In the High Court of Justice **CO/11538/2010**
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 –

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Defendant

REPLY TO DEFENDANT'S SUMMARY GROUNDS

"Poly-substance abuse is increasingly the norm amongst drug misusers. This dependence commonly involves alcohol as well as [controlled] drugs, and is therefore one of the key reasons why it makes sense to bring together the response to severe alcohol dependence and drug misuse into one strategy".

– HM Government Drug Strategy
December 2010

Prepared By

Casey William HARDISON

16 December 2010

CO/11538/2010

Casey William HARDISON Claimant

– v –

Secretary of State for the Home Department Defendant

Reply to Defendant's Summary Grounds

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1. Mr Casey William Hardison, the Claimant, takes issue with the Defendant's Summary Grounds of Resistance ("the SGR") on four points:

    1) the Acknowledgment of Service was late;

    2) the Defendant did not address the Claimant's four grounds;

    3) the Defendant would have the Court believe the impossible;

    4) the Defendant seeks to silence the Claimant.

The Acknowledgment of Service was late

2. CPR 54.8 states that any person served with the claim form who wishes to take part in the judicial review must file an acknowledgment of service, Form N462, within 21 days of service of the claim form upon them.

3. On 11 November 2010, the Defendant's fax machine received the Claim Form N461. The Claimant deemed the date of service to be 11 November 2010. The Defendant's Form N462 is dated 9 December 2010. This is seven days after the time period for filing the Form N462 has expired.

4. Given the paucity of the response in the Form N462 and the SGR, this is unreasonable. The Claimant therefore requests that the Court deny the Defendant permission to participate in any hearing as per CPR 8.4(2).

The Defendant did not address the Claimant's grounds

5. At issue in this claim is the Defendant's interpretation and exercise of s2(5) of the Misuse of Drugs Act 1971 ("the Act"). In his Statement of Grounds ("the SOG"), the Claimant's asserts that the Defendant's 10 August 2010 decision not to consult the Advisory Council under s2(5) of the Act is not lawful on four public law grounds. Sadly, the Defendant's SGR fails to address any of those grounds.

6. And though, in paragraph 8, the SGR states "the Defendant's duty to consult the ACMD applies **only** in the limited circumstances specified by sections 2(5), 7(7), *&* 31(3) of the MDA 1971 [D 22-25]", rather than apply herself to a proper construction of that s2(5) "duty", the Defendant redirects the Court to the policy distinction the Defendant maintains between dangerous drugs.

7. On a proper construction of s2(5), and the "legislative purpose", the Defendant's "adopted policy is [not] a lawful exercise of that discretion": *In re Findlay* [1985] AC 318, 338E. (*NB*. The Act does not mandate 'prohibition').

8. More, the Claimant has **not** said, "the Defendant should control alcohol and tobacco under the MDA 1971" [SGR para 7], only that she has a "duty" to consult the Advisory Council on that possibility: *Padfield* [1968] AC 997, 1030B.

9. Again, this claim is about the Defendant's 10 August 2010 decision not to consult the Advisory Council under s2(5) of the Act and the lawfulness of the decision-making process. The Claimant requests that the Court first construe the Act and then squarely confront the substance of his grounds.

The Defendant would have the Court believe the impossible

10. The Defendant would have this Court believe that the lawfulness of the 10 August 2010 decision has been determined; this is not possible. Whilst the Claimant has been denied permission on claims that obliquely touched upon the Defendant's policy, the Court has not adjudicated on a claim that the Defendant has exercised the s2(5) discretion unlawfully.

11. CO/687/2007 concerned an expectation to the Defendant's promised review of the Act's drug classification system. The Claimant thought the Defendant's decision to renege on that promise was unreasonable given nascent evidence that the current classification of controlled drugs was arbitrary. The Court refused permission saying, "Remedies for this grievance lie in the world of politics, not in the world of law": "this grievance" being the expectation.

12. CO/7548/2007 concerned an allegation that the 2007 Drugs Strategy Consultation Paper ("DSCP"): 1) was set in misleading terms; 2) failed to provide sufficient information and reasons for intelligent consideration and response; and 3) was not undertaken when the proposals were in a formative stage. Refusing permission, the Court said there was "no prospect of success".

13. CO/9095/2010 is an open permissions application re the handling of the Claimant's criminal application to the Criminal Cases Review Commission.

14. Those claims did not concern, as the instant does, the Defendant's public law "duty" [SGR para 8] to consult the Advisory Council under s2(5) of the Act.

The Defendant seeks to silence the Claimant

15. Rather than apply her mind to the grounds set out in the SOG, the Defendant redirects the Court onto previous, disparate and irrelevant permissions decisions (that cannot possibly bind this Court), using these to persuade this Court that because his previous applications for permission failed, this one must, and thus the Claimant is no more than a vexatious, hopeless and unmeritorious litigant who must be silenced.

16. To this end, and via CPR 3.11, the Defendant seeks an Extended Civil Restraint Order. Yet, as per CPR 3.11 and PD 3C 3.1(2), the application for the Order should only be heard after the merits of this claim are determined.

17. Re the merits, it is curious that the bundle accompanying the Defendant's application for such an Order contains four substantially similar statements of the unlawful policy: [D 2 para 7, D 9-10 para 10, D 16 para 8, D 19 para 3]. As stated in her 24 September 2010 LOR, this unlawful policy reads:

> "the Government's policy is to regulate controlled drugs – more commonly referred to as "illegal drugs" – through the Misuse of Drugs Act 1971, and the availability of alcohol and tobacco separately. This stance recognises that whilst alcohol and tobacco pose health risks and may have anti-social effects, their use is embedded in society, and responsible use is possible and commonplace." [D 19, emphasis added]

18. This unlawful policy fettered the Defendant's s2(5) discretion and so determined the 10 August 2010 decision: [SOG, pages 18-19]. *Prima facie*, this unlawful policy considers two irrelevant factors and fails to consider properly two relevant factors: *Tameside MBC* [1977] AC 1014, 1065B, [SOG, pages 12-14]. This unlawful policy relies on the Defendant's enduring misconstructions of the Act and its "legislative purpose": [SOG, pages 10-11]. These are proper grounds for quashing the decision and the policy.

19. 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 ……