

LETTER BEFORE CLAIM FOR JUDICIAL REVIEW

25 August 2010

Casey William Hardison
HMP Wellingborough A6078AJ
Wellingborough
Northants NN8 2NH

Advisory Council on the Misuse of Drugs
6th Floor, Peel Building
2 Marsham St
London SW1A 4DF

Re: applying s2 of the Misuse of Drugs Act 1971 c38 to alcohol and tobacco

Dear Sir / Madam,

1. **The defendant:** the Advisory Council on the Misuse of Drugs (“ACMD”), as addressed above.
2. **The claimant:** Mr Casey William Hardison, as addressed above.
3. **Reference details:** ACMD decision letter to Mr Hardison dated 16 August 2010.
4. **Details of matter being challenged:** The ACMD’s 16 August 2010 decision not to offer advice and/or recommendations to the Secretary of State for the Home Department (“SSHD”) on the possibility of bringing alcohol and tobacco under the control of the Misuse of Drugs Act 1971, c38 (“the Act”) as requested in Hardison’s 9 July 2010 letter.
5. **Issues in proposed proceedings:**
 - 5.1. The ACMD has fettered itself to the SSHD’s “policy of prohibition”.¹
 - 5.2. The ACMD has abdicated, or “neglected”² its s1(2) duty re the dangerous or otherwise harmful drugs alcohol and tobacco.
 - 5.3. The ACMD’s refusal to offer the SSHD advice and recommendations on the possibility of controlling alcohol and tobacco under the Act thwarts the legislative intention expressed by Parliament.
 - 5.4. The ACMD’s explicit approval of the SSHD’s policy of having “separate”³ systems for regulating the production, supply, possession and use of alcohol and tobacco on one hand and controlled drugs on the other is arbitrary.
 - 5.5. The ACMD’s explicit approval of the SSHD’s policy of having “separate” systems for regulating the production, supply, possession and use of alcohol and tobacco on one hand and controlled drugs on the other denies procedural fairness to persons the Act regulates.

¹ Home Office (2007) *Response to Better Regulation Executive re MDA Act Proposal*, 27 September 2007

² ACMD (2006) *Pathways to Problems*, page 14

³ Home Office (2007) *Response to Better Regulation Executive re MDA Act Proposal*, 27 September 2007; *R(Hardison) v SSHD* [2007] EWHC 2133 (Admin) at 10; SSHD’s Defence Statement re CO/7548/2007 at 8, 18 September 2007

LETTER BEFORE CLAIM FOR JUDICIAL REVIEW

Questions of Law for the Court:

- 5.6. Is the Act neutral and therefore generally applicable to any substance where precedent facts are established? More, are the following the precedent facts?
 - 5.6.1. the substances is, or is intended to be, self-administered as a drug;
 - 5.6.2. the drug may be, or is being, misused;
 - 5.6.3. the misuse of the drug may have, or is having, harmful effects;
 - 5.6.4. the harmful effects may be, or are sufficient to be, a social problem.
- 5.7. As used in the Act, what does “misuse” mean?
- 5.8. As used in the Act, what does “harmful effects” mean?
- 5.9. As used in the Act, what does “sufficient to constitute a social problem” mean?
- 5.10. Does controlling a drug or substance under s2 of the Act mandate that all production, commerce, possession or use of that drug for non-medical or non-scientific purposes remain unlawful?
- 5.11. Does s1(2) of the Act confer a public interest duty on the ACMD to offer advice or make recommendations to the SSHD on the possibility of controlling a dangerous or otherwise harmful drug or substance when the precedent facts are acknowledged by the ACMD?
 - 5.11.1. The ACMD acknowledges and accepts the precedent facts re alcohol and tobacco exist now!
 - 5.11.2. If a duty exists, the ACMD’s refusal to consider the control of alcohol and tobacco is unlawful, unreasonable, and/or unfair.
- 5.12. If no duty exists under s1(2) of the Act, or can be read to exist via *Padfield*⁴, given the acknowledged and accepted costs in blood and treasure resulting from alcohol and tobacco misuse, does the ACMD’s decision not to offer advice and/or recommend to the SSHD re the possibility of controlling alcohol and tobacco under s2 of the Act thwart the legislative intention expressed in the Act?
- 5.13. Does the ACMD have a general duty under s31(3) of the Act to advise the SSHD on the exercise of the Act’s powers, particularly in considering alternative regulatory options re a controlled drug?
- 5.14. Is the ACMD sufficiently independent of the SSHD?
- 5.15. Or is the ACMD’s “main function – advice on illegal drugs or those that can (realistically) be brought under the control of the 1971 Act”, as the SSHD said in their *Draft response to Recommendation 1 of the ACMD’s Pathways to Problems*?

⁴ *Padfield v Minister of Agriculture, Fisheries and Food* [1968] AC 997 at 1030; *R v SSHD, ex p Brind* [1991] 1 AC 696

LETTER BEFORE CLAIM FOR JUDICIAL REVIEW

- 5.16. Or is ACMD advice and/or recommendations fettered to the SSHD's "policy of prohibition"⁵ of all production, commerce, possession or use of a controlled drug for non-medical or non-scientific purposes, such that if the ACMD recommended the SSHD control alcohol and tobacco under the Act they would in effect be recommending "prohibition"?
6. **The Claimant expects that the defendant will:**
- 6.1. Reconsider their 16 August 2010 decision under s1(2) of the Act not to offer advice and/or recommendations to the SSHD on the possibility of bringing alcohol and tobacco under the Act's control.
- 6.2. Publicly declare to the SSHD that of their own volition they will be conducting an inquiry into the possibility of controlling alcohol and tobacco under the Act as requested in Mr Hardison's 9 July 2010 letter.
7. **As of yet, there are no legal advisors in this self-litigated claim.**
8. **There are no specifically identified interested parties.**
9. **Mr Hardison seeks hardcopies of the following classes of information:**
- 9.1. All internal ACMD communications re Hardison's Freedom of Information Act 2000 ("FoI Act") requests, his 10 February 2010 request of the ACMD Chair, his 9 July 2010 request of the ACMD, including any and all communications between the ACMD and the Home Office re these requests.
- 9.2. The current ACMD file on the risks and harms of alcohol misuse.
- 9.3. The current ACMD file on the risks and harms of tobacco misuse.
- 9.4. Any data on Mr Casey William Hardison held by the ACMD.
10. **In addition to the above, these documents are relevant and necessary:**
- 10.1. Home Office (2007) *Draft Response to Recommendation 1 of ACMD's Pathways to Problems Report calling for explicit inclusion of alcohol and [tobacco] in the ACMD's terms of reference*, and Home Office Cover letter T6866/10, T7234/10, FOI 14725 dated 21 May 2010
- 10.2. HM Government (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
- 10.3. ACMD (2006) *Pathways to Problems: hazardous use of tobacco, alcohol and other drugs by young people in the UK and its implications for policy* – Advisory Council on the Misuse of Drugs – 14 September 2006

⁵ Home Office (2007) *Response to Better Regulation Executive re MDA Act Proposal*, 27 September 2007

LETTER BEFORE CLAIM FOR JUDICIAL REVIEW

- 10.4. HC 1031 (2006) *Drug classification: making a hash of it?* – The Fifth report from the House of Commons Science and Technology Committee Session 2005-06 HC 1031 – 31 July 2006
- 10.5. HM Government (2006) *Review of the UK's Drugs Classification System – a Public Consultation*, May 2006
- 10.6. Home Office letters T9943/10, T12131/10
- 10.7. All letters of request by Casey William Hardison to the ACMD under the FoI Act.
- 10.8. All responses of the ACMD to Hardison's letters of request.
11. **The address for service and reply:** Casey William Hardison as above
12. **The Claimant expects a substantial reply within 14 days by first class post.**
13. **Be Advised:** The Court of Appeal decision, C4/2007/2160, of 3 December 2007, was a narrowly tailored ruling on whether the SSHD's 13 October 2007 decision, in Cm 6941 at paragraph 12, not to pursue the promised review of the drug classification system was reasonable and/or violated Hardison's legitimate expectation. No other arguments were addressed or ruled upon.

–fiat lux, fiat justitia, ruat caelum!

Casey William Hardison
Claimant