In the High Court of Justice **CO/12291/2010**
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

– v –

ADVISORY COUNCIL ON THE MISUSE OF DRUGS

Defendant

DRAFT STATEMENT OF GROUNDS

"While the term 'drug' is used in the Misuse of Drugs Act 1971 there is no qualification of whether this includes … alcohol and tobacco".

Pathways to Problems: A follow-up report
Advisory Council on the Misuse of Drugs
July 2009

Prepared By

Casey William HARDISON

15 November 2010

CO/12291/2010

Casey William HARDISON — Claimant

– v –

Advisory Council on the Misuse of Drugs — Defendant

Draft Statement of Grounds

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1. Mr Casey William Hardison ("the Claimant") requests permission for judicial review of:

    1) the 16 August 2010 decision ("the decision") by the Advisory Council on the Misuse of Drugs ("the Defendant" aka "the ACMD") not to advise the Secretary of State for the Home Department ("SSHD") on the possibility of controlling the dangerous drugs alcohol and tobacco under s2 of the Misuse of Drugs Act 1971, c38 ("the Act"); and

    2) the Defendant's policy, stated 18 June 2010: "Wherever drugs are used outside of medical and scientific use, and may have or appear capable of having harmful effects sufficient to constitute a social problem, they are regarded as dangerous or otherwise harmful drugs for which prohibitive controls are in place", and substantially similar past statements.

2. The Claimant requests judicial review in the public interest as this claim raises public law issues of general importance to the health and welfare of the nation. Reflecting this, he seeks a protective cost order as per *R(Corner House Research) v Secretary of State for Trade and Industry* [2005] 1 WLR 2600 at 70.

The Grounds

3. The decision and the policy is unlawful on four grounds:

    1) In formulating their policy and making the decision, the Defendant misconstrued their remit and the Act. (Pages 10-13)

    2) In making the decision, the Defendant did not act upon relevant factors to the exclusion of irrelevant factors. (Pages 14-15)

    3) The Defendant's decision is arbitrary and unreasonable. (Pages 16-17)

    4) The Defendant's decision-making and policy is not sufficiently independent of their Departmental sponsor. (Pages 18-21)

Brief Facts

4. In late 2006 the Claimant began correspondence with the Defendant, exploring their construal of the Act and their remit given by it. By early 2010, it was manifest the Defendant had misconstrued both and had "neglected" their *"duty"* with respect to alcohol and tobacco.

5. The Claimant thought this contrary to the rule of law and legislative intent; so, on 10 February 2010, he wrote the Defendant and set out what he alleges are their public law wrongs. He also requested that the Defendant procure independent legal advice as to the Act and their remit. On 18 June 2010, the Defendant refused that request and repeated the principal wrong.

6. Exasperated, on 9 July 2010, the Claimant specifically requested the Defendant "advise the Home Secretary about the feasibility of creating under the Act via ss7(1)-(2), 22(a)(i) & 31(1)(a) a coherent regulatory structure for alcohol and tobacco production and commerce allowing for, at minimum:

    1) Regulating and licensing under s7(1)-(2) the import and export of alcohol and tobacco;
    2) Regulating and licensing under s7(1)-(2) the production and supply of alcohol and tobacco;
    3) Regulating and licensing under s7(1)-(2) premises and persons for the safe supply and consumption of alcohol and tobacco;
    4) Excluding the operation of s5 [possession] re alcohol and tobacco under s22(a)(i) for all persons over the age of 18".

The Decision

7. The relevant portion of the Defendant's 16 August 2010 decision letter ("the decision letter") misconstrued the Act and put the cart before the horse:

> "I have been clear that the ACMD interprets the legislation as including alcohol and tobacco issues whilst retaining a focus on illicit drugs. […] I understand … that the Coalition Government has no intention of seeking the classification of alcohol and tobacco under the Misuse of Drugs Act (the 1971 Act) for the purposes of controlling these substances under the Act. It is important that I make clear from the outset that the ACMD does not intend to provide advice to ministers on alcohol and tobacco that is concerned with classification under the [Act]". (Emphasis added)

8. *Prima facie* the Defendant ignored the merits of the Claimant's request and shut their mind. They "outright[ly] refus[ed] to consider the relevant matter": *Padfield v Minister of Agriculture Fisheries & Food* [1968] AC 997 at 1058D.

Pre-Action Protocol

9. On 25 August 2010, the Claimant posted a Letter Before Claim ("LBC") to the Defendant, requesting reconsideration within 14 days and setting out the relevant legal issues and the points of law that might arise in addressing them.

10. On 4 October 2010, Ms Geraldine Haack, for the Treasury Solicitor, responded on behalf of the Defendant. The Letter of Response ("LOR") reiterated the Defendant's remit and then stated:

> "The ACMD took the decision not to offer advice to the Home Secretary in its professional expert opinion. It has not fettered its discretion in this regard in any manner, and considered whether it was appropriate to provide such advice. ACMD did not feel that this was a matter it needed to advise the government on at this time".

11. Yet, on 22 October 2010, the Defendant contradicted the above assertion:

> "The ACMD has not discussed the possibility of recommending to the Secretary of State the control of alcohol and tobacco under s2(5) of the Act in formal meetings of the Full Council or any of its working groups or sub-committees between the years 2003-2010".[1] (Emphasis added)

The Issue in Overview

12. The Misuse of Drugs Act 1971 c38 is a neutral and generally applicable Act of Parliament regulating activities with *"dangerous or otherwise harmful drugs"*.

13. Section 1 and Schedule 1 of the Act creates the Advisory Council on the Misuse of Drugs, the Defendant, as a non-executive, non-departmental public body. Section 1(2) confers on the Defendant two duties: (1) *"to keep under review"* the situation with respect to drugs likely to be misused and of which the misuse is capable of having harmful effects sufficient to constitute a social problem; and (2) to give the SSHD "*advice on measures (whether or not involving alteration of the law)"*, which ought to be taken for preventing the misuse of such drugs or dealing with social problems connected with their misuse.

14. The Act currently regulates, on advice from the Defendant, the import, export, production, supply, and possession of over 650 drugs. Section 2 of the Act defines these drugs as *"controlled drugs"* and provides the mechanism of control. Schedule 2 classifies these controlled drugs into three classes A, B and C, ostensibly reflecting the relative harms of the drug, if misused, and the maximum penalties that their unauthorised import/export, production, supply, and possession attract.

[1] ACMD (2010) Freedom of Information Act 2000 response to Claimant, 22 October 2010

15. The Defendant's continued "neglect" of alcohol and tobacco is a curious anomaly, outrageous in its defiance of logic, particularly as the Defendant stated in their 2006 report on hazardous use of tobacco, alcohol and other drugs by young people and its implications for policy:

    1) "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 … no longer seems appropriate".[2] (Emphasis added)
    2) "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".[2] (Emphasis added)
    3) "A fully integrated approach should be taken to the development of policies designed to prevent the hazardous use of tobacco, alcohol and other drugs".[2]

16. The Defendant's current rationale for not recommending the control of alcohol and tobacco under the Act, i.e. "a fully integrated approach", include:

    1) "The ACMD does not believe that the Misuse of Drugs framework is appropriate for the regulation of alcohol and tobacco".[3]
    2) "the ACMD interprets the legislation as including alcohol and tobacco issues whilst retaining a focus on illicit drugs".[4]
    3) "While the term 'drug' is used in the Misuse of Drugs Act 1971 there is no qualification of whether this includes … alcohol and tobacco".[5]

17. The statements above either show the Defendant misdirecting themselves in law or otherwise abdicating their *"duty"* with respect to alcohol and tobacco.

18. And so, at issue is the Defendant's *"duty"* under s1(2) of the Act. This duty is coupled with a discretion, *"where … the Council conconsider it expedient to do so"*: *Cf. Julius v Bishop of Oxford* (1880) 5 App Case 214, 222-223. And because "the question of discretion is inseparable from the question of construction": *Bromley LBC v Greater London Council* [1983] 1 AC 768 at 821H, deciding the limits of the Defendant's powers, and whether they have exceeded or abdicated them, will require this Court to construe s1(2) of the Act, the sections it touches: ss2(5), s7(7) *&* s31(3), and the Act as a whole.

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[2] ACMD (2006)*Pathways to Problems: hazardous use of tobacco, alcohol and other drugs by young people in the UK and its implications for policy*, page 14, Recommendation 1 and Recommendation 11, respectively
[3] ACMD (2010) Freedom of Information Act 2000 response to Claimant, 22 October 2010
[4] ACMD (2010) decision letter to Claimant, 16 August 2010; letter to Claimant, 18 June 2010
[5] ACMD (2009) *Pathways to Problems: A follow-up report on the implementation of recommendations from Pathways to Problems*, page 5, n1

The Law regulating the Defendant's decision-making

19. Section 1 of the Act creates the Defendant and confers a *"duty"* upon them; the relevant portion of s1 states:

> *"1. The Advisory Council on the Misuse of Drugs*
>
> *(2) It shall be the duty of the Advisory Council to keep under review the situation in the United Kingdom with respect to drugs which are being or appear to them likely to be misused and of which the misuse is having or appears to them capable of having harmful effects sufficient to constitute a social problem, and to give to any one or more of the Ministers, where either the Council consider it expedient to do so or they are consulted by the Minister or Ministers in question, advice on measures (whether or not involving alteration of the law) which in the opinion of the Council ought to be taken for preventing the misuse of such drugs or dealing with social problems connected with their misuse, and in particular on measures which in the opinion of the Council ought to be taken – (a) for restricting the availability of such drugs or supervising the arrangements for their supply;* […]
> *(4) In this section "the Ministers" means the Secretary of State for the Home Department".*

20. Section 1(2) of the Act dovetails with: s2(5), re drug control and classification; s7(7), re making s7(4) designation Orders; and s31(3), re making regulations. These sections show clear statutory intent to employ an independent advisory body to assist the SSHD in the rational and objective exercise of the Act's discretionary powers.

21. The Claimant argues that when s1(2) is read conjunct the *Padfield* [1968] AC 997 duty to promote the legislative purpose, s1(2) confers a duty on the Defendant to advise the SSHD on the possible control of a drug whenever the four following precedent facts are established and accepted:

    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.

22. Similarly, the Claimant argues that the Defendant has a duty to recommend that the SSHD seek the control of a drug under s2(5) whenever these four precedent facts are established and accepted:

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

23. By their 16 August 2010 decision, their misconstructions of their remit and the Act, the Defendant has abdicated these duties re alcohol and tobacco.

The Points of Law – Misuse of Drugs Act 1971

24. Does the term *"drugs"* as used in the Act's title, preamble and text include alcohol and tobacco and any preparation or other product containing their active constituents?

    The Claimant asserts that the only possible answer is yes.

25. As used in the Act what did Parliament intend by *"misuse"*?

    1) The ordinary definition of *"misuse"* can mean incorrect, careless or improper use.

    2) Section 37(2) of the Act states:

       "37 … (2) References in this Act to misusing a drug are references to misusing it by taking it; and the reference in the foregoing provision to the taking of a drug is a reference to the taking of it by a human being by way of any form of self-administration, whether or not involving assistance by another".

       Section 37(2) holds that *"misuse"* is a type of drug-taking; however, it does not define the Rubicon where drug-taking becomes *"misuse"*.

    3) In 2006, the Defendant defined "drug misuse" as:

       "the act of inappropriate or dangerous drug-taking".[2]

       However, the Act does not define criteria by which "inappropriate" or "dangerous" can be determined.

    4) In response to a recent question about the "legitimate use"[6] of "*controlled drugs"*, the Defendant stated:

       "wherever controlled drugs are used outside of those legitimate activities i.e. medical, scientific or industrial use, they are regarded as 'dangerous or otherwise harmful drugs'.[7]

       But what of drugs not so controlled like alcohol and tobacco; when does their non-medical and non-scientific use become *"misuse"*?

    5) To answer that, the Claimant contends that *"misuse"* must mean *"self-administration"* of a drug or substance, for whatever purpose, occasioning real, not illusory, harm, whether intended or not.

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[6] *Hansard*, HC Deb, *First Day Debate on the Address*, 28 Oct 1969, Vol. 790 Col. 37
[7] ACMD (2010) Freedom of Information Act 2000 response to Claimant, 22 October 2010

26. As used in the Act what did Parliament intend by *"harmful effects"*?

    The Claimant contends that *"harmful effects"* must have a wide meaning encompassing all manner of mental, physical and societal damage.

27. As used in the Act what did Parliament intend by *"sufficient to constitute a social problem"*?

    The Claimant contends that any state (or personal) expenditure incurred in reasonably regulating those engaged in activities with dangerous drugs and preventing, minimising or ameliorating the harmful effects that may be caused by those activities is *"sufficient to constitute a social problem"*.

28. Are the following the precedent facts justifying a drug's control?

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

    These four fact couplets are inferable from s1(2) of the Act. The Defendant frequently advises the SSHD to seek control of a drug on their basis.

29. Does the Act mandate that all import, export, production, supply, and possession of a *"controlled drug"* for non-medical or non-scientific use purposes remain unlawful? Or, said another way, does a proper construction of ss7(1)-(4), 22(a)(i)-(ii) & 31(1)-(3) of the Act empower the Defendant to recommend and the SSHD to authorise the production and commerce of any controlled drug for any use purpose, by any person, under any circumstances, subject to any conditions?

    1) In the First Day Debate on the Address, respecting the 1969 Queen's Speech, introducing the Misuse of Drugs Bill, the Prime Minister said:

       "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 … 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, emphasis added)

       The Claimant contends that the Prime Minister's word choice shows the drafters envisaged plural "regimes" not limited to so-called "prohibition" in which all non-medical, non-scientific activities with respect to a "controlled drug" are made unlawful. This is further evidenced by ss7(1)-(4), 22(a)(i)-(ii) & 31(1)(a)-(b), which make plural "regimes" possible.

2) Sections 7(1)-(4) of the Act state:

"7. Authorisation of activities otherwise unlawful under foregoing provisions.

(1) The Secretary of State may by regulations – (a) except from section 3(1)(a) or (b), 4(1)(a) or (b) or 5(1) of this Act such controlled drugs as may be specified in the regulations; and (b) make such other provision as he thinks fit for the purpose of making it lawful for persons to do things which under any of the following provisions of this Act, that is to say sections 4(1), 5(1) and 6(1), it would otherwise be unlawful for them to do.
(2) Without prejudice to the generality of paragraph (b) of subsection (1) above, regulations under that subsection authorising the doing of any such thing as is mentioned in that paragraph may in particular provide for the doing of that thing to be lawful – (a) if it is done under and in accordance with the terms of a licence or other authority issued by the Secretary of State and in compliance with any conditions attached thereto; or (b) if it is done in compliance with such conditions as may be prescribed.
(3) Subject to subsection (4) below, the Secretary of State shall so exercise his power to make regulations under subsection (1) above as to secure – (a) that it is not unlawful under section 4(1) of this Act for a doctor, dentist, veterinary practitioner or veterinary surgeon, acting in his capacity as such, to prescribe, administer, manufacture, compound or supply a controlled drug, or for a pharmacist or a person lawfully conducting a retail pharmacy business, acting in either case in his capacity as such, to manufacture, compound or supply a controlled drug; and (b) that it is not unlawful under section 5(1) of this Act for a doctor, dentist, veterinary practitioner, veterinary surgeon, pharmacist or person lawfully conducting a retail pharmacy business to have a controlled drug in his possession for the purpose of acting in his capacity as such.
(4) If in the case of any controlled drug the Secretary of State is of the opinion that it is in the public interest – (a) for production, supply and possession of that drug to be either wholly unlawful or unlawful except for purposes of research or other special purposes; or (b) for it to be unlawful for practitioners, pharmacists and persons lawfully conducting retail pharmacy businesses to do in relation to that drug any of the things mentioned in subsection (3) above except under a licence or other authority issued by the Secretary of State, he may by order designate that drug as a drug to which this subsection applies; and while there is in force an order under this subsection designating a controlled drug as one to which this subsection applies, subsection (3) above shall not apply as regards that drug". (Emphasis added)

The Defendant's power to recommend, and the SSHD's power to prescribe, under ss7(1)-(2), which of the offences, enumerated in ss3-6, apply to which controlled drugs makes possible plural "regimes". And by contrasting ss7(3)-(4) and ss7(1)-(2), the Act makes clear that legitimate use of controlled drugs was not intended to be restricted to medical, scientific or industrial use only, as the Defendant contends. Indeed, the only requisite for 'legitimate use' is the SSHD's authorisation under s7.

3) Sections 22(a)(i)-(ii) of the Act state:

"22. Further powers to make regulations.

The Secretary of State may by regulations make provision – (a) for excluding in such cases as may be prescribed – (i) the application of any provision of this Act which creates an offence; or (ii) the application of any of the following provisions of [the Customs and Excise Management Act 1979…], in so far as they apply in relation to a prohibition or restriction on importation or exportation having effect by virtue of section 3 of this Act". (Emphasis added)

Here, under s22, the Defendant can advise the SSHD to exclude the application of any offence. This is an exceptionally wide power: if the Defendant recommended and the SSHD and Parliament approved, personal possession of controlled drugs could be lawful by the weekend.

4) Sections 31(1)-(3) of the Act state:

"31. General provisions as to regulations.

(1) Regulations made by the Secretary of State under any provision of this Act – (a) may make different provision in relation to different controlled drugs, different classes of persons, different provisions of this Act or other different cases or circumstances; (b) may make the opinion, consent or approval of a prescribed authority or of any person authorised in a prescribed manner material for purposes of any provision of the regulations; (c) may contain such supplementary, incidental and transitional provisions as appear expedient to the Secretary of State.
(2) Any power of the Secretary of State to make regulations under this Act shall be exercisable by statutory instrument, which shall be subject to annulment in pursuance of a resolution of either House of Parliament.
(3) The Secretary of State shall not make any regulations under this Act except after consultation with the Advisory Council". (Emphasis added)

The Claimant contends that ss31(1)-(3) of the Act empower the Defendant to recommend, and the SSHD to authorise via ss7(1)-(2) & 22(a)(i)-(ii) (subject to annulment by Parliament), the production and commerce of any controlled drug for any use purpose, by any person, under any circumstances, subject to any conditions.

5) Were alcohol and tobacco *"controlled drugs"*, regulations could allow their use and commerce whilst the public would be informed as to their risk of harm relative to other controlled drugs and *vice versa*. This is the pluralism, envisaged by the Prime Minister's use of the phrase "appropriate regimes" in the First Day Debate on the Address in 1969.

Ground 1

30. In formulating the policy and making the decision, the Defendant misconstrued their remit and the Act.

31. This misconstruction takes <u>two</u> basic forms:

> "the ACMD has concerns that there is no equivalent independent expert body, similar to the ACMD, to advise on [alcohol and tobacco] issues".[8]
>
> "The ACMD does not believe that the Misuse of Drugs framework is appropriate for the regulation of alcohol and tobacco".[9]

32. First, the Defendant is by law charged with a *"duty"* to advise the SSHD *"on measures (whether or not involving alteration of the law) which in the opinion of the Council ought to be taken for preventing the misuse of [alcohol and tobacco] or dealing with social problems connected with their misuse"*. This makes the Defendant <u>the</u> "independent expert body".

33. Second, either the Act's "framework is appropriate" for regulating (people concerned with) alcohol and tobacco or it is not. This is a 'hard-edged' question and it is for this Court to determine.

34. The Claimant asserts, and ss7(1)-(2), 22(a)(i)-(ii) & 31(1)(a)-(b) show, that the Act is a beautifully crafted and appropriate mechanism for precisely regulating the <u>lawful</u> import, export, production, supply, and possession of <u>any</u> dangerous drug that <u>may</u>, when misused, have *"harmful effects sufficient to constitute a social problem"*, including alcohol and tobacco.

35. The Defendant's misconstrual of the Act takes a third form as policy:

> "Wherever drugs are used outside of medical and scientific use, and may have or appear capable of having harmful effects sufficient to constitute a social problem, they are regarded as 'dangerous or otherwise harmful drugs' for which prohibitive controls are and will remain in place".[10]

36. This policy constrains the Defendant's advice under the Act. It ignores the width of the discretions conferred on the SSHD under ss7(1)-(2), 22(a)(i) & 31(1)(a) and the Defendant's *"duty"* to offer advice on the possible exercise of those discretions. And, as alcohol and tobacco are used non-medically and non-scientifically, this is <u>the</u> barrier to advice on their control.

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[8] ACMD (2009) *Pathways to Problems: A follow-up report*, p3; *Cf* paragraphs 4.4 and 6.17
[9] ACMD (2010) FoI Act 2000 response to Claimant, 22 October 2010
[10] ACMD (2007) FoI Act 2000 response to Claimant, 14 August 2007; *Cf.* ACMD (2010) FoI Act 2000 response to Claimant, 22 October 2010 & letter to Claimant, 18 June 2010

37. A fourth form of the Defendant's misconstrual of the Act echoes the third in that it too seeks to exclude the width of ss7(1)-(2), 22(a)(i) & 31(1)(a):

> "there are no purposes outside of medical and scientific purposes and within the context, purpose and intent of the 1971 Act under which … 'the reasonable safe or responsible exercise of property rights in controlled drugs for non-medical and non-scientific purposes' can be regulated by virtue of the [Act] … There is no prospect of change".[11]

38. Upon reading this, the Claimant requested of the Defendant:

> "Please direct me to the section(s) within the Misuse of Drugs Act 1971 ("the Act"), or the ACMD's terms of reference, whether published or not, which state that non-medical and non-scientific purposes of use of 'controlled drugs' are "not permitted", will never be permissible and can never be made permissible under the Act".[12]

39. To which, on 5 March 2008 the Defendant replied:

> "The Misuse of Drugs Act (1971) states that it is unlawful to possess a controlled drug <u>without authorisation</u>: it is therefore of no relevance whether the drug is to be used (for whatever purpose)".[13] (Emphasis added)

40. For an instant, the Defendant understood that the <u>only</u> barrier to the import, export, production, supply, and possession of a controlled drug is <u>authorisation</u> by the SSHD, s7(1)-(3), subject to annulment by Parliament, s31(2). This would allow the Defendant to recommend the control and classification of alcohol and tobacco under the Act conjunct a lawful commerce for their reasonably safe, non-medical and non-scientific use.

41. That fleeting understanding resonated with the Defendant's admission in their 2006 report *Pathways to Problems*:[14]

> "<u>Although its terms of reference do not prevent it from doing so</u>, the ACMD has not considered alcohol and tobacco other than tangentially. 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. <u>For the</u>

[11] ACMD (2007) FoI Act 2000 response to Claimant, 14 August 2007
[12] Claimant (2008) FoI Act 2000 request of the Defendant, 11 February 2008
[13] ACMD (2008) FoI Act 2000 response to Claimant, 5 March 2008
[14] ACMD (2006) *Pathways to Problems,* page 14

ACMD to neglect two of the most harmful psychoactive drugs … no longer seems appropriate". (Emphasis added)

42. For which, in *Pathways to Problems*, the Defendant recommended:

> "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". (Recommendation 1, emphasis added)

43. To which the Home Office replied (FOI 14725):

> "Whilst 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. The penalty-linked framework has no place in the regulation of alcohol and tobacco, but this does not displace ACMD's remit to include these substances, as notably the 1971 Act does not define "drugs", (it only defines controlled drugs). Its current remit gives full scope for making recommendations that do not [sic] include an alteration of the law (ie. Classification) and they are specifically charged with giving advice to prevent misuse of drugs".[15] (Emphasis added, parenthetical expressions preserved)

44. Perhaps the above underlined "not" is a drafting error, for it contradicts the Defendant's remit under the Act. More, the paragraph has a similar legal error that may be the source of the Defendant's second misconstrual: that the Act is 'not an appropriate framework' for regulating activities with alcohol and tobacco, *viz* "the penalty-linked framework has no place". *NB*. This is the calibre of advice the Defendant is receiving from their advisee*!*

45. And, in 2009, when they were again not certain as to their remit, rather than obtain independent legal advice, they asked their advisee:

> "While the term 'drug' is used in the [Act] there is no qualification of whether this includes the … substances alcohol and tobacco. The ACMD has approached the Home Office for clarification of the current terminology in the MDA".[16]

46. So, on 10 February 2010, knowing the Defendant had neither sought nor received independent legal advice as to their remit or the Act, the Claimant requested the Defendant obtain such advice. On 4 October 2010 they said:

> "The ACMD is not under a duty to obtain legal advice regarding the purpose and objects of the Act".[17]

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[15] Home Office (2006) *Draft response to Recommendation 1 of the ACMD's Pathways to Problems Report*, FOI 14725
[16] ACMD (2009) *Pathways to Problems: A follow-up report,* p5
[17] ACMD (2010) Letter of Response, Treasury Solicitor ref: GEH/AHC/3B, 4 October 2010

47. No, they are not; but Lord Diplock said:

> "the decision maker must understand correctly the law that regulates his decision-making power and must give effect to it. Whether he has or not is par excellence a justiciable question": *GCHQ* [1985] AC 374 at 401.

48. And, in their July 2009 report *Pathways to Problems: A follow-up report on the implementation of recommendations from Pathways to Problems*, (not made public until 29 March 2010), the Defendant makes clear that, in 39 years, they have not given proper effect to their remit with respect to alcohol and tobacco:

> "The view of the ACMD is that alcohol and tobacco come within the terms of reference, but to date they have not been explicitly included in the Council's work … the ACMD's terms of reference also state that it is under a duty to consider any matter relating to drug dependence or misuse that may be referred to it by the Government – this is not restricted to those drugs covered by the Act. Therefore, there seems to be no legal barrier to the ACMD considering matters pertaining to alcohol and tobacco".[18] (Emphasis added)

49. The Defendant has forgotten that they are under a *"duty"* to be proactive, *"where … the Council conconsider it expedient to do so"*; they are not simply waiting for the Government to refer "matters pertaining to" alcohol and tobacco to them, as it will be a long wait.[19] Hence, the Defendant appears confused.

50. The Claimant asserts that the Defendant's misconstrual of their remit, however achieved, has prevented them from giving proper effect to the Act or they have developed an intentional policy echoing this recent statement:

> "the ACMD interprets the legislation as including alcohol and tobacco issues whilst retaining a focus on illicit drugs".[20]

51. First, they accept that alcohol and tobacco are within their remit, and then they devise a policy whereby their advice is limited to "matters pertaining to alcohol and tobacco" or "alcohol and tobacco issues". Finally, they state that:

> "The ACMD does not believe that the Misuse of Drugs framework is appropriate for the regulation of alcohol and tobacco".[21]

52. Which is it? And does the Defendant's misconstrual of the Act make their 16 August 2010 decision and their policies giving rise to it unlawful?

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[18] ACMD (2009) *Pathways to Problems: A follow-up report*, paragraphs 4.2-4.3
[19] ACMD (2009) *Pathways to Problems: A follow-up report*, paragraph 6.17
[20] ACMD (2010) letter to Claimant, 16 August 2010; letter to Claimant, 18 June 2010
[21] ACMD (2010) FoI Act 2000 response to Claimant, 22 October 2010

Ground 2

53. In formulating the policy and making the decision, the Defendant did not act upon relevant factors to the exclusion of irrelevant factors.

54. In the First Day Debate on the Address, respecting the 1969 Queen's Speech, whilst introducing the Misuse of Drugs Bill, the Prime Minister provided illumination as to the Act's structure, function and purpose:

> "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 … 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, emphasis added)

55. This statement, in broad outline, describes the Act. It puts the Defendant at the heart of an evidenced-based, dynamic and evolutive mechanism for controlling, classifying and regulating any dangerous drug, "new or old". *Cf.* ss1, 2(5), 7(7), 31(3) and Schedule 1.

56. As shown, the Act has an array of mechanisms allowing "appropriate regimes of control". And because the Act "does not define "drugs" (it only defines controlled drugs)",[22] it is neutral; the Act can "make … provision with respect to [any] dangerous or otherwise harmful drug",[23] "new or old".

57. At the Bill's (first) second reading, the then SSHD said:

> "I want now to make a few comments about Clause 2 and Schedule 2. These establish a three-tier classification of drugs for the purposes of the penalties provided by Clause 25 and Schedule 4. The object here is to make, so far as possible, a more sensible differentiation between drugs. It will divide them according to their accepted dangers and harmfulness in the light of current knowledge and it will provide for changes to be made in the classification in the light of new scientific knowledge". (*Hansard*, HC Deb, 25 March 1970, Vol. 798 Col. 1453, emphasis added)

58. Alcohol and tobacco were known then to be harmful drugs; however, they were regarded as "the devil we know".[24] But as our knowledge and experience of alcohol and tobacco has grown, it is the Defendant's continuing *"duty"* to *"keep under review"* these drugs and to advise the SSHD accordingly.

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[22] Home Office (2010) FoI Act 2000 response to Claimant T7234/10, 21 May 2010, disclosing FOI 14725
[23] Misuse of Drugs Act 1971 c38, Preamble
[24] Home Office/ACDD (1968) *Report on Cannabis,* Hallucinogens Sub-Committee, HMSO, para 63; *Cf. Hansard*, HC Deb, *Misuse of Drugs Bill 1970*, 25 March 1970, Vol. 798 Col. 1446, 1471, 1516, etc.

59. The relevant parts of the Defendant's remit, in s1(2), state:

> *"1. – (2) It shall be the duty of the Advisory Council to keep under review the situation … with respect to drugs which are being or appear …likely to be misused and of which the misuse is having or appears ... capable of having harmful effects sufficient to constitute a social problem, and to give to any one or more of the Ministers … advice on measures (whether or not involving alteration of the law) which … ought to be taken for preventing the misuse of such drugs or dealing with social problems connected with their misuse".*

60. The above underlined clauses of s1(2) implicitly identify the relevancies to be taken into account by the Defendant in deciding whether to advise the SSHD on the possibility of seeking the control of a drug under s2(5). Accordingly, these are the precedent factors:

    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.

61. In recent times, the Defendant has stated:

    1) "alcohol and tobacco [are] implicit in the ACMD's terms of reference as these are substances that can be misused".[25]
    2) "large numbers of children and young people in the UK are using tobacco, alcohol and other drugs in hazardous ways". [26]
    3) "smoking tobacco continues to cause over 100,000 premature deaths in the UK each year".[26]
    4) "Alcohol is also a major factor in violent crime".[26]

62. Clearly, the Defendant has established that alcohol and tobacco are "drugs which are being … misused and of which the misuse is having … harmful effects sufficient to constitute a social problem":

    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.

63. The Defendant has neglected its duty to advise the SSHD that, with respect to alcohol and tobacco, these precedent factors are established and their control should be sought under s2(5). Hence, in making the 16 August 2010 decision, the Defendant did not act upon relevant factors to the exclusion of irrelevant factors: *SSES v Tameside MBC* [1977] AC 1014, 1065B.

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[25] ACMD (2009) *Pathways to Problems: A follow-up report*, paragraph 4.2
[26] ACMD (2006) *Pathways to Problems,* paragraphs 3.1, 1.9 and 1.10, respectively

Ground 3

64. The Defendant's decision is arbitrary and unreasonable.

65. In their 2006 *Pathways to Problems* the Defendant said:

> "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".[27] (Emphasis added)

66. Accompanying this clear signal that the distinctions made regarding drug policy and law are arbitrary, the Defendant admitted:

> "Although its terms of reference do not prevent it from doing so, the ACMD has not considered alcohol and tobacco other than tangentially. […] For the ACMD to neglect two of the most harmful psychoactive drugs […] no longer seems appropriate". (Emphasis added)

67. Consistent with this admission of "neglect", the Defendant recommended:

> "tobacco and alcohol should be explicitly included within the terms of reference of the Advisory Council on the Misuse of Drugs".

68. It was unclear why the Defendant sought explicit reference of alcohol and tobacco within their remit, as the Home Office responded by telling them what they should have already known:

> "their terms of reference are already sufficiently wide to include alcohol and tobacco".[28]

69. Perhaps only explicit reference would overcome the arbitrary "historical and cultural" belief that alcohol and tobacco are not *"drugs"*.[29]

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[27] ACMD (2006) *Pathways to Problems*, paragraph 1.13
[28] Home Office (2006) *Draft response to Recommendation 1 of the ACMD's Pathways to Problems Report*, FOI 14725
[29] Misuse of Drugs Act 1971 c38, s1(2), clause 1; *Cf.* ACMD minutes, 25 May 2006, paragraph 7.7

70. Perhaps only explicit reference would allow the them to shed their belief that:

> "the Misuse of Drugs framework is [not an] appropriate for the regulation of alcohol and tobacco".[30]

71. Nevertheless, on 9 July 2010, the Claimant specifically requested the Defendant "advise the Home Secretary about the feasibility of creating under the Act via ss7(1)-(2), 22(a)(i) & 31(1)(a) a coherent regulatory structure for alcohol and tobacco production and commerce allowing for, at minimum:

    1) Regulating and licensing under s7(1)-(2) the import and export of alcohol and tobacco;
    2) Regulating and licensing under s7(1)-(2) the production and supply of alcohol and tobacco;
    3) Regulating and licensing under s7(1)-(2) premises and persons for the safe supply and consumption of alcohol and tobacco;
    4) Excluding the operation of s5 [possession] re alcohol and tobacco under s22(a)(i) for all persons over the age of 18".

72. To which on 16 August 2010 the Defendant replied, with emphasis:

> "I understand … that the Coalition Government has no intention of seeking the classification of alcohol and tobacco under the Misuse of Drugs Act (the 1971 Act) for the purposes of controlling these substances under the Act. It is important that I make clear <u>from the outset</u> that the ACMD does not intend to provide advice to ministers on alcohol and tobacco that is concerned with classification under the [Act]".[31]

73. *Prima facie* the Defendant has left out the merits of the Claimant's request and shut their mind: "from the outset". They have "refus[ed] to consider the relevant matter": *Padfield v Minister of Agriculture Fisheries & Food* [1968] AC 997 at 1058D. Between *Pathways to Problems* in 2006 and the Defendant's LOR on 4 October 2010, the Defendant has advanced no lawful reason for refusing to advise the SSHD on the possibility of controlling alcohol and tobacco under the Act. In this, the decision appears arbitrary and based on "historical and cultural factors [that] lack a consistent and objective basis".[26]

74. From this, the Court is invited to infer that no lawful reason exists. Knowing what they know about alcohol and tobacco misuse and the damage that misuse does to society, the Defendant's decision is:

> "outrageous in its defiance of logic": *GCHQ* [1985] AC 374 at 410G-H.

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[30] ACMD (2010) FoI Act 2000 response to Claimant, 22 October 2010
[31] ACMD (2010) decision letter to Claimant, 16 August 2010

Ground 4

75. The Defendant's decision-making and policy is not sufficiently independent of their Departmental sponsor.

76. The Defendant, the Advisory Council on the Misuse of Drugs, is a statutory and non-executive, non-departmental public body ("NDPB"), created under the Misuse of Drugs Act 1971, an Act designed to employ education, health and police power measures to prevent, minimise or eliminate the *"harmful effects sufficient to constitute a social problem"* that may arise via any self-administration of *"dangerous or otherwise harmful drugs"*.

77. It is the Defendant's *"duty"*: 1) to keep the drugs *"situation"* and relevant law *"under review"*; (2) to give ministers advice on exercising the Act's powers; and (3) to give ministers advice on any measure or measures, *"whether or not involving alteration of the law"*, thought necessary to achieve the Act's purpose. And as the Act's purpose is the protection of public health, it is vital that the Defendant discharges their duties independent of political pressure.

78. Cabinet Office guidance on NDPBs confirms that an NDPB is:

> "A body which has a role in national government, but is not a government department, or part of one, and which accordingly operates to a greater or lesser extant at arm's length from ministers […] Ministers are however ultimately responsible for a NDPB's independence, its effectiveness and efficiency".

79. The minister ultimately responsible for the independence, effectiveness and efficiency of the Defendant is also the primary advisee, the Secretary of State for the Home Department. The SSHD may well, and often does, come under intense public and political pressure in relation to that advice. In the last few years, this public and political pressure has spilled over onto the Defendant and resulted in the sacking of their chairman.

80. On 30 October 2010, the former SSHD, the Rt Hon Alan Johnson MP, sacked the Defendant's former chair, Dr David Nutt, for publically repeating what evidence and logic had shown, that "ecstasy and LSD are less harmful than alcohol and tobacco". In doing so the SSHD made clear:

> "I cannot have public confusion between scientific advice and policy".[32]

81. Policy trumped evidence and, over the next ten days, five of the Defendant's esteemed experts, who are unpaid volunteers, resigned in protest.

[32] SSHD (2009) Alan Johnson MP's letter to Professor David Nutt, 30 October 2009

82. On 1 November 2009, Dr Les King, the Defendant's senior chemist, resigned in protest at Dr Nutt's dismissal, saying:

> "I'm not going to say just how many will resign but there is an extremely angry feeling among most council members. Amongst the scientists, I think a number will resign […] the classification of drugs is about harm. It doesn't need to be politicised in the way that it is". [33]

83. On 2 November 2010, Marion Walker, the Defendant's Royal Pharmaceutical Society representative resigned in protest. And, on 10 November 2009, after a meeting between the SSHD and the Defendant, three more ACMD members resigned: Dr John Marsden, Dr Ian Ragan, and Dr Simon Campbell.[34]

84. On 13 January 2010, Professor Les Iversen was appointed by the SSHD as interim chair.

85. On 29 March 2010, Dr Polly Taylor resigned in the midst of a moral-panic about the drug mephedrone:

> "I feel that there is little more we can do to describe the importance of ensuring that advice is not subjected to a desire to please ministers or the mood of the day's press".[35]

86. On 1 April 2010, after the announcement that the "control" of mephedrone will be sought under the Act, Mr Eric Carlin resigned. He said:

> "Our decision was unduly based on media and political pressure".[36]

87. According to a 17 April 2010 editorial in *The Lancet*,[37] the draft of the Defendant's mephedrone report was still being discussed by the Council when the chair, Les Iversen, rushed out of the meeting to brief the SSHD on their advice in time for the SSHD's scheduled press briefing.

88. And in the midst of the political storm over mephedrone, another of the Defendant's reports, *Pathways to Problems: A follow-up report on the implementation of recommendations from Pathways to Problems*, was quietly released, containing some potentially unpalatable conclusions on tackling young people's drug problems, stating not enough was being done on alcohol and tobacco, as well as calling for a review of the Act. This report contains the quote found on the cover of this Statement of Grounds.

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[33] *BBC News (*2009) *Second drugs adviser quits post*, 1 November 2009
[34] *The Times* (2009) *Three more members of drugs advisory panel resign after sacking of David Nutt*, 11 November 2010; *Cf.* SSHD/*ACMD* (2009) *Joint Statement from the Home Secretary and the Advisory Council on the Misuse of Drugs*, 10 November 2009
[35] *BBC News* (2010) *Drug advisers resignation letter*, 29 March 2010
[36] *BBC News* (2010) *Adviser resigns over mephedrone*, 2 April 2010
[37] *The Lancet* (2010) *A collapse in integrity of scientific advice in the UK*, Vol. 375, Issue 9723, page 1319, 17 April 2010

89. Consequent of the political tempest over Dr Nutt, the trust between ministers and expert scientific advisers has evaporated. If the Defendant, cannot discharge their duty effectively for fear of being terminated or unduly influenced by public or political pressure, then ultimately, their independence is compromised and with it the nation's health.

90. Hence, without even considering the merits of the Claimant's request that the Defendant advise the SSHD on the possibility of controlling alcohol and tobacco under the Act, the Defendant's chair marched in the SSHD's tracks:

> "I understand … that the Coalition Government has no intention of seeking the classification of alcohol and tobacco under the Misuse of Drugs Act (the 1971 Act) for the purposes of controlling these substances under the Act. It is important that I make clear from the outset that the ACMD does not intend to provide advice to ministers on alcohol and tobacco that is concerned with classification under the [Act]".[38]

91. This appears like the Defendant is not acting as a statutorily independent non-executive body advising their departmental sponsor on the exercise of statutory discretion: for in discharging their *"duty"* under the Act, the SSHD's intentions are of no consequence to the Defendant. Neither should the Defendant be swayed by the SSHD's attempted influence over their process:

> "There may be practical problems for ACMD in its current form to take a greater interest and responsibility in alcohol and tobacco. For instance its current membership may need to be revised significantly to provide the necessary expertise. The Government may welcome the ACMD's advice […] though it must be confident that the ACMD is equipped to give that advice and also, that ACMD is not distracted by what is considered to be its main function – advice on illegal drugs or those that can (realistically) be brought under the control of the 1971 Act".[39] (Emphasis added)

92. Here, the sponsor/advisee is advising the Defendant on "its main function" and the drugs that can "realistically" be controlled under the Act: remember, rather than take independent legal advice, the Defendant "approached the [sponsor/advisee] for clarification of the current terminology in the MDA".[40]

93. Unsurprisingly, the sponsor/advisee misconstrues the Act like the Defendant:

> "the Misuse of Drugs Act 1971 is not a suitable mechanism for regulating … alcohol and tobacco".[41] (Emphasis added)

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[38] ACMD (2010) decision letter to Claimant, 16 August 2010
[39] Home Office (2006) *Draft response to Recommendation 1 of the ACMD's Pathways to Problems Report*, FOI 14725
[40] ACMD (2009) *Pathways to Problems: A follow-up report,* p5
[41] Cm 6941 (2006) page 24, 13 October 2006; *Cf.* Home Office (2010) letter to Mr H McCulla, T15271/10, 23 September 2010

94. And in 2007, the sponsor/advisee declared that:

> "our policy of prohibition [is]reflected in the terms of the Misuse of Drugs Act 1971".[42]

95. But, equating a "policy of prohibition" with the Act's policy, expressed so unmistakably in ss7(1)-(2), 22(a)(i)-(ii) *&* 31(1)(a)-(b), is manifestly absurd; yet apparently "prohibition" is a policy choice the Defendant acquiesces in:

> "wherever controlled drugs are used outside of those legitimate activities i.e. medical, scientific or industrial use, they are regarded as 'dangerous or otherwise harmful drugs' for which there are prohibitive controls".[43]
>
> "Wherever drugs are used outside of medical and scientific use, and may have or appear capable of having harmful effects sufficient to constitute a social problem, they are regarded as dangerous or otherwise harmful drugs for which prohibitive controls are and will remain in place … There is no prospect of change".[44] (Emphasis added)

96. These statements adhere to the sponsor's "policy of prohibition", designed to limit controlled drug use purposes to medicine, science and industry. These policies prevent the control of alcohol and tobacco under the Act without the unwanted effect of imposing "prohibitive controls"; as a result, the policy precludes the Defendant from properly considering the merits of the Claimant's request, or departing from the policy long enough to do so.

97. In *R(S) v Secretary of State for the Home Department* [2007] EWCA Civ 546 at 50 it was said that:

> "A public authority may not adopt a policy which precludes it from considering individual [requests] on their merits, nor may it allow its treatment of [requests] to be dictated by agreement with another government body".

98. Together, the Defendant and their sponsor/advisee, influenced by public and political pressure, have created an impenetrable wall not susceptible to logic or persuasion whereby the Defendant will not advise the SSHD on the possibility of controlling alcohol and tobacco under the Act and the SSHD will not request that advice. Together, the Defendant and the SSHD have closed ranks and shut their minds: "from the outset". This gives every impression that the Defendant is insufficiently independent of their sponsor/advisee: *Cf. R(Brookes & Others) v Parole Board* [2008] 1 WLR 1950.

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[42] Home Office (2007) *Response to Better Regulation Executive re MDAct*, 27 September 2007
[43] ACMD (2010) FoI Act 2000 response to Claimant, 22 October 2010
[44] ACMD (2007) FoI Act 2000 response to Claimant, 14 August 2007; *Cf* ACMD (2010) letter to Claimant, 18 June 2010

Conclusion

99. In *Padfield v Minister of Agriculture Fisheries & Food* [1968] AC 997 at 1030B Lord Reid said that:

> "Parliament must have conferred the discretion with the intention that it should be used to promote the policy and objects of the Act … if the [Defendant], by reason of [their] having misconstrued the Act or for any other reason, so uses [their] discretion as to thwart or run counter to the policy and objects of the Act, then […] persons aggrieved [are] entitled to the protection of the court".

100. Adding to this, Lord Pearce said at 1053G:

> "If all the prima facie reasons seem to point in favour of [the Defendant] taking a certain course to carry out the intentions of Parliament in respect of power which it has given [them] in that regard, and [they] give no reason whatever for taking a contrary course, the Court may infer [they have] no good reason and that [they are] not using the power given by Parliament to carry out its intentions".

101. It is clear that Parliament attached considerable importance on the Advisory Council on the Misuse of Drugs, the Defendant, to ensure that the Secretary of State for the Home Department has the finest available evidence with which to exercise the Act's discretions in the interests of public health.

102. The Advisory Council has made it known that alcohol and tobacco should be explicitly integrated into the Act and policy:

> "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". [45]

> "A fully integrated approach should be taken to the development of policies designed to prevent the hazardous use of tobacco, alcohol and other drugs".[45]

103. The *prima facie* reasons point in favour of the Defendant advising the SSHD on the possibility of controlling alcohol and tobacco under the Act; yet, the Defendant gave no good and lawful reason for taking a contrary course in making their 16 August 2010 decision; this denies the public of protections that Parliament intended they should have.

[45] ACMD (2006) *Pathways to Problems*, Recommendations 1 and 11, respectively

Remedies sought

104. The Claimant seeks the following Orders:

1) An Order quashing the Defendant's 16 August 2010 decision not to advise the SSHD on the possibility of controlling alcohol and tobacco under the Misuse of Drugs Act 1971.

2) An Order quashing the Defendant's policy statement as found in paragraph 1(2) above, and all similar versions, as unlawful.

3) An Order mandating the Defendant reconsider their 16 August 2010 decision according to law and upon relevant considerations to the exclusion of irrelevant considerations; alternatively, an Order mandating the Defendant advise the SSHD on the possibility of controlling alcohol and tobacco under the Misuse of Drugs Act 1971 according to law and upon relevant considerations to the exclusion of irrelevant considerations.

4) An Order mandating the Defendant's sponsorship is moved to the Department of Health.

Costs

105. The Claimant seeks no costs. Reflecting this, he seeks a Protective Cost Order to be agreed according to *R(Corner House Research) v Secretary of State for Trade and Industry* [2005] 1 WLR 2600.

Prayer

106. Ultimately, the Claimant, Mr Casey William Hardison, wants to vindicate the rule or law; he wants the Defendant confidently established in their rightful position at the heart of evidence-based policy, unshackled from the SSHD's "policy of prohibition". To this end, he prays that this Honourable Court grants him permission for judicial review of the Defendant's decision and policy as regards the Misuse of Drugs Act 1971 and that this Court gives it the scrutiny it deserves.

I firmly believe that the facts stated in this Draft Statement of Claim are true.

– fiat lux, fiat justitia, ruat cælum!

Casey William Hardison
Claimant

Date ……