ADMINISTRATIVE LAW

Where to bury Richard III? Judicial review and the 'ownership' of a king's remains

R (The Plantagenet Alliance Ltd) v Secretary of State for Justice [2013] EWHC B13 (Admin)
R (The Plantagenet Alliance Ltd) v Secretary State for Justice (Rev 1) [2013] EWHC 3164 (Admin)

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Introduction

The issue of standing for the purposes of judicial review is crucial and the courts have increasingly adopted a far less restrictive approach, which emphasises the importance of upholding the rule of law. The recent decision of the Administrative Court to permit a judicial review application by the Plantagenet Alliance is remarkable,[1] as the courts have accepted that the importance of the issue, namely, what should happen to Richard III's remains, means that the application should proceed to a substantive hearing. The application challenged the failure by both the Secretary of State for Justice and the University of Leicester, to carry out a consultation when determining what should happen to Richard's remains. The discovery of the remains has reignited public interest in the historical debate surrounding his rise to power. This is unsurprising, as Richard still remains a controversial figure some five hundred years after his death. However, the vocal debate as to where the remains should be buried has added a legal dimension to this dispute; one that will continue to fuel the heavy media coverage and public interest in Richard's legacy, his remains and the eventual location of where these will be reinterred. By permitting the application to proceed, the Administrative Court has ensured that Richard's relatives are able to have a court review of the approach taken by the respondents.

The decision in *R (The Plantagenet Alliance Ltd) v Secretary of State for Justice*[2]

The Administrative Court has given permission for the Plantagenet Alliance to bring an application to judicially review the decision to reinter Richard III's remains in Leicester Cathedral. The application was based on the failure to carry out any consultation, either before or after the licence had been issued by the Secretary of State to permit the University of Leicester to exhume and reinter Richard's remains. The court also extended the time limit for bringing the application and granted a Protective Costs Order. By awarding the Protective Costs Order, the decision encourages the challenge by the claimant to proceed to the substantive hearing.[3]

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[1] The Plantagenet Alliance Ltd is comprised of Richard III's collateral descendants. It was formed in response to the discovery of Richard's remains.
[2] [2013] EWHC B13 (Admin)
[3] *Ibid*, at paragraph 36. Haddon-Cave J observed that 'If a Protective Costs Order is not made, the claimant will probably discontinue the proceedings and will be acting reasonably in so doing.'

The legal challenge

The claimant challenged the decision of the Secretary of State for Justice to issue an exhumation licence under s.25 of the Burial Act 1857 (BA 1857). The licence had been issued on 2 September 2012 and stated that the remains of 'persons unknown' would need 'to be deposited at the Jewry Street Museum or else reinterred at St Martin's Cathedral [Leicester Cathedral] or in a burial ground in which interments may legally take place.'[4] The claimant argued that the licence had been granted without prior consultation or requiring subsequent consultation. Furthermore, it was argued that once it was clear that there would no such consultation, the Secretary of State had failed to re-visit the licence. The claimant also challenged the decision of the University of Leicester on 4 February 2013, to start making arrangements to reinter Richard III at Leicester Cathedral.

Sir Charles Haddon-Cave J granted additional time to make the application and consequentially the claimants were not barred from bringing the application, as they had exceeded the three-month time limit under CPR 54.5. Given the circumstances and the delay in confirming that the remains were actually those of Richard III, Haddon-Cave J held that there had 'been no unreasonable delay by the claimant in bringing proceedings.'[5] Indeed, 'the claimant acted with reasonable promptness.'[6]

Why the claimant had standing

The Plantagenet Alliance were held to have standing for the purposes of judicial review, as it met the requirement of a sufficient interest as stipulated by s.31 of the Senior Courts Act 1981. Sir Charles Haddon-Cave considered sufficient interest to have 'a wide meaning' and that the claimant's had standing:

> '[B]oth on conventional principles, and in the unusual circumstances of this case which involve the discovery of the proven remains of a former monarch.'[7]

Haddon-Cave J made reference to a number of previous decisions when deciding there was sufficient interest. These decisions included *R v Monopolies and Mergers Commission*[8], where the Court of Appeal considered the test for sufficient interest from *R v Inland Revenue Commissioners, Ex parte National Federation of Self-Employed and Small Businesses Ltd*[9] and reiterated that while Lord Diplock and Lord Fraser had introduced a two stage test, with the first stage designed to refuse permission if the claimant 'has no interest whatsoever and is, in truth, no more than a meddlesome busybody', the question of sufficient interest could be considered in the second stage as 'one of the factors to be weighed in the balance.'[10] Therefore, provided the claimant has some interest and is not considered a busybody, the strength

[4] *Ibid*, at paragraph 6
[5] *Ibid*, at paragraph 11
[6] *Ibid*, at paragraph 13
[7] *Ibid*, at paragraph 15
[8] [1986] 1 WLR 763
[9] [1982] AC 617
[10] [1986] 1 WLR 763 at page 773, per Sir John Donaldson MR.

of the claimant's interest should not prevent the claim from having a substantive hearing.

Reference was also made to the decision in *Walton v The Scottish Ministers.*[11]where the Supreme Court considered the interpretation of the requirement 'a person aggrieved' for the purposes of challenging a decision of the Scottish Ministers to designate or remove the designation of a trunk road under the Roads (Scotland) Act 1984. Lord Reed considered the requirement that the applicant needed to be 'a person aggrieved' and was of the view that (where there had been a breach of statutory duty):

> 'In many contexts it will be necessary for a person to demonstrate some particular interest in order to demonstrate that he is not a mere busybody. Not every member of the public can complain of every potential breach of duty by a public body. But there may also be cases in which any individual, simply as a citizen, will have sufficient interest to bring a public authority's violation of the law to the attention of the court, without having to demonstrate any greater impact upon himself than upon other members of the public. The rule of law would not be maintained if, because everyone was equally affected by an unlawful act, no one was able to bring proceedings to challenge it.'[12]

The necessity of a less restrictive approach to standing, which places emphasis on upholding the rule of law and permits the concerned citizen to bring the alleged violation of the executive and its agencies before a court, is clearly of great importance in a modern democracy. The claimant represented members that were related to Richard III, albeit distant relatives separated by over five hundred years of history. Being related to medieval monarchs is not uncommon and the decision to permit the group to have standing is generous. Considering the decision in *R v Secretary of State for the Environment, Ex parte Rose Theatre Trust Co*[13] (which was not cited), the claimant's have benefitted from subsequent decisions such as *R (Greenpeace Ltd) v Her Majesty's Inspectorate of Pollution*[14] (which was cited) and *R v Secretary of State for Foreign and Commonwealth Affairs Ex p. World Development Movement Ltd*.[15] Clearly, the claimant benefited from the importance of the historical discovery and the fact that as beneficiaries of a much more liberal judicial approach to standing they were not regarded as busybodies.[16]

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[11] [2012] UKSC 44

[12] *Ibid*, at paragraph 93

[13] [1990] 2 WLR 186. The decision in *Ex parte Rose Theatre Co* was restrictive. Schiemann J explained his reasoning for holding that the interested citizens did not have standing: 'I do not consider that an interested member of the public who has written and received a reply in relation to a decision not to schedule a site as an ancient monument has sufficient interest in that decision to enable him to apply for judicial review…the law does not see it as the function of the courts to be there for every individual who is interested in having the legality of an administrative action litigated. Parliament could have given such a wide right of access to the court but it has not done so. The challenger must show that he "has a sufficient interest in the matter to which the application relates"… We all expect our decision makers to act lawfully. We are not all given by Parliament the right to apply for judicial review' (at p.522).

[14] [1994] 4 All ER 329

[15] [1995] 1 WLR 386; see Rose LJ's judgment at page 395.

[16] The Ministry of Justice is currently reforming judicial review. The proposals will reform the rules on who can have standing. This will potentially restrict a large of claims, especially if the current approach

The common law duty to consult

Although there was neither a statutory duty to consult under the 1857 Act, nor would the court impose a restriction on the unfettered discretion accorded to the Secretary of State, Haddon-Cave J held that there was a common law duty to consult, which arose from a legitimate expectation that there would be a consultation.[17] Haddon-Cave J held that it was arguable that there was a legitimate expectation that there would be a consultation prior to the granting of the licence.[18] The categories of potential consultees that had a legitimate expectation were wide and included interested citizens and Richard III's relations.[19]

The Secretary of State was unable to delegate the duty to consult to the University of Leicester, and ought to have reconsidered the grant of the licence after the remains were identified as Richard III's and it was apparent that the University of Leicester was not intending to have a consultation. Furthermore, it was arguable that as a public body, the University of Leicester should not have taken the decision to reinter the remains without having held a consultation.[20]

Haddon-Cave J accepted that a number of points were arguable based on the evidence before the court. Reference was made to English Heritage's 'Guidance for best practice of treatment of legal remains excavated from Christian burial grounds' (2005) where '[i]t is clear from fair reading of the Guidance that good practice and "ethical treatment" of human remains require' a consultation which included persons with legitimate interest, members of the public if appropriate, and the descendants of the deceased.[21] Importantly, the Ministry of Justice had contributed to the guidance. Finally, the consultation should take 'steps to determine "the individual wishes of the dead."'[22]

Reference was made to the awareness of the Secretary of State at the time of issuing the licence, that the remains could be those of Richard III, who would have descendants. The Head of the Burials Team at the Ministry of Justice had written in

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as to standing is narrowed. The consultation can be accessed at https://consult.justice.gov.uk/digital-communications/judicial-review/consult_view, last assessed on 9th October 2013. It is clear from 'Reform of Judicial Review: The Government response' (April, 2013), which responded to the views of those who took part in the consultation, that the government's intention 'was to target weak, frivolous and unmeritorious cases, so that they were filtered out quickly and at an early stage, while ensuring that arguable claims could proceed to a conclusion without delay', available at https://consult.justice.gov.uk/digital-communications/judicial-review-reform, accessed on 21st October 2013. The reforms to judicial review are concerning, as any restriction on who could bring judicial review could have a negative impact on the rule of law and executive accountability. The Bingham Centre for the Rule of Law has launched a review as to the 'possible ways of improving judicial review procedures in the Administrative Court, to save and protect public funds, in a manner consistent with the rule of law.' Full details are available at http://www.biicl.org/binghamcentre/JRinquiry/, accessed on 9th October 2013.

[17] [2013] EWHC B13 (Admin) at paragraphs 20-21

[18] *Ibid*, at paragraph 22

[19] *Ibid*

[20] *Ibid*

[21] *Ibid*, at paragraph 24

[22] *Ibid*, see English Heritage's 'Guidance for best practice of treatment of legal remains excavated from Christian burial grounds' (2005). This is available at, http://www.english-heritage.org.uk/publications/human-remains-excavated-from-christian-burial-grounds-in-england/, accessed 21st October 2013.

an email that, '[i]t is relatively unusual to have a licence application in relation to the remains of a named person of this age, and therefore with potential descendants, so this would raise greater sensitivities to weigh up, even if the remains were not royal.'[23] Haddon-Cave J observed that the Secretary of State had failed to comply with English Heritage's guidance, despite the known 'sensitivities'. Haddon-Cave J was of the view that it was arguable that 'the Secretary of State should, at least, have placed a condition or *locus poenitentiae* on the Licence that, in the event that Richard III's remains were in fact found, no re-interment could take place, unless and until the Secretary of State had first carried out appropriate consultation.'[24] Haddon-Cave J considered that it was arguable that the Secretary of State had submitted that the Ministry's practice was to only consult relatives where the body had been buried within a hundred years. This did not however conform to the guidance, which despite saying that 'the consent of the next of kin is usually dispensed with where the remains were buried 100 years or more previously…', there was however a ethical duty to take steps to alert those people in the locality who could be descendants 'so that their views may be heard.'[25] It was clear that the decision in the present case did not conform to the established guidance, or with what could be expected in such an unprecedented case, where the body was that of a King of England.

Originally, there had been an idea to consult interested parties. However, this idea was not pursued. Haddon-Cave J referred to an email sent on 25 September 2012 from the University of Leicester to the Leicester Arts and Museums Service, which indicated that there would be public consultation as to where the remains, if Richard III's, would be reinterred. Haddon-Cave J remarked that, 'This sentence does not appear in the press release as published on 14 January 2013. It is not clear why.'[26] It was evident that there was strong public interest and that 'Richard III should be reburied was considered to be sufficiently important to warrant of a Parliamentary debate.'[27] The Ministry of Justice had subsequently intended to hold a 'belated consultation' and invited interest parties to a meeting which was postponed indefinitely. The invitees did not include Richard III's descendants.

Interestingly, Haddon-Cave J accepted that Article 8 of the European Convention on Human Rights would be relevant, as Strasbourg had previously held that the deceased's wishes must be taken into account when considering their burial arrangements, and '[f]or this reason, and in view of the unusual circumstances of this claim by traceable descendants of a famous Royal figure, it may be said that article 8 (right to respect private and family life) has some role to play.'[28] The prospect of Richard III being associated with the possible development of article 8 jurisprudence is in itself remarkable.

Haddon-Cave J accepted that it was arguable that the claimant, amongst other interested parties, had a legitimate expectation that it would be consulted:

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[23] *Ibid*, at paragraph 26. Email from the Head of the Burials Team at the Ministry of Justice to Ms Phillipa Langley of the Richard Society, sent on the 12 January 2011.
[24] *Ibid*, at paragraph 27
[25] *Ibid*, paragraph 25, English Heritage's 'Guidance for best practice of treatment of legal remains excavated from Christian burial grounds' (2005) at paragraphs 18, 20 and 21.
[26] *Ibid*, at paragraph 29
[27] *Ibid*, at paragraph 31. See *Hansard*, 12th March 2013, 22-30WH.
[28] *Ibid*, at paragraph 33

> 'Whilst for many individuals the discovery remains an irrelevance, nevertheless, institutions of state, organisations and citizens of this country, as well as descendants, could legitimately feel that they should have been consulted or had a say in the matter, in particular those from competing parts of the country claiming association with Richard III and the Wars of the Roses. The discovery of Richard III's remains touches upon our history, heritage and identity.'[29]

The decision in *R (The Plantagenet Alliance Ltd) v Secretary of State for Justice (Rev 1)*[30]

On 26 September 2013, a subsequent hearing took place before Haddon-Cave J, which was to determine the cap for the Protective Costs Order. The Secretary of State made an application at the hearing *inter alia* to vary or discharge the Protective Costs Order. The University of Leicester supported this application. The Secretary of State had sought to appeal the Protective Costs Order at the Court of Appeal. Haddon-Cave J observed that '[t]his was a procedural mistake. It is impermissible to challenge a decision of the Administrative Court made on paper on an ancillary matter by way of appeal to the Court of Appeal without having first renewed the matter orally before the Administrative Court.' [31] The Order was challenged for a number of reasons, including that the 'this was a "wholly inappropriate" case for the Government to fund.'[32] The Secretary of State attempted to argue that the Protective Costs Order was not appropriate as it did not comply with the general principles reiterated in *R (Corner House) v Secretary of State for Trade and Industry*. [33] It was argued that the Order could be challenged because there was no '[g]eneral public importance', which was required by the principles from *R (Corner House)*.[34] Haddon-Cave J rejected this argument and referred back to his original decision, where he demonstrated the considerable public and parliamentary interest, and that the discovery 'is *"unprecedented"* and touches on our history, heritage and identity.'[35]

Haddon-Cave J was critical of the Secretary of State's submission that there was no public interest in the process of granting a licence, therefore separating this from the public interest surrounding the decision as to where Richard's remains should be

[29] *Ibid*, at paragraph 34
[30] [2013] EWHC 3164 (Admin)
[31] *Ibid*, at paragraph 8
[32] *Ibid*, at paragraph 10
[33] [2005] 1 WLR 2600 (CA) at paragraph 74. The general principles for granting a Protective Costs Order were outlined by Lord Phillips MR: '1. A protective costs order may be made at any stage of the proceedings, on such conditions as the court thinks fit, provided that the court is satisfied that:
i) The issues raised are of general public importance;
ii) The public interest requires that those issues should be resolved;
iii) The applicant has no private interest in the outcome of the case;
iv) Having regard to the financial resources of the applicant and the respondent(s) and to the amount of costs that are likely to be involved it is fair and just to make the order;
v) If the order is not made the applicant will probably discontinue the proceedings and will be acting reasonably in so doing.
2. If those acting for the applicant are doing so *pro bono* this will be likely to enhance the merits of the application for a PCO.
3. It is for the court, in its discretion, to decide whether it is fair and just to make the order in the light of the considerations set out above.'
[34] [2013] EWHC 3164 (Admin), at paragraph 33.
[35] *Ibid*, at paragraph 34

reinterred. This argument was described as seeking 'illegitimately, to divorce the decision from the process.'[36] Haddon-Cave J observed that the process in making the decision and the decision itself are 'inextricably' linked.[37] Furthermore, the Secretary of State had argued 'that there was no "public interest" in the outcome of the judicial review, merely a "parochial" interest by York sympathisers driving the claim' and that it was sufficient that there was a public debate, which was taking place in the newspapers.[38] This argument was 'flawed and heretical' and ignored 'the fundamental need for the Court to ensure that the due processes of the common law are adhered to'.[39] Haddon-Cave J was scathing '(the Secretary of State's argument) suggests that amorphous 'public debate' in the Press or on the Web is somehow a substitute for the adherence by public bodies to the duty at common law properly to consult interested parties.'[40] Taken perhaps to its logical conclusion, the need for judicial review to uphold the principles of justice would depend on a sliding scale of newspaper interest.

The Secretary of State argued that the claimant was using litigation in order to advance its own private interest.[41] Haddon-Cave J was clear that in addition to the claimant's interest, there was considerable public interest in seeing that the decision was correctly made. The claimant's private interest was not fatal to awarding a Protective Costs Order.[42] It was also argued that the Protective Costs Order was inappropriate as the claimant was a company and this enabled its members to limit their personal liability. It was argued that the claimant should have sought funding from the public and taken steps to obtain *pro bono* legal representation. Haddon-Cave J, who held that the claimant did not have the resources to bring the claim without the Protective Costs Order, dismissed these arguments:

> 'If lawyers are prepared to act free of charge in particular cases all well and good; but it cannot be a *sine qua non* to the grant of a PCO that applicants are required to prove that they have trawled the legal market for *pro bono* representation. This would be contrary to the principle of free choice of representation.'[43]

This is important, as a party seeking to challenge a decision of the executive should not be expected to procure free representation, or make diligent steps to do so, before being eligible for a Protective Costs Order.

It was further argued by the Secretary of State that it was not fair and justice to grant a Protective Costs Order because the litigation 'as simply being used as a 'campaigning or publicity tool' to try and persuade decision-makers to re-inter the body of Richard III in York' and that it was unfair that the government should have all the risk.[44] Haddon-Cave J rejected the proposition that the litigation was simply about publicity, as it was about seeking to quash the licence and achieve the 'appropriate consultation' before a decision is reached. Furthermore, Haddon-Cave J held that:

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[36] *Ibid*, at paragraph 35
[37] *Ibid*
[38] *Ibid*, at paragraph 37
[39] *Ibid*, at paragraph 38
[40] *Ibid*, at paragraph 38
[41] *Ibid*, at paragraph 39
[42] *Ibid*, at paragraph 40
[43] *Ibid*, at paragraph 46
[44] *Ibid*, at paragraph 48

> 'The relief sought is logically a necessary legal step to achieving what the claimant's supporters contend they are entitled to at Common Law, namely a level playing field of consultation in which to argue the case for York as opposed to Leicester.'[45]

Haddon-Cave J set an overall cap of £70,000 and stated that the amount could be revisited as the parties were given permission to make applications in the future.[46]

Commentary and conclusions

Richard III: a controversial monarch, a controversial legacy and a controversial burial

Richard III is one of England's most controversial monarchs, having come to power in 1483, after deposing his young nephew; Edward V. Richard was not the only monarch to be accused of murdering his nephew in order to secure his rule.[47] He was the last king to be killed in battle and his reign marked the end of the Plantagenet dynasty.[48] The image of Richard is skewed by Shakespeare's depiction of the King as a hunchback and a repulsive individual.[49] Shakespeare's Richard III is often accused of being Tudor propaganda and Richard's physical deformity was subject to considerable controversy.[50]

Once Richard was discovered the question was where to reinter the king's remains. Richard's grave at Greyfriars was that of a defeated ruler, buried without honours, the despoiled body having been placed in an ill-fitting grave. Very soon after the discovery of Richard's remains it was announced that he would be reinterred in Leicester Cathedral and this planned reburial sparked more controversy, namely, as to the competing claim of York Minister to the king's remains. It can be observed that whilst Leicester does have a strong claim to the King, Richard having been buried there for some five hundred years, opponents to this plan argue that he had a strong connection to York and that Richard would have preferred for the remains to be

[45] *Ibid*, at paragraph 49
[46] *Ibid*, at paragraph 67
[47] John Lackland was accused of having murdered his nephew Arthur of Brittany. Arthur was an alternative heir to Richard I and after John became king, Arthur was captured and imprisoned. Arthur's death is attributed to John who was accused of personally murdering his nephew.
[48] The Plantagenet dynasty descended from Geoffrey of Anjou, the husband of the Fitz Empress Matilda, who was the daughter of Henry I and the mother of the great legal reformer Henry II. For a general history of the Plantagenets see Jones, D. *The Plantagenets: The Kings who made England* (William Collins, 2013). Note that the book does not cover the dynasty beyond the accession of Henry IV in 1399.
[49] Perhaps the most famous description of Richard III (by Shakespeare) was the introduction to *Richard III*, where Shakespeare's Richard describes himself as, 'I, that am curtail'd of this fair proportion, Cheated of feature by dissembling nature, Deformed, unfinish'd, sent before my time into this breathing world, scare half made up, And that so lamely and unfashionable that dogs bark at me as I halt by them…. I am determined to prove a villain…' (Act 1, Scene 1).
[50] Rosemary Horrox noted that '[i]t is easy to refute the "Tudor Myth", with its cold-blooded schemer who revels in evil', but that 'Richard's bad reputation was not entirely a Tudor creation'. See Horrox, R. 'Richard III (1452-85)' *Oxford Dictionary of National Bibliography*, Oxford University Press, 2004. Also see the relatively pro-Richard biography by Kendall, P.M. *Richard III* (1955).

reinterred in York Minister. Leicester may be where Richard had resided since 1485, but that was Henry Tudor's choice, and not Richard's.

Significance of the decision in R (The Plantagenet Alliance Ltd) v Secretary of State for Justice

The Administrative Court's decision to allow the claim to proceed has added a new, legal, dimension to one of the most important archaeological discoveries (from a lay, if not an academic perspective) of the past few decades. The wrangling over Richard III's remains is of considerable importance for a number of reasons. Firstly, the remains of one of English history's most infamous monarchs have finally been discovered and this has resulted in a legal dispute that stems from the granting of a licence to exhume the remains and to rebury these without consultation. Given the historical importance of the discovery and the likelihood that there were individuals able to claim kinship with Richard, this lack of consultation by the Secretary of State for Justice and subsequently, by the University of Leicester is surprising. The claimant brought the application for judicial review as self-declared representatives of the Plantagenets, a former royal dynasty which ended with the death of Richard III at Bosworth field in 1485. The opening paragraph of Haddon-Cave J's decision is clear as to the importance of permitting the application to proceed, as '[t]he archaeological discovery of the mortal remains of a former King of England after 500 years is without precedent.'[51] Indeed, by paving the way for a substantive hearing, the Administrative Court permits judicial scrutiny of the decision to reinter the body of a King of England, without the prior consultation of his descendants, nor the overt consideration of Richard III's own wishes.

Secondly, the decision is important as the court accepted that it was arguable that there had been a legitimate expectation that the claimant would have been consulted. In the absence of such a statutory requirement, this gave rise to a common law duty to consult with interested parties, and enables the claimant to challenge the absence of any consultation by either the Secretary of State or the University of Leicester. Thirdly, the decision to allow the application to proceed is of interest because the claimant was held to have standing for the purposes of judicial review. This was despite the considerable expiration of time that had passed since 1485 and the distant link that connected the claimant's members to the king. Considering the government's planned reforms of judicial review and the restrictions on standing, the decision demonstrates the current judicial willingness to permit interested and concerned citizens to challenge public bodies, despite the lack of a strong direct interest or the application involving an overt threat to the rule of law.

The challenge to the Protective Costs Order

It is clear that the importance of the litigation was not undermined by the claimant's private interest or the wider public debate which was being voiced in the media. The Protective Costs Order was upheld and the arguments to discharge it greeted with very little support. It was clear that Haddon-Cave J viewed the Protective Costs Order

[51] *Ibid*, at paragraph 1

as guaranteeing a fair playing field to permit the claimant to argue that its common law right to consultation had not been given effect to.

Where next?

A judicial review application being brought in these circumstances is unusual and arguably invites an initial response of bemusement and historical curiosity; however, the fact remains that the claimant represents the descendants of Richard III and as Haddon-Cave J observed, 'Counsel for the Plantagenet Alliance submit that the law of England is not simply based on *"finders keepers"*, particularly where the remains of a former King of England are concerned.'[52] The question is what degree of consultation is relevant when deciding where to reinter a monarch's remains. Arguably where there are descendants, this should necessitate a much boarder involvement in the decision, rather than just the organisation which has discovered the remains and the Secretary of State. Indeed, the application is an attempt to force the Secretary of State and the University of Leicester to hold a consultation, something which surprisingly had not taken place. Haddon-Cave J advised the parties to avoid a repeat of the War of the Roses through the courts and to instead refer the matter to an independent advisory panel.[53]

The attempt by the Secretary of State to appeal the award of a Protective Costs Order to the Court of Appeal and the applications raised at the most recent hearing, indicates that there appears to be little appetite to voluntarily revisit the grant of the licence and hold an appropriate consultation. A week before the second hearing,[54] it had been reported that the Secretary of State still intends that Richard III will be buried in Leicester Cathedral and that he would not adopt the suggestion of referring the matter to an independent advisory panel.[55] Nonetheless, in the absence of the matter being resolved out of court, it will be interesting to note the outcome of the judicial review, especially as the Ministry of Justice, in response to an offer by the claimant to resolve the matter out of court, informed *The Telegraph* that '[w]e will vigorously defend our position at this judicial review.'[56] It would be tempting to predict the outcome, if and when, there is a substantive hearing. Arguably, the original licence could be quashed and the Secretary of State ordered to conduct an appropriate consultation prior to the re-interment of Richard III's remains. In any event, the substantive hearing will take place on 13 March 2014 and the decision of the Administrative Court promises to be of considerable interest to those who have followed the events of the past year.

[52] *Ibid*, at paragraph 18
[53] *Ibid*, at paragraphs 40-41
[54] [2013] EWHC 3164 (Admin)
[55] Collins, N. 'Chris Grayling to "vigorously defend" Leicester burial for Richard III' 18 September 2013, *The Telegraph*, available at http://www.telegraph.co.uk/history/10315687/Chris-Grayling-to-vigorously-defend-Leicester-burial-for-Richard-III.html, accessed on 9th October 2013.
[56] *Ibid*