

PRESS SUMMARY

23 May 2025

***R (Tortoise Media Ltd) v Conservative and Unionist Party
[2025] EWCA Civ 673***

Important note for the press and the public: This summary is provided to assist in understanding the Court’s decision. It does not form part of the reasons for the decision. The full written judgment of the Court is the only authoritative document. The judgment is a public document and a copy can be obtained at

**<https://www.judiciary.uk/judgments/> or at
<https://caselaw.nationalarchives.gov.uk>.**

1. The Court of Appeal Civil Division has today dismissed a claim for judicial review brought by Tortoise Media Limited (“Tortoise”) against the Conservative and Unionist Party.
2. The main judgment was given by Lord Justice Singh, with whom Sir Geoffrey Vos, Master of the Rolls, and Lord Justice Dingemans, agreed.
3. The main issue in the case was whether, when it elected its leader in September 2022 (Liz Truss), the Party was exercising a public function for the purposes of section 6 of the Human Rights Act 1998 (“HRA”). That issue arose in the context of a request by Tortoise for the disclosure of information regarding the Party’s membership and the leadership contest, which was refused by the Party.
4. The factual background was that, on 7 July 2022, the incumbent Prime Minister, Boris Johnson, resigned as leader of the Conservative Party. He remained as Prime Minister until his successor had been appointed by the Sovereign, the late Queen Elizabeth II. His resignation triggered a leadership election. The election process included a ballot of eligible party members, who could vote for one of two candidates after votes by the Parliamentary Party had eliminated other candidates. On 5 September 2022 the result of the election was announced: Liz Truss had won more votes than Rishi Sunak. On the following day, Ms Truss flew to Balmoral and was invited by the late Queen to become Prime Minister and form a government.
5. Tortoise applied to the High Court (in the Administrative Court) for permission to bring a claim for judicial review of the Party’s refusal to disclose the information requested. Permission was refused on the papers on 19 July 2023 by Lang J and, after the application was renewed at an oral hearing on 23 November 2023, was again refused by Fordham J, who gave a detailed, reserved judgment on 5 December 2023. Both judges held that the Conservative Party was not exercising a public function when it conducted the leadership election and was not amenable to judicial review.
6. Tortoise then applied for permission to appeal against the decision of Fordham J to the Court of Appeal. After considering that application on the papers, in an order sealed on 31 July 2024, rather than granting permission to appeal, Stuart-



Smith LJ granted permission to bring the claim for judicial review and reserved the substantive hearing of that claim to the Court of Appeal. So it is that the Court of Appeal, as happens on occasion, was considering not an appeal but a claim for judicial review for itself.

7. A claim for judicial review may be brought in respect of the lawfulness of “a decision, action or failure to act in relation to the exercise of a public function”: rule 54.1(2) of the Civil Procedure Rules. Similarly, section 6(3)(b) of the HRA provides that a “public authority” for the purposes of that Act includes “any person certain of whose functions are functions of a public nature”.
8. In its decision the Court of Appeal has held that the Conservative Party was not exercising a public function when it conducted the process for election of its leader in 2022.
9. At **paras 22-50** of his judgment, in particular **paras 29-32** and **paras 39-41**, Lord Justice Singh explained that the Party is a voluntary association, governed by its own constitution; it does not exercise any statutory or other public law powers; and the election of its leader is not an exercise in governmental functions. The appointment of the new Prime Minister comprised the following three distinct stages:
 - (1) The election of the Party leader (“stage 1”).
 - (2) Advice given by the incumbent Prime Minister to the Sovereign as to which person was likely to have the confidence of the House of Commons and therefore should be invited to become Prime Minister (“stage 2”).
 - (3) The appointment by the Sovereign of the Prime Minister (“stage 3”).
10. Although stages 2 and 3 concerned the exercise of public functions, the present claim for judicial review concerned only stage 1. The Court held that the Party was not exercising a public function at stage 1 of the process. The “nature” of the “act” was private and did not become public simply because of the consequences which would follow, in accordance with constitutional convention.