



Neutral Citation Number: [2007] EWHC 2630 (Admin)

Case No: CO/9605/2006

IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION
ADMINISTRATIVE COURT

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 19 November 2007

Before :

Mr Justice Collins

Between :

R(HASAN)

Claimant

- and -

**Secretary of State for Trade
& Industry**

Defendant

Mr Michael Fordham, Q.C. & Ms Naina Patel (instructed by Public Interest Lawyers) for
the **Claimant**

Mr James Eadie & Mr Sam Wordsworth (instructed by the Treasury Solicitor) for the
Defendant

Hearing dates: 10 & 11 October 2007

**Judgment Approved by the court
for handing down
(subject to editorial corrections)**

Mr Justice COLLINS :

1. The claimant in this case is a Palestinian who lives in a village near Bethlehem. He owned land on which he cultivated olives and almonds. In April 2005, Israeli forces destroyed all his trees and fenced off his land, thereby appropriating it on the basis that it belonged to the Israeli Land Department. He brings this claim in respect of the grant by the defendant of licences to export to Israel items of military equipment.
2. The claim was originally lodged on 15 November 2006. It sought to challenge the decisions announced on 28 September 2006 to grant 27 Standard Individual Export Licences (SIELs) for Military List items exported to Israel during the quarter April to June 2006. Quarterly reports are made of export licensing decisions and so the public is unaware until such a report is produced (which normally occurs at the end of the subsequent quarter) of the licences granted in a particular quarter. Those representing the claimant had sought to obtain information of the relevant licences granted for the quarter June to September 2006 but had not at the time the claim was lodged been given that information. The claim followed a lengthy and detailed pre-action protocol letter demanding a review of the legality and rationality of the Government's arms related trading with Israel and an immediate suspension of the grant of export licences for military equipment. This demand was based on the concerns confirmed by an advisory opinion from the International Court of Justice and by reports from various sources that Israel had been guilty of actions which seriously breached the human rights of Palestinians in the occupied territories. Thus it was said that there was a real risk that articles on the military list would be used against Palestinians for internal repression. Reliance was placed on the unlawful construction of the wall dividing Israel from the occupied territories and the means used, said to be indiscriminate, to be unduly repressive and to constitute serious breaches of human rights, to deal with some activities deployed against the state of Israel and its inhabitants.
3. The attack was thus on the system and constituted an attempt to persuade the court to take action which would prevent export of items on the military list. The defendant decided (without conceding any obligation to do so) that he would give information which showed that the 27 SIELs did comply with the Criteria (which I will set out when dealing with the factual and legal background in due course) which govern decisions in respect of export licences to countries such as Israel of items on the military list. A schedule was annexed to the Summary Grounds of Defence served with the Acknowledgement of Service on 13 December 2006. It showed, as Mr Fordham, Q.C. on behalf of the claimant accepted, that there had been compliance with the criteria and that there was no proper basis upon which the grant of the 27 licences could be challenged. The same exercise has since been carried out by the defendant in relation to 28 SIELs granted for the quarter July to September 2006, although that information was not provided until 26 September 2007. It shows, as again Mr Fordham accepted, that there has been compliance with the criteria.
4. The service of the Acknowledgement of Service in December 2006 led the claimant's advisers to recognise that the claim would not succeed. The remedy sought had been a declaration that the defendant had acted unlawfully in granting the licences. Thus on 2 February 2007 amended grounds were lodged. By these, the claimant asserts that the defendant is obliged in making his quarterly report to give reasons to show that there has been compliance in the case of each export licence granted with the relevant criteria. The relief sought has been amended by adding to the declaration the words "without placing in the public domain information demonstrating their compatibility with the Consolidated Criteria". The claim is based upon the assertion that the need for transparency in public decision making means that the defendant is obliged to provide the information in question, as he has now done in relation to the two questions with which this claim is directly concerned. That is said to be required in accordance with the standards of good administration set by the law.
5. Apart from his defence to the claim on the merits, the defendant challenged the claimant's standing. There was, he suggested, no link between the grant of the licences and what has happened to the claimant and that was the more obvious when the challenge was limited to a requirement to give reasons. Mr Fordham made the point that, albeit the claimant was not directly affected by any of the items exported during

the two quarters in question, he could be affected by any items of military equipment exported to Israel, particularly if (as had happened in the past) they were used for repression of Palestinians such as him. If there was unlawfulness in the failure to give reasons for which Mr Fordham contends, it was important that it be identified and suitable redress granted.

6. The courts' approach to whether a claimant has a sufficient interest (the test applicable under s.31 (3) of the Supreme Court Act 1981) is a liberal one. A direct interest is not necessary. If an individual has no private law interest, his motives in bringing the claim may be material so that if, for example, he is acting out of ill-will or for some improper purpose, he will be refused standing: see per Dyson LJ in *R(Feakins) v Secretary of State for the Environment etc* [2004] 1 W.L.R. 1761 at paragraph 23. Otherwise, unless he should be regarded as a busybody having no apparent legitimate interest in bringing the claim, he will normally be regarded as having standing.
7. The claim came before me as a result of an order of Silber J directing that there should be what is termed a 'rolled-up' hearing, that is to say, that I should consider the application for permission and, if persuaded that permission should be granted, deal with the substantive claim. Such hearings are particularly desirable where a judge considers that there is or may be an arguable claim but a defence, such as delay, should be kept open or some additional evidence is needed to show that the claim is indeed an arguable one and it is desirable that it should be dealt with substantively rather than rejected as unarguable.
8. It might be thought that sufficiency of interest should be considered before leave is given. However, there is clear authority that it can be considered after leave has been granted. So much was decided by Schiemann J in *R v Secretary of State for the Environment ex parte Rose Theatre Trust Co* [1990] 1 QB 504, although I cannot agree with his decision in that case that the particular claimants lacked standing. The claimant as a Palestinian living in a part of the occupied territories affected by Israel's attempts to contain attacks upon its citizens and so indirectly affected by any trade in military equipment to Israel is not a busybody and has in my view sufficient interest to pursue this claim. Mr Fordham asked rhetorically if he does not who has? It is, he submitted, important that the law should be applied sufficiently flexibly to ensure that if possible someone is able to challenge a public decision whose unlawfulness may have serious effects. I decided, without opposition from Mr Eadie, that I should grant permission. I am satisfied that the claimant has a sufficient interest so that the claim does not fail on that ground.
9. The power to control exports is conferred by the Export Control Act 2002, which, by s.1 (1), permits the Secretary of State to make by order "provision for or in connection with the imposition of export controls in relation to goods of any description". This is subject to s.5 which imposes restrictions, one of which (s.5 (4)) is to limit the power to a description of goods "within one or more of the categories specified in the Schedule for such controls". Paragraph 1 of the Schedule covers military equipment which includes (Paragraph 1(4)) not only firearms and other weapons but "goods intended, designed or adapted for military use (whether or not in military use)". It also includes accessories and component parts (Paragraph 1(5)). Section 9 of the Act requires the Secretary of State to issue and lay before Parliament Guidance which must inter alia deal with the general principles to be applied (s.9(3)). S.9(8) provides:-

"The consolidated criteria relating to export licensing decisions announced to Parliament by the Secretary of State on 26th October 2000 shall (until withdrawn or varied under this section) be treated as guidance which –

(a) is given and published under this section; and

(b) fulfils the duty imposed by subsection (3) in respect of any export controls ... which may be imposed in relation to goods or technology of a description falling within paragraph 1 or 2 of the Schedule."

10. The relevant order made under the Act is the Export of Goods, Transfer of Technology and Provision of Technical Assistance (Control) Order 2003 (SI 2003 No.2764). Article 3 prohibits the export of goods of a description specified in Schedule 1 unless a licence has been granted and any conditions complied with. Criminal liability attaches to a breach (Article 16). Article 22 permits disclosure of any information held by the Secretary of State, provided always that any such disclosure is proportionate to the object of the disclosure, in the circumstances specified in 22(2) which reads:-

“Information to which this Article applies may be used for the purposes of, or for any purposes connected with-

- (a) the exercise of functions in relation to any control imposed by this order or by any other order made under the Act;
- (b) giving effect to any European Community or other international obligation of the United Kingdom;
- (c) facilitating the exercise by an authority or international organisation outside the United Kingdom of functions which correspond to functions conferred by or in connection with any activity subject to control by this order or any other order made under this Act, and

may be disclosed to any person for use for those purposes.”

Article 22(5) provides that ‘nothing in this article shall be taken to affect any power to disclose information that exists apart from this article’. Schedule 1 includes, putting it generally, military equipment of any description, descending to very great detail in what is and is not subject to the licensing regime.

11. The criteria of 26 October 2000 referred to in s.9 of the Act set out 8 criteria. They are introduced in these words:-

“An export licence will not be issued if the arguments for so doing are outweighed by the need to comply with the U.K.’s international obligations and commitments, by concern that the goods might be used for internal repression or international aggression, by the risks to regional stability or by other considerations as described in these criteria.”

12. The most material criterion for the purposes of this case is number 2 which requires the respect of human rights and fundamental freedoms in the country of final destination and states that a licence will not be issued if there is a clear risk that the proposed export might be used for internal repression. Criterion 6 requires the government to take into account the buyer country’s respect for international law. It is to be noted that it has been confirmed that, due to the misuse of a particular export, the Secretary of State would not rely on assurances about the extent of the intended use given by the Israeli authorities. The other criteria are designed to ensure permissible and proportionate use of any such exports.

13. Section 10 of the Act requires the Secretary of State to lay before Parliament in respect of each year ‘a report on ... matters relating to the operation of this Act (and any order made under it) during the year’. In addition to the obligatory annual reports, the government has decided to issue quarterly reports on its export licensing decisions. Those reports are considered by a committee of the House of Commons known as the Quadripartite Committee, so called because they are considered by members of four separate committees, namely defence, foreign affairs, international development and trade and industry. The quarterly reports for April to June 2006 and July to September 2006, with which this claim is concerned, identify all SIELs, including of course these, to Israel granted during the quarter in question. The identification goes no further than a description such as “Components for military training aircraft” or “for other equipment which has a military use.” Mr Fordham submits that this is insufficient and that reasons should be given to show why all such items are regarded as falling within the criteria.

This has been done since the claim was lodged so that, he submits, it can and should be done routinely, subject, as he accepts, to any particular objection based on national security or confidentiality which would limit the extent of any such reasons. While Mr Eadie recognises the possibility of doing as Mr Fordham urges, he draws attention to the evidence of Mr Doddrell, the Director of the Export Control Organisation who is responsible for export licensing of the difficulty in terms of resources in providing routinely the sort of information required. Mr Doddrell identifies the difficulties in considering whether sensitivity should preclude publication, stating:-

"In relation to resources, it should be noted that assessing whether information is confidential or otherwise too sensitive to be released is not always straightforward and inevitably time consuming. While information on one, or a group of, individual licensing decisions might not in itself be sensitive, it could become sensitive when associated with other aggregated information, for example, because the aggregated information for a specific destination or type of goods might reveal information about the Government's concerns in relation to that destination or those goods which cannot be disclosed for security or wider counter-proliferation reasons; or the confidential procurement decisions of a defence partner, which would damage the U.K.'s defence relationship with them. Thus the difficulties do not only arise where sensitive destinations are concerned."

14. In the Annual Report for 2005, the relevant Ministers say, in paragraph 1.3,:

"The House of Commons Select Committee on Strategic Export Controls (the Quadripartite Committee) has continued its scrutiny of export licensing decisions throughout the year. Since the last Annual report the Government has further refined the information passed to the Committee in the quarterly Reporting of our Strategic Exports, as well as the layout and format of the information provided. The Government has also continued its practice of making as much information as possible available to the Committee in response to its requests. Every effort is made to ensure that as much information as possible is made public."

Questions were asked at some length and in some detail by the Committee of the Ministers who gave evidence. The first joint reports for 2005 – 2006 and 2006 – 2007 published in July 2006 and July 2007 respectively were before me. The reports contain certain criticisms and recommendations. They recognise that the Committee can only review a very small proportion of the Government's decisions on licence applications, but the purpose of its questions is 'to ensure effective scrutiny of government policy and operations in an area which affects U.K. business and security as well as the lives of millions across the world'. And there is no reason why a member of the public should not draw a member's attention to a particular SIEL about which he has concerns. It is clear from the transcript of hearings that there was rigorous questioning in particular on exports to Israel. Paragraph 32 of the July 2006 report recorded:-

"32. We received evidence on the content of the annual report from the U.K. Working Group on Arms, who have extensive experience of examining the data in annual and quarterly reports. They explained the problems they had analysing the data on export licences:

Criticism regarding U.K. strategic export practice typically focuses on a limited number of licences to a limited range of destinations. But it is in no-one's interest that the Government is subject to criticism for arms transfer licensing decisions that, if more information were publicly available, would not be regarded as problematic. As one way of avoiding spurious objections to the Government's decisions, it might therefore prove useful for the annual report to include a brief narrative explanation of the Government's export licensing practice for certain destinations either where this has been subject to criticism or where the Government anticipates that criticism may be forthcoming. Such a narrative could include:

- (a) a statement on the general arms transfer control approach or policy toward the recipient state, along with any policy changes that have occurred over the year;
- (b) summary information on the types of transfer authorised during the reporting period and an explanation of how these reflect the Government's stated commitments.

Our own experience in scrutinising the Government's decisions and policy on strategic export controls in the annual and quarterly reports chimes with that of the U.K. Working Group.

33. We identify two additional areas where improvements to the annual report would assist scrutiny. First, section 1 of the 2004 Annual report, "Policy Issues Relating to Strategic Export Controls", provides an overview of policy with a focus on recent international developments. The section would be of greater assistance if it were expanded to provide an assessment in general terms of the effectiveness of strategic export control policy during the year covered by the report and an analysis of the market and the demand for goods and technologies subject to export control. (We accept that it would not be advisable to highlight gaps in the report, and request this information be supplied under a security classification to the Committee.) We found it instructive to compare the Annual report on Strategic Export Controls with the Government's 2005 Human Rights Annual report, which gives as its objective:

To provide detailed information for Parliament and other specialised readers outside Government on the FCO's activities over the past year to promote human rights abroad. At the same time we want this report to be accessible to non-specialist readers who have a general interest in foreign policy or human rights. But whoever the reader, the report has the same objective: to provide those outside the Government with a tool to hold the Government to account for its commitments.

We conclude that the Human Rights Annual Report and its objectives provide an exemplary model for improvement to future annual reports on strategic export controls. We recommend that the Government take the Human Rights Annual report as a model for making improvements to the content of future annual reports on strategic export controls."

Paragraph 155 of the same report recommends the Government to 'explain in future annual reports the reasons for granting licences for exports to countries on the list headed 'Major countries of concern'. This list includes Israel. Israel is specifically dealt with in paragraphs 156 to 160. There are relevant criticisms in paragraphs 158 to 160 which read:-

"158. Whilst we are grateful for the Minister's candour in explaining his difficulties in taking decisions on exports to Israel, we do not understand what the policy means. We cannot, for example, see that there is a class of equipment or technology that fits the definition "aggressively deployed" in the occupied territories. We recommend that the Government explain the policy – that no weapons, equipment or components which could be deployed aggressively in the Occupied Territories will be licensed for export from the U.K. to Israel – in its reply to this Report. It would assist us if the Government gave examples of the equipment to which, in the light of the policy, it has refused to grant export licences.

159. The Minister explained that the Government:

Look[s] very carefully at the way in which any equipment that has been exported is used and it is an area and two countries that are under very, very intense observation. We have very good teams

in Tel Aviv and Jerusalem and we watch very, very carefully what is going on.

160. We recommend that the Government explain how the teams in Tel Aviv and Jerusalem who are observing the use to which exported equipment is put carry out their work and how their work differs from end-use monitoring."

15. In the report for 2006 – 2007, the Committee recorded that in nearly all cases where a questionable export was identified the Government produced a satisfactory answer. But there were concerns, expressed in Paragraphs 329 to 331:-

"329. We can see the strength of both Saferworld's position and that of the Government. We have also had the advantage to request additional information when we identify an export that appears questionable in an Annual or Quarterly report on Strategic Export Controls. We are pleased to be able to say that in nearly all the cases the Government has produced a satisfactory answer – often along the lines of that given by Ms Leslie. In our view a significant part of the problem is the opaque manner in which these exports are presented and the obfuscating and frustrating terms in which the Government seeks to justify its decision to grant, or withhold, licences. When an interested party notes, for example, the export of armoured vehicles to a government with a poor human rights record it is entirely understandable that he or she is concerned that the export may be used for internal repression. When a question is put to the Government the habitual reply is: *all applications are considered on a case by case basis against the Consolidated EU and National Export Licensing Criteria. Any licence which we assess is inconsistent with the Criteria will be refused.* The answer provides no information and asks the questioner to take the Government's decision to export (or withhold) arms on trust. We remind the Government of one of the conclusions of the Scott Report:

Without the provision of full information it is not possible for Parliament, or for that matter the public, to assess what consequences, in the form of attribution of responsibility or blame, ought to follow. A denial of information to the public denies the public the ability to make an informed judgment on the Government's record. A failure by Ministers to meet the obligations of Ministerial accountability by providing information on their departments undermines, in my opinion, the democratic process.

330. We note that Criterion 2 requires the exercise of "special caution and vigilance in issuing licences, on a case by case basis". In our view this means the Government must examine each application for an export licence on its merits. It is not a cloak to throw over every decision to prevent scrutiny of the Government's reasons for issuing or withholding an export licence. We recommend that the Government provide firm and explicit answers to questions about its decisions to grant, or withhold, export licences for goods or technology which could be used for internal repression in countries where human rights are abused.

Transparency

331. Exports to a group of countries which include Israel, Saudi Arabia and China show the lack of transparency in the interpretation of the EU Code of Conduct on Arms Exports at its most stark. The reasons for refusal are not published and so may encompass some or all the Criteria in the EU Code of Conduct on Arms Exports. This of itself is an indication of lack of transparency."

There is one further extract I should refer to. Paragraph 340 reads:-

"340. We recommend again this year that the Government explain its policy on licensing exports to Israel, Jordan or other countries in the Middle East and that it explain whether it has adjusted its policy since 1997 as events in the Occupied Territories and Middle East have unfolded. We further recommend that Government explain how it assesses whether there is a "clear risk" that a proposed export to Israel might be used for internal repression (for the purposes of Criterion 2)."

16. I have set out extracts from the Committee Reports at some length because they demonstrate that careful scrutiny of exports to Israel (and, indeed, elsewhere) of military equipment has been exercised. The Committee can call for any information which may be material and that includes sensitive material which for good reason cannot be made public. It is to be noted that, as the information given in this claim and the reports show, there is no evidence that the criteria are not being properly applied.
17. Mr Fordham draws attention to the stated aim of the Government that there should be so far as possible transparency in decision making. Transparency, he submits, is not only a virtue but an obligation and the law will require that procedures are adopted which ensure such transparency. Not only must policies be made available to the public but also decisions made should be shown to be in accordance with those policies. Thus, in dealing with exports of military equipment, if all that is discovered is that, for example, accessories for armoured vehicles are being licensed, those who might be affected are likely to be concerned and so reasons should be published to show that the criteria are indeed being met.
18. Mr Fordham gathers together a number of general statements. In *R(Salih) v Secretary of State for the Home Department* [2003] EWHC 2273 (Admin), Stanley Burnton J observed at paragraph 52 that a policy as to how a statutory power is to be exercised (in that case, assessment of so-called hard cases who needed support as asylum seekers) should generally be made known to those who may need to avail themselves of it. In *R v Secretary of State for the Home Department ex p Doody* [1994] 1 A.C. 531 at p. 561E, Lord Mustill said:-

"I prefer to begin by looking at the question in the round, and inquiring what requirements of fairness, germane to the present appeal, attach to the Home Secretary's fixing of the penal element. As general background to this task, I find in the more recent cases on judicial review a perceptible trend towards an insistence on greater openness, or if one prefers the contemporary jargon "transparency", in the making of administrative decisions. "

This was in the context of ensuring that a prisoner should know what criteria were applied in fixing a tariff period for his life sentence and should be able to make representations about it. Mr Fordham also relied on a decision of the ECt, *Kuijjer v Council of European Union (No 2)* [2002] 1 W.L.R. 1941. That case concerned a request by the applicant for access to various documents pursuant to a Council Decision 93/731/EC on public access. At paragraphs 52 & 53 on p.1950, the Court observed:-

"52. It is first necessary to point out that the principle of transparency is intended to secure a more significant role for citizens in the decision-making process and to ensure that the administration acts with greater propriety, efficiency and responsibility vis-à-vis the citizens in a democratic system. It helps to strengthen the principle of democracy and respect for fundamental rights: see, to that effect, *The Bavarian Lager Co Ltd v Commission of the European Communities* (Case T-309/97)[1999] ECR II-3217, 3234-3235, Paragraph 36.

53. Moreover, when the Council decides whether the public interest may be undermined by releasing a document, it exercises a discretion which is among the political responsibilities conferred on it by provisions of the Treaties. In those circumstances, review by the Court of First Instance must be limited to verifying whether the procedural rules have been complied with, the decision at issue is properly reasoned and the facts

have been accurately stated, and whether there has been a manifest error of assessment of the facts or a misuse of powers.”

However, the principle of transparency referred to there is given effect through the Council Decision. That applies to the Council and is not an overriding principle which binds the domestic courts of Member States.

19. The domestic equivalent to the Council Decision is the Freedom of Information Act 2000. This gives the public right of access to information subject to exemptions (which include confidentiality and public safety elements) and sets up an appeal process which can deal with refusals of access. Parliament has set out the parameters for the disclosure of information and the law not only need not but should not go further. Certainly, the authorities do not support the suggestion that the common law has set a general requirement for transparency in decision making by government or other public bodies. Rather the common law has required that decision making be fair and that those affected generally should have a right to know why a decision has been or, is intended to be made so that they may be able to challenge it or make representations about it.
20. There is, as Mr Fordham was constrained to accept, no general principle that decisions by public bodies must be reasoned. The courts have over the years insisted that reasons should be given where an individual is adversely affected by a decision; fairness dictates that that should be so. In *Stefan v GMC* [1999] 1 W.L.R. 1293 at 1300D Lord Clyde, delivering the judgment of a strong Board of the Privy council, observed:-

“Their Lordships now turn to the alternative approach, that of the common law. In its most general form the argument proposes that there should be a general obligation on all decision-makers to give reasons for their decisions. The advantages of the provision of reasons have been often rehearsed. They relate to the decision-making process, in strengthening that process itself, in increasing the public confidence in it, and in the desirability of the disclosure of error where error exists. They relate also to the parties immediately affected by the decision, in enabling them to know the strengths and weakness of their respective cases, and to facilitate appeal where that course is appropriate. But there are also dangers and disadvantages in a universal requirement for reasons. It may impose an undesirable legalism into areas where a high degree of informality is appropriate and add to delay and expense. The arguments for and against the giving of reasons were explored in the Justice-All Souls report “Administrative Justice: Some Necessary Reforms” (1988). Another summary can be found in *Reg v Higher Education Funding Council Ex Parte Institute of Dental Surgery* [1994] 1 W.L.R. 242, 256.

The trend of the law has been towards an increased recognition of the duty upon decision-makers of many kinds to give reasons. This trend is consistent with current developments towards an increased openness in matters of government and administration. But the trend is proceeding on a case by case basis (*Reg v Kensington & Chelsea Royal London Borough Council Ex Parte Grillo* (1995) 94 L.G.R. 144), and has not lost sight of the established position of the common law that there is no general duty, universally imposed on all decision-makers. It was reaffirmed in *Reg v Secretary of State for the Home Department, Ex Parte Doody* [1994] 1 A.C. 531, 564, that the law does not at present recognise a general duty to give reasons for administrative decisions. But it is well established that there are exceptions where the giving of reasons will be required as a matter of fairness and openness. These may occur through the particular circumstances of a particular case. Or, as was recognised in *Reg v Higher Education Funding Council, Ex Parte Institute of Dental Surgery* [1994] 1 W.L.R. 242, 263, there may be classes of cases where the duty to give reasons may exist in all cases of that class. Those classes may be defined by factors relating to the particular character or quality of the decisions, as where they appear aberrant, or to factors relating to the particular character or particular jurisdiction of a decision-making body, as where it is concerned with matters of special

importance, such as personal liberty. There is certainly a strong argument for the view that what were once seen as exceptions to a rule may now be becoming examples of the norm, and the cases where reasons are not required has not been departed from and their Lordships do not consider that the present case provides an appropriate opportunity to explore the possibility of such a departure. They are conscious of the possible re-appraisal of the whole position which the passing of the Human Rights Act 1998 may bring about. The provisions of Article 6(1) of the Convention on Human Rights, which are now about to become directly accessible in national courts, will require closer attention to be paid to the duty to give reasons, at least in relation to those cases where a person's civil rights and obligations are being determined. But it is in the context of the application of that Act that any wide-reaching review of the position at common law should take place."

21. An obligation to give reasons is rooted in the common law's concern that there should be fairness or, as the historic approach stated, compliance with the rules of natural justice so that individuals directly affected should not suffer without any possible remedy or at least knowing why they were suffering. It is always necessary to look at the statutory scheme to ascertain whether an absence of a requirement to give reasons needs to be filled.
22. Public scrutiny is required by the Act through Parliament. The Quadripartite Committee, as the transcripts of the evidence given before it and its reports show, fulfils that role and ensures compliance with the criteria. It is obvious that there will be sensitive matters arising in some of the licensing decisions and the Committee can obtain all necessary information, even though it cannot be published openly. While no doubt the defendant could routinely give the information which has been given in this case, it would involve a considerable amount of extra work. I have no doubt that the law does not require this exercise to be undertaken. In principle, judicial review is a remedy of last resort and is only needed if appropriate redress cannot be obtained by another route. Parliament has set out the means whereby the lawfulness of licensing decisions such as those with which the claimant is concerned should be monitored. Thus there is in my judgment the necessary transparency and insofar as the defendant fails to comply with it, the Committee will comment and the ultimate judge will be Parliament.
23. It follows that this claim must fail.