

Tomecki Natalie LEGAL GROUP DWP-DH LITIGATION

From: Michael Vian Clark [mjc@GRO-C]
Sent: 01 March 2010 15:31
To: Tomecki Natalie LEGAL GROUP DWP-DH LITIGATION
Subject: RE: R (March) v Secretary of State for Health (Mich Ref:54708/3)

Natalie,

Further to my email earlier, please may I hear from you as to whether/when your client will disclose these important briefings? We really do need to see them.

Best wishes,

Michael

From: Tomecki Natalie LEGAL GROUP DWP-DH LITIGATION [mailto:NATALIE.TOMECKI@GRO-C]
Sent: 25 February 2010 12:27
To: Michael Vian Clark
Cc: Laurence Vick
Subject: RE: R (March) v Secretary of State for Health

Michael - confirm your letter received and being considered.
Kind Regards,
Natalie

Natalie Tomecki
Litigation Division
DWP/DH Legal Services
5th Floor
1-11 John Adam Street
London WC2N 6HT

DX GRO-C

020 GRO-C
020

-----Original Message-----

From: Michael Vian Clark [mailto:mjc@GRO-C]
Sent: 24 February 2010 18:40
To: Tomecki Natalie LEGAL GROUP DWP-DH LITIGATION
Cc: Laurence Vick
Subject: R (March) v Secretary of State for Health
Importance: High

Dear Natalie,

Please find attached an important letter regarding disclosure which has missed tonight's post.
Please may we have your response soonest.

02/03/2010

DHSC6887722_090_0001



Best regards,

Michael

FAO: Natalie Tomecki
Litigation Division
DWP/DH Legal Services
DX **GRO-C**

LVN/MJC/54708/3

NT/LJR/09/609/DH

24 February 2010

AND BY EMAIL: NATALIE.TOMECKI@ **GRO-C**

Michel

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Our reference

Your reference

Dear Sirs

**R (ON THE APPLICATION OF ANDREW MICHAEL MARCH) -v- SECRETARY OF STATE
FOR HEALTH
CLAIM NO: CO/9344/2009**

Thank you for your letter of 16 February 2010 enclosing the Defendant's Grounds and Evidence received 17 February, which we have now had an opportunity to consider.

We are pleased now to have received these two lever arch files of documents, notwithstanding the very significant delay. However, you appear to us to have overlooked the need to include with your evidence all relevant contemporaneous documents relating to the decision in issue in these proceedings.

We take it that we do not need to remind you of your duty of candour in relation to these proceedings, including your duty to provide to the court all documents necessary to demonstrate how the Government arrived at its decision. The duty is to provide a "full and accurate" picture. The witness statement, and the contemporaneous documents disclosed, will provide the relevant facts and the reasoning behind the decision challenged. See *Quark and Belize*, in the *Judicial Review Handbook* at §10.4.1. As our Counsel emphasised in paragraph [5] of our Reply to your client's Summary Grounds of Defence, a court adjudicating this question would need to be provided with a witness statement and any relevant contemporaneous documents. This has not happened in this case.

In particular, we refer you to the guidance in *Tweed v Parades Commission for Northern Ireland* [2007] 1 AC 650 at [4] and [33] and *R (National Association of Health Stores) v Department of Health* [2005] EWCA Civ 154 at [47] and [49]. These cases are cited at the *Judicial Review Handbook* at §17.4.4. They describe the importance of a defendant public authority exhibiting the primary documents, and not simply summarising them or giving a secondary account.

Two such relevant contemporaneous documents can readily be identified from your Grounds and the witness statement of Deborah Webb. In paragraph [59] Ms Webb refers to an early briefing note to Ministers "dealing with the Archer recommendations"; and in paragraph [60] she refers to a second briefing about the "more generous compensation scheme" in Ireland. Paragraph [60] then appears to contain Ms Webb's précis of the briefing referred to, but does not exhibit the briefing itself, nor does it offer any reason for withholding the primary documents.

We therefore ask that you disclose the briefing documents referred to by Ms Webb, and any other relevant contemporaneous documentation concerning the decision rejecting the recommendation regarding parity with Ireland, as a matter of urgency. Our skeleton is due very soon and we are hampered by an incomplete picture. We do not wish to have to make an urgent application for disclosure. We look forward to hearing from you by return.

02/03/2010

DHSC6887722_090_0002

Yours faithfully,

MICHELMORES LLP

Email: mjc@

GRO-C

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