JUDICIARY OF
ENGLAND AND WALES

THE RT HON. LORD JUSTICE HOLROYDE
Chairman of the Sentencing Council

Rec'd
19/11/18

Dr Peter M Southwood
110 Purves Road
Kensal Rise
London
NW10 5TB

14th November 2018

Dear Dr Southwood,

Lord Justice Holroyde has asked me to write to you to acknowledge receipt of your letter of 11th November 2018 and its enclosures.

Yours sincerely

David Cole
Clerk to Lord Justice Horloyde

Royal Courts of Justice

BY SPECIAL DELIVERY – Open Letter

Email: p.southwood@btinternet.com

Your refs: C1/2018/1827 & 1828/PTA

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Rt Hon. Lord Justice Holroyde,
Civil Appeals Office,
Room E307,
Royal Courts of Justice,
Strand,
London WC2A 2LL

11 November 2018.

Dear Lord Holroyde,

Re: The Queen on the application of Peter Southwood v The Rt Hon Lord Goldsmith QC (Respondent) & H.M. Attorney General (Interested Party)

Thank you for your decisions of 1 November, received on 7th, concerning the above case. Although my appeal has been refused, and there is no right of appeal to any higher English Court, I am bound to write on the 100th anniversary of the ending of the Great War to underline the significance of a legal definition of 'an irenical perspective' and to emphasise that the final decision in this matter will rest with the Court of history.

There are three aspects of your reasoning that I must respectfully draw to public attention:

1. Your reasoning makes no reference to the judgments concerning the Project on Demilitarisation (Prodem) and the authoritative definition provided by Carnwath J. (as he then was) of 'an irenical perspective' in his High Court judgment of 9 October 1998.

   I submit that there is no excuse or justification for this omission especially as the Court of Appeal emphatically endorsed that view in its judgment on 28 June 2000. Still less, is there just cause for seeking to pass off his objective criteria for assessing 'an irenical perspective' as being merely my opinion.

   Moreover, this present case could not have arisen if that principle had not been endorsed by the judiciary in the Prodem case, which the Respondent and every Attorney General since has sought to ignore, undermine or set aside.

.../cont'd

2. Furthermore:
   (i) It was impossible for Mr Eggers QC to arrive at his decision on costs, as for you, by application of the procedure laid down by Martin Spencer J on 30 April 2018; and
   (ii) The Court of Appeal (Civil Division) has also made light of one count of apparent perjury committed by the Interested Party and supported by the Respondent.

   This simply encourages in Law Officers that careless disregard for fact and law which must have the effect of undermining respect for the rule of law by its unreasonableness.

3. Finally, your reasoning has the effect, if not the intention, of continuing a cover up of '...the truth, the whole truth and nothing but the truth', which started with the Court of Appeal judgment in the Prodem case on 28 June 2000. By this I mean that Court decisions were not taken solely on the basis proposed in my originating summons, as amended by order dated 16 September 1997, viz.

   > ... if all the relevant legal cases and material facts presented had been fully and correctly taken into account then PRODEM would have been found to be for the public benefit in a manner which the law would regard as charitable.

   No judge and, indeed, no government lawyer have ever disputed the correctness of this layman's understanding of how a legal decision is to be arrived at.[1] I respectfully contend that your decisions do not meet that test either.

Conclusion

The points in 1, 2 and 3 above are, I submit, unarguably correct. However, the legal process of the English civil courts is now exhausted.

Consequently, the public benefit from the principal conclusion of the Iraq Inquiry Report has been ignored, set aside or denied. The Inquiry Chairman's statement on 6 July 2016 reads: 'We have concluded that the UK chose to join the invasion of Iraq before the peaceful options for disarmament had been exhausted. Military action at that time was not a last resort.' In refusing either to uphold the judicially defined 'irenical perspective', or the role of education in applying it objectively, the public benefit of this Inquiry finding is lost for posterity.

On the anniversary of the end of the Great War it constitutes, by the State in England and Wales, a betrayal of our war dead and a heightening of the prospects for another Great Power War, as my four Prodem Briefings had forewarned (Mar 1993 – October 1995).

May Almighty God have mercy upon our immortal souls.

Yours sincerely,

Peter M. Southwood (Dr)

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[1] . Compare with *Q (Evans) v H.M. Attorney General et al* [2014] EWCA Civ 254 at para 81 where the Master of the Rolls states: 'He [HMAG] could point to no error of law or fact in the [Upper Tribunal's] decision...'

Enclosures: I am returning herewith copies of the Court of Appeal decisions as unsatisfactory, even though I will respect the orders made.

Distribution List

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Mr Peter MacDonald Eggers QC, Administrative Court

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(:GS:05.07.18)

IN THE COURT OF APPEAL, CIVIL DIVISION

REF: **C1/2018/1827/PTA**

The Queen, on the application of

PETER M SOUTHWOOD –v– THE RT HON. LORD GOLDSMITH QC

ORDER made by the Rt. Hon. Lord Justice Holroyde

On consideration of the appellant's notice and accompanying documents, but without an oral hearing, in respect of an application for permission to appeal, against the refusal of the High Court to grant permission to apply for judicial review of the decision of Martin Spencer J on 30.04.18 (sent to the parties on 02.05.18) refusing permission and certifying the claim as totally without merit.

Decision: The applications for an extension of time and for permission to appeal are REFUSED.

Permission to appeal: ☐ **Granted** ☒ **Refused** ☐ **Adjourned**

OR

Permission to apply for judicial review: ☐ **Granted**

Where permission to apply for judicial review is granted, the application should be returned to the Administrative Court ☐

OR

There are special reasons (set out below) why the application should be retained in the Court of Appeal ☐

Reasons

An appeal against the decision of Martin Spencer J has no real prospect of success, and there is no other compelling reason why an appeal should be heard, for the following brief reasons:

1. The claim for JR has been brought long out of time. The advice to which the claim relates was given by Lord Goldsmith in March 2003. It was published by the government in April 2005, and it is not clear to me why the applicant claims he did not know of Lord Goldsmith's alleged "failure to act" until the Iraq Inquiry Report was published in July 2016. On any view, it is plainly wrong to say that July 2016 is the date of the "failure to act". In any event, even if the applicant were able to show that he could not reasonably know the details of Lord Goldsmith's conduct until July 2016, he then delayed making his claim for a further 18 months. That further delay cannot be justified by the suggestion that he could not commence proceedings until other prospective litigants had decided not to pursue separate litigation: that may have been the reason why the applicant preferred to wait, but it is not a reason why he had to wait. The suggestion that he would have applied to be appointed as an advocate to the court in the other litigation, had it been commenced, is simply misconceived. Martin Spencer J was therefore unarguably correct to decide that permission should be refused on the grounds of delay alone.
2. The applicant has no standing to bring a claim. In public law terms, the essence of his case appears to be that Lord Goldsmith failed to consider a relevant factor, namely the "irenical perspective", when giving his advice. Usually, a claimant seeking JR in such circumstances would seek to show that the failure to have regard to a relevant factor had resulted in a wrong decision or in wrong action/inaction, by which he was personally affected. Here, in contrast, the applicant states that he offers no view on the legality of the UK decision to go to war. Nor does he say that Lord Goldsmith was obliged to give advice to the government on the basis of an "irenical perspective". His contention is that Lord Goldsmith acted unreasonably in his role as Law Officer and public protector of charity and/or failed to declare a conflict of interest. The applicant is of course entitled to his personal views about the "irenical perspective", but his holding of them does not give him standing to bring a claim. Nor does the claimed importance of the issues raised. The three matters which he relies on at para 2.1 of his statement of grounds do not assist him: the first and third merely explain why he takes an interest in the "irenical perspective"; the second is misconceived, as an advocate to the court is invited, usually by the court, to assist in ongoing litigation between other parties. Martin Spencer J was therefore unarguably correct in his decision that the applicant lacked standing.

3. As to the substantive merits of the claim for JR, it is clear that Lord Goldsmith was asked to advise the government as to the legality of prospective military action. He gave advice in that regard, necessarily referring to international law. The applicant has been unable to show any arguable basis for saying that Lord Goldsmith was obliged to take account of the "irenical perspective" or that a failure to do so rendered his conduct unlawful. The giving of legal advice to the government was one of Lord Goldsmith's roles as a Law Officer. The fact that Lord Goldsmith also had a role in relation to charities is irrelevant to the present issue. It is not arguable that Lord Goldsmith should have declared a conflict of interest. Martin Spencer J was therefore fully entitled to conclude as he did that the claim had no prospect of success and was totally without merit. I have read the grounds of appeal and accompanying papers, but can see no substance in the criticisms which the applicant makes of the decision. There is in my judgment no basis on which it could be argued that Martin Spencer J was wrong to reach that decision and that permission should be granted.

4. Martin Spencer J's decision that the JR claim could not result in any practical benefit to the applicant, and was therefore futile, was not (as appears to be suggested) a decision that declaratory relief is to be deprecated. It was an assessment, which he was entitled to make, that the JR proceedings would in reality be an attempt to ventilate the applicant's views, which would not be a proper use of the court's resources.

5. It was clearly appropriate that the applicant should pay the costs which had been incurred in preparing the acknowledgment of service and summary grounds of resistance. No claim in that regard had been made by Lord Goldsmith, but a claim had been made by the Interested Party. As I explain in my decision in relation to application C1/2018/1828, it was perfectly proper to order the applicant to pay those costs. The fact that Martin Spencer J expressed that as an order to pay costs to the defendant was an obvious error, and provides no basis for the contention that the decision as a whole was reached without due care and diligence.

6. There is therefore no basis on which a successful challenge could be made to Martin Spencer J's decision. Moreover, the appeal notice was served out of time, and there is no satisfactory explanation for the delay. I see no merit in the argument put forward in the email of 01.08.18.

7. The application for an order setting out the court's view as to whether a matter should be referred to the police is misconceived.

For those reasons, the applications for an extension of time and for permission to appeal are refused.

Where permission has been granted, or the application adjourned, any directions to the parties (including, if appropriate, any abridgement of the 35 day time limit for filing evidence provided for in CPR 54.14)

HER MAJESTY'S E & W COURT OF APPEAL

Signed:

Date: 1st November 2018

By the Court

Notes

(1) Rule 52.6(1) provides that permission to appeal may be given only where –
   a) the Court considers that the appeal would have a real prospect of success; or
   b) there is some other compelling reason why the appeal should be heard.

(2) Where permission to appeal has been refused on the papers, that decision is final and cannot be further reviewed or appealed. See rule 52.5 and section 54(4) of the Access to Justice Act 1999.

(3) Rule 52.15 provides that, in granting permission, the Court of Appeal may grant permission to appeal or permission to apply for judicial review. Where the Court grants permission to apply for judicial review, the Court may direct that the matter be retained by the Court of Appeal or returned to the Administrative Court.

Case Number: **C1/2018/1827/PTA**

DATED 1ST NOVEMBER 2018
IN THE COURT OF APPEAL

ORDER

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Dx 123242
Kingsway 6

Lower Court Ref: CO/1252/2018

PTA Template 269C1 - OCT16 - First Appeal

IN THE COURT OF APPEAL, CIVIL DIVISION

(GS:05.07.18)

Her Majesty's Court of Appeal

05 NOV 2018

CIVIL

REF: **C1/2018/1828/PTA**

PETER M SOUTHWOOD –v– **THE RT HON. LORD GOLDSMITH QC**

ORDER made by the Rt. Hon. Lord Justice Holroyde

On consideration of the appellant's notice and accompanying documents, but without an oral hearing, in respect of an application for permission to appeal against the order of Mr Eggers QC on 16.07.18 (sent to the parties on 18.07.18) varyinghte order for costs made by Martin Spencer J

Decision: The applications for an extension of time and for permission to appeal area REFUSED.

Reasons

The claim for JR challenges the conduct of Lord Goldsmith in his role as HM Attorney General. The appropriate course in such circumstances is to bring proceedings against HM Attorney General. The applicant however chose to commence proceedings against Lord Goldsmith personally, naming the Attorney General as Interested Party. In reality, the positions of Lord Goldsmith and the Attorney General in resisting the claim were the same. As would be expected in such circumstances, the Government Legal Department conducted proceedings on behalf of the Attorney General, putting forward grounds of resistance which were equally relied upon by, and were expressly adopted by, Lord Goldsmith.

Before Martin Spencer J, there was an application for costs on behalf of the Attorney General, but no such application on behalf of Lord Goldsmith. It was open to the court to make an order for costs in favour of the Attorney General, and it is clear that that is what Martin Spencer J intended to do. It is in my view also clear that his making of an order that costs be paid to the defendant was an error. It is equally clear that the Deputy Judge was correct to amend the order in a manner which better reflected the intention of Martin Spencer J.

The fact that the Deputy Judge refused an application for permission to amend the order in other respects is not inconsistent with, and does not undermine, the amendment which he made. In the circumstances of this case, amendment to name the Attorney General as the Defendant was not necessary.

In those circumstances an appeal against the deputy Judge's order has no real prospect of success, and there is no other compelling reason why an appeal should be heard. permission to appeal is accordingly refused.

Information for or directions to the parties

HER MAJESTY'S E & W COURT OF APPEAL

Where permission has been granted, or the application adjourned

a) time estimate (excluding judgment)
b) any expedition

Signed: Lin Holroyde

Date: 1st November, 2018

By the Court

Notes

(1) Rule 52.6(1) provides that permission to appeal may be given only where –
   a) the Court considers that the appeal would have a real prospect of success; or
   b) there is some other compelling reason why the appeal should be heard.

(2) Where permission to appeal has been refused on the papers, that decision is final and cannot be further reviewed or appealed. See rule 52.5 and section 54(4) of the Access to Justice Act 1999.

(3) Where permission to appeal has been granted you must serve the proposed bundle index on every respondent within 14 days of the date of the Listing Window Notification letter and seek to agree the bundle within 49 days of the date of the Listing Window Notification letter (see paragraph 21 of CPR PD 52C).

Case Number: **C1/2018/1828/PTA**

DATED 1ST NOVEMBER 2018
IN THE COURT OF APPEAL

ORDER

Copies to:

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