For educational use only

*2102 Sunworld Ltd. v Hammersmith and Fulham London Borough Council
Regina v Blackfriars Crown Court, Ex parte Sunworld Ltd.

Positive/Neutral Judicial Consideration

Court
Queen's Bench Division

Judgment Date
23 November 1999

Report Citation
[2000] 1 W.L.R. 2102

ICLR

Queen's Bench Division

Simon Brown L.J. and Turner J.

1999 Nov. 9, 23

Crown Court—Appeal from—High Court jurisdiction—Case stated or application for judicial review—Crown Court giving fully reasoned judgment but refusing to state case on two of three questions requested by defendant—Defendant applying for judicial review of refusal—Whether case to be remitted or dealt with by High Court

The defendant company was convicted in a magistrate's court of three offences of recklessly making false statements, contrary to section 14(1)(b)(ii) of the Trade Descriptions Act 1968 . [1] An appeal against conviction was dismissed by the Crown Court, which gave a fully reasoned written judgment. The court stated a case on one of three questions requested by the defendant but refused to state a case on the other two. On an application by the defendant for permission to apply for judicial review of that refusal, the judge ordered that the application be renewed in the proceedings on the case stated. When the substantive case came on for hearing the question arose whether the matter should be dealt with by way of case stated or judicial review.

© 2025 Thomson Reuters.

On the appeal and application:—

Held , granting the application for judicial review, that, since the Crown Court had given a fully reasoned judgment, there was little advantage in requiring it to set out the whole matter again by way of case stated or in compelling it to state a case on the additional questions; that the court would therefore proceed as if the challenge had been brought by judicial review rather than remit the case stated to the Crown Court for further questions; that it was difficult to find in the Crown Court's reasoning any clear indication that it had convicted the defendant on the proper basis, but the matter would not be remitted for further hearing because of the length of time that had already elapsed; and that, accordingly, the Crown Court's decision would be quashed and an order allowing the defendant's appeal against conviction substituted (post, pp. 2105F–G , 2107A , 2110B–C).

Reg. v. Ipswich Crown Court, Ex parte Baldwin (Note) [1981] 1 All E.R. 596, D.C. distinguished .

Per curiam . Where a court refuses to state a case, the party aggrieved should without delay apply for permission to bring judicial review. If the court below has already given a reasoned judgment containing all the necessary findings of fact or explained its refusal to state a case in terms which clearly raise the true point of law in issue, the correct course is for the single judge, if he thinks the point properly arguable, to grant permission for judicial review which directly challenges the order complained of. If the court below has stated a case in respect of some questions only, it may be better to apply for the case stated to be amended unless there already exists sufficient material to enable the court to deal with all the properly arguable issues in the case (post, pp. 2106E–H , 2111A).

The following cases are referred to in the judgment of Simon Brown L.J.:

Airtours Plc. v. Shipley (1994) 158 J.P. 835, D.C.
Reg. v. Ipswich Crown Court, Ex parte Baldwin (Note) [1981] 1 All E.R. 596, D.C. ****2103***
Reg. v. Thames Magistrate's Court, Ex parte Levy, The Times, 17 July 1997, D.C.
Wings Ltd. v. Ellis [1984] 1 W.L.R. 731; [1984] 1 All E.R. 1046, D.C.

No additional cases were cited in argument.

© 2025 Thomson Reuters.

The following additional cases, although not cited, were referred to in the skeleton arguments:

Meridian Global Funds Management Asia Ltd. v. Securities Commission [1995] 2 A.C. 500; [1995] 3 W.L.R. 413; [1995] 3 All E.R. 918, P.C.
Reg. v. Caldwell [1982] A.C. 341; [1981] 2 W.L.R. 509; [1981] 1 All E.R. 961, H.L.(E.)
Reg. v. North West Suffolk (Mildenhall) Magistrate's Court, Ex parte Forest Heath District Council [1997] C.O.D. 352, C.A.
Reg. v. Reigate Justices, Ex parte Counsell (1983) 148 J.P. 193, D.C.
Series v. Poole [1969] 1 Q.B. 676; [1968] 2 W.L.R. 261; [1967] 3 All E.R. 849, D.C.
Tesco Supermarkets Ltd. v. Nattrass [1972] A.C. 153; [1971] 2 W.L.R. 1166; [1971] 2 All E.R. 127, H.L.(E.)
Yugotours Ltd. v. Wadsley (1988) 153 J.P. 345, D.C.

Case Stated by the Crown Court at Blackfriars and Application for judicial review.

On 13 July 1998 three informations were laid before the West London Magistrate's Court by the prosecuting local authority, Hammersmith and Fulham London Borough Council, against the defendant company, Sunworld Ltd., which carried on business as a tour operator, that on three occasions between 1 October 1996 and 27 December 1996 it recklessly made false statements in its 1997 holiday brochure to a consumer, Mr. John Martin, contrary to section 14(1)(b) of the Trade Descriptions Act 1968 . On 22 December 1998 the justices convicted the defendant on all three informations. On 15 April 1999 the Crown Court at Blackfriars (Mr. Recorder Christopher Sallon Q.C. and two justices) dismissed an appeal by the defendant against the convictions. On 19 May 1999 the Crown Court refused to state a case on two of three questions requested by the defendant on 11 May 1999, but on 19 June 1999 it stated a case for the opinion of the High Court on the remaining question.

By a notice of application for leave to apply for judicial review dated 10 June 1999 the defendant sought judicial review by way of an order of mandamus to oblige the Crown Court to state a case on the two questions on which it had refused to state a case. On 15 July 1999 Latham J. ordered that the application be renewed at the hearing of the appeal by way of case stated.

The facts are stated in the judgment of Simon Brown L.J.

Representation

John Wardell for the defendant.
Simon Blackford for the local authority.

Simon Brown L.J.

© 2025 Thomson Reuters.

On 15 April 1999 the Crown Court at Blackfriars (Mr. Recorder Christopher Sallon Q.C. and two lay justices) dismissed an appeal by Sunworld Ltd. against their conviction in the West London Magistrate's Court on 22 December 1998 on three informations laid against them by Hammersmith and Fulham London Borough Council.

Sunworld are amongst the top four tour operators in the United Kingdom. The informations alleged that in their brochure, published in ***2104** the autumn of 1996, advertising Greek holidays for the summer of 1997, they recklessly made false statements to Mr. John Martin in relation to certain self-catering apartments on the Greek island of Lygia, contrary to section 14(1)(b)(ii) of the Trade Descriptions Act 1968 . The false statements were respectively: (1) that the apartments were within beautiful lawned and flowered areas, when they were not; (2) that the apartments comprised three blocks, when, in fact, they consisted in addition of two unfinished blocks; (3) that there were no apartments or studios within close proximity of the swimming pool, when, in fact, there were.

Section 14(1)(b)(ii) of the Act of 1968 provides:

> "It shall be an offence for any person in the course of any trade or business…
>
> (b) recklessly to make a statement which is false; as to any of the following matters, that is to say…
>
> (ii) the nature of any services, accommodation or facilities provided in the course of any trade or business…"

It is convenient also at this stage to set out section 14(2)(b) of the Act, which provides:

> "For the purposes of this section…

© 2025 Thomson Reuters.

> (b) a statement made regardless of whether it is true or false shall be deemed to be made recklessly, whether or not the person making it had reasons for believing that it might be false"

The Crown Court found, first, that the statements in each of the informations were false, second, that they had been made without regard to their truth or falsity and accordingly were reckless within the meaning of section 14(2)(b) and, third, that Mr. Alan James, Sunworld's brochure information manager who had devised the system for ensuring brochure accuracy, was part of the company's controlling mind so as to render Sunworld liable under section 14(1)(b) . Sunworld now challenge the second and third of those findings. Before turning to the substance of their challenge, it is necessary to indicate just how this case has come before the court.

The procedural issue

On 4 May 1999 Sunworld requested the Crown Court to state a case for the opinion of the High Court on three particular questions:

> "(1) Whether the Crown Court was correct in holding that Mr. James was reckless as to the truth or falsity of entries made in Sunworld Ltd.'s holiday brochure.
>
> (2) Whether the defects in the system (if any) adopted by Sunworld Ltd. for ensuring the brochure accuracy could justify the conclusion that the system failed to have regard to the truth or falsity of the brochure entries.
>
> (3) Whether Mr. James could as a matter of law be treated as part of the directing mind of Sunworld Ltd. so as to found liability under section 14(1)(b) of the Trade Descriptions Act 1968 "

On 7 May 1999 the recorder agreed to state a case on question (3) but refused to do so on questions (1) and (2), which he regarded as matters of fact not law. On 11 May 1999 Sunworld reformulated questions (1) and (2) so as to make them questions of law:

© 2025 Thomson Reuters.

> "(1) Whether there was any evidence on which [the Crown Court] could hold that Mr. James was reckless as to the truth or falsity of ***2105*** entries made in Sunworld Ltd.'s holiday brochure.
>
> (2) Was there any evidence to justify the conclusion that the system adopted by Sunworld Ltd. failed to have regard to the truth or falsity of the brochure entries"

On 19 May 1999, however, the recorder maintained his decision and a month later stated a case solely with regard to question (3). Meanwhile, on 10 June 1999, Sunworld sought leave to move for judicial review to mandamus the Crown Court to state a case also on questions (1) and (2). On 23 June 1999 the Crown Court sent the signed case to Sunworld's solicitors for lodging with the Crown Office and added, "I also attach a copy of the written judgment which should be included with the original case when lodged." That written judgment is important. It consists of 10 closely typed pages handed down on the fourth morning of the Crown Court hearing.

On 15 July 1999 Sunworld's application for judicial review came before Latham J. on the documents. He ordered: "Renew orally in case stated proceedings on notice to respondents. Application can be made at the same time to amend case stated." Thus it was that the matter first came before us a fortnight ago. We then indicated that we would adjourn the hearing of the substantive challenge until today and would then decide it on the existing documents without further reference to the Crown Court, giving our reasons for doing so within the main judgment. Let me now deal with that.

As was pointed out by this court in *Reg. v. Ipswich Crown Court, Ex parte Baldwin (Note) [1981] 1 All E.R. 596* , proceedings to challenge a Crown Court's decision may be brought: "either by case stated or by judicial review, whichever is the most convenient in the circumstances." In that particular case, as Donaldson L.J. stated, at p. 596: "it is much more convenient that it should be brought by case stated because then we can get at the facts." Or, as McNeill J. observed, at p. 597:

© 2025 Thomson Reuters.

> "in a case such as this which bristles with factual difficulties the only convenient and proper way to get it before the Divisional Court is by case stated and not by way of application for judicial review."

The present case, however, is strikingly different. Here, as stated, the Crown Court gave a fully reasoned judgment when it reached its decision and, for my part, I see little advantage in these circumstances in troubling the court below to set out the whole matter again by way of a stated case; still less do I see any good reason to embark upon a whole round of fresh proceedings with a view to compelling the Crown Court to state a case on additional questions.

This sort of problem crops up not infrequently in this court. A variant of it arose in *Reg. v. Thames Magistrate's Court, Ex parte Levy, The Times, 17 July 1997* , and I hope it may be helpful if I repeat now something of what I said then:

> "On 13 November 1996 the magistrate refused to state a case, explaining fully and helpfully the reasons why he regarded the applicant's argument as unsustainable and why in the result he concluded that the application was frivolous within the meaning of section 111(5) of the Magistrate's Court Act 1980 . Invited by the applicant's solicitors on 4 December 1996 to reconsider his decision, the magistrate on 11 December refused, pointing out that, in any event, 'the case has in effect been stated in the body of that letter' ***2106** (i.e. his earlier letter of 13 November). The same day, 11 December 1996, the applicant brought judicial review proceedings seeking an order for mandamus to require the respondent magistrate to state a case. Leave to move was granted… on 26 January 1997, and it was in that form that the matter first came before us today. As, however, I have had occasion to remark in a number of other cases, such a course, although conventional and technically correct, is in fact, in circumstances such as arise here, absurdly inconvenient. If it succeeds, all it produces is an order for a case to be stated which in reality advances the resolution of the substantive issue not one jot. Far better surely, in a case like this where the facts are not in dispute and where in any event the magistrate has, as he observed, already in effect stated the case, that the true issue should be placed directly before

© 2025 Thomson Reuters.

> this court (as so easily it can be) by way of a straightforward judicial review challenge to the legality of the conviction…"

I can omit the next paragraph, which stressed the pointlessness of an arid debate as to whether or not the point of law raised was to be regarded as misconceived, and continue:

> "With these considerations in mind, we gave leave at the outset of the hearing to amend the proceedings to include a separate judicial review challenge going directly to the conviction on 23 October 1996 so as to raise squarely for present decision—rather than merely for the expression of a prima facie view upon—the critical issue arising. I should just note that we took this course with the agreement not merely of the applicant, but also of the Crown Prosecution Service, who fortunately were represented before us."

In that case, of course, as the quoted passage stated, the facts were not in dispute. Here, in certain respects at least, they were, but as one hopes will generally be the case in the Crown Court, such findings of fact as were necessary to the decision were included in the court's judgment. Although it is impossible to lay down principles which will apply in every case, and this court should retain the flexibility to deal with unusual situations as they arise, I would suggest the following approach. (1) Where a court, be it a magistrate's court or the Crown Court, refuses to state a case, then the party aggrieved should without delay apply for permission to bring judicial review, either (a) to mandamus it to state a case and/or (b) to quash the order sought to be appealed. (2) If the court below has already (a) given a reasoned judgment containing all the necessary findings of fact and/or (b) explained its refusal to state a case in terms which clearly raise the true point of law in issue, then the correct course would be for the single judge, assuming he thinks the point properly arguable, to grant permission for judicial review which directly challenges the order complained of, thereby avoiding the need for a case to be stated at all. (3) If the court below has stated a case but in respect of some questions only, as here, the better course may be to apply for the case stated to be amended unless again, as here, there already exists sufficient material to enable the Divisional Court to deal with all the properly arguable issues in the case. (4) This court for its part will adopt whatever course involves the fewest additional steps and the least expense, delay and duplication of proceedings. Whether, *Reg. v. Thames Magistrate's Court, Ex parte Levy* , it will be possible to proceed at once to a

© 2025 Thomson Reuters.

substantive determination of the issues must inevitably depend in *2107 part upon whether all interested parties are represented and prepared, and in part upon the availability of court time.

Applying those principles to the present case, there can be no doubt that, rather than remit the case stated to the Crown Court for further questions to be raised, this court should proceed as if this challenge had been brought by judicial review. I see no possible need to produce further formal documents for the purpose.

The substantive challenge

Sunworld make two main criticisms of the decision: first, they contend that the recorder misdirected himself in that he regarded the fact that errors had occurred as being determinative of the issue of Mr. James's recklessness; second, they submit that the recorder erred in law in holding that Mr. James was part of the directing mind of the company.

The first of those points effectively encompasses questions (1) and (2) of the three originally raised. To understand these criticisms it is necessary first to understand Sunworld's system for seeking to ensure the accuracy of their brochure and to understand also how the system failed to prevent the false statements that were undoubtedly made in the present case.

First, the system was devised, as already indicated, by Mr. James. The procedure for verifying the factual accuracy of the relevant brochure entries was at the time contained in two documents, one called “Brochure Production System and its use in helping to ensure brochure accuracy,” the other, “Brochure Errata System and its use in helping to ensure brochure accuracy.” For new properties, i.e. those which had not previously been featured in Sunworld's programme, a product information form (“P.I.F.”) was sent to the area/resort manager, who was required to complete all sections and who was instructed that the document would form the basis of the text used in the brochure. The P.I.F. stated that the details supplied had to be comprehensive and accurate. It had to be signed by the area manager and certified as correct by the proprietor of the property or his manager.

The P.I.F. once completed was then used as the basis for a text for the brochure. Galley proofs were sent to the area manager under the cover of a fax from Mr. James which stressed that:

© 2025 Thomson Reuters.

> "It is a strict legal requirement that all entries in the brochure be verified by as many sources as possible, in order to ensure compliance with all appropriate E.C. and U.K. legislation all appropriate E.C. and U.K. legislation. It is imperative that your personal involvement in this be understood and that your attention is focused on every single word of copy, and that this is reflected in your response. Please do not assume that any text is correct Please do not assume that any text is correct… Read all the text and check it thoroughly Read all the text and check it thoroughly"

The area manager was requested to check the text thoroughly and to sign and date each page of copy before sending it all back to Sunworld. When all the galley proofs were returned, any amendments were collated in a master copy, which was then used in the brochure. Once the brochure had been printed it was sent out to the area manager, who was required to check the description and any photographs and to sign a declaration that the information in the brochure was accurate. This declaration had to be countersigned by the owner or manager of the property. The final check was carried out prior to the start of the season. The area manager was required to complete a pre-season declaration confirming that the ***2108*** information remained accurate; this too had to be countersigned by the owner or manager of the property.

A similar but amended procedure was adopted for properties which had previously been featured. As with the new property, the area manager had to check the draft text carefully before signing off each page. Once the brochure was produced, the area manager had to sign a declaration confirming the brochure's accuracy and had to carry out a similar pre-season check (in both cases securing the confirmatory signature of the owner or manager).

Next, I must indicate how the system came to fail in this case, and fail indeed, over two consecutive years, although it is only in respect of the second year's failures that Sunworld were charged. Sunworld's area manager for Lefkas was Ms Mittroyanni. In 1995 she completed the P.I.F. for the relevant apartments, a new property for Sunworld's brochure. She stated that there were extensive gardens with lawns and flowers, but said nothing as to their quality. She said that the apartments comprised two blocks (as then they did) and that "there are two unfinished buildings in the gardens." She said nothing as to the atmosphere around the swimming pool. So far so good.

© 2025 Thomson Reuters.

The P.I.F. was then used as the basis for the text for the brochure, and it is here that things began to go badly wrong. The draftsman, who was either one of Sunworld's own employees or a freelance copywriter: (a) described the lawned and flowered area as "beautiful;" (b) omitted mention of the two unfinished buildings within the grounds; and (c) described the atmosphere around the swimming pool as "very private." That description, let me explain, coupled with the photograph used to illustrate the entry, was the basis of the third misstatement, namely that there were no apartments or studios within close proximity of the swimming pool.

There then followed four successive failures by Ms Mittroyanni to take the opportunities given to her to correct those misstatements. The first two were in 1995, when initially she approved the draftsman's copy for the 1996 brochure—she made, I should note, one or two alterations but none with regard to these three misstatements—and then signed off the 1996 brochure as correct. The next two were in 1996, when (in June) she was sent the 1996 entry as the basis for the 1997 brochure—when she changed the reference to two blocks to read: "Three blocks, two being featured by Sunworld," a correction duly made for the 1997 brochure—and (in October) was sent the proof for the 1997 brochure and, again, simply signed it off as correct. I may add that she failed to correct the errors a fifth time in May 1997 when she made her pre-season declaration for that year but, of course, this postdated both the publication complained of and the informations before the court. On each occasion she failed, so also did the local property owner. On each occasion too, it is right to note, she did so despite receiving a copy of Mr. James's fax (quoted above) requiring that "attention is focused on every single word of copy"

I come now to those parts of the Crown Court's judgment which appear central to this challenge as it has developed. First, having referred to a policy change introduced by Mr. James in 1996 with regard to future brochure production—a change which had no application to the property here in question—the court commented:

> "It did nothing to remedy the problem which had arisen in the 1996 brochure, namely that although the P.I.F. was supposed to be ***2109** used to inform the brochure, the brochure entries in 1996 and 1997 for the Thalero Apartments contained assertions which were not included in the P.I.F"

The court then said:

© 2025 Thomson Reuters.

> "Mr. Mason"—he, I interpolate, is Sunworld's solicitor who acted for them in the Crown Court—"asks us to find that the system for verification was excellent. We do not agree. There was not only a failure to include fundamental information by those asked to fill out the P.I.F., but also the inclusion of information in the brochure which had never been in the P.I.F. To this extent the procedure was ignored… Next it is argued that the statements were not made recklessly. Applying the wider meaning as bestowed by the deeming section of the Act"—a reference to section 14(2)(*b*)—"we feel there was recklessness in relation to all three charges. I have already stated why we find that the system for verifying brochure entries was unsatisfactory. In so far as descriptions not contained in the P.I.F. were put into the entry, and disadvantageous material included in the P.I.F. was omitted, we find so we are sure that the system in operation failed to have regard to the truth or falsity of what was in the brochure… Accordingly we find that the company was reckless in relation to the false statements made through the controlling mind of Mr. James"

Let me at this point address the third question originally raised, that dealt with by the case stated at paragraph 15(iii):

> "Were we right as a matter of law in treating Mr. James as part of the directing mind of Sunworld Ltd. so as to find liability under section 14(1)(b) of the Trade Descriptions Act 1968"

To my mind that question simply does not arise. What it is crucial to understand about this prosecution is that on true analysis it centres on Sunworld's system for ensuring brochure accuracy. This case, therefore, is essentially unlike *Wings Ltd. v. Ellis [1984] 1 W.L.R. 731* and *Airtours Plc. v. Shipley (1994) 158 J.P. 835* . Giving the judgment of this court in *Wings Ltd. v. Ellis [1984] 1 W.L.R. 731* , 741 Mann J. said:

© 2025 Thomson Reuters.

> "The most that could be said for the prosecutor is that the members of this class"—those ruling the company—"although establishing a system, failed to establish a system which would have prevented the mistake which occurred. That failure cannot, in our judgment, constitute 'recklessness.' There may be cases where the system is such that he who establishes it could not be said to be having regard to the truth or falsity of what emerged from it, but that is not this case."

That, however, Mr. Blackford submits to us, is this case.

In *Airtours Plc. v. Shipley, 158 J.P. 835* , 837 McCowan L.J., having considered the appellant's system, said:

> "It seems to me to amount to an excellent system. Indeed, the system is not criticised on the part of the respondent. What has happened here is that there has been human error."

In the present case, I repeat, it is the system which is criticised. That being so, it seems to me that Sunworld themselves must necessarily be responsible in law for that system: either they delegated to Mr. James their ***2110** own responsibility for ensuring brochure accuracy, in which case he became for the purpose the company's directing mind; or, as Mr. James and Sunworld in fact contend, he was acting under the overall supervision of the board and was answerable for the system to others senior to him, in which case those more senior officers were the directing mind of the company and, in turn, responsible for permitting Mr. James to operate his system. The fact that Mr. James was expressly found by the Crown Court to be a man of integrity and a credible witness seems to me nothing to the point.

To my mind, therefore, everything ultimately turns on whether it could properly be said of Sunworld's system that it did not have proper regard to the truth or falsity of what emerged from it (i.e. to the accuracy of the brochure). That seems to me to be the single question upon which the court below should have been focusing. It is, however, far from clear that that is how they

© 2025 Thomson Reuters.

saw it and, certainly, it is difficult to find in the court's reasoning any clear indication of how they came to convict on that basis. Alas, that Hammersmith were not represented in the Crown Court by counsel. In a case of this complexity, they surely should have been. In the result, there appears to have been no exploration of a number of features of Sunworld's system, which on the face of it seem to me to have cried out for consideration.

Mr. James said in his evidence that "the system works extremely well;" nobody apparently asked him even whether the errors here were the only ones ever to have been made. No one considered whether Ms Mittroyanni had proved to be an unusually unreliable area manager. No one asked what instructions were given to the copywriters. No one asked what, if any, sanctions were visited upon copywriters who departed from the P.I.F., or area managers who failed to correct such departures.

Mr. Blackford submits that the Crown Court's decision here rested on the criticism implicit in their judgment that no one in the company independently verified that the brochure entries accurately reflected the contents of the P.I.F. (someone, that is, independent both of the copywriter and of the area manager). One difficulty with this submission, however, is that no such criticism of the system appears to have been put to Mr. James in cross-examination. On the contrary, the only improvement suggested to him was that perhaps the P.I.F. should have been returned to the area manager with the draft copy so that he/she could be reminded of the information originally given.

Another difficulty with Mr. Blackford's argument is that it invites this court to read into the reasoning below more than is clearly there—something which, for my part, I am loath to do in a borderline case such as this. It is a serious thing to stigmatise an apparently responsible system as one whose authors are careless of the truth or falsity of its product. Of course those who produce travel brochures (and the like) are under a duty to guard against inaccuracies and, as Mr. Wardell rightly recognises, if the system devised clearly overlooks other more obviously desirable safeguards, then a conviction on this basis may well be appropriate. It may even be that a properly reasoned conviction could have been supported on the facts of this very case. That, however, we do not have. We could of course in the result quash the Crown Court's decision and remit the matter for further hearing. But the thought of a further three- or four-day hearing after this length of time discourages me from such a course; rather, I think the time has come to draw a line under this litigation. I would, accordingly, quash the Crown Court's decision and substitute for it an ***2111*** order by which Sunworld's appeal against their conviction by the justices is allowed.

© 2025 Thomson Reuters.

Turner J.

I agree with what Simon Brown L.J. has said as to procedure and have nothing to add to it. I also agree with his decision on the substance of the case. My tentative reservation related to the failure of the system to introduce an element of internal authentication or audit and consistency by those not involved in the process of compilation of the brochure material.

The difficulty in proceeding along these lines in the present case is due to the absence of an effective examination of the applicant's systems during the course of the hearing before the Crown Court. It does not appear to me that the Crown Court received the assistance which it would have had from both parties if they had been represented by advocates experienced in this field of practice. In the result, the findings of the Crown Court lack sufficient detail to enable me to be confident that the proper issues were canvassed and addressed. For these reasons I agree with Simon Brown L.J.'s conclusion that it is now too late for this case to go back to the Crown Court.

[Reported by Sharene P. Dewan, Barrister]

Representation

Solicitors: Mason Bond, Leeds ; Head of Legal Services, Hammersmith and Fulham London Borough Council .

Application granted with costs before Crown Court against local authority and before Divisional Court out of central funds. No order for costs before magistrate's court. Decision of Crown Court quashed. Appeal against convictions allowed.

Footnotes

1 Trade Descriptions Act 1968, s. 14(1)(b)(ii) : see post, p. 2104B–C.

(c) Incorporated Council of Law Reporting for England & Wales