

LETTER BEFORE CLAIM FOR JUDICIAL REVIEW

25 August 2010

Casey William Hardison
HMP Wellingborough A6078AJ
Wellingborough
Northants NN8 2NH

Secretary of State for the Home Department
Home Office
2 Marsham St
London SW1A 4DF

My Rt Hon Friend,

Re: controlling alcohol and tobacco under the Misuse of Drugs Act 1971 c38

1. **The defendant:** the Secretary of State for the Home Department (“SSHD”), as addressed above.
2. **The claimant:** Mr Casey William Hardison, as addressed above.
3. **Reference details:** Home Office Letter T12131/10 (“the decision letter”).
4. **The Claimant challenges:**
 - 4.1. The SSHD’s 10 August 2010 decision not to request of the Advisory Council on the Misuse of Drugs (“ACMD”) their advice and/or recommendations on the possibility of bringing alcohol and tobacco under the control of the Misuse of Drugs Act 1971, c38 (“the Act”).
 - 4.2. The SSHD’s adamant refusal to consider properly, reasonably and in good faith, the possibility of controlling alcohol and tobacco under the Act.
5. **Issues in proposed proceedings:**
 - 5.1. In refusing to seek advice from the ACMD re the possibility of controlling alcohol and tobacco under the Act, the SSHD made three errors of law:
 - 5.1.1. The SSHD appears to believe that the Act permanently proscribes the enumerated activities, ss3-9, re a controlled drug, bar medical and scientific purposes.
 - 5.1.2. The SSHD appears to claim a power, the SSHD does not possess, to exempt individuals or classes of individuals from the operation of the law by excluding alcohol and tobacco from the Act’s control.
 - 5.1.3. The SSHD appears to believe in the “illegality of certain drugs”,¹ i.e. that some drugs or “substances” are “legal” whilst the Act makes other drugs or substances “illegal”.
 - 5.2. The SSHD’s refusal to consider the possibility of controlling alcohol and tobacco under the Act thwarts the legislative intent expressed by Parliament.

¹ Cm 6941 (2006) page 18

LETTER BEFORE CLAIM FOR JUDICIAL REVIEW

- 5.3. The SSHD's refusal to seek the ACMD's advice and/or recommendations on the possibility of controlling alcohol and tobacco under the Act thwarts the legislative intent expressed by Parliament.
- 5.4. The SSHD's policy of having "separate"² 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 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 is unfair to persons the Act regulates.
- 5.6. The SSHD fettered herself to an overly rigid policy of "prohibition".

Questions of law in proposed proceedings:

- 5.7. Is the Act neutral and so s2(5) generally applicable to any drug where the precedent facts are established? More, are the following the precedent facts?
 - 5.7.1. the substances is, or is intended to be, self-administered as a drug;
 - 5.7.2. the drug may be, or is being, misused;
 - 5.7.3. the misuse of the drug may have, or is having, harmful effects;
 - 5.7.4. the harmful effects may be, or are sufficient to be, a social problem.
- 5.8. As used in the Act, what does "misuse" mean?
- 5.9. As used in the Act, what does "harmful effects" mean?
- 5.10. As used in the Act, what does "sufficient to constitute a social problem" mean?
- 5.11. 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?
- 5.12. Or does a proper construction of ss31(1)(a), s7(1)-(2) & s22(a)(i) of the Act, empower the SSHD to authorise the production and commerce of any controlled drug for any use purpose, by any person, under any circumstances, subject to any conditions?
- 5.13. On a proper construction of s2(5) of the Act, does the SSHD have a public interest duty to request advice or recommendations from the ACMD re a dangerous or otherwise harmful drug or substance when the precedent facts re that drug or substance are acknowledged and accepted by the SSHD?
 - 5.13.1. The SSHD acknowledges and accepts that the precedent facts re alcohol and tobacco exist now.
 - 5.13.2. Accordingly, if a duty exists, the SSHD's refusal to act re alcohol and tobacco is unlawful, unreasonable, and/or unfair.

² 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

- 5.14. If no duty exists under s2(5) of the Act, or can be read to exist via *Padfield*,³ given the acknowledged and accepted costs in blood and treasure resulting from alcohol and tobacco misuse, does the SSHD's decision to prefer a separate system for regulating the production, supply, possession and use of alcohol and tobacco thwart the legislative intention expressed in the Act?
- 5.15. Is 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 arbitrary?
- 5.16. Is 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 unfair to persons the Act regulates?
6. **Mr Hardison expects that the SSHD will:**
- 6.1. Reconsider the SSHD's interpretation of the Act, specifically the three alleged errors of law conjunct a proper construction of ss31(1)(a), 7(1)-(2) & 22(a)(i), independent of any international instrument of law.
- 6.2. Seek the advice and recommendations of the Advisory Council on the Misuse of Drugs re the possibility of bringing alcohol and tobacco under the Act's control as per Hardison's 1 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 Home Office ("HO") communications re: 1) Hardison's Freedom of Information Act 2000 ("FoI Act") requests; 2) his 1 July 2010 direct request of the SSHD; including communications between the HO and ACMD; and 3) Hardison's previous judicial reviews CO/687/2007 and CO/7548/2007, bar material attracting legal professional privilege.
- 9.2. The most current Cabinet Office brief on the costs of alcohol misuse to the Department of Health, the HO, the Ministry of Justice, and other relevant Departments of State, including estimates of their costs to society at large;
- 9.3. The most current Cabinet Office brief on the costs of tobacco misuse to the Department of Health, the HO, the Ministry of Justice, and other relevant Departments of State, including estimates of their costs to society at large;
- 9.4. Current mortality and morbidity statistics, adjusted for prevalence, re the drugs listed in Box 1 of the Department of Health's 2003 report *Dangerousness of Drugs: A Guide To The Risks And Harms Associated With Substance Misuse*.
- 9.5. HO letters T6296/9, T22569/9

³ *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

10. In addition to the above, these documents are relevant and necessary:

- 10.1. HO letters T12131/10, T9943/10, T6580/10, T19870/9
- 10.2. HO (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
- 10.3. All FoI Act requests by Casey William Hardison to the Home Office re the Misuse of Drugs Act 1971 and the ACMD
- 10.4. HO (200?) response to ACMD Pathways to Problems follow up questionnaire as noted in HO letter to Hardison 7 October 2009.
- 10.5. 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
- 10.6. 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
- 10.7. 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
- 10.8. HO (2006) *Review of the UK's Drugs Classification System – a Public Consultation*, May 2006
- 10.9. Department of Health (2003) *Dangerousness of Drugs: A Guide To The Risks And Harms Associated With Substance Misuse*, January 2003
- 10.10. Order EWCA, C4/2007/2160, 3 December 2007
- 10.11. Hardison's 8 October 2007 Skeleton Argument in Support of Grounds of Appeal against *R(Hardison) v SSHD* [2007] EWHC 2133 (Admin)
- 10.12. Judgment *R(Hardison) v SSHD* [2007] EWHC 2133 (Admin)
- 10.13. SSHD's Summary Grounds for Contesting the Claim CO/0687/2007

11. The address for service and reply: Casey William Hardison as above

12. Mr Hardison expects a substantial reply within 14 days by first class post.

–fiat lux, fiat justitia, ruat caelum!

Casey William Hardison
Claimant