

LETTER BEFORE CLAIM FOR JUDICIAL REVIEW

1 June 2010

Casey William HARDISON
HMP Wellingborough A6078AJ
Wellingborough
Northants NN8 2NH

Criminal Cases Review Commission
Alpha Tower
Suffolk Street Queensway
Birmingham B1 1TT

Re: 00687/2009

Dear Sir / Madam:

1. **The defendant:** The Criminal Cases Review Commission, Alpha Tower, Suffolk Street Queensway, Birmingham B1 1TT
2. **The claimant:** Mr Casey William Hardison as addressed above.
3. **Reference details:** 00687/2009
4. **Details of matter being challenged:** 24 May 2010 decision by Commission not to refer Hardison's application 00687/2009 to the Court of Appeal.
5. **Issues in proposed proceedings:**
 - 5.1. The Commission failed to treat Hardison's common law argument separate from his Human Rights Act 1998 argument.

Under Common Law, Hardison asserts that the SSHD has acted *ultra vires* the Misuse of Drugs Act 1971 ("the Act"). Under the Human Rights Act 1998 ("HRA"), Hardison asserts that the State, via their administration of the Act, has acted *ultra vires* the HRA. These are distinct.

Hardison's argument that the legislation under which his prosecution was brought was administered abusively by the SSHD based on 3 errors of law and 5 irrational acts creating 5 types of unfairness, ultimately resulting in his unequal treatment under criminal law, has not been before a Court.

- 5.2. The Commission failed to inquire as to whether an executive abuse of statutory discretion was present in Hardison's criminal case as alleged in his application. This is unfair and irrational.

The Commission accepts at paragraph 122 of the Statement of Reasons that: "if the Court of Appeal were to find that the conduct of the executive was such that it would be "an affront to the public conscience to allow the prosecution to succeed" then the Court does have the power to find that the proceedings should have been stayed and as a result the conviction is unsafe". (Internal quote: *R v Mullen* [1999] 2 Cr App R 143)

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- 5.3. The Commission wrongly took into account irrelevant civil submissions by Hardison in *R(Hardison) v SSHD* [2007] EWHC 2133 (Admin) that were themselves irrelevant to that civil claim of legitimate expectation to a promised review of the drug classification system.

In his Appeal against that civil judgment, C4/2007/2160, Hardison apologized for obfuscating his civil claim with irrelevant material. The Commission now wrongly relies on these irrelevant submissions at paragraph 100-102 & 105 of their Statement of Reasons to wrongly conflate and dismiss his Common Law and HRA arguments.

- 5.4. The Commission wrongly asserts at paragraph 106: “Whilst the Common Law strand of the argument was not raised at the abuse of process hearing, the essence of the argument that was put forward remains the same”.

If an application for a stay is unsuccessful and there is a conviction then the grounds for requesting that stay may be relied upon on appeal in alleging that the conviction is unsafe: Attorney-General’s Reference (No. 1 of 1990) [1992] QB 630.

And whilst differential treatment is an essence of the original pretrial abuse of process argument, Hardison had no evidence to discharge the onus then or on appeal.

When new evidence came in the form of Government documents, Hardison realized that it meant that the SSHD had acted *ultra vires* the Act not simply *ultra vires* the HRA. This new argument and evidence has not been heard.

- 5.5. The Commission wrongly took into account civil dicta from the judgment in *R(Hardison) v SSHD* [2007] EWHC 2133 (Admin), re legitimate expectation, at paragraph 123, to dismiss Hardison’s common law criminal claim that his prosecution should have been stayed because the legislation under which his prosecution was brought was administered abusively by the SSHD based on 3 errors of law and 5 irrational acts creating 5 types of unfairness, resulting in his unequal treatment under criminal law.

- 5.6. The Commission failed to consider Hardison’s Point of Law from a common law lens and was wrong not to refer it for determination by the Court. More, at paragraph 109, the Commission has wrongly taken Hardison’s statement that “as a result of Cm 6941, Hardison can now state the 5 Points of Law as one” to mean that the single point of law was a boil down of the original 5. This is not the case; he meant only that the new Point of Law simply gets to the nub, simplifying the work of the Court.

- 5.7. Having failed to properly examine Hardison’s Common Law claim of unequal treatment due to executive abuse, at paragraph 133, the Commission fails to grasp that due to the abuse his sentence remains manifestly excessive and should be referred along with his conviction to the Court of Appeal.

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6. **Action defendant expected to take:** The Commission could, if they were minded to, quash their decision of 25 May 2010 and undertake an analysis of Hardison's common law claim, considering whether the abuse alleged existed, and if such an abuse did in fact exist, referring his conviction and sentence to the Court of Appeal.

N.B. the civil judgment relied on by the Commission at paragraph 123 of their Statement of Reasons, *R(Hardison) v SSHD* [2007] EWHC 2133 (Admin), embodies the three errors of law raised by Hardison in his application to the CCRC in that "the decision to prefer a separate system of regulation" is based on them: 1) no substance can be "prohibited" by the Misuse of Drugs Act 1971 ("the Act"), only human actions can be made unlawful; 2) the SSHD exceeds his power in excluding alcohol and tobacco from the Act's controls; and 3) the SSHD's preference for a "separate but equal" system of regulation is based on subjective factors not rationally connected to the Act's policy or objects contrary to *Padfield*.

7. **As of yet, there are no legal advisors in this self-litigated claim.**
8. **Details of any interested parties:** Darryl Bickler, Paradigm Legal Services, 48 Ridgeway, Leeds, LS8 4DF
9. **Details of any information being sought:** a digital copy on CD of the Provisional Statement of Reasons and the Statement of Reasons would be appreciated.
10. **The following documents are considered relevant and necessary:**
 - 10.1. Hardison's complete application and case file: CCRC 00687/2009
11. **The address for service and reply:** Casey William Hardison as above.
12. **Proposed reply date:** The claimant expects a substantial reply within 14 days. If the claimant is in all circumstances not satisfied with the response and proposed settlement, the Claim will be lodged in the Administrative Court Office on 22 June 2010.

—fiat lux, fiat justitia, ruat caelum!

Casey William HARDISON
Claimant