

In the Supreme Court of Judicature
Court of Appeal (Civil Division)
On Appeal from the Queen's Bench Division
The Administrative Court
His Honour Mr. Justice Beatson

C4/2007/2160

Royal Courts of Justice
Strand
London WC2A 2LL

In the matter of an Application for Judicial Review CO/687/2007

The Queen on the Application of

CASEY WILLIAM HARDISON

Appellant

— *vs* —

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

**AMENDED GROUNDS OF APPEAL
AGAINST ORDER**

**Review of the
Drug Classification System**

Prepared By

Casey William HARDISON

October 8th 2007

AMENDED GROUNDS OF APPEAL

Introduction

1. Mr Casey William Hardison, an incarcerated self-litigant, appeals the Order made by Mr Justice Beatson on August 31st 2007 refusing permission for Hardison to seek Judicial Review of the SSHD's October 13th 2006 decision in Command Paper Cm 6941 at paragraph 12. Hardison has now given full consideration to HHJ Beatson's Judgment and so offers these amended Grounds.
2. Hardison claims that a procedural and substantive legitimate expectation was induced by the then SSHD, the Rt. Hon. Charles Clarke, on January 19th 2006 when he gave a "clear promise" to Parliament, and so the nation, thusly:

"I will in the next few weeks publish a consultation paper with suggestions for a review of the drug classification system. [...]Clarity is the most important thing. One of the biggest criticisms of the current classification system is that it does not illuminate debate and understanding among the young people who are affected by it. That is one of the reasons that I have decided to undertake an examination of this matter." *Hansard*, HC Deb, 19 Jan 2006, Col 983 *et seq.*

3. In deciding not to pursue the promised review of the drug classification system, in Cm 6941 at paragraph 12, the procedural legitimate expectation to be consulted on the review of the classification system was thwarted along with the substantive legitimate expectation of a consistent and objective classification system where like cases are treated alike and unlike cases are treated differently.
4. Hardison has now had sight of the full *Hansard* transcripts and maintains that:
 - a. the original January 19th 2006 promise made by the SSHD to pursue a review of the drug classification system was made in the public interest;
 - b. the public interest in honouring that promise increased when the 2005-2006 Science and Technology Committee Report, HC 1031, *Drug classification: making a hash of it?*, published July 31st 2006, concluded that the "classification system is not fit for purpose and should be reviewed" and when the statutory Advisory Council on the Misuse of Drugs published their September 14th 2006 report *Pathways to Problems: hazardous use of tobacco, alcohol and other drugs by young people in the UK and its implications for policy* stating that the Government's risk management distinctions made under the Misuse of Drugs Act 1971 and related legislation "are based on historical and cultural factors and lack a consistent and objective basis" and as a result, "[t]he current system for classifying and controlling drugs in the UK has a number of shortcomings and should be reviewed". These two reports strongly indicate that the Misuse of Drugs Act 1971 and its drug classification system are being administered illegally and disproportionately; and
 - c. the SSHD's decision in Cm 6941, at paragraph 12, to renege on his predecessor's promise was not made in the public interest nor was any such overriding public interest offered in Cm 6941 which justified the SSHD in breaking the promise. (Cm 6941 enclosed).

AMENDED GROUNDS OF APPEAL

The Grounds for Appeal

5. HHJ Beatson failed to address Hardison's Application for Equal Footing listed in s7 of the N461 and mailed to the Court on March 28th 2007. Thus, the papers set out in the Essential Documents declaration attached to the N461 and dated January 16th 2007 were not before the Court.
 - a. This placed the Court at a substantial disadvantage in applying the overriding objective (CPR 1.1(2)(a)) to the controversy and denied the opportunity to establish the factual basis of the "promise" *Cf. Re Findlay* [1985] 1AC 318 at 338 per Lord Scarman: "But what was their *legitimate* expectation?"; R v North & East Devon Health Authority, ex p Coughlan [2001] QB 213 at 56; E v SSHD [2004] EWCA Civ 49 at 66.
 - b. As a result Mr Hardison has been denied "equality at arms" and so he has *not* had a "fair crack of the whip".
6. HHJ Beatson made an error of law concerning the "clear promise" element of the cause of action and subsequently the scrutiny of any defence to any legitimate expectation created by such a "clear promise".
7. HHJ Beatson made an error of law in placing the "promise" in a category which demands the least scrutiny and the most deference from the Court. Because of Hardison's and the wider public's procedural and substantive legitimate expectations, HHJ Beatson should have placed the "promise" in at least the second Coughlan category, set out in paragraph 57.
8. HHJ Beatson failed to connect the "clear promise" to Hardison's ultimate and compelling liberty interest, and the liberty interest of all others similarly situated, and thus to his procedural and substantive expectation that the consultation process and review would uncover a majoritarian abuse of power in the unequal administration of the Misuse of Drugs Act 1971.
 - a. This failure to treat like cases alike and unlike cases differently is acknowledged in Cm 6941 on page 24, in paragraph 7 of the March 14th 2007 'Defendant's Summary Grounds for Contesting the Claim' and repeated in HHJ Beatson's Judgment at paragraph 10.
 - b. Strict scrutiny by this Court of either of those paragraphs would elucidate the abuse of power. Hardison has a keen liberty interest in the substantive changes of subordinate legislation any such finding – by the promised review or by the Courts – would mandate under the HRA 1998 and the Rule of Law.
9. HHJ Beatson failed to address the Article 6 'procedural fairness' claim.
 - a. Classification decisions ultimately result in deprivations of liberty and property; thus classification must be a reliable fact of law.
 - b. The new evidence indicates the current classification of drugs is no longer a reliable fact of law.

AMENDED GROUNDS OF APPEAL

Prayer for Relief

10. That Mr Justice Beatson did not avoid errors of law and fact has rendered his decision to refuse permission for Judicial Review wrong and unjust within the meaning of CPR 52.11(3)(a) and (b). As such, Mr Hardison requests that permission to Appeal the Order of the Court below be granted and that the decision be reversed.
11. In addition, Mr Hardison makes the following requests:
- a. that this Court grant Mr Hardison permission to submit additional relevant evidence, in particular, *Hansard* transcripts of both Houses and the Reply of the Advisory Council on the Misuse of Drugs to the Fifth Report of the Science and Technology Committee, establishing that the SSHD's promise was a "clear promise";
 - b. that this Court Orders the disclosure of the "the consultation document which is in draft form in the department" as stated by Home Office Minister Vernon Coaker in his oral testimony to the 2005-2006 Parliamentary Science and Technology Committee in response to Q1205, firmly indicating that the wheels were in motion towards honouring the promise. It is believed by Hardison that this document adversely affects the Defence case.

– vitam impendere vero, fiat lux!

Signed
Casey William HARDISON

Dated