In the High Court of Justice **CO/9095/2010**
Queen's Bench Division
Administrative Court

In the matter of an Application for Judicial Review

The Queen on the Application of

CASEY WILLIAM HARDISON

Claimant

– & –

CRIMINAL CASES REVIEW COMMISSION

Defendant

DETAILED STATEMENT OF FACTS

A Chronological Adventure

"To many young people the regulation of tobacco and alcohol and the prohibition of drugs presents a dichotomy in terms of harm. They question why substances of considerable harm such as cigarettes and alcohol are able to be consumed relatively easily when possessing a drug like cannabis can lead to prosecution".

Review of the UK's Drugs Classification System – a Public Consultation
Paragraph 6.3
Home Office
May 2006

Prepared By

Casey William Hardison

8 August 2010

CO/9095/2010

Casey William HARDISON — Claimant

– & –

Criminal Cases Review Commission — Defendant

DETAILED STATEMENT OF FACTS

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1. The Appellant, Mr Casey William Hardison, a thirty-nine year old United States citizen, was arrested on 11 February 2004 and charged with various offences relating to the manufacture, supply and possession of Class A controlled drugs contrary to the provisions of the Misuse of Drugs Act 1971. Hardison dismissed the services of counsel prior to Trial and carried out his own advocacy.

2. On 5 January 2005, at Lewes Crown Court, before His Honour Judge Niblett, Hardison moved to stay the indictment as an abuse of process – alleging that an executive abuse of power threatened his human rights under Articles 3, 6, 8, 9, 10 & 14 of the Human Rights Act 1998 ("HRA"). There were <u>two</u> main thrusts to this argument:

   1) Hardison argued that "by prohibiting access to certain modes of thought or consciousness via drug laws, the Government is censoring cognitive processes, ideations, and information which reside, occur, or are accessible in these states". This was said to violate HRA Article 9, Freedom of Thought.

   2) Hardison further argued that "there is a clear inequality of treatment of people who 'use' illicit drugs in the enjoyment of several of the convention rights 'grounded upon a predisposed bias' on the part of a majority which does not use 'illicit' drugs against a minority which does use 'illicit' drugs". This was said to violate HRA Article 14, Freedom from Discrimination.

3. This application necessitated several days of oral argument and ended with an adverse ruling on 13 January 2005.[1]

4. On 18 January 2005, at Lewes Crown Court, before His Honour Judge Niblett, the jury was sworn and trial began.

5. The Indictment left to the Jury contained 8 counts:

Count 1

STATEMENT OF OFFENCE

PRODUCING A CONTROLLED DRUG OF CLASS A contrary to Section 4(2)(a) of the Misuse of Drugs Act 1971.

PARTICULARS OF OFFENCE

Casey William Hardison between 1st day of April 2002 and 13th day of February 2004 produced 4-BROMO-2,5-DIMETHOXYPHENETHYLAMINE, a controlled drug of Class A in contravention of Section 4(1) of the Misuse of Drugs Act 1971.

[1] 13 January 2005 Transcript of Judge's Reasons for Ruling on Abuse of Process/Human Rights Arguments at p4A-B

DETAILED STATEMENT OF FACTS

Count 2

STATEMENT OF OFFENCE

PRODUCING A CONTROLLED DRUG OF CLASS A contrary to Section 4(2)(a) of the Misuse of Drugs Act 1971.

PARTICULARS OF OFFENCE

Casey William Hardison between 1st day of April 2002 and 13th day of February 2004 produced 4-IODO-2,5-DIMETHOXYPHENETHYLAMINE, a controlled drug of Class A in contravention of Section 4(1) of the Misuse of Drugs Act 1971.

Count 3

STATEMENT OF OFFENCE

PRODUCING A CONTROLLED DRUG OF CLASS A contrary to Section 4(2)(a) of the Misuse of Drugs Act 1971.

PARTICULARS OF OFFENCE

Casey William Hardison between 1st day of April 2002 and 13th day of February 2004 produced N,N-DIMETHYLTRYPTAMINE, a controlled drug of Class A in contravention of Section 4(1) of the Misuse of Drugs Act 1971.

Count 4

STATEMENT OF OFFENCE

PRODUCING A CONTROLLED DRUG OF CLASS A contrary to Section 4(2)(a) of the Misuse of Drugs Act 1971.

PARTICULARS OF OFFENCE

Casey William Hardison between 1st day of April 2002 and 13th day of February 2004 produced LYSERGIC ACID DIETHYLAMIDE, a controlled drug of Class A in contravention of Section 4(1) of the Misuse of Drugs Act 1971.

Count 5

STATEMENT OF OFFENCE

PRODUCING A CONTROLLED DRUG OF CLASS A contrary to Section 4(2)(a) of the Misuse of Drugs Act 1971.

PARTICULARS OF OFFENCE

Casey William Hardison between 1st day of April 2002 and 13th day of February 2004 produced MESCALINE, a controlled drug of Class A in contravention of Section 4(1) of the Misuse of Drugs Act 1971.

Count 6

STATEMENT OF OFFENCE

POSSESSING A CONTROLLED DRUG OF CLASS A WITH INTENT TO SUPPLY contrary to Section 5(3) of the Misuse of Drugs Act 1971.

PARTICULARS OF OFFENCE

Casey William Hardison on 12th day of February 2004 had in his possession approximately 171,500 paper doses of LYSERGIC ACID DIETHYLAMINE, a controlled drug of Class A with intent to supply it to another in contravention of Section 4(1) of the Misuse of Drugs Act 1971.

Count 7

STATEMENT OF OFFENCE

POSSESSING A CONTROLLED DRUG OF CLASS A, contrary to Section 5(2) of the Misuse of Drugs Act 1971.

PARTICULARS OF OFFENCE

Casey William Hardison on 12th day of February 2004 had in his possession 0.369g of N,N-DIMETHYL-5-METHOXY-TRYPTAMINE, a controlled drug of Class A in contravention of Section 5(1) of the Misuse of Drugs Act 1971.

Count 8

STATEMENT OF OFFENCE

BEING KNOWINGLY CONCERNED IN THE FRAUDULENT EVASION OF A PROHIBITION ON THE EXPORTATION OF GOODS, contrary to Section 170(2)(b) of the Customs and Excise Management Act 1979.

PARTICULARS OF OFFENCE

Casey William Hardison between the 1st day of July 2003 and the 11th day of July 2003 in relation to a Class A controlled drug, namely MDMA, was knowingly concerned in the fraudulent evasion of the prohibition on exportation in contravention of Section 3(1) of the Misuse of Drugs Act 1971.

6. On 18 March 2005, the Jury convicted Hardison on Counts 1, 3, 4, 6, 7 & 8 and acquitted him on Counts 2 & 5.

7. On 22 April 2005, assisted by Counsel, Mr Rudi Fortson, Hardison was deprived of liberty for twenty years and recommended for deportation and asset recovery.

8. On 19 January 2006 the Rt Hon Charles Clarke MP, the then Secretary of State for the Home Department ("SSHD"), told the House of Commons:

> "The more that I have considered these matters the more concerned I have become about the limitations of our current system. Decisions on classification often address different or conflicting purposes and too often send strong but confused signals to users and others about the harms and consequences of using a particular drug and there is often disagreement over the meaning of different classifications. […] For these reasons I will in the next few weeks publish a consultation paper with suggestions for a review of the drug classification system, on the basis of which I will in due course make proposals". *Hansard*, HC Deb, 19 Jan 2006, Col 983

9. On 13 February 2006, the Honourable Mr Justice Christopher Clarke, refused an application for Leave to Appeal against Conviction stating, relevant to this Application:

> "You admit (see paragraph 22 of your Appendix A) that you were aware that your *'explorative facilitations'* were in breach of the criminal law. There is no arguable basis for contending that the statutory prohibitions against producing class A drugs, your conviction, or your sentence contravene, or are incompatible with, the European Convention or the rights you enjoy under it". (Emphasis added)

DETAILED STATEMENT OF FACTS

10. On 2 March 2006, Lord Bassam of Brighton clarified the Government's position re the promised consultation on the classification system:

> "The Government's review on classification will begin in a few weeks with the publication of a consultation paper. […] I should say at the outset that the consultation document will take forward an improved system of control.

11. On 6 May 2006, the Rt Hon Charles Clarke MP resigned as SSHD. Unbeknownst to Hardison the Home Office shelved the promised consultation paper. He would not know why until the Home Office was forced to disclose it to him on 9 July 2010, after a three-year battle under the Freedom of Information Act 2000. It would go directly to the heart of his criminal appeals.

12. On 25 May 2006, the Court of Appeal heard a renewed Application for Leave to Appeal against Conviction, 200504343C4, prepared by Hardison, and an Appeal against Sentence, prepared by Counsel. The Court of Appeal dismissed both the Application for Leave to Appeal and the Appeal against Sentence, stating, relevant to this Application:

> "9. The appellant's portmanteau defence to these charges was that he was a victim of society's war on drugs. We all have the inalienable right to do with our own bodies as we wish, and that includes the right to alter our own consciousness by taking drugs whose hallucinogenic qualities free the mind. The appellant claims that he was doing no more than enabling members of the human race to expand their horizons by exploring the world through hallucinogenic drugs. The criminalisation of what he did was said to be an infringement of his and everyone else's human right to have autonomy over their own person. The judge was unimpressed by this argument. He told the jury that it was not a defence in law.
>
> 10. In our judgment, the judge was right to reach that conclusion for the reasons which he gave. Although the appellant has filed reams of material challenging that ruling on this application for leave to appeal, we do not regard it as necessary to address his argument in any detail. If there is any Convention right which is properly engaged by this argument, it is that which guarantees the right to respect for one's private life. But as this Court was to say in Taylor (Paul) [2002] 1 Cr.App.R. 519, in which the appellant argued that the consumption of cannabis was part of his religion and was used as an act of worship, the prohibitions contained in the Misuse of Drugs Act 1971 did not amount to an unwarranted interference with the appellant's rights to a private life or to his freedom to practice his religion. They were part of this country's policy to combat the dangers of narcotic drugs to public health which included international treaty obligations". (Emphasis added)

13. On 31 July 2006, after rigorously investigating the production and use of scientific advice and evidence in making drug control and classification decisions under s2 of the Act, the Fifth Report of the House of Commons Science and Technology Committee Session 2005-06 HC 1031 *Drug classification: making a hash of it?* declared:

> "With respect to the ABC classification system, we have identified significant anomalies in the classification of individual drugs and a regrettable lack of consistency in the rationale used to make classification decisions. […W]e have concluded that the current classification system is not fit for purpose and should be replaced with a more scientifically based scale of harm. […] In light of the serious failings of the ABC classification system that we have identified, we urge the Home Secretary to honour his predecessor's commitment to review the current system". (Summary, emphasis added)

14. The 31 July 2006 report HC 1031 *Drug classification: making a hash of it?* continued:

> "Furthermore, a paper authored by experts including Professor Nutt, chairman of the ACMD Technical Committee, which we have seen in draft form, found no statistically significant correlation between the Class of a drug and its harm score as calculated by leading experts using the so-called Delphi method. Astonishingly, despite that fact that Professor Nutt is the lead author, the paper asserted that "The current classification system has evolved in an unsystematic way from somewhat arbitrary foundations with seemingly little scientific basis". The paper also found that the boundaries between Classes were entirely arbitrary". (Para 96, emphasis added)
>
> "Considering the fact that the Chair of the ACMD Technical Committee had started drafting the paper proposing an alternative to the ABC system of classification more than 18 months ago, we were very surprised to hear from the Chairman of the ACMD that the Council had "never formally discussed the case for reviewing the classification system". We are also taken aback by Sir Michael's [Chairman of the ACMD] assertion that the Council did not possess "the necessary expertise" to provide advice on alternative approaches to the classification of drugs. In addition, confidential information we have obtained makes us somewhat suspicious of the reasons behind the delay in submission of the paper authored by Professor Nutt and his colleges for publication. We understand that the ACMD operates within the framework set by the Misuse of Drugs Act 1971 but, bearing in mind that the council is the sole scientific advisory body on drugs policy, we consider the Council's failure to alert the Home Secretary to the serious doubts about the basis and the effectiveness of the classification system at an earlier stage a dereliction of duty. (Para 97, emphasis added)
>
> "One of the most striking findings highlighted in the paper drafted by Professor Nutt and his colleagues was the fact that, on the basis of their assessment of harm, tobacco and alcohol would be ranked as more harmful that LSD and ecstasy (both Class A drugs). The Runciman Report also stated that, on the basis of harm, "alcohol would be classed as B bordering on A, whilst cigarettes would probably be in the borderline between B and C". Various memoranda argued that the exclusion of tobacco and alcohol from the classification system was an anomaly". (Para 106, emphasis added)

The 2006 Science and Technology Committee report HC 1031 finished thusly:

> "We conclude that, in respect of this case study, the Government has largely failed to meet its commitment to evidence based policy making". (Para 108, emphasis added)

15. The "paper authored by experts including Professor Nutt, chairman of the ACMD Technical Committee" was published as Appendix 14 to HC 1031 in the name of the Advisory Council on the Misuse of Drugs. It found:

> "no clear distinction between socially accepted and illicit substances".

16. Hardison finds it unsettling that the then SSHD, the Rt Hon Charles Clarke MP, and the ACMD Chair accepted that alcohol and tobacco were more harmful than the psychedelic-type drugs LSD and Ecstasy, but did not seek their control under s2(5) of the Act, *before* he was sentenced to 20 years imprisonment for his activities with LSD and Ecstasy. More, Hardison did not know that the promised consultation document proposing a review of the drugs classification system declared as much in May 2006, before his oral appeal hearings. He would have to wait until 9 July 2010.

17. On 8 August 2006 Hardison filed a certiorari petition requesting the Court of Appeal certify 5 Points of Law as matters of general public importance. The 5 Points of Law were:

    i. ***R v Taylor* – a Question of Necessity.** In *R v Taylor*,[2] a religious Cannabis user attempted to rely on Articles 8 and 9 of the Convention. But, at the Crown's urging, this Court, relied on 'inferences' drawn from the United Kingdom's subscription to the UN drug Conventions as 'evidence of the necessity of any interference' with Taylor's rights, in pursuit of the Government's 'legitimate aims'. Can 'inferences' drawn from the UN drug Conventions – which are not explicitly enabled by an Act of Parliament and which themselves explicitly allow non-compliance on human rights grounds – demonstrate a 'pressing social need' justifying interference with Hardison's Convention[3] rights?

    ii. **Article 14 – a Question of *ambit*.** In demonstrating that he has been the victim of discrimination, Mr. Hardison does *not* need to show that another Convention right has been breached. Such a restrictive approach would give no independent scope for the right under Article 14 itself. Instead, the Strasbourg Court has held that discrimination can arise whenever the complaint falls within the *ambit* of another Convention right.[4] Was Mr. Justice Keith right to place the instant case within the *ambit* of Article 8?

    iii. **Misuse of Drugs Act 1971 – neutral in principle?** The Misuse of Drugs Act 1971 was designed "to make it possible to control particular drugs according to their comparative harmfulness either to individuals or society at large when they were misused".[5] Thus, the Act draws a bright line between the inclusive 'drugs' in Section 1(2) and the exclusive 'controlled drug' in Section 2(1)(a). Is the Act neutral in principle and therefore of general applicability?

    iv. **Discrimination.** The guiding principle of Article 14 is that people in similar circumstances should not be treated differently without an objective and reasonable justification for that differential treatment. Yet, Mr. Hardison has been severely punished for being concerned with harmful drugs *valued by minorities* while those concerned with comparably harmful drugs *valued by the majority* are preferentially entitled to privacy, consumer choice, public protection and freedom of contract through suitable regulation and/or the free market. Is there an objective and reasonable justification for this disparity of treatment and denial of equal rights and protection?

    v. **Inhumane Punishment.** Previously, where the trial Judge has passed a sentence within his discretion generally no point of law of general public importance can arise,[6] but, under the Human Rights Act 1998 a sentence disproportionately severe could constitute "inhumane punishment"[7] *especially* conjunct discriminatory and prejudicial administration of an ostensibly neutral Act. Is Mr. Hardison's sentence of 20 years imprisonment proportionate to the gravity of the acts committed? And, if not, should the sentence be varied?

18. These five points, or questions of law, here underlined, were stated on page 2 of the petition and the remainder of the document was divided into sections dealing with each one of them in turn.

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[2] *Cf. R v Taylor* [2001] EWCA Crim 2263 at 14 & 31; *Cf. R v Hardison* [2006] EWCA Crim 1502 at 9 & 10
[3] *The European Convention for the Protection of Human Rights and Fundamental Freedoms* (1950) Cmd 8969
[4] *Inze v Austria* (1987) 10 EHRR 394 at 36; *Rasmussen v Denmark* (1984) 7 EHRR 371 at 29
[5] HC 1031 (2006) The Fifth Report of the House of Commons Science and Technology Committee Session 2005-06 HC 1031 *Drug classification: making a hash of it?* Ev 53, Memoranda from the Government, para 1.6
[6] *R v Ashdown* [1974] 58 Cr App R. 339
[7] *Weeks v United Kingdom* (1987) 10 EHRR 293 at 47; see also *Hussain v United Kingdom* (1996) 22 EHRR 1 at 53

19. On 14 September 2006, the Advisory Council on the Misuse of Drugs ("ACMD") published *Pathways to Problems: hazardous use of tobacco, alcohol and other drugs by young people in the UK and its implications for policy* in which the ACMD declared unequivocally that the artificial divide in drugs policy lacks rationality:

> "We believe that policy-makers and the public need to be better informed of the essential similarity in the way in which psychoactive drugs work: acting on specific parts of the brain to produce pleasurable and sought-after effects but with the potential to establish long-lasting changes in the brain, manifested as dependence and other damaging physical and behavioural side-effects. At present, the legal framework for the regulation and control of drugs clearly distinguishes between drugs such as tobacco and alcohol and various other drugs which can be bought and sold legally (subject to various regulations), drugs which are covered by the Misuse of Drugs Act (1971) and drugs which are classed as medicines, some of which are also covered by the Act. The insights summarised [here] indicate that these distinctions are based on historical and cultural factors and lack a consistent and objective basis". (Paras 1.13, emphasis added)

20. Also in *Pathways to Problems*, the ACMD admitted "neglect[ing]" their duty under the Act by discriminating between "harmful psychoactive drugs" on the ground of "legal status":

> "The scientific evidence is now clear that nicotine and alcohol have pharmacological actions similar to other psychoactive drugs. Both cause serious health and social problems and there is growing evidence of very strong links between the use of tobacco, alcohol and other drugs. For the ACMD to neglect two of the most harmful psychoactive drugs simply because they have a different legal status no longer seems appropriate". (Introduction, p14, emphasis added)

Consistent with this, *Recommendation 1* of the *Pathways to Problems* read:

> "As their actions are similar and their harmfulness to individuals and society is no less than that of other psychoactive drugs, tobacco and alcohol should be explicitly included within the terms of reference of the Advisory Council on the Misuse of Drugs".

21. The Home Office did not respond publicly to this recommendation at the time but Hardison would later read in the ACMD's July 2009 document (strangely not made public until 29 March 2010) "Pathways to Problems: A follow-up report on the implementation of recommendations from *Pathways to Problems*":

> "the [Home Office] considered alcohol and tobacco to be implicit in the ACMD's terms of reference, as these are substances that can be misused". (Para 4.2)

Hardison immediately requested under the Freedom of Information Act 2000 a copy of the document in which the Home Office had allegedly stated this. On 21 May 2010 the Home Office, ref T6866/10, provided Hardison with their 2006 "Draft response to Recommendation 1 of ACMD's Pathways to Problems Report calling for the explicit inclusion of alcohol and tobacco in the ACMD's terms of reference". The Home Office had actually stated that:

> "the ACMD was established by an Act, the main function of which is to provide a framework within which criminal penalties are set with reference to the harm caused by a drug, their terms of reference are already sufficiently wide to include alcohol and tobacco… as notably the 1971 Act does not define "drugs", (it only defines controlled drugs)". (Emphasis added, parenthetical expression theirs)

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22. On Friday, 13 October 2006, the Government issued a Command Paper, Cm 6941, *The Government Reply to the Fifth Report from the House of Commons Science and Technology Committee Session 2005-06* HC 1031 *Drug classification: making a hash of it?* Significantly, page 24 stated:

> "Government [believes] the classification system under the Misuse of Drugs Act 1971 is not a suitable mechanism for regulating legal substances such as alcohol and tobacco. However, it should not be imputed that Government takes the harms caused by these drugs any less seriously. […] The distinction between legal and illegal substances is not unequivocally based on pharmacology, economic or risk benefit analysis. It is also based in large part on historical and cultural precedents. A classification system that applies to legal as well as illegal substances would be unacceptable to the vast majority of people who use, for example alcohol, responsibly and would conflict with deeply embedded historical tradition and tolerance of consumption of a number of substances that alter mental functioning […]. Legal substances are therefore regulated through other means. […] However, the Government acknowledges that alcohol and tobacco account for more health problems and deaths than illicit drugs". (Para 7 & p24, emphasis added)

23. Hardison thought that this new evidence in Cm 6941 was relevant to his certiorari petition, as here the Government admit that alcohol and tobacco are more harmful, so on Monday, 15 October 2006 Hardison requested a 7 or 14 day adjournment of the hearing for certiorari, scheduled for 17 October 2006, in order to have time to examine, analyse and present this fresh evidence.

24. On 17 October 2006, the Court of Appeal declined the adjournment and declined to certify the 5 Points of Law for the House of Lords re the Appeal against Sentence.

25. And although the 5 Points of Law were clearly enumerated on page 2 in paragraph 7 of Hardison's application for *certiorari* and a request for certification was made in paragraph 8, in refusing to certify, Lord Justice Hooper, for the Court of Appeal said:

> "I cannot give you the points of law because they were just scattered over 25 pages".

26. This appears to be a wilful obfuscation of Hardison's *certiorari* application.

27. This left Hardison with a new evidence appeal under s23 of the Criminal Appeal Act 1968 as his only redress. This required a deep think. Recalling Lord Steyn's 2002 statement, "where a human rights instrument proves inadequate to its task the rule of law is the safety net",[8] Hardison returned to first principles and the six sentences from Cm 6941:

    1) "Government fully [believes] that the classification system under the Misuse of Drugs Act 1971 is not a suitable mechanism for regulating … substances such as alcohol and tobacco". (Is the Act suitable or not? Is this an error of law?)

    2) "The distinction between legal and illegal substances is not unequivocally based on pharmacology, economic or risk benefit analysis". (Does the SSHD really mean the distinction between alcohol/tobacco and 'controlled drugs'? Is this an error of law?)

    3) "It is … based in large part on historical and cultural precedents". ([Are these reasonable grounds for not applying a neutral law generally]?) [question altered 9 July 2010]

[8] Lord Johan Steyn (2002) *Democracy Through Law*, Occasional Paper No 12, Victoria University of Wellington, NZ

4) "A classification system that applies to [alcohol, tobacco and 'controlled drugs'] would be unacceptable to the vast majority of people who use, for example alcohol, responsibly and would conflict with deeply embedded historical tradition and tolerance of consumption of a number of substances that alter mental functioning". (Is the SSHD confusing 'control' with 'prohibition' here, otherwise, why would it be unacceptable? Is this an error of law? [New evidence on this as of 9 July 2010])

5) "[Alcohol and tobacco] are therefore regulated through other means". (Is this rational?)

6) "the Government acknowledges that alcohol and tobacco account for more health problems and deaths than illicit drugs". (Then why are they not controlled drugs?)"

28. Through assiduous study of English administrative law and these six sentences, conjunct the Misuse of Drugs Act 1971, Hardison would see that Cm 6941 showed *prima facie* the SSHD had acted *ultra vires* the Act and not simply *contrary* to s6 of the HRA 1998.

29. Over the next few years, Hardison would meticulously analyse and then carefully articulate the exact nature of the SSHD's public law wrongs, establishing that these wrongs make his convictions "unsafe: *See* "Draft Arguments in Support of Grounds", 8 August 2009.

30. In the meantime, on 16 January 2007 Hardison filed for permission to judicially review the SSHD's decision not to review the classification system under the Misuse of Drugs Act 1971 made at page 5, paragraph 12 of the Introduction to Cm 6941.

31. On 18 February 2007, Hardison first used the phrase "unequal treatment" in his preparatory writings; but not in a Common Law context, rather in a Convention rights context. He stated:

> "It is the unequal treatment of drugs and those concerned with them that contradicts Article 14"

32. It would take three more months for Hardison to connect this "unequal treatment of drugs" directly to his unequal treatment under criminal law conjunct Common Law principles.

33. On 22 March 2007, while defending against Hardison's claim for a judicial review, CO/687/2007, of the SSHD's decision in paragraph 12 of Cm 6941 "not to pursue a review of the classification system at this time", the SSHD admitted the "separate but equal" regulation of people concerned with dangerous drugs whilst attempting to justify it on subjective and/or incoherent grounds:

> "The Government's policy is to regulate drugs which are classified as illegal through the 1971 Act and to regulate the use of alcohol and tobacco separately. This policy sensibly recognises that alcohol and tobacco do pose health risks and can have anti-social effects, but recognises also that consumption of alcohol and tobacco is historically embedded in society and that responsible use of alcohol and tobacco is both possible and commonplace". (Emphasis added)

34. Two days later, on 24 March 2007, a paper by Professor David Nutt, the current ACMD Chairman, and Professor Colin Blakemore, the former Chief Executive of the Medical Research Council, appeared in *The Lancet* entitled *Development of a rational scale to assess the harm of drugs of potential misuse*. This paper describes the first scientific ranking, in matrix form, of the relative harmfulness of the most commonly used drugs ("the Nutt et al Matrix") It said, with emphasis:

> "The current classification system has evolved in an unsystematic way from somewhat arbitrary foundations with seemingly little scientific basis. […] Our findings raise questions about the validity of the current Misuse of Drugs Act classification, despite the fact that it is nominally based on an assessment of risk to users and society. The discrepancies between our findings and current classifications are especially striking in relation to psychedelic type drugs. Our results also emphasise that the exclusion of alcohol and tobacco from the Misuse of Drugs Act is, from a scientific perspective, arbitrary. We saw no clear distinction between socially acceptable and illicit substances. The fact that the two most widely used legal drugs lie in the upper half of the ranking of harm is surely important information that should be taken into account in public debate on illegal drug use. Discussions based on a formal assessment of harm rather than on prejudice and assumptions might help society to engage in a more rational debate about the relative risks and harms of drugs". (*The Lancet* 369: 1047-1053)

35. Encouraged by *The Lancet* paper, on 26 March 2007, Hardison requested, under the Freedom of Information Act 2000 ("the FoI Act"), the "consultation document which is in draft form in the department", re the proposed review of the classification system, referred to by Vernon Coaker MP in his evidence in answer to Question 1205 to the House of Commons Science and Technology Committee on 14 June 2006.

36. Also, on 26 March 2007, whilst creating his reply to the SSHD's Defence to judicial review CO/687/2007, Hardison reasoned – for the first time – that the SSHD's belief that the inclusion of alcohol and tobacco in Schedule 2 of the Act would necessitate "Prohibition" is an error of law. This is evidenced by paragraph 5 of the SSHD's Defence in which Counsel for the SSHD asserted that were the SSHD "to list alcohol and tobacco as controlled drugs under the 1971 Act" this would effectively impose Prohibition". A decision-maker that believes this does not understand the Act correctly and, as a result, would not give proper effect to the Act.

37. And so, near the end of March 2007, the egg tooth of Hardison's Common Law argument emerged from its shell with the identification of this error of law: the SSHD believes the application of the classification system to a drug mandates the regulatory option of prohibition. It would take two more months for Hardison to connect the Government's refusal to apply the Act to alcohol and tobacco directly to the unequal treatment of people concerned with controlled drugs in common law terms.

38. In those two months, Hardison had a deep think from which he emerged on 25 May 2006 with the Belmarsh Detainees' judgment, *A & Others v SSHD* [2004] UKHL 56, in his hand, with his eyes focused on a paragraph quoted from *Railway Express Agency, Inc v New York* (1949) 336 US 106 at 112, in which Supreme Court Justice Jackson described the equality-of-treatment doctrine and how to apply it to protect the few against majoritarian abuses of power:

> "Government must exercise their powers so as not to discriminate between their inhabitants except upon some reasonable differentiation fairly related to the object of regulation. This equality is not merely abstract justice. […T]here is no more effective practical guaranty against arbitrary and unreasonable government than to require that the principles of law which officials would impose upon a minority be imposed generally. Conversely, nothing opens the door to arbitrary action so effectively as to allow those officials to pick and choose only a few to whom they will apply legislation and thus to escape the political retribution that might be visited upon them if larger numbers were affected. Courts can take no better measure to assure that laws will be just than to require that laws be equal in operation".

39. This salutary doctrine encapsulates both the problem and the remedy in Hardison's case. This doctrine starts Lord Bingham's analysis of the unequal treatment of foreign national terrorist suspects in *A & Others*. Without doubt, this could be applied to Hardison's case re "dangerous or otherwise harmful drugs" as it was evident from page 24 of Cm 6941 that the SSHD is seeking to "escape the political retribution that might be visited upon them if larger numbers were affected" by not applying the Act to alcohol and tobacco:

> "A classification system that applies to [alcohol, tobacco and 'controlled drugs'] would be unacceptable to the vast majority of people who use, for example alcohol, responsibly and would conflict with deeply embedded historical tradition and tolerance of consumption of a number of substances that alter mental functioning".

40. It would only be "unacceptable" if the Act mandated prohibition; and it does not.

41. It was now clear that Hardison would have to develop a Common Law argument to fit Justice Jackson's *Railway Express* judgment. As a United States citizen, this appealed to his sensibilities. He had a genuine grievance to articulate and so petition for legal redress.

42. On 2 July 2007, the Home Office responded to Hardison's request for the consultation document proposing a review of the drug classification system claiming exemptions under ss21 & 35(1)(a)-(b) of the FoI Act: (material in the public domain, formulation of government policy and ministerial communications respectively).

43. On 24 July 2007, the Government released *Drugs: Our Community, Your Say*, A Consultation Paper on the Government's drug policy. Hardison thought that this document was procedurally unfair so he filed a Letter before Claim with the SSHD on 10 August 2007 explaining this, asking that the document be withdrawn until these errors were corrected.

44. On 29 July 2007, Hardison identified, via Cm 6941, Parliamentary transcripts conjunct study of the Act, a second error of law the SSHD makes in administering the Act:

> "The SSHD believes that the SSHD has the power to exclude two unquestionably harmful drugs from the scope of the Act without using the mechanisms in the Act"

45. The two errors of law identified by Hardison, when read together, explained why the SSHD refused to exercise s2(5) of the Act re alcohol and tobacco: the jurisdictional facts re alcohol and tobacco were sufficiently established such that they should be made controlled drugs, but the electoral or "vast majority" prefer alcohol and tobacco, and the SSHD believes the Act mandates prohibition, so the SSHD simply ignored the s2(5) duty re alcohol and tobacco.

46. An understanding of the two errors of law allowed Hardison to state, on 14 August 2007, that his case concerned two forms of unjustifiable unequal treatment:

    1) the failure to treat like cases alike, *viz* the unequal application of the Act to those concerned with equally harmful drugs without a rational and objective basis; and

    2) the failure to treat unlike cases differently, *viz* the failure to treat those who peacefully enjoy property rights in controlled drugs as a different case from the mischief to which the Act is explicitly directed. (later refined)

47. On 21 August 2007, responding to Hardison's letter before claim, the SSHD refused to withdraw the allegedly procedurally unfair Drug Strategy Consultation paper.

DETAILED STATEMENT OF FACTS

48. On 22 August 2007, Hardison filed for permission to judicially review the 24 July 2007 decision to issue the Drug Strategy Consultation paper and the 21 August 2007 decision not to withdraw it on the grounds of procedural fairness: the document contained the two errors of law, confusing language, and left consultees unable to give an intelligent response.

49. On 31 August 2007, Justice Beatson denied Hardison permission to judicially review the SSHD's decision, in paragraph 12 of Cm 6941, not to proceed with the review of the drug classification system, adopting the SSHD's statement of 22 March 2007 re Government's policy of "regulat[ing] the use of alcohol and tobacco separately" verbatim in paragraph 10 of his judgment. (see paragraph 33 above)

50. On 4 September 2007, Hardison appealed J Beatson's 31 August 2007 decision refusing Hardison permission for judicial review to the Court of Appeal.

51. On 18 September 2007, Gerard Clarke, for the SSHD, the same Counsel for CO/687/2007, in defending the Hardison's claim against the Drug Strategy Consultation Paper, reiterated the first error of law:

> "The relief sought by the Claimant in that case extended as far as an order requiring the Secretary of State to impose prohibition of alcohol and tobacco in the United Kingdom (in the Claimant's reasoning, this would place the drugs which he traded on an equal footing with alcohol and tobacco)".

52. But Hardison had only asked that alcohol and tobacco be made controlled drugs under s2 of the Act, thus adding them to Schedule 2. This does not mandate prohibition as ss7(1)-(2), 22(a)(i) & 31(1)(a) give the SSHD very wide regulatory latitude.

53. Gerard Clarke, Counsel for the SSHD, then trotted out the "separate but equal" line:

> "The Government's policy is and has been to regulate drugs which are classified as illegal through the 1971 Act and to regulate the use of alcohol and tobacco separately. This policy sensibly recognises that alcohol and tobacco do pose health risks and can have anti-social effects, but recognises also that consumption of alcohol and tobacco is historically embedded in society and that responsible use of alcohol and tobacco is both possible and commonplace".

54. Sounds eminently "sensible", except the above paragraph contains the two errors of law articulated by Hardison (and third error of law not identified until February 2009: the Act cannot classify a drug as illegal). The two errors are here stated in the converse:

    1) The Act makes provision for drugs that "do pose health risks" and "can have anti-social effects": s1(2) of the Act sets these two factors as inclusion criteria. Hence, excluding the drugs alcohol and tobacco is irrational and *ultra vires* s2(5).

    2) By ss7(1)-(2), 22(a)(i) & 31(1)(a) of the Act, the SSHD can permit the production and commerce of "historically embedded" dangerous drugs for "responsible" *recreational* "use"; thus "regulat[ing] the use of alcohol and tobacco separately" is contrary to the principle that laws neutral on their face are generally and equally applicable.

55. On 27 September 2007, the Home Office reiterated verbatim counsel for the SSHD's statement of 22 March 2007 and 18 September 2007 re Government's policy of "regulat[ing] the use of alcohol and tobacco separately" in their *Response to the Better Regulation Executive re Misuse of Drugs Act Proposal.*

56. On 17 October 2007, the Honourable Mr Justice McCombe refused Hardison permission to apply for judicial review of the 2007 Drug Strategy Consultation Paper, *Drugs: Our Community, Your Say*. So, Hardison left it at that.

57. Between late October 2007 and February 2008, due to operational constraints at the prison, Hardison's computer access was withdrawn. So, he had another deep think, returned to the black letters of the law, and regrouped.

58. On 3 December 2007, the Rt Honourable Sir Henry Brookes denied Hardison's appeal against J Beatson's decision refusing him permission to judicially review the SSHD's decision not to carry out the promised review the drugs classification system, stating:

> "Remedy for this grievances lies in the world of politics, not in the world of law".

59. On 4 February 2008, Hardison requested an internal review from the Home Office Information Policy Team of the Home Office's decision to withhold the "the consultation document which is in draft form in the department".

60. On 12 March 2008, the Home Office Information Policy Team upheld the 2 July 2007 decision by the Home Office not to disclose "the consultation document which is in draft form in the department".

61. On 31 March 2008, Hardison requested the Information Commissioner conduct an independent review of the 2 July 2007 decision by the Home Office Direct Communications Unit not to disclose "the consultation document".

62. Up to 1 July 2008, Hardison had learned by various Freedom of Information Act 2000 requests, among other things, that:

    1. The ACMD had no procedural guidelines even though Schedule 1 Section 3 of the Act suggests they should have. This denies due process and results in arbitrary decisions, advice and recommendations. However, since the "Nutt et al Matrix", structure has emerged for classification advice and recommendations.

    2. The ACMD Chair believed the Act and the ACMD are fettered to the 3 UN Drug Conventions even though only the executive have signed them, Parliament has not ratified them, and the ACMD is independent of the executive.

    3. The ACMD has not requested or received legal advice as to whether their decision-making is bound by the UN Conventions or the HRA 1998.

    4. The ACMD accept that all drugs are capable of being controlled by the Act and that they have neglected their duty in relation to alcohol and tobacco. Curiously, this admission did not spurn them to recommend the control of alcohol and tobacco.

    5. The ACMD appear not to understand flexibility of s7(1) and 7(2), 22(a)(i) and 31(1)(a) but, they conceded that the only barrier to production, commerce and possession of controlled drug, for whatever purpose, is the SSHD's authorization.

    6. The Government had not reviewed the drug classification system nor has the ACMD reviewed it since 1979.

    7. The Government had not reviewed the ACMD in line with Cabinet Office guidance.

63. Throughout 2008, Hardison continued his research, analysing 20th Century Hansard transcripts to understand the development and implementation of drug law and policy, in particular the Misuse of Drugs Act 1971 c38. In so doing, he found this statement by the then Prime Minister, the Rt Hon Harold Wilson MP, in the First Day Debate on the Address re the 1969 Queen's Speech introducing the Misuse of Drugs Bill (emphasis added):

> "My Rt Hon Friend's new bill will not only bring all the existing powers under one Act, but will give him powers on advice from international bodies or experts in this country to devise appropriate regimes of control for any drug, new or old, according to its legitimate use, its dangers and its social effects". (*Hansard*, HC Deb, 28 Oct 1969, Vol. 790 Col. 37)

64. Clearly, the Act was intended to be a suitable mechanism for regulating any "dangerous or otherwise harmful drug", indeed, "any drug, new or old". So, why not alcohol and tobacco?

65. On 22 October 2008, Hardison was transferred to HMP Wellingborough and as a result he would not regain computer access until February 2009.

66. On 19 February 2009, Hardison finally elucidated the third error of law. An error so pernicious, he believed it:

> The SSHD believes that some drugs or "substances" are "legal" whilst the Act makes other drugs or substances "illegal".

67. But this is wrong, a drug is either "controlled" under the Act, s2(1)(a), or it is not; i.e. the Act can only "restrict", "regulate" or "prohibit" human action. This error is littered through the SSHD's writings and statements on drugs, most obviously Cm 6941 and the Defence statements of Gerard Clarke, Counsel for the SSHD.

68. Hardison now had all the pieces to conduct a full analysis of Cm 6941 and allied fresh evidence. He had: 1) the three errors of law the SSHD makes in administering the Act; 2) the SSHD's contortionist defences for the exclusion of alcohol and tobacco from the Act; 3) the excellent framework of the *A & Others*, the Belmarsh Detainees' Case, with its inclusion of *Railway Express Agency* as a starting point for an equal treatment analysis; and 4) the two articulated unequal treatment statements re the Act.

69. On 8 August 2009, Hardison again sought Leave to Appeal against Conviction based on new documentary evidence showing his convictions under the Misuse of Drugs Act 1971 c.38 ("the Act") were "unsafely" grounded in executive abuses of statutory discretion giving rise to severe inequality of treatment.

70. Hardison stated that Cm 6941, a Government Command Paper, elucidates abuse of power by the Secretary of State for the Home Department ("SSHD") in the administration of the Act grounded in errors of law, irrationality and unfairness. The subsequent criminal proceedings against Hardison manifested two inequalities of treatment:

    1) a failure to treat like cases alike, *viz* the unequal application of the Act to persons concerned with equally harmful drugs without a rational and objective basis; and

    2) a failure to treat unlike cases differently, *viz* the failure to regulate persons concerned in peaceful activities re controlled drugs differently from persons causing harm.

71. Hardison stated that these inequalities of treatment constitute unequal deprivations of liberty at common law and discrimination contrary to Article 14 of the Human Rights Act 1998 ("HRA") within the ambit of Articles 5, 8, 9 & Protocol 1 Article 1 on the grounds of "property", "drug preference" and/or "legal status".

72. Hardison said that page 24 of Cm 6941 revealed three errors of law supporting the SSHD's abuse whilst defending the inequality of treatment on subjective and/or incoherent grounds not rationally connected to the Act's policy and/or objects, contrary to *Padfield*.[9]

73. Hardison said that scrutiny of Cm 6941 and the Act shows the inequality of treatment occur because: (1) Parliament neither stated an explicit policy nor fixed any determining criteria to guide the SSHD's decision-making re drug control and classification under s2(5) of the Act; (2) HM Government fettered the SSHD to an overly-rigid and predetermined "policy of prohibition"[10]; (3) the SSHD failed to understand and give effect to the Act's policy and objects; and (4) the SSHD arbitrarily exercised s2(5) and the incidental discretionary powers.

74. Hardison claimed that had Cm 6941 been available to discharge the evidential burden inherent in his pre-trial motion to stay the indictment as an abuse of process – alleging that executive abuse of power threatened his liberties – his trial would have been stayed.

75. Hardison therefore requested that Court of Appeal: (1) grant leave to appeal against conviction; (2) anxiously scrutinise the new evidence and argument; (3) confirm the abuse of power; (4) declare his indictment should have been stayed; (5) declare his conviction "unsafe"; (6) quash his conviction; and (7) order his release.

76. Hardison also stated that as a result of Cm 6941, and the lessons learned from it, he could boil the whole matter down to one point of law:

> Where abuse of power is evident in the exercise of, or failure to exercise, a statutory discretion by the Secretary of State and that exercise of discretion requires approval by either a positive or negative resolution of both Houses of Parliament and the application of that abused statute to a criminal defendant has subjected that defendant to severe inequality of treatment in terms of common law and the Human Rights Act 1998, is the issue justiciable and is that defendant entitled to the Court's protection?

77. On 1 September 2009, Hardison received a letter from the Court of Appeal ("CoA") dated 28 August 2009 stating that he is not entitled to a second application for leave to appeal against conviction for want of jurisdiction. The Court of Appeal suggested he apply to the Criminal Cases Review Commission ("the Commission").

78. On 7 September 2009, Hardison made a formal application to the Commission, 00687/2009, forwarding on to them the documents he prepared for the Court of Appeal.

79. On 9 March 2010, the Information Commissioner ordered the Home Office to disclose the consultation document on the proposed review of the drugs classification system to Hardison within 35 days, Decision Notice FS50198230.

80. On 30 March 2010, the Commission issued its Provisional Statement of Reasons re 00687/2009 expressing their provisional view that the Court of Appeal would not overturn his convictions or reduce his sentences if referred. He was given until 7 May 2010 to make further submissions.

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[9] *Padfield v Minister of Agriculture, Fisheries and Food* [1968] AC 997 at 1030

[10] Home Office (2007) *Response to Better Regulation Executive*, 27 September 2007, www.betterregulation.gov.uk

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81. On or about 10 April 2010, the Home Office sought an appeal against the Information Commissioner's 9 March 2010 Decision Notice ordering the disclosure of the consultation paper at the First Tier Tribunal. They did not disclose the document.

82. On 26 April 2010, Hardison wrote to the First Tier Tribunal requesting joinder as a party to the appeal to represent the public interest in the disclosure of the consultation paper.

83. On 5 May 2010 Hardison submitted his "further submissions" in response to the Commission's 20 March 2010 Provisional Statement of Reasons ("PSR") in a document entitled "Errors in the Commission's Legal Analysis" which can be summarised as follows:

    1) There are a number of errors in the Commission's legal analysis of his application.

    2) The Commission failed to properly consider Hardison's Common Law arguments separate from the HRA 1998 arguments and in light of the new evidence.

    3) Hardison conceded that HRA 1998 arguments could not affect the safety of his convictions; though, they can inform any decisions re sentencing.

    4) Hardison requested that the Commission use its powers under s17 of the Criminal Appeal Act 1995 to seek disclosure of Government documents relating to the administration of the Act, in particular the draft consultation document re the proposed review of the drugs classification system.

    5) Hardison requested that at minimum the Commission refer his sentence to the Court of Appeal because when the new evidence and common law arguments are properly taken into account his sentence is shown to be arbitrary and thus disproportionate.

84. On 8 May 2010, Hardison received form the Home Office a redacted copy of the document "Review of the UK's Drugs Classification System – a Public Consultation, May 2006". The remainder of the document would be the subject of the appeal by the Home Office against the Information Commissioner's 9 March 2010 Decision Notice.

85. In the redacted copy of the "Review of the UK's Drugs Classification System – a Public Consultation", Hardison found variations on all six sentences that would later appear on page 24 of Cm 6941. But paragraph 6.8 contained a fresh admission:

> "There has not, in the UK, been any attempt to impose controls comparable to illicit drugs where it would be an offence to possess and supply alcohol and tobacco. The social acceptability of, for example, alcohol would make such controls unacceptable to the majority who use alcohol responsibly and therefore impractical. But alcohol and tobacco account for more health problems and deaths than illicit drugs. To many young people this presents problems in understanding the rationale behind controlling drugs such as cannabis and ecstasy when their misuse contributes less overall harm to society than the widely available drugs such as alcohol and tobacco".

86. This is startling: before Mr Hardison's appeal on 25 May 2006, where he expressed his "problems in understanding" the dichotomy presented in the paragraph above, the SSHD was aware that alcohol and tobacco caused more harm than the drugs of his indictment. And the only reason he was in prison and alcohol and tobacco producers were not was "social acceptability" and the "impractical[ity]" of applying a neutral law to "the majority who use alcohol [and tobacco] responsibly". Looked at forensically, this is a clear admission of majoritarian abuse of statutory power.

87. So, on or about 10 May 2010, Hardison contacted Ms R Jackson, his case manager at the Criminal Cases Review Commission, and declared he had relevant fresh evidence that was not included in his final submissions of 5 May 2010, i.e. the document, "Review of the UK's Drugs Classification System – a Public Consultation, May 2006" (" the rDCS"). He asked for a couple weeks to prepare the submission based on the rDCS and Ms Jackson agreed to wait for the submission before making any final decision.

88. On 12 May 2010, Hardison submitted his "Public Interest" *amicus curiae* document to the First Tier Tribunal re disclosure of the remainder of the rDCS. That same day the Tribunal made Hardison a party to the proceedings.

89. On 24 May 2010, the Commission reached its final decision not to refer Hardison's conviction and/or sentence to the Court of Appeal. Clearly, Ms R Jackson's verbal agreement for submission on the rDCS was not honoured. They did not want to know.

90. On 25 May 2010, not knowing the Commission had closed his file, Hardison sent his rDCS submission to the Commission. Later that day he learned via a solicitor in contact with the Commission that they had closed his file. He immediately called Ms R Jackson in confusion only to learn that she was on leave for 2 weeks. The decision had been made.

91. On 1 June 2010, Hardison posted to the Commission a Letter before Claim for judicial review of their 24 May 2010 decision and the process by which it was reached. Hardison was wholly unsatisfied with their response dated 10 June 2010. This response did not address in any detail any of the issues raised in the Letter before Claim; it simply asserted they had already addressed the issues and set out the Court's jurisprudence on judicial review of the Commission's decisions.

92. On 5 July 2010, the Home Office sought leave to withdraw its appeal to the First Tier Tribunal re the Information Commissioner's 9 March 2010 Decision Notice. The Tribunal granted the Home Office leave to withdraw.

93. On 9 July 2010, the Home Office posted to Hardison the full, unredacted document "Review of the UK's Drugs Classification System – a Public Consultation". This document admits the inequality of treatment, the "dichotomy", yet seeks to maintain it. In particular, after admitting in paragraph 6.9 that alcohol and tobacco kill 120,000 per annum, the previously redacted paragraphs 6.10-6.11 state:

> "In view of the harms presented by [alcohol and tobacco] a classification system could recognise these substances in a way which would stop short of imposing comparable controls. The creation of a system to assess the harmfulness of drugs on a more structured and transparent basis, as presented earlier in this paper, could be extended to cover alcohol and tobacco but for comparative and messaging rather than control purposes. Acknowledging the harmfulness of alcohol and tobacco could allow young people to give greater credence to the message that all drugs are harmful and the less overall misuse the better for individuals, their communities and society as a whole.
>
> "This approach would allow for a more logically consistent approach to substance misuse. However most people would not want to see the drugs classification system as a mechanism for regulating legal substances such as alcohol and tobacco. If applied to legal as well as illegal substances, this would conflict with deeply embedded historical tradition and tolerance of consumption of a number of substances that alter mental functioning".

94. All three errors of law are present or are inferred by these two paragraphs.

95. The problem is that the SSHD thinks "control" equates to "prohibition", so the SSHD seeks to exclude alcohol and tobacco from "control" as a "more logically consistent approach to substance misuse". But by doing so, the SSHD treats people (not drugs) arbitrarily and unequally.

96. Accordingly, Hardison maintains that the Commission made six public law errors in reaching their decision:

    1) The Commission failed to direct itself correctly re the fresh evidence and arguments available to show a real possibility that the Court of Appeal would not uphold Hardison's convictions if referred.

    2) The Commission misdirected itself in law re the distinction between and the process of deciding Common Law and Human Rights Act 1998 arguments.

    3) Mr Wagstaff, for the Commission, acted with bad faith.

    4) In deciding the "real possibility" test, the Commission took into account irrelevant civil dicta from a disparate Administrative Court judgment.

    5) The Commission failed to ask itself the right questions re Hardison's Point of Law and so wrongly refused to refer it to the Court of Appeal for decision.

    6) Having failed to direct itself properly re Hardison's Common Law argument, the Commission failed to ask itself the right questions re his sentences and so wrongly refused to refer them for determination by the Court of Appeal.

97. Hardison seeks the following remedies:

    1) An Order quashing the Commission's decisions of 24 May 2010 not to refer his convictions, sentences and point of law to the Court of Appeal.

    2) An Order mandating the Commission reconsider their decision re Hardison's convictions and sentences, taking proper account of the new evidence and each of the allegations in Hardison's Common Law argument based upon it.

    3) An Order mandating the Commission reconsider their decision not to refer Hardison's Point of Law to the Court of Appeal for determination under s14(3) of the 1995 Act.

    4) An order mandating the Commission refer Hardison's case to the Court of Appeal if, after proper examination of Hardison's common law argument, the Commission finds that there was an executive abuse of statutory discretion subsequently giving rise to his unequal treatment under criminal law.

– I firmly believe that the facts stated in this Statement of Facts are true.

Signed …….
Casey William HARDISON – Claimant

Dated …….