

CA before Beldam LJ, Ward LJ, 1st May 1998

J U D G M E N T : L O R D J U S T I C E B E L D A M :

1. In the wake of the inquiries into the murder of school children and their teacher at Dunblane, Parliament decided to prohibit the possession of certain types of handgun which had hitherto been lawfully held by members of the public who held a firearms certificate in respect of them. Parliament's response was to pass the Firearms (Amendment) Act 1997 ("the Act"), which received the Royal assent on 22 February 1997. To compensate those who handed in their firearms pursuant to the requirements of the Act, Parliament required the Secretary of State for the Home Department to make arrangements for the surrender of firearms and for the compensation of those who handed them in.
2. The requirements set out by the Act are in sections 15 to 18. Sections 16 and 17 require the Secretary of State to make payments in accordance with a scheme made by him. By section 18 Parliament required that any such scheme had to be laid before it and be subject to affirmative approval. The Firearms (Amendment) Act 1997 compensation scheme ("the Scheme") was laid before Parliament and was approved. It was to be administered by the Secretary of State, and after describing the scope of the Scheme, it contained provisions for the orderly surrender of guns, expanding ammunition and equipment.
3. By paragraphs 9, 10 and 11, those who held handguns, ammunition and equipment, were given three options for claiming compensation. Option A, a flat rate payment for individual items; Option B, a payment for an individual item at the relevant price contained in a list of values which was annexed to the Scheme; and Option C, a payment based on an individual valuation of an item's full market value, as at or immediately before 16 October 1996.
4. Individuals and dealers who claimed compensation had to choose one of the three options for each item in respect of which a claim was made. But under Option C, individuals were restricted to claiming for guns, expanding ammunition or equipment which was not listed under Option B, or for guns which were so listed but which had been specially adapted or customised in such a way as to increase their value.
5. Accordingly, the Secretary of State provided by paragraph 11 that, if a claim was made under Option C, it had to be supported by documentary evidence of the purchase price, the date when it was acquired, a dealer's valuation or a recent insurance valuation for the item; other documentary evidence could include published evidence or documents of a manufacturer's retail price in the period immediately preceding 16 October.
6. The Scheme first required that the guns had to be handed in to the appropriate police station. Paragraphs 12 to 17 set out the manner in which the claims would be received and verified. In summary, the handgun or equipment had to be handed in to the police station, where the appropriate firearms certificate holder was registered, and claims in respect of property which was surrendered had to be submitted to the police force to which the property was surrendered. A completed claim form had to be submitted at the same time as the equipment was surrendered. There were arrangements for advanced notice to be given so that police stations were not overwhelmed with surrenders at the same time. By paragraph 16, the police were required to check the details of the guns and ammunition for which claims were made against those surrendered and against the guns and ammunition recorded in the firearms certificate. There were similar arrangements for checking the other equipment which might be handed in. Once the claim was received, the police force gave the claimant a reference number and a receipt for the property surrendered.
7. The Scheme provided that, if there was a discrepancy between the claim and the handgun or equipment surrendered, it should, where possible, be resolved before the claim was forwarded to the Home Office Firearms Compensation Section. The Scheme then provided for the evaluation of claims in paragraphs 28 and 31. In the course of submissions made by Mr Elvin on behalf of the Secretary of State we were invited to consider the way in which the claims were evaluated, and the requirements for the claims made under the various options. Claims made under Options A or B were to be settled at a relevant flat rate for large calibre handguns or expanding ammunition, or in the case of Option B for listed value, that is the values listed in the extensive appendix to the Scheme. In those two cases, it was said the claim was to be paid automatically. Claims made under Option C, which had to be supported by documentary evidence of value, were to be met if the documentary evidence submitted was satisfactory. But once the validity of the

claim had been checked, the claimant was entitled to an acknowledgement of receipt of his claim and notification of approval.

8. After approval of an Option A or Option B claim, paragraph 29 of the Scheme stated that the claimant would receive payment "*shortly*". Similarly, paragraph 30 stated that in the case of an Option C claim, he was entitled to receive notification that his claim had been approved, and that payment of a given amount would be sent to him. On notification he was required to complete a declaration that he accepted the amount of the compensation offered by the Firearms Compensation Section of the Home Office which dealt with the claims and, according to paragraph 30, the payment instruction would then be issued as soon as the completed declaration was returned to the Firearms Compensation Section ("FCS").
9. The difference between a claim made under Option C and a claim made under Option A or B is that, where the documentary evidence in support of a claim under Option C was considered unsatisfactory in that it did not fully support the amount claimed, appeared to be of doubtful provenance or, in the case of a listed gun, did not appear to justify a significant departure from the listed value, the FCS would request further evidence from the claimant, and if the additional documentary evidence was satisfactory, then the claim would be met. But if the additional evidence was not provided, or presumably if it was unsatisfactory in any of the respects indicated in the paragraph, the police force to which the gun had been surrendered would be asked to seek a valuation from an independent source.
10. The cost of obtaining that valuation was to be borne by the FCS, and the Scheme provided that, where an independent valuation is obtained it would normally be used to calculate the amount of the claim to the claimant. As previously stated, the Scheme provided for payment of the claims to be made, either shortly after they had been approved (in the case of Options A or B) or in the case of a claim under Option C when the completed declaration of the value had been returned to the appropriate section.
11. The date by which firearms had to be surrendered was 1 October 1997. The plaintiff Mr Steed surrendered his firearms, ammunition and ancillary equipment to the Mole Valley division of the Surrey police in accordance with the published requirements of the Scheme on 29 July 1997. At the same time he completed the requisite application form for compensation and handed over a valuation by an independent gunsmith that at the relevant date those items for which he claimed compensation under Option C were of a value of £1,824.85. He also surrendered his current firearms certificate.
12. By 27 October 1997 the plaintiff had received no compensation so he issued a summons in the West London County Court claiming, in respect of his claims under Option A, B and C, a total sum of £3,298, the amount which he said was due to him as payment of compensation for handing over his firearms on 29 July. By a summons issued later in 1997, the defendant applied to strike out the plaintiff's claim on the grounds that it disclosed no reasonable cause of action and sought an extension of time for service of its defence until 14 days after the hearing of that summons, which took place on 16 January 1998 before District Judge Madge. On 27 January 1998 the district judge dismissed the defendant's summons. The defendant had argued that the provisions of the Act gave no private law right of action to the plaintiff to claim compensation for the handguns and equipment he had handed over. I would pay tribute to the judgment given in this case by District Judge Madge. It was a clear exposition of the reasons why he considered that it was Parliament's intention that the plaintiff had a private law right of action, and he rejected the defendant's contention. He said he could not accept that Parliament intended that former firearms owners should be completely without redress if the Government failed to pay compensation, or if the amount paid was less than the amount to which the applicant was entitled.
13. He was sure that Parliament intended that in such circumstances the former firearms owners would have some means of redress through the courts. He held that the plaintiff did have a remedy at private law, and gave a carefully reasoned judgment for his decision that Parliament's intention was that they should have a right to take proceedings in the County Court.
14. He further held that in general such proceedings were more appropriate than proceedings for judicial review in the High Court under Ord.53. That was accordingly an indication that the action should not be struck out. The defendant had argued that no obligation to pay arose until the claim crystallised, by which he meant until a claim had been approved by the FCS.

15. The district judge held that, once a firearm had been surrendered in accordance with the Scheme, there was an obligation to process the claim and make a payment. Counsel for the defendant had conceded before the district judge that the plaintiff came within the Scheme; he had submitted a valid claim for compensation and that an acknowledgement of his claim had been issued to him. Accordingly, he said that the plaintiff's private law right of action had arisen and it was not for the Court, on the application to strike out his statement of claim, to consider whether or not a reasonable time had passed for the defendant to process and pay the claim. Accordingly, he dismissed the defendant's summons.
16. The defendant appealed to Judge Cowell who heard the appeal on 17 February. He too concluded that the plaintiff had a private law right of action and that the plaintiff's claim should not be struck out as disclosing no reasonable cause of action and dismissed the appeal.
17. By this time the defendant had filed its defence, and in turn the plaintiff had filed amended particulars of claim. Those amended particulars of claim disclosed that his claims under Option A and Option B had eventually been paid on 26 November 1997, and accordingly, to that extent, the amount of his claim was reduced. However, his claim included a claim for interest on the amount paid from the time at which he said it would have been reasonable for his claim to have been met, and for the amount which he claimed was due under his Option C claim and interest on that claim until paid.
18. His Honour Judge Cowell dismissed the defendant's appeal, but on 26 February he granted the Secretary of State leave to appeal to this Court. Mr Elvin for the Secretary of State submits that no private law right was intended to be conferred upon the plaintiff, or could come into existence until after a decision had been reached by the Secretary of State under the Scheme that the claim should be paid, and that a private law right could never arise before the Secretary of State had decided whether the necessary conditions for payment of compensation had been fulfilled.
19. His argument proceeds upon the basis that the Secretary of State had a discretion whether to accept a claim under the Scheme, or at least the processing of the claim, until it was finally accepted by the Secretary of State, contained a large element of discretion to be exercised by the Secretary of State. Until a decision had been reached, the only remedy available to a person who had complied with the Scheme's requirement and handed over his firearm, was by way of judicial review under Ord.53.
20. The starting point for a consideration of Mr Elvin's argument must be the interpretation of the statute and whether, from the language used in the Act and the terms by which Parliament entrusted to the Secretary of State the power to create a scheme and rules, it was the Parliament's intention to create a duty to pay for firearms handed in which would be enforceable in private law. The mere fact that the Secretary of State has executive functions under the Scheme, which he himself initiated and devised and which was approved by Parliament, does not mean that no private law duty can arise. Lord Diplock in his speech in **O'Reilly v. Mackman** left room for exceptions to a general rule that actions taken to enforce executive decisions should be brought under Ord.53 and, as has since frequently been remarked, it is an error to regard remedies in public law and private law as, in consequence, being necessarily exclusive.
21. In deciding whether Parliament intended to confer (or in other cases to deprive) a person of a legal right, the practical consequences of insisting on a choice of the procedure to be followed clearly have to be considered. This was made clear in a decision to which Mr Elvin referred us, **Trustees of the Dennis Rye Pension Fund and another v Sheffield City Council** [1997] 4 All ER 747. The question at issue in that case was whether Parliament had intended to confer a private law right of action on a claimant for an improvement grant under the Local Government and Housing Act 1989. The Court held that in performing its role under the Act in relation to recommending grants, the local authority was in fact performing public functions which did not give rise to private rights. But that, once the authority had concluded that an application for a grant should be approved, there did arise a duty to pay the amount to the applicant who fulfilled the statutory conditions, which would be enforceable by ordinary action.
22. Mr Elvin referred us to the observations of the Master of the Rolls who said (page 752F-J):
"The statutory provisions I have cited make it clear that the legislation contains a statutory code for the approval of grants. The rule is designed to give to the person entitled to the benefit of the grant a right to payment of the grant on compliance with the conditions contained in the legislation. When this has happened the authority has no justification

for refusing payment. In this situation I can see no reason why the landlord cannot bring an ordinary action to recover the amount of the grant which is unpaid as an ordinary debt. Notwithstanding the statutory code, it would be disproportionate to seek a remedy, of say, mandamus or a declaration by way of judicial review to enforce payment. Any suggestion that there had been any abuse of process involved in bringing an ordinary action in the High Court or county court would be totally misconceived. Judicial review was not intended to be used for debt collecting. ...

Having examined the statutory provisions, I regard it as clear that in general when performing its role in relation to the making of grants the authority is performing public functions which do not give rise to private rights. This is so, even when, as here, improvement notices have been served so that the making of a grant is mandatory (s 113(1)). Even in this situation the refusal to approve an application for a grant gives rise to no right to damages and in the ordinary way the appropriate procedure will be judicial review."

23. At first instance Mance J had carried out an analysis of numerous authorities which now exist on this subject, and he had equated the position of a claimant whose claim had been approved to one where his relationship with a public body, as in the case of **Roy v. Kensington and Chelsea and Westminster Family Practitioner Committee** [1992] AC 624, whether statutory or contractual would confer on him conditional rights to payment, so that the bringing of an ordinary action to enforce those rights was not in itself an abuse of process.
24. Lord Woolf continued: *"What, in my view, is more important when considering what is the correct procedure to adopt, is that in both situations any challenge to an authority's refusal to express satisfaction will depend on an examination of issues largely of fact which are more appropriately examined in the course of ordinary proceedings than on an application for judicial review. So far as the present actions are concerned there is no reason to think that when the quality of the work is examined against the particulars and estimates provided and any relevant specification, taking into account the actions of the council's inspectors, the question of whether the council could lawfully withhold its satisfaction will be resolved by a determination of the factual position. This is the class of issue, which if it cannot be resolved by mediation, is ideally resolved by a court with the assistance of a report from a surveyor jointly instructed by both parties. Such an approach would be infinitely more in the interests of the taxpayers of the authority, the landlord and the court than an application for judicial review."*
25. He then considered where Lord Diplock's observations in **O'Reilly v. Mackman** stood in the light of numerous exceptions which had been held to exist. He said: *"What I would suggest is necessary is to begin by going back to first principles and remind oneself of the guidance which Lord Diplock gave in **O'Reilly v. Mackman** . This guidance involves recognising (a) that remedies for protecting both private and public rights can be given in both private law proceedings and on an application for judicial review; (b) that judicial review provides, in the interest of the public, protection for public bodies which are not available in private law proceedings (namely the requirement of leave and the protection against delay). The proceedings will be heard by a High Court judge and will be managed by the Crown Office which has the necessary experience of public law proceedings to ensure that questions, such as expedition, are dealt with in a manner which is appropriate. (c) That for these reasons it is a **general rule** that it is contrary to public policy - and as such an abuse of the process of the court, to permit a person seeking to establish that a decision of a public authority infringed rights to which he was entitled to protection under public law to proceed by way of an ordinary action and by this means to evade the provisions of Ord.53 for the protection of such authorities."*
26. He went on to say that, having established the foundation for the general rule, it might be of assistance in reducing difficulties which were being experienced if he gave this guidance: firstly, if it is not clear whether judicial review or an ordinary action is the correct procedure, it will be safer to make an application for judicial review than commence an ordinary action since there should be no question of it being treated as abusing the process of the Court by avoiding the protection provided by judicial review. Secondly, if a case is brought by ordinary action and there is an application to strike it out, the Court should at least, if it is unclear whether the case should have been brought by judicial review, ask itself whether, if the case had been brought by judicial review when the action was commenced, it is clear that leave would have been granted. If it would, then that is at least an indication that there had been no harm to the interests judicial review is designed to protect. In addition, the Court should consider by which procedure the case could more appropriately be tried. If the answer is that an ordinary action is equally or more appropriate than an application for judicial review, then that again should be an indication that the action should not be struck out.

27. He drew attention to the fact that where it is unclear whether proceedings had been correctly brought by ordinary action, it is always possible for them to be transferred to the Crown Office.
28. After commenting that it is not possible in the framework of the judgment in a single appeal to give a comprehensive pragmatic guide, He said of his suggestions: *"They do involve not only considering the technical questions of the distinctions between public and private rights and bodies but also looking at the practical consequences of the choice of procedure which has been made. If the choice has no significant disadvantages for the parties, the public or the court, then it should not normally be regarded as constituting an abuse."*
29. I have cited those observations at length for they seem to me to be helpful to any Court having to decide whether the commencement of an action, such as the one in issue in this case, constitutes an abuse of the process of the Court.
30. I am conscious, as Mr Elvin pointed out, that when questions of delay are involved (particularly delay by a public authority) in reaching a decision, the Crown Office has the experience of public law proceedings to ensure that the issue is dealt with appropriately. Mr Elvin relied on other matters. Firstly that, looking at the Act and the terms of it, that no specific remedy is provided and that judicial review would be adequate at the stage of processing an applicant for compensation application.
31. Next he says that, although it is true that the Act confers a right on a limited class and that might be an indication of a private law right, it is part of a wider scheme, and should be seen as part of a wider scheme, to protect society from the menace of handguns. Thirdly, he says that there are in the Scheme devised by the Secretary of State a number of judgments required be made and exercised by a public authority and that Parliament has approved that Scheme. Accordingly this is an indication that a private law right should not be held to have come into existence until those judgments have been exercised.
32. Next he said that Parliament had entrusted the task of processing the claims and creating the Scheme to the Secretary of State. The Secretary of State is the person who is required to make the necessary judgments, not the County Court, and to allow an ordinary action to be brought before the Secretary of State has reached a conclusion whether to approve the claim would be to expose Ministers or civil servants to a decision which could lead to a claim for damages.
33. He points to the fact that the initial processing of the claim is in the hands of the police, and further that the number of claims outstanding (which I think he put at between 20,000 and 30,000) requires that there should be a fair approach to processing the claims. That essentially is a question of public law. The Crown Office is therefore more apposite than the County Court to achieve the degree of consistency which public fairness demands. Finally, he says that the Secretary of State has, by his scheme, sought to create a fair balance in processing the various types of claim.
34. Two matters are important in deciding whether this claim should be struck out. The first is whether, from the terms used by Parliament in the Firearms (Amendment) Act 1997, it is to be inferred that Parliament intended to give a right to compensation to those who surrendered firearms. For my part, I regard it as clear that Parliament intended such a right and that such a right should be enforceable at law.
35. The next question is how should the right be enforceable. Should it be enforceable only by judicial review until the application has been approved? Applying Lord Woolf's guidance, the question seems to me to be whether issues, which would be likely to arise in the processing of the claim, could more conveniently be dealt with by an ordinary and simple action in the County Court. If those issues depend essentially on questions of fact, I can see no reason why the rights conferred by Parliament should not be enforceable at common law. Mr Elvin placed considerable emphasis on the requirements in respect of Option C claims and in the procedure contained in paragraphs 26 and 27 of the Scheme. But it seems to me that, unless the Secretary of State (or the FCS) in dealing with an Option C claim has reason to think that the certificate of valuation forwarded or the claim is in some respect unsatisfactory because it does not support the amount claimed, or is of doubtful provenance, that the only question to be decided by the Secretary of State is whether the claim is a valid Option C claim. That, it seems to me, depends essentially on the question whether the handgun has been significantly increased in value because of adaption or being customised. Similarly, if a dispute arises as to the value of such a handgun or equipment, it is a question of deciding the

appropriate value. I can see nothing which could arise in those issues which would render the County Court an inappropriate forum to decide them.

36. The other question which might arise, and upon which Mr Elvin places great reliance, is whether the Secretary of State has processed the claim within a reasonable time. As I have mentioned, Mr Elvin submits that the Divisional Court has the experience to determine what is a reasonable time. But it is not the only Court which has to determine in various circumstances what is a reasonable time for certain actions to be taken. In any event, it seems to me that, if a claimant had to proceed by way of judicial review to determine what was a reasonable time within which an administrative decision should be taken, the Court would have to decide what period was reasonable for processing the applicant's claim. It does not follow that what is reasonable in one applicant's claim is unreasonable in another applicant's claim, and essentially the reasonableness of processing the claim would depend upon the issues which arise when the claim is received by the FCS in accordance with paragraphs 25 and 27.
37. In Option A and B cases, it is difficult to see that there is any issue likely to engage the Section in any significant administrative decision. As I ventured to suggest to Mr Elvin (and as I believe he conceded) whether the private right of action arises only after the claim has been approved, or whether it is conferred by the Act, cannot depend upon whether the claim is made under Option A or B as opposed to Option C. Thus it seems to me that any issues which are likely to be raised in an action brought to recover compensation under the Act, can just as easily be determined by the County Court as they could in an application for judicial review. But the action in the County Court has one significant advantage: it can lead to the County Court giving judgment in the plaintiff's favour for the sum which is due to him. Whereas an application for judicial review would, even if it was concluded in his favour, require him to bring further proceedings to recover the amount due.
38. In the present case I have no hesitation in holding that both the direct legislative provisions as well as the rule-making powers entrusted to the Secretary of State by Parliament, were intended to confer a right to compensation on a person who surrendered his firearm in accordance with the Scheme, and not merely to give such person an opportunity to ask the Court to review the progress being made by the Secretary of State in processing his claim under the Scheme. The language of the Scheme itself is, it seems to me, consistent with a legal obligation on the Secretary of State to pay compensation, not simply with giving a mere hope or legitimate expectation of receiving it after the Secretary of State had processed the claim.
39. Accordingly I would dismiss this appeal.

JUDGMENT : LORD JUSTICE WARD:

40. I agree. Posing the question very loosely it is perhaps this. When a citizen surrenders firearms and ammunition at a designated police station in accordance with the Scheme made under section 15 of the Firearms (Amendment) Act 1997, and where he claims to enforce payment in respect of that firearm and ammunition, which pursuant to section 16 of the Act "the Secretary of State shall in accordance with the Scheme made by him make...", then is this claim one which savours of a public law or of private right? For reasons given by my Lord, with which I agree, I conclude that it is more a matter of private right than of public law. At this late hour on a Friday before a bank holiday, I shall not give my own reasons at great length, but the salient features in summary seem to be this.
41. Firstly, in asking whether the case is more appropriate for the County Court or the Crown Office List, it is clear to me that there is a limited class who have this right to compensation, even though greater public good lies behind the statutory scheme. The Act may have been passed for the benefit of society as a whole, but it is also directed at individuals as individuals. Secondly, as for categories A and B, they give rise to simple issues requiring no complex exercise of discretion. Thirdly, as to category C, the problem here seems to be that the Scheme in paragraph 30 gives no mechanism, and does not even seem to contemplate what will happen, if the citizen does not agree with the amount that the required payment notification declares is to be the only amount to be paid to the him in settlement of his claim. If he says, "No thank you; I want more please", who is to resolve that dispute? It seems to me that his right will undoubtedly have crystallised and he will be entitled to go to the County Court because the Scheme provides no other mechanism for the resolution of that dispute. I accept, as Mr Elvin submits, that it is necessary to analyse whether there are still essential value judgments to make of the kind more suited to be made

administratively by the Secretary of State before it can be shown (in the words of Purchas LJ in **Cato v. Ministry of Agriculture Fisheries and Food** [1989] 3 CMLR 513 at 536): "... the discretionary function of the Minister has been spent." What then are those decisions under this Scheme? Firstly, under paragraph 25 to decide whether this is a gun which has been adapted or customised in such a way as to significantly increase its value; under paragraph 26 to decide whether the claim has been supported by valid documentary evidence of the full market value of the item in question, the nature of that evidence being receipts, a dealer's valuation, recent insurance valuations, or published evidence of the value. Then, if that documentary evidence is thought to be unsatisfactory, so that the FCS seek further valuation evidence from an independent source, there is the ultimate question as to whose valuation is to be preferred, and so what compensation is payable.

42. It seems to me that those categories of assessment are all essentially matters of fact, treating valuation opinions as matters of fact, and there is not a huge amount of discretion involved in arriving at those decisions. Moreover, they are exactly the disputes which seem to me to fall within the ambit of what Lord Woolf MR said in **Trustees of the Dennis Rye Pension Fund v. Sheffield City Council** [1997] 4 All ER 747 at 753G: "*What, in my view, is more important when considering what is the correct procedure to adopt, is that in both situations any challenge to an authority's refusal to express satisfaction will depend on an examination of issues largely of fact which are more appropriately examined in the course of ordinary proceedings than on an application for judicial review.*"
43. I come to the conclusion that these are matters which require to be examined in the course of ordinary proceedings because this Scheme is a scheme of expropriation, and it is a scheme where, when the citizen surrenders his property, he is entitled, as the Act makes clear, to be compensated for the value of that property. In my judgment, it is important in legislation of this kind that the value of the property should ultimately be decided by some form of tribunal upon its merits and not by way of a challenge by judicial review, where the challenge to judgments of value will necessary be severely circumscribed. I cannot for my part believe that the purpose of the Act is to deprive the citizen of his firearm without giving him the opportunity to lay before a Court or a tribunal any dispute as to the value of his property, and to have that adjudicated upon its merits. That is a task for the County Court.
44. I have been impressed by the submissions of Mr Elvin in particular (I say "*in particular*" now because I was impressed by all of it and I am grateful to him for it) by his submissions that in a scheme of this kind it is important that there be a consistency of approach; that there be fair and even handling of the claims; that there be no jumping of the queue by those avenging steeds who are galloping to avail of the County Court procedure perhaps gaining advantage over others less knowledgeable or less well able to find their way to the County Court. That is a submission of importance. But given that the nature of the ultimate disputes are disputes essentially of fact and valuation (a task which confronts the County Court day in and day out) I cannot believe that any inconsistency will arise such as to undermine the Scheme as a whole. Nor am I impressed by the resource implication argument that perhaps not enough money has been set aside to set up enough bodies to process these claims in time. That was a matter to have been borne in mind when the Scheme was established. Since, as my Lord and I are agreed, the Scheme gives the citizen the right to compensation, then that right is to be enforced by private action and not by public law.
45. Accordingly, I too agree that the appeal be dismissed.

ORDER: Appeal dismissed with costs; leave to appeal to the House of Lords refused.

MR D ELVIN (Instructed by The Treasury Solicitor) appeared on behalf of the Appellant

MR M HEYWOOD (Instructed by Messrs Howell-Jones & Partners, Surrey KT1 2AF) appeared on behalf of the Respondent