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

DRAFT STATEMENT OF GROUNDS

"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".

Review of the UK's Drugs Classification System
A Public Consultation
Home Office
May 2006

Prepared By

Casey William HARDISON

1 November 2010

CO/11538/2010

Casey William HARDISON — Claimant

– v –

Secretary of State for the Home Department — Defendant

Draft Statement of Grounds

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

    1) the 10 August 2010 decision ("the decision") by the Secretary of State for the Home Department ("the Defendant") not to consult the Advisory Council on the Misuse of Drugs ("the Advisory Council") 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 ("the policy") not to control alcohol and tobacco (and thus persons concerned with these drugs) under the Act, as evinced in the decision letter and similar statements before and after.

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 the policy and making the decision, the Defendant misconstrued the Act. (Page 10)

    2) In formulating the policy and making the decision, the Defendant did not inquire sufficiently and did not act upon relevant considerations to the exclusion of irrelevant considerations. (Page 12)

    3) The Defendant's policy and the decision made pursuant to it are arbitrary and unreasonable. (Page 15)

    4) Fettered to an overly-rigid policy, the Defendant refused outright to consider the relevant matter. (Page 18)

Brief Facts

4. In 2006 the Claimant began correspondence with the Home Office, exploring the Act's structure, function and purpose. By 1 November 2009, it was manifest the Defendant had misconstrued the Act and for political reasons had excluded alcohol and tobacco from its control, thus excluding persons concerned with these drugs from the Act's measures.

5. The Claimant thought this contrary to legislative intent and arbitrary: a failure to treat like cases alike. So, he wrote the Defendant and set out what he thought were the Defendant's public law wrongs. The Defendant's responses, T6866/10, T7234/10 and T9943/10, *inter alia*, repeat those wrongs.

6. On 1 July 2010, the Claimant requested the Defendant exercise her discretion to consult the Advisory Council on the possibility of bringing alcohol and tobacco under the Act's control. The Claimant specifically requested the Defendant "ask the Council 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 allowing for:

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

The Decision

7. The relevant portion of the Defendant's 10 August 2010 decision letter, T12131/10, ("the decision letter") put the cart before the horse:

> "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. […S]ection 2(5) places a duty on the Secretary of State not to lay a draft Order in Council before Parliament … except after consultation with or on the recommendation of the Advisory Council. It does not place a duty upon the Secretary of State to otherwise consult the Council".

8. As the Defendant leaves out the merits of the Claimant's request to consult the Advisory Council on the possibility of controlling alcohol and tobacco under the Act, this is "an outright refusal 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 setting out the issues he thought pertinent and the questions of law that might arise in addressing them.

10. On 24 September 2010, Mr James Chapman, for the Treasury Solicitor, responded for the Defendant. The Letter of Response ("LOR") addressed none of the specific issues set out in the LBC. The short LOR merely reiterated the Defendant's "policy":

> "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."

11. It will be shown that the Defendant's policy is based on an enduring misconstruction of the Act, in particular, that the Act "is not a suitable mechanism" for regulating persons concerned with alcohol and tobacco: *See R(A) v SSHD* [2003] 1 WLR 330 at 49. On the face of the policy, the Defendant has considered two irrelevant factors and failed to consider properly two relevant factors: *Secretary of State for Education and Science v Tameside Metro Borough Council* [1977] AC 1014, 1065B.

12. The LOR also stated that in an earlier, disparate proceeding, CO/687/2007 the Court invited the Defendant to seek a Civil Restraint Order. The Claimant will vigorously oppose any application for such an Order here.

The Issue in Overview

13. The Misuse of Drugs Act 1971 c38 is a neutral and generally applicable Act of Parliament authorising activities with "dangerous or otherwise harmful drugs" that "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". (Preamble conjunct s1(2))

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

15. The Defendant's *de facto* exclusion of alcohol and tobacco from the Act's reach is a curious anomaly, outrageous in its defiance of logic, particularly as the Defendant has stated:

    1) "Alcohol and tobacco are substances that can be misused".[1]
    2) "alcohol and tobacco pose health risks and may have anti-social effects".[2]
    3) "alcohol and tobacco account for more health problems and deaths than [controlled] drugs".[3]
    4) "In terms of death, [controlled] drugs amounted to 1,388 in 2003 compared to about 20,000 for alcohol and 100,000 for tobacco".[4]

16. The Defendant's rationale for excluding alcohol and tobacco from the Act's reach include such statements as:

    1) "the UK Government does not think alcohol [and presumably tobacco] should be subject to the same regulatory framework as controlled drugs because the ABC classification system is not a suitable mechanism".[5]
    2) "The Misuse of Drugs Act … [is] not suitable for applying to alcohol and tobacco".[6]
    3) ""The penalty linked framework [of the Misuse of Drugs Act] has no place in the regulation of alcohol and tobacco' insofar as the means by which [persons concerned with alcohol and tobacco] are regulated is embedded in historical traditions and tolerance of responsible consumption".[1]
    4) "The distinction between [alcohol, tobacco and controlled drugs] is not unequivocally based on pharmacology, economic or risk benefit analysis. It is … based in large part on historical and cultural precedents".[3]
    5) "most people would not want to see the drugs classification system as a mechanism for regulating … substances such as alcohol and tobacco".[7]

17. The five statements above either show the Defendant misdirecting herself in law or contain considerations irrelevant to the decision of whether or not to consult the Advisory Council with respect to alcohol and tobacco control.

18. At issue is the discretion conferred on the Defendant's under s2(5) of the Act, which is "unfettered" provided "that the adopted policy is a lawful exercise of the discretion": *In re Findlay* [1985] AC 318 at 338; and as "the question of discretion is inseparable from the question of construction": *Bromley LBC v Greater London Council* [1983] 1 AC 768 at 821H, determining the scope, policy and objects of s2(5) is for this Court.

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[1] Home Office (2010) letter to the Claimant, T9943/10, 2 July 2010
[2] Home Office (2010) Defendant LOR, 24 September 2010, Treasury Solicitor ref: Q102736A/JCP/B4
[3] Home Office (2006) Cm 6941, *The Government Reply to the Fifth Report from the House of Commons Science and Technology Committee Session 2005-06 HC 1031*, page 24, 13 October 2006
[4] Home Office (2006) *Review of the UK's Drug Classification System – a Public Consultation*, paragraph 6.9, May 2006
[5] Home Office (2010) letter to Mr H McCulla, T15271/10, 23 September 2010
[6] Home Office (2010) letter to Claimant T7234/10, 21 May 2010
[7] *Vide supra*, note 4, paragraph 6.11

19. Section 2 of the Misuse of Drugs Act 1971 c38 states:

"*2. Controlled drugs and their classification for purposes of this Act.*

(1) In this Act – (a) the expression "controlled drug" means any substance or product for the time being specified in Part I, II, or III of Schedule 2 to this Act; and (b) the expressions "Class A drug", "Class B drug" and "Class C drug" mean any of the substances and products for the time being specified respectively in Part I, Part II and Part III of that Schedule; and the provisions of Part IV of that Schedule shall have effect with respect to the meanings of expressions used in that Schedule.
(2) Her Majesty may by Order in Council make such amendments in Schedule 2 to this Act as may be requisite for the purpose of adding any substance or product to, or removing any substance or product from, any of Parts I to III of that Schedule, including amendments for securing that no substance or product is for the time being specified in a particular one of those Parts or for inserting any substance or product into any of those Parts in which no substance or product is for the time being specified.
(3) An Order in Council under this section may amend Part IV of Schedule 2 to this Act, and may do so whether or not it amends any other Part of this Schedule.
(4) An Order in Council under this section may be varied or revoked by a subsequent Order in Council thereunder.
(5) No recommendation shall be made to Her Majesty in Council to make an Order under this section unless a draft of the Order has been laid before Parliament and approved by a resolution of each House of Parliament; and the Secretary of State shall not lay a draft of such an Order before Parliament except after consultation with or on the recommendation of the Advisory Council." (Emphasis added)

20. Section 2(5) shows that the Defendant is the gatekeeper of the control and classification process (akin to the Minister in *Padfield*). This process begins with a recommendation to the Defendant from the Advisory Council or the Defendant's active consultation with them.

21. Section 2(5) is constructed in terms of what the Defendant "shall not" do rather than what she "may" or "shall" do. Compounding this, there is no reference to the scope of the Defendant's s2(5) discretion and/or the relevant facts controlling its exercise, though one can "ascertain" these from s1(2) and the Act as a whole: *Bromley LBC v Greater London Council* at 814H.

22. After creating the Advisory Council, the relevant part of s1 states:

"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 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 … 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".

23. The Claimant argues that when s2(5) is read conjunct s1(2), and the *Padfield* [1968] AC 997 duty to promote the legislative purpose, s2(5) confers a duty on the Defendant to consult the Advisory Council 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.

24. Similarly, the Claimant argues that the Defendant has a duty to "lay a draft Order" under s2(5), "recommend[ing] to Her Majesty in Council to make an Order under [s2(2)]" 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.

25. Accordingly, the Claimant asserts that: 1) the Defendant has a duty to consult the Advisory Council re the possibility of controlling alcohol and tobacco under the Act; and 2) if the Advisory Council confirm the precedent facts, the Defendant has a duty to "lay a draft Order" under s2(5), "recommend[ing] to Her Majesty in Council to make an Order under [s2(2)]" re alcohol and tobacco; and 3) by her 10 August 2010 decision and her overly-rigid policy, the Defendant has abdicated these duties.

Notes on Justiciability

26. The Defendant's decision and policy appear intercalated between the *In re Findlay* [1985] AC 318 principle of wide discretion; the *Anisminic* [1969] 2 AC 147 duty not to err in law; the *Padfield* [1968] AC 997 duty to promote not thwart the legislative purpose; the *Tameside* [1977] AC 1014 duty to acquaint oneself with the relevant facts; and the *Wednesbury* [1948] 1 KB 223 duty to act reasonably upon those facts.

27. If the Court cannot or will not regulate the Defendant's decision-making powers with respect to s2(5) of the Act, the discretion is truly "unfettered" and the Claimant respectfully withdraws.

28. If, on the other hand, the Court can and will regulate the Defendant's decision-making powers re s2(5), on traditional judicial review grounds, disposal of this case depends on the Act's proper construction; and again, that is a matter for the Court.

The Points of Law – Misuse of Drugs Act 1971

29. As these appear inclusive criteria for exercising s2(5), what did Parliament intend by using, in s1(2) of the Act, the phrases: 1) "misuse"; 2) "harmful effects"; and 3) "sufficient to constitute a social problem"?

    1) The ordinary definition of "misuse" can mean incorrect, careless or improper use. However, if Parliament intended "misuse" to mean only non-medical or non-scientific use or so-called "improper" or "illegitimate" use, they were not clear. 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".

       But s37(2) does not define so-called "legitimate" use of which "misuse" supposedly falls foul. Hence, the Claimant contends that "misuse" cannot mean any of the activities enumerated in ss3-6 but must mean "self-administration" of a drug or substance, s37(2), for whatever use purpose, including "recreation" or "sacrament", occasioning real, not illusory, harm.

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

    3) 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 their activities is "sufficient to constitute a social problem".

30. Is s2(5) of the Act neutral and generally applicable to any substance or drug where the precedent facts exist? The Claimant asserts that the only possible answer is *yes* as, in the Defendant's words, "the 1971 Act does not define "drugs" (it only defines controlled drugs)".[8]

31. 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 precedent fact couplets above are inferable from s1(2) of the Act and the Defendant frequently exercises s2(5) on their basis.

[8] Home Office (2010) letter to Claimant T7234/10, FOI 14725, 21 May 2010

32. Does the Act mandate that all import/expert, 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)-(2), 22(a)(i)-(ii) & 31(1)(a)-(b) of the Act empower the Advisory Council to recommend and the SSHD to authorise the production and commerce of <u>any</u> controlled drug for <u>any</u> use purpose, by <u>any</u> person, under <u>any</u> circumstances, subject to <u>any</u> 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 <u>appropriate regimes of control for any drug, new or old, according to its legitimate use, its dangers and its social effects</u>". (*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" <u>not</u> limited to so-called "prohibition" in which all import/export, production, supply, and possession of a drug for non-medical, non-scientific use purposes is made unlawful. And plural regimes are made possible by ss7(1)-(2), 22(a)(i)-(ii) & 31(1)(a)-(b).

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

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

    (1) <u>The Secretary of State may</u> 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) <u>make such other provision as he thinks fit for the purpose of making it lawful for persons to do things</u> which under any of the following provisions of this Act, that is to say sections 4(1), 5(1) and 6(1), <u>it would otherwise be unlawful for them to do</u>.
    (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". (Emphasis added)

    The Defendant'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".

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, by statutory instrument, exclude the application of any offence. This is an exceptionally wide power: if the Defendant was so inclined, and Parliament approved, personal possession of controlled drugs could be made lawful by the weekend.

4) Sections 31(1)(a)-(b) 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". (Emphasis added)

5) Accordingly, the Claimant contends that a proper construction of ss7(1)-(2), 22(a)(i)-(ii) & 31(1)(a)-(b) of the Act empowers the Advisory Council to recommend and the Defendant to authorise the production and commerce of any controlled drug for any use purpose, by any person, under any circumstances, subject to any conditions.

6) Sections 7(1)-(2), 22(a)(i)-(ii) & 31(1)(a)-(b) make clear that were alcohol and tobacco controlled under the Act, it is possible for the Defendant to operate its provisions "in a way which would stop short of imposing comparable controls"[9] on persons concerned with these drugs.

7) 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. Surely, this makes the Act "a suitable mechanism" for alcohol and tobacco control.[10]

[9] Home Office (2006) *Review of the UK's Drug Classification System – a Public Consultation*, paragraph 6.10, May 2006
[10] *Cf. Hansard*, HC Deb, *Misuse of Drugs Bill 1970*, 25 March 1970, Vol. 798 Col. 1486 "if he could be persuaded to do so"

Ground 1

33. In formulating the policy and making the decision, the Defendant misconstrued the Act.

34. This misconstruction is persistent and takes two basic forms:

> "the Misuse of Drugs Act 1971 is not a suitable mechanism for regulating … alcohol and tobacco".[11] (Emphasis added)

> "The penalty-linked framework has no place in the regulation of alcohol and tobacco".[12] (Emphasis added)

35. Either the Act is not a suitable mechanism and has no place in the regulation of (activities with) alcohol and tobacco or the Act is a suitable mechanism and has a place. This 'hard-edged' question is for this Court to decide.

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

37. The Defendant's policy turns this beautiful Act into a blunt instrument:

> "our policy of prohibition [is]reflected in the terms of the Misuse of Drugs Act 1971".[13]

38. Equating a "policy of prohibition" with the Act's policy, expressed so unmistakably in ss7(1)(a)-(b), 22(a)(i)-(ii) & 31(1)(a)-(b), is manifestly absurd.

39. The Defendant once understood this flexibility, leaving a telling "could" in a previously suppressed document on the promised *Review of the UK's Drug Classification System – a Public Consultation*:

> "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 … This approach would allow for a more logically consistent approach to substance misuse".[14] (Emphasis added)

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[11] Cm 6941 (2006) page 4, 13 October 2006; *Cf* Home Office letter to Mr H McCulla, T15271/10, 23 September 2010;
[12] Home Office (2010) letter to Mr H McCulla, T12046/10, 4 August 2010; letter to Claimant T7243/10, 21 May 2010
[13] Home Office (2007) *Response to Better Regulation Executive re MDAct*, 27 September 2007
[14] Home Office (2006) *Review of the UK's Drug Classification System – a Public Consultation*, paragraph 6.10-6.11, May 2006; NB this is the promised "review" of 19 January 2006 that was resiled from on 13 October 2006 in Cm 6941 and at issue in CO/687/2007; the Claimant secured its release, 9 July 2010, after a three-year Freedom of Information Act 2000 campaign.

40. The Defendant's persistent misconstructions also takes these forms:

> "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".[15]
>
> "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".[16]
>
> "First of all, there is a distinction between illegal and legal drugs, as I know you are aware, and what we have got is a classification system that ranks illegal drugs".[17]

41. From these it can be seen that the Defendant believes the Act classifies or regulates so-called "illegal drugs". This makes the Act "not a suitable mechanism" for so-called "legal drugs" such as alcohol and tobacco. But this is wrong: "Illegal drugs" do <u>not</u> exist in fact or law; either a drug is "controlled" or it is not, s2. It can also be seen that the Defendant believes the Act regulates drugs rather than people; but drugs will <u>not</u> behave.

42. A third, newer form of the Defendant's misconstruction of the Act reads:

> "The misuse of drugs legislation does not have a monopoly on this matter [of alcohol and tobacco]".[18] (Emphasis added)

43. The Claimant argues that, as no primary legislation has displaced the Act, with respect to "dangerous or otherwise harmful drugs", the Act has the monopoly: *R v SSHD, ex p Fire Brigades Union* [1995] 2 AC 513 at 551D.

44. All in all, the Defendant has <u>not</u> understood the Act. In *Council of Civil Service Unions v Minister for the Civil Service* [1985] AC 374 at 401, Lord Diplock formulated the classic statement on illegality as a ground of judicial review:

> "By 'illegality' … I mean 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".

45. So, having misconstrued the Act that "regulates [her] decision-making power", the Defendant's policy and the decision are unlawful.

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[15] Home Office (2010) Defendant LOR, 24 September 2010, Treasury Solicitor ref: Q102736A/JCP/B4
[16] SSHD's Summary Grounds for Contesting Claim, CO/687/2007, 14 March 2007; SSHD's Summary Grounds for Contesting Claim, CO/7548/2007, 18 September 2007; SSHD's *Response to Better Regulation Executive*, 27 September 2007
[17] HC 65 (2006) Home Office Minister Vernon Coaker's evidence to the House of Commons Science and Technology Committee, *Drug classification: making a hash of it?* – follow-up, 22 November 2006
[18] Home Office (2010) letter to Mr H McCulla, T12046/10, 4 August 2010

Ground 2

46. In formulating the policy and making the decision, the Defendant did not inquire sufficiently into the relevant matter and did not act upon relevant considerations to the exclusion of irrelevant considerations.

47. 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)

48. This statement, in broad outline, describes the Act as it is found today. It is a consolidating Act for which the Defendant is responsible. It puts the expert Advisory Council at the heart of the control, classification and regulation of dangerous drugs, "new or old". *Cf.* ss1, 2(5), 7(7), 31(3) and Schedule 1.

49. 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)",[19] it is neutral, it can "make … provision with respect to [any] dangerous or otherwise harmful drug",[20] "new or old".

50. At the Bill's (first) second reading, the then Home Secretary 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)

51. Alcohol and tobacco were known then to be harmful; however, they were regarded as "the devil we know".[21] But as our knowledge and experience of alcohol and tobacco has grown, it is the Advisory Council's continuing "duty" to re-evaluate these drugs and to advise the Defendant accordingly.

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[19] Home Office (2010) letter to Claimant T7234/10, FOI 14725, 21 May 2010
[20] Misuse of Drugs Act 1971 c38, Preamble
[21] 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.

52. The relevant parts of the Advisory Council'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 … misused and of which the misuse is 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". (Emphasis added)*

53. The above underlined clauses of s1(2) implicitly identify the relevancies to be taken into account in deciding whether to consult the Advisory Council on the possibility of controlling a drug under s2(5) or whether to seek 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.

54. In recent times the Defendant has stated:

    1) "Alcohol and tobacco are substances that can be misused".[22]
    2) "alcohol and tobacco pose health risks and may have anti-social effects".[23]
    3) "alcohol and tobacco account for more health problems and deaths than [controlled] drugs".[24]
    4) "In terms of death, [controlled] drugs amounted to 1,388 in 2003 compared to about 20,000 for alcohol and 100,000 for tobacco".[25]

55. 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.

56. It is arguable, that with respect to alcohol and tobacco, the Advisory Council has "neglect[ed]"[26] its duty to advise the Defendant that these precedent factors are established and that their control should be sought under s2(5).

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[22] Home Office (2010) letter to the Claimant, T9943/10, 2 July 2010
[23] Home Office (2010) Defendant LOR, 24 September 2010, Treasury Solicitor ref: Q102736A/JCP/B4
[24] Home Office (2010) letter to Mr H McCulla, T12046, 4 August 2010; (2006) Cm 6941, page 24, 13 October 2006
[25] Home Office (2006) *Review of the UK's Drug Classification System – a Public Consultation*, paragraph 6.9, May 2006
[26] ACMD (2006) *Pathways to Problems: hazardous use of tobacco, alcohol and other drugs by young people in the UK and its implications for policy*, September 14th 2006, page 14

57. Still, the Defendant bears the ultimate responsibility and the Defendant has told the Claimant "on numerous occasions" that:

> "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".[23]

58. These sentences show that the Defendant has got her relevancies muddled; the Act does not concern itself with whether a drug is "embedded in society" or whether "responsible use is possible or commonplace"; or whether:

> "A classification system that applies to [alcohol, tobacco and controlled drugs] would be unacceptable to the vast majority".[27]

Nor does it provide the Defendant discretion to exclude alcohol and tobacco on the grounds of:

> "social values, political vision, historical precedent, cultural preference".[28]

"Embeddedness", "responsible use", "unacceptability", "social values", "political vision", "historical precedent", "cultural preference" are irrelevant considerations to the Defendant's decision whether to consult the Advisory Council on the possibility of controlling alcohol and tobacco under the Act and to her ultimate discretion to seek the control of these drugs; (though, they may be relevant in creating "appropriate regimes of control").

59. The Claimant acknowledges that the Defendant's s2(5) discretion is "unfettered" provided "that the adopted policy is a lawful exercise of the discretion conferred on [her] by statute": *In re Findlay* [1985] AC 318 at 338; however, as the Defendant failed to properly consider all relevant factors and to remove from consideration all irrelevant factors, her policy is unlawful.

60. And, as the Defendant's policy stopped her from the first steps of inquiry into the relevant matter, the question for the court is, in making the decision:

> "did the Secretary of State ask [her]self the right question and take reasonable steps to acquaint [her]self with the relevant information to enable [her] to answer it correctly?": *Secretary of State for Education and Science v Tameside Metro Borough Council* [1977] AC 1014, 1065B.

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[27] Home Office (2006) Cm 6941, page 24
[28] Home Office (2006) Cm 6941, page 15

Ground 3

61. The Defendant's policy and the decision made pursuant to it are arbitrary and unreasonable.

62. The Misuse of Drugs Act 1971 is a neutral law of Parliament regulating, in the public interest, personal behaviour with respect to dangerous drugs.

63. Since the release of Command Paper Cm 6941,[29] on 13 October 2006, the Claimant has believed the Defendant has misconstrued the Act and for political reasons has excluded alcohol and tobacco from its control, thus excluding *the behaviour* of persons concerned with these dangerous drugs from the Act's measures. In Cm 6941 the Defendant said:

> "Government [believes] the classification system under the Misuse of Drugs Act 1971 is not a suitable mechanism for regulating … alcohol and tobacco. However, it should not be imputed that Government takes the harms caused by these drugs any less seriously. […] The distinction between [alcohol, tobacco and controlled drugs] is not unequivocally based on pharmacology, economic or risk benefit analysis. It is … based in large part on historical and cultural precedents. 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 […]. [Alcohol and tobacco] are therefore regulated through other means. […] However, the Government acknowledges that alcohol and tobacco account for more health problems and deaths than [controlled] drugs". (Paragraph 7 *&* page 24)

64. These six sentences show the Defendant's misconstruction of the Act, her regard for irrelevant factors and her disregard of relevant factors. They show no good reasons for refusing to apply the Act to persons concerned with alcohol and tobacco while giving excellent reasons for applying it.

65. Moreover, the Claimant thought that the Defendant's exercise of discretion, "based in large part on historical and cultural precedents", was arbitrary and contrary to legislative intent: a failure to treat like cases alike. So in correspondence with the Defendant, he queried what he thought were the Defendant's public law wrongs; and, as he established the facts, his questions got sharper. The Defendant's responses, T6866/10, T7234/10 and T9943/10, *inter alia*, continually repeat these wrongs and ignore the facts.

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[29] Home Office (2006) 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?*, 13 October 2006

66. As an example, on 27 May 2010, in reply to the Defendant's 21 May 2010 Freedom of Information Act 2000 response, FOI 14725, the Claimant asked:

> "If as was said in Cm 6941 that "alcohol and tobacco account for more health problems and deaths than illicit drugs", how does licensing controls on alcohol and tobacco "represent a clear acknowledgment of their harmfulness to health and the need to provide adequate protection for the public"[30] as against: "the main function of [the Act] is to provide a framework within which criminal penalties are set with reference to the harm caused by a drug"[30]? Why the special treatment of alcohol and tobacco?" (Emphasis added)

67. The Defendant's 2 July 2010 reply, T9943/10, was a non-answer, it simply recycled words and phrases from Cm 6941 and similar policy statements:

> "Government intervenes in many ways to prevent and minimise the harms caused by alcohol and tobacco. […] The means by which these substances are regulated is embedded in historical tradition of responsible consumption; and the licensing controls on these substances remain acceptable to the vast majority of people. The way in which Government regulates alcohol and tobacco therefore remains distinct from the method by which drugs subject to the Misuse of Drugs Act 1971 are controlled".

68. On 1 July 2010, whilst waiting for yet another of the Defendant's predictably delayed replies (often sent through internal mail), the Claimant lost patience and simply requested the Defendant "ask the Council 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 allowing for:

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

69. The Defendant's 10 August 2010 response was an outright refusal to consider the merits of the request. The policy determined the decision:

> "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".

[30] Home Office (2010) letter to Claimant T7234/10 and Home Office FOI 14725, respectively, 21 May 2010

70. With litigation fast approaching, on 25 August 2010, the Claimant sent a Letter Before Claim to the Defendant, to which, on 24 September 2010, Mr James Chapman, for the Treasury Solicitor, responded. The Letter of Response addressed none of the specific issues set out in the LBC or the merits of the original request. The short LOR merely reiterated the "policy":

> "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".

71. Further, on 23 September 2010, in reply to another concerned citizen, the Defendant restated a misconstruction of the Act from Claim 1 and Cm 6941:

> "the UK Government does not think alcohol [and presumably tobacco] should be subject to the same regulatory framework as controlled drugs because the ABC classification system is not a suitable mechanism".[31]

72. Between the issue of Cm 6941 in October 2006 and the Defendant's LOR in September 2010, the Defendant has advanced no lawful reason for refusing to apply the Act to those concerned with alcohol and tobacco or for the decision not to consult the Advisory Council on the possibility of controlling these drugs under the Act. From this, the Court would be entirely justified in making an inference that no lawful reason exists.

73. The broader and more loosely textured a discretion is, the greater the scope for subjectivity and hence for arbitrariness. Section 2(5) confers on the Defendant two "unfettered" discretions. It is entirely a matter for her whether to consult the Advisory Council for "advice on measures (whether or not involving alteration of the law) which … ought to be taken for preventing the misuse of [alcohol and tobacco] or dealing with social problems connected with their misuse": and of course she has a complete discretion whether or not to accept their advice with respect to seeking a drug's control. However, as Lord Wrenbury observed in *Roberts v Hopwood* [1925] AC 578 at 613, these discretions must be exercised on reasonable grounds:

> "[S]he must in the exercise of [her] discretion do not what [s]he likes but what [s]he ought".

74. As the Defendant has <u>not</u> done what [s] he ought, and without lawful reason, the policy and the decision are arbitrary and unreasonable.

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[31] Home Office (2010) letter to Mr H McCulla, T15271/10, 23 September 2010

Ground 4

75. Fettered to an overly-rigid policy, the Defendant refused outright to consider the relevant matter.

76. The Defendant has reiterated "on numerous occasions"[32] that:

> "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". (Emphasis added)

77. Unfortunately, a disparate Administrative Court judgment, *R(Hardison) v SSHD* [2007] EWHC 2133 (Admin), handed down 31 August 2007 re the Claimant's legitimate expectation to the Defendant's promised *Review of the UK's Drugs Classification System – a Public Consultation*[33] appears on its face to have endorsed the Defendant's policy. This must be corrected.

78. The issues in CO/687/2007 were: a) whether the Claimant had a legitimate expectation to the Defendant's 19 January 2006 promise to review the Act's drugs classification system; and b) whether evidence of a need for review and the Claimant's embryonic exposé of the Defendant's erroneous reasoning made the 13 October 2006 decision to renege on the promise, at paragraph 12 of Cm 6941, so unreasonable as to be unlawful.

79. On 22 May 2007, Mr J Sullivan said that the challenge was "in reality, if not in form, a challenge to the merits not the legality of the Government's drug policy". In his judgment of 31 August 2007, Mr J Beatson agrees with Mr J Sullivan whilst adopting, at paragraph 10, the matter ostensibly "put well in paragraph 7 of the Defendant's summary 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)

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[32] Home Office (2010) Defendant LOR, 24 September 2010, Treasury Solicitor ref: Q102736A/JCP/B4; Home Office (2007) *Response to Better Regulation Executive re MDAct*, 27 September 2007; SSHD's Summary Grounds for Contesting Claim, CO/7548/2007, 18 September 2007; SSHD's Summary Grounds for Contesting Claim, CO/687/2007, 14 March 2007

[33] Home Office (2006) *Review of the UK's Drug Classification System – a Public Consultation*; NB this is the promised "review" of 19 January 2006 that was resiled from on 13 October 2006 in Cm 6941 and at issue in CO/687/2007; the Claimant secured its release, 9 July 2010, after a three-year Freedom of Information Act 2000 campaign.

80. The Court will recognise this as the same policy stated in the Defendant's LOR on 24 September 2010. Yet, Mr J Beatson said of this policy:

> "it is difficult to see that … the decision to prefer a separate system of regulation for substances not prohibited is irrational". (Emphasis added)

81. However, as his good faith is not in question, it appears that Mr J Beatson has allowed himself to be misled as to the true position by Counsel for the Defendant, Mr Gerard Clarke, who drafted the adopted policy statement, as the Claimant has herein established that: 1) the Act does not prohibit or regulate drugs; though, it may prohibit or regulate action; 2) the Act does not classify drugs as "illegal"; 3) that the Defendant's policy considers irrelevant matters and disregards relevant matters; and 4) that accordingly, the Defendant's policy is arbitrary and unreasonable.

82. The Defendant will no doubt assert, as they did in the decision letter, that the 'preference' for a policy of "separate but equal"[34] systems for regulating those concerned with dangerous drugs:

> "is a framework that successive Parliaments have endorsed".

But as the Defendant has not laid, under s2(5), draft Orders in Council before Parliament recommending alcohol and tobacco control, and Parliament has not rejected such draft Orders, it is manifestly absurd to say that the Defendant's policy has Parliament's endorsement.

83. It is imperative that this Court puts an end to the Defendant's intransigent "separate but equal" policy. It has prevented the Defendant from departing from it even long enough to consult the Advisory Council, though she knows that alcohol and tobacco misuse kills over 120,000 citizens annually.

84. In *R v Secretary of State for the Home Department, ex p Venables* [1998] AC 407 at 496G, Lord Browne-Wilkinson said:

> "When Parliament confers a discretionary power … the person on whom the powers is conferred [is not precluded] from developing and applying a policy as to the approach which [s]he will adopt in the generality of cases … But the position is different if the policy adopted is such as to preclude the person on whom the power is conferred from departing from the policy ... If such an inflexible and invariable policy is adopted, both the policy and the decisions taken pursuant to it will be unlawful".

85. As the Defendant's "invariable policy" prohibited a proper consideration of the merits of the Claimant's request, the decision pursuant to it is unlawful.

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[34] *Plessy v Ferguson* (1896) 163 US 537 at 552; *Brown v Board of Education* (1954) 347 US 483 at 495

So, does s2(5) confer duties on the Defendant?

86. Lord Reid said, in *Padfield* [1968] AC 997 at 1030B, 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 Minister, by reason of his having misconstrued the Act or for any other reason, so uses his 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".

87. 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 [her] in that regard, and [s]he gives no reason whatever for taking a contrary course, the Court may infer [s]he has no good reason and that [s]he is not using the power given by Parliament to carry out its intentions".

88. Adopting Lord Pearce's next sentence: "In the present case, however, the [Defendant] has given reasons which show that [s]he was not exercising [her] discretion in accordance with the intentions of the Act".

89. Yet, a difficulty arises in defining "persons aggrieved" as the Claimant's "only *locus* is to assert the public interest".[35] He says that both the Defendant's decision and policy are contrary to the public interest, not because he feels aggrieved, which he does, but because together they deprive the public of protections that Parliament intended they should have.

90. On 21 May 2010, the Defendant wrote the Claimant, T7234/10, to convey a document, FOI 14725, entitled 'Draft response to Recommendation 1 of the ACMD's Pathways to Problems Report […]', "explain[ing] the reasoning which has been inherent from the outset of the Act's provisions, as to the absence of applying control of alcohol and tobacco under the Misuse of Drugs Act". The Advisory Council's Recommendation 1 had said:

> "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" [36]

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[35] *R v Secretary of State for Trade and Industry, ex p Greenpeace* [1998] Env LR 415 at 425

[36] ACMD (2006) *Pathways to Problems: hazardous use of tobacco, alcohol and other drugs by young people in the UK and its implications for policy*, September 14th 2006, page 14

91. After repeating the Advisory Council's remit in s1(2) and stating that their "terms of reference are already sufficiently wide to include alcohol and tobacco", at paragraph 5 of FOI 14725 the Defendant said:

> "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". (Emphasis added)

92. From this paragraph, like many others, it is clear the Defendant does not understand the law regulating her decision-making power: alcohol and tobacco can "realistically be brought under the control of the 1971 Act".

93. More, this paragraph shows that the Defendant does not understand the "main function" of the Advisory Council. In *R v Secretary of State for the Home Department, ex p Venables* [1998] AC 407 (CA) at 466G, it was said:

> "the wider the discretion conferred on the Secretary of State the more important it must be that [s]he has all the relevant material to enable [her] properly to exercise it".

This is the "main function" of the Advisory Council: to muster the relevant material to be taken into account by the Defendant in exercising the Act's discretions, above all s2(5). Parliament thought this in the public interest.

94. The Advisory Council already advised the Defendant in Recommendation 11 of their 2006 report *Pathways to Problems*, actionable by "All relevant government departments" including the Defendant's, that:

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

95. Ignoring this, the Defendant continues to assert:

> "The licensing controls on these substances already restrict the lawfulness of their sale and this represents a clear acknowledgment of their harmfulness to health and the need to provide adequate protection for the public. Successive Government's have considered that these provisions do not need to be replicated in the Misuse of Drugs Act".[37] (Emphasis added)

[37] Home Office (2010) Letter to Claimant T7234/10, 21 May 2010; Letter to Mr H McCulla T9423/10, 29 June 2010

96. This may simply be a political difference of opinion between two independent public authorities constellated around what definition to place on the subjective "need" to "provide adequate protection for the public", however, the second sentence in which "need" appears shows that the Defendant understands that, with respect to alcohol and tobacco, "these provisions" could be replicated in the Act where Parliament intended them.

97. It is clear that Parliament attached considerable importance on the independent Advisory Council on the Misuse of Drugs to ensure that the Defendant has the finest available evidence with which to exercise the Act's discretions. The Advisory Council has made it known that alcohol and tobacco should be explicitly integrated into the Act, going so far as to say in paragraph 1.13 of *Pathways to Problems* that their exclusion was arbitrary:

> "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". (Emphasis added)

98. The Defendant has been unable to answer the accusation of arbitrariness, as laid upon them by the Advisory Council, for surely that is what "historical and cultural factors … lack[ing] a consistent and objective basis" indicates.

99. In this modern day of multiculturalism it cannot be accepted that the public interests as established in an Act of Parliament can be ignored by the Defendant in favour of "historical precedent" and "cultural preference". Whose culture takes precedent? Whose history triumphs?

100. Consequently, the Claimant confidently asserts that: 1) the Defendant has a duty to consult the Advisory Council re the possibility of controlling alcohol and tobacco under the Act; and 2) if the Advisory Council confirm the precedent facts, the Defendant has a duty to "lay a draft Order" under s2(5), "recommend[ing] to Her Majesty in Council to make an Order under [s2(2)]" re alcohol and tobacco; and 3) by her 10 August 2010 decision and her policy, the Defendant has abdicated these duties. Does this Court agree?

Remedies sought

101. The Claimant seeks the following Orders:

1) An Order quashing the Defendant's 10 August 2010 decision not to consult the Advisory Council re the possibility of controlling alcohol and tobacco under s2(5).

2) An Order quashing the Defendant's policy statement as found in the LOR of 23 September 2010, and all similar versions, as unlawful.

3) A mandatory Order directing the Defendant to reconsider the 10 August 2010 decision according to law and upon relevant considerations to the exclusion of irrelevant considerations; alternatively, a mandatory Order directing the Defendant consult the Advisory Council re the possibility of controlling alcohol and tobacco under s2(5) of the Act.

Costs

102. 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

103. Ultimately, the Claimant, Mr Casey William Hardison, wants to vindicate the rule or law; he wants an Advisory Council confidently established in its rightful position at the heart of evidence-based policy, unshackled from the Defendant'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 s2(5) of the Misuse of Drugs Act 1971 and that this Court gives it the scrutiny it deserves.

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

– *fiat lux, fiat justitia, ruat cælum!*

Casey William Hardison
Claimant

Date ……