

BETWEEN:

The Queen on the application of
CASEY HARDISON

Claimant

-and-

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Defendant

DEFENDANT'S SUMMARY
GROUNDS FOR CONTESTING
THE CLAIM

1. The Secretary of State opposes this claim for judicial review, for the reasons set out below.
2. The Secretary of State contends that it is not possible to distil from the lengthy grounds of claim submitted by the Claimant any distinct ground of challenge to any decision of the Secretary of State which is properly arguable on recognised public law principles.
3. The claim appears substantially to be a challenge to Parliamentary and Governmental policy decision as to the classification of drugs under the Misuse of Drugs Act 1971.

4. As Sullivan J said in *R (Greenpeace) v Secretary of State* [2007] EWHC 311 (Admin):-

I would readily accept the proposition that in the absence of any statutory or other well established procedural rules for taking such strategic decisions it may well be very difficult for a claimant to establish procedural impropriety. Similarly, given the judgmental nature of “high level, strategic” decisions it will be well nigh impossible to mount a “*Wednesbury* irrationality” challenge absent bad faith or manifest absurdity: see *R (London Borough of Wandsworth and others) v Secretary of State for Transport*_EWHC 20 (Admin), paragraph 58 (the “*Airports White Paper*”).

As Sullivan J also observed in the *Greenpeace* case, a decision is not immune from review by the court simply on the basis that it concerns a matter of “high policy”. The grounds upon which the court will intervene in matters of policy are, however, strictly limited. The Secretary of State contends that no such grounds are or could be made out in this case.

5. Insofar as the claim contends that the Court should effectively impose Prohibition in the United Kingdom by compelling the Secretary of State to list alcohol and tobacco as controlled drugs under the 1971 Act, the challenge is manifestly absurd.
6. Furthermore, insofar as this claim seeks to challenge a decision of 19th October 2006, the claim was not made promptly and there are no proper grounds for extending the time for making the claim.
7. The Government’s policy is to regulate drugs which are classified as illegal through the 1971 Act and to regulate the use of alcohol and tobacco separately. This policy sensibly recognises that alcohol and tobacco do pose

health risks and can have anti-social effects, but recognises also that consumption of alcohol and tobacco is historically embedded in society and that responsible use of alcohol and tobacco is both possible and commonplace.

8. The “decision” complained of does not infringe any legitimate expectation. The Secretary of State indicated that he would continue to review the classification of drugs as the evidence evolves over time. This he continues to do. For a legitimate expectation case to succeed there must be some unfairness or abuse of power in the departure from a previously adopted position. There is no such unfairness or abuse of power in the present case.
9. As to the Human rights claim, the 1971 act is not directed at the regulation of property rights. It is a penal statute which regulates certain types of behaviour. Its impact on the alleged “property rights” of those who possess drugs which are subject to the act is incidental and, even if such impact does engage Article 1 Protocol 1 ECHR, the Act clearly serves the public interest and is a proportionate means of pursuing a legitimate aim.
10. Article 6 is not engaged or infringed. Prosecutions under the 1971 Act follow due process in accordance with that article.
11. To the extent that Article 8 is engaged at all, any interference with private life is a proportionate means of pursuing a legitimate aim.

12. Article 9 is not engaged or infringed. The control of drugs has no impact on the ability of any individual to exercise freedom of thought, conscience or religion.
13. Article 14 is not engaged or infringed. The status of drug manufacturer, drug dealer or drug user is not a protected status under Article 14.
14. In any event, the Defendant, who is serving a prison sentence consequent upon his engagement in large scale manufacturing of the drug Ecstasy is not a victim of any infringement of human rights. Even if he had his professed wish and the use of alcohol and tobacco was made unlawful, this would not invalidate public policy which renders unlawful the use of drugs presently controlled by the 1971 Act.
15. The Court is asked to dismiss this claim.

GERARD CLARKE