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Litigation and Employment Group

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Please Quote: GEH/AHC/3B

Your Reference:

4 October 2010

Dear Mr Hardison,

Re: Response to letter before claim

I am instructed by the Advisory Council on the Misuse of Drugs ("ACMD") and am in receipt of your pre-action letter dated 25 August 2010.

You seek to judicially review the ACMD's decision of 16 August 2010 not to offer advice and/or recommendations to the Secretary of State for the Home Department on the possibility of bringing alcohol and tobacco under the control of the Misuse of Drugs Act 1971 ("Act"). In your letter of 10 February 2010, you set out your view that the ACMD needed to take independent legal advice regarding the purposes and objects of the Act.

As you are aware, the ACMD's duty is 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..."¹.

The ACMD is not under a duty to obtain legal advice regarding the purposes and objects of the Act.

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 this was a matter it needed to advise the government on at this time.

¹ S.1 Misuse of Drugs Act 1971.

It seems that your claim is essentially aimed at bringing alcohol and tobacco within the auspices of the Act. As you know, the Court of Appeal has already ruled on this issue in December 2007, setting out that your remedy for such a grievance is political, not legal. How the government of the day chooses to regulate legal and illegal substances is a matter of policy, and Courts will not involve themselves in policy issues.

I am instructed that any judicial review you seek to bring will be strongly defended by the ACMD, and costs will be sought for all legal work undertaken in defence of any such claim. The ACMD has had sight of the letter from the Home Office responding to your separate pre-action protocol letter to them, and is in agreement with its contents.

With regards to your request for information, this will be dealt with as a Freedom of Information request and I understand you will be provided with a response to that in due course.

As I am instructed on behalf of the ACMD, I am authorised to accept service on its behalf, and would be grateful if any further correspondence on this matter would be sent to my attention at the Treasury Solicitor's Department.

Yours faithfully,



Geraldine Haack
For the Treasury Solicitor

Cc. Mr Darryl Bickler
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