In the High Court of Justice
Queen's Bench Division
Administrative Court

CO/12291/2010

In the matter of an Application for Judicial Review

The Queen on the Application of

CASEY WILLIAM HARDISON

Claimant

– v –

ADVISORY COUNCIL ON THE MISUSE OF DRUGS

Defendant

REPLY TO DEFENDANT'S SUMMARY GROUNDS

"The Defendant is clear that its remit under s1(2) includes alcohol and tobacco. […] As alcohol and tobacco are not listed in Schedule 2 they are not "controlled drugs". They do not fall within the MDA 1971".

– Defendant's Summary Grounds
Paragraph 10

Prepared By

Casey William HARDISON

26 December 2010

CO/12291/2010

Casey William HARDISON — Claimant

– v –

Advisory Council on the Misuse of Drugs — Defendant

Reply to Defendant's Summary Grounds

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1. Casey William Hardison, the Claimant, is grateful for the Defendant's Summary Grounds of Resistance ("the SGR"); however, their arguments:

    1) confuse the issue;

    2) misconstrue the legislation; and

    3) assert the impossible.

The issue

2. At issue is whether, on 16 August 2010, the Advisory Council on the Misuse of Drugs ("the Defendant" aka "the ACMD") lawfully discharged its *"duty"* in deciding not to advise the Secretary of State for the Home Department ("SSHD") on the possibility of controlling alcohol and tobacco under s2 of the Misuse of Drugs Act 1971, c38 ("the Act").

3. The Defendant's *"duty"* is found in s1(2) of the Act.

First construe the legislation

4. It is vital that this Court first construe the Act for itself.

5. On a proper construction, the Act regulates people not drugs, i.e. the Act regulates a subject doing things with an object: "controlled drug"; thus, controlling a drug under s2 of the Act signifies that, with respect to that "controlled drug", certain actions of certain actors are regulated.

6. On the Act's proper construction, s1(2) intercalates with ss2(5), 7(1)-(2), 22(a)(i)-(ii) & 31(1)(a)-(b). These sections show that the Act is a beautifully crafted and appropriate mechanism for precisely regulating a lawful import, export, production, supply, and possession of any dangerous drug that may, when misused, have *"harmful effects sufficient to constitute a social problem"*, including alcohol and tobacco.

7. Once the Act is understood in all its beautifully dazzling quotidian humility, it becomes manifestly absurd for the Defendant to continue to justify their 16 August 2010 decision on the basis that they think, find, feel, or believe that:

> "the framework of the Misuse of Drugs is not appropriate for the regulation of alcohol and tobacco". [SGR, paragraph 9]

8. As the appropriateness of the Act is not a question for the Defendant, nor was it the question before the Defendant, the Defendant keeps asking the wrong question: *Tameside MBC* [1977] AC 1014, 1065B.

9. More, as alcohol and tobacco cannot be regulated, only people can, the above finding shows that the Defendant has misconstrued the Act and so could not possibly give proper effect to it: *GCHQ* [1985] AC 374, 410F.

10. And, if one asks why the Defendant keeps asking the wrong question, a simple thought couplet explains:

    1) the Defendant believes (wrongly) that recommending the control of a drug under s2 of the Act inexorably leads to the prohibition of all non-medical and non-scientific use purposes or activities re that drug; and

    2) as alcohol and tobacco are used non-medically and non-scientifically by the "vast majority" [SGR, paragraph 13(i)], this would be unacceptable.

11. Hence, the Defendant asserts, "the vast majority would readily recognise why the distinction is drawn" [SGR, paragraph 13(i)] "between the legal frameworks regulating alcohol and tobacco and the regime under the MDA 1971 in respect of controlled drugs" [SGR, paragraph 4].

12. Yet in 2006, in their report *Pathways to Problems: hazardous use of tobacco, alcohol and other drugs by young people in the UK and its implications for policy*, at paragraph 1.13, the Defendant asserted that this very distinction is:

> "based on historical and cultural factors [that] lack a consistent and objective basis". [C/272]

13. Consequently, the Claimant wonders why the Defendant now resiles from that declaration of arbitrariness, among others [C/302], going so far as to leave out the last clause of that declaration when asserting:

> "The Defendant recognised that these different frameworks were used, not because of harm caused by the different drugs being regulated, but because of historical and cultural factors". [SGR, paragraph 13(i)]

14. It is precisely these historical and cultural factors and the misconstructions of the Act that now have the Defendant confusedly asserting in their SGR:

> "The Defendant is clear that its remit under s.1(2) includes alcohol and tobacco. The MDA 1971 also establishes a system of *"controlled drugs"* which are defined by s.2 of the MDA 1971 […] in Part I-III of Schedule 2 of the MDA 1971. The SSHD is required by the MDA 1971 to consult the ACMD in circumstances relating to controlled drugs as prescribed by s.2(5), s.7(7), and s.31(3) of the MDA [D/22-25]. As alcohol and tobacco are not listed in Schedule 2 they are not "controlled drugs". They do not fall within the MDA 1971". (SGR, paragraph 10, emphasis in original)

15. But, as alcohol and tobacco are within the Defendant's remit, they fall within the Act and the Defendant can, under s1(2), advise the SSHD of their possible control via s2(5); precisely the Claimant's original request. [C/81]

16. Crucially, and contrary to the Defendant's insistence, s2(5) is not about controlled drugs, rather s2(5) specifies the process by which, after *"consultation with or on the recommendation of the Advisory Council"*, the SSHD may "lay a draft Order" before Parliament "recommend[ing] to Her Majesty in Council to make an Order under [s2(2)]" controlling a drug or substance.

17. Thus, the Defendant's s1(2) *"duty"* dovetails with s2(5) and only after a drug is "controlled" under s2(2) does ss7(7) *&* 31(3) become relevant.

18. Section 1(2) implicitly identifies the relevancies to be taken into account by the Defendant in discharging their *"duty"* to advise the SSHD on the possibility of seeking the control of a drug under s2(5):

    1) a substances is or is intended to be self-administered as a drug;
    2) the drug is being or may be misused;
    3) the misuse of the drug is having or may have harmful effects;
    4) the harmful effects are or may be sufficient to constitute a social problem.

    And it is accepted that:

    1) alcohol and tobacco are self-administered as drugs;
    2) alcohol and tobacco are being misused;
    3) alcohol and tobacco misuse is having harmful effects;
    4) those harmful effects are sufficient to constitute a social problem.

19. The Defendant has yet to give a lawful reason for abdicating their s1(2) *"duty"* to recommend that alcohol and tobacco be controlled under the Act so that the behaviour of those concerned with alcohol and tobacco is regulated consistent with the Act's purpose: *Padfield* [1968] AC 997, 1030B.

The Defendant asserts the impossible

20. The Defendant would have this Court believe that the issue of the 16 August 2010 decision and the Defendant's "duty" under s1(2) has already been disposed of: this is not possible.

21. Whilst the Claimant previously filed unsuccessful claims that obliquely touched upon the SSHD's cherished policy distinction between alcohol and tobacco and controlled drugs, a distinction the Defendant seems to cherish just as passionately, the Court has not adjudicated on claim of the Defendant's unlawful exercise of s1(2) of the Act.

22. CO/687/2007 concerned an expectation to the SSHD's promised review of the Act's drug classification system. The Claimant thought the SSHD's decision to renege on that promise was unreasonable given evidence provided by the ACMD that the current classification of controlled drugs was arbitrary [C/272 & 302]. The Court said, "Remedies for this grievance lie in the world of politics, not in the world of law": "this grievance" being the expectation.

23. CO/7548/2007 concerned the Claimant's allegation that the SSHD's 2007 Drugs Strategy Consultation Paper ("DSCP"): 1) was set in unfair and misleading terms; 2) generally failed to provide sufficient information and reasons for intelligent consideration and intelligent response to its proposals and questions; and 3) was not undertaken at a time when DSCP proposals were in a formative stage. The Court said there was "no prospect of success".

24. CO/9095/2010 is an ongoing review of the handling of the Claimant's criminal application by the Criminal Cases Review Commission.

25. CO/11538/2010 concerns the SSHD's duty under s2(5) of the Act and the SSHD's misconstruction of that duty, the Act and related matters.

26. None of those claims concern, as the instant does, the lawfulness of the Defendant's 16 August 2010 decision under s1(2) of the Act.

27. Accordingly, the Claimant requests that this Court approach his Statement of Grounds on a proper construction of the Act and with an open mind.

I firmly believe the facts stated in this Reply are true.

– *primum lex scripta construere, fiat lux!*

Casey William Hardison
Claimant

Date ……