



Hilary Term
[2022] UKPC 1
Privy Council Appeal No 0037 of 2020

JUDGMENT

**Public Service Commission (Respondent) v Ceron
Richards (Appellant) (Trinidad and Tobago)**

**From the Court of Appeal of the Republic of Trinidad
and Tobago**

before

Lord Briggs

Lady Arden

Lord Sales

Lord Leggatt

Lady Rose

JUDGMENT GIVEN ON

31 January 2022

Heard on 25 November 2021

Appellant

Ramesh L Maharaj SC

Robert Strang

Alvin Ramroop

Kingsley Walesby

(Instructed by BDB Pitmans LLP (London))

Respondent

Thomas Roe QC

(Instructed by Charles Russell Speechlys LLP (London))

LORD SALES:

1. This case is primarily concerned with the obligation of the Public Service Commission (“the Commission”) to act fairly when deciding to suspend a prison officer from duty, on full pay, while a disciplinary investigation proceeds against him. It also raises an issue regarding the responsibility of the Commission for misfiling a letter of representations sent by the appellant, causing it to omit to consider those representations when it took its decision to suspend him.
2. The Commission is a body established under section 120(1) of the Constitution of Trinidad and Tobago. It has jurisdiction in relation to matters of discipline in relation to all public officers, including prison officers. The Public Service Commission Regulations (“the Regulations”) govern the exercise of the Commission’s functions in relation to discipline, among other things.

The Regulations

3. Chapter VIII of the Regulations is entitled “Discipline” and comprises regs 84-114. It applies in relation to officers employed in the civil service, the prison service and various other public services. Regulation 84 provides that an officer who is alleged to be guilty of misconduct or indiscipline by failing to comply with any regulation, order or directive which applies to him “is liable to disciplinary proceedings in accordance with the procedure prescribed in these Regulations”.
4. So far as is relevant for the present case, Chapter VIII provides in reg 90 that where a report or allegation of indiscipline or misconduct by an officer is received, the Head of Department (in this case, the Commissioner of Prisons - “the COP”) shall report the matter to the Director of Personnel Administration (“the Director”), an official of the Commission, for the attention of the Commission and shall warn the officer of the report or allegation (sub-reg (1)); an investigating officer shall be appointed by the Director or relevant Head of Department (sub-regs (2) and (2A)); the investigating officer shall give the officer a written notice specifying the time, not exceeding seven days, within which he may, in writing, give an explanation concerning the report or allegation (sub-reg (3)); the investigating officer shall “with all possible dispatch but not later than thirty (30) days from the date of his appointment” forward to the Director for the information of the Commission a report together with all relevant documents and statements (sub-reg (5)); the Commission may grant an extension of the time for the investigating officer to report (sub-reg (5A)); and, after

considering his report and any explanation given by the officer, the Commission shall decide whether the officer should be charged with a disciplinary offence (sub-reg (6)).

5. Regulation 88 provides:

“(1) When the Commission becomes aware of any act of indiscipline or misconduct and the Commission is of the opinion that the public interest or the repute of the public service requires it, the Commission may direct the officer in writing to cease to report for duty until further notice from the Commission, and an officer so directed shall cease to perform the functions of his office forthwith.

(2) An officer directed to cease to perform the duties of his office in accordance with subregulation (1) shall continue to draw full salary until notice is given to him by the Commission under regulation 89.”

Although the language used in reg 88(1) might suggest that the power of suspension can only be used where an act of indiscipline or misconduct has occurred, it is evident from the context in which it appears and it is common ground that reg 88 applies in a case where the Commission becomes aware of any allegation of indiscipline or misconduct.

6. Regulation 89(1) provides that where disciplinary proceedings for an officer’s dismissal or criminal proceedings have been or are about to be instituted against him, and where the Commission considers that the public interest requires that he should forthwith cease to perform the functions of his office, “the Commission shall interdict him from such performance”. The effective date of such interdiction is the date of receipt of notification of the interdiction or, where the officer has already been suspended under reg 88, such date as the Commission may direct (reg 89(2)); and once interdicted he shall be permitted to receive such proportion of his pay, not being less than one half, as the Commission may determine (reg 89(3)). Any deduction of pay may be reversed or varied in light of the outcome of the disciplinary proceedings (reg 89(4)).

The factual background and the decisions of the local courts

7. At the material time the appellant was a prison officer in the Trinidad and Tobago prison service. (He was also the President of the Prison Officers' Association of Trinidad and Tobago, but this has no bearing on the resolution of the legal issues in the appeal). He was subject to the Prison Service (Code of Conduct) Regulations 1990 ("the Code of Conduct"). Regulation 20 of that Code of Conduct provides that a prison officer commits an act of misconduct if he is guilty of discreditable conduct which includes conduct likely to bring discredit on the prison service: reg 20(2)(a)(i). Further, it provides by reg 20(2)(f) that a prison officer commits an act of misconduct if he fails to account for property for which he is responsible in connection with his duties as a prison officer.

8. In November 2013, the COP issued the appellant with a regulation firearm (an H & K Compact 9mm pistol) and ammunition.

9. According to the appellant, on 10 March 2016 he secured the firearm and ammunition in a small safe at his home, keeping the key in his personal possession. The safe was a portable type and was not affixed to the appellant's property. The appellant left his home to conduct business elsewhere and stayed overnight at a friend's house. When he returned home on 11 March 2016 he discovered that the safe and its contents had been stolen. The same day, he reported the theft to the local police, who conducted an investigation at the scene and recovered fingerprints. The appellant did not report the loss of the firearm to the prison service at this time.

10. In April 2016 the appellant ran into Mr Rudy Mahase, the armourer for the prison service, and told him that he had lost his firearm and ammunition. Although the evidence does not disclose what the appellant said, it is a fair inference that he told Mr Mahase that his firearm had been under lock and key but had been stolen. It seems that this led Mr Mahase to inform the COP about the incident. By a letter dated 9 May 2016 from Mr Mahase to the COP, Mr Mahase reported on the latest routine firearm inspection carried out by him with prison officers and again mentioned that the appellant's firearm and ammunition had been reported stolen.

11. By letter dated 28 June 2016, the COP informed the appellant that Mr Allan Nanan, a prison supervisor, had been appointed by him as investigating officer pursuant to reg 90 of the Regulations to enquire into allegations that (i) the appellant was discreditable in his conduct, contrary to reg 20(2)(a)(i) of the Code of Conduct, by reason of his failure adequately to secure the firearm and ammunition, which resulted in their theft; and (ii) the appellant had failed to account for the firearm and ammunition, contrary to reg 20(2)(f) of the Code of Conduct, when he reported the theft of the equipment. According to reg 90(1), at the same time the COP should have

informed the Director, for the Commission, about the allegations against the appellant, but by an oversight this was not done.

12. By a letter dated 11 July 2016 Mr Nanan wrote to the appellant to introduce himself and explain that he had been appointed to investigate the allegations, inviting the appellant to submit a statement in relation to them within seven days. Mr Nanan also met the appellant on 13 July and gave him a copy of this letter.

13. By letter dated 19 July 2016 (“the 19 July letter”), the appellant wrote to Mr Nanan to give his account. He wrote that he had secured the firearm and ammunition in a safe at his locked residence; on 11 March he discovered that his home had been broken into and the firearm and ammunition stolen by persons unknown; he had reported the theft to the police on the same day; and he maintained that he had acted in accordance with the Firearms Act. The appellant also sent a copy of the 19 July letter to the Director, for the Commission.

14. Also on 19 July, the appellant’s lawyer wrote to the Director, at the Commission, to submit that it would be wrong to prefer any disciplinary charge against the appellant and enclosing a copy of the 19 July letter, referred to as the appellant’s “statement”. Unfortunately, this was misdirected within the Commission and did not reach the members of the Commission who later considered the appellant’s case. It seems that the same happened with the copy of the 19 July letter which the appellant had sent directly to the Director.

15. By letter dated 2 August 2016, Mr Nanan wrote to the Commission to ask for permission to extend the time for his enquiries into the allegations against the appellant by 30 days (ie pursuant to reg 90(5A)). It appears from this letter that Mr Nanan assumed that the Commission had already been informed about his investigation. However, this was in fact the first the Commission had been told about the allegations.

16. At a meeting on 23 August 2016 the Commission considered the allegations and decided, pursuant to reg 88 of the Regulations, that the repute of the prison service and the public interest required it to direct the appellant to cease reporting for duty (that is to say, that the appellant should be suspended from duty on full pay) until further notice. This is the decision under challenge in these proceedings (“the decision”). In making the decision, the Commission did not consider the 19 July letter, which had been misfiled within its organisation. However, it appeared from Mr Nanan’s letter of 2 August that an investigation was under way into the incident involving the loss of the firearm and ammunition, that Mr Nanan had already made

some enquiries and that he wished to continue making enquiries. Accordingly, the position at the time of the decision, as it appeared to the Commission, was that serious allegations had been made in relation to the appellant, the appellant denied them, Mr Nanan had not decided by that stage that the complaint against the appellant could be rejected as unfounded, Mr Nanan's investigation was continuing and there was further evidence he wished to gather before coming to a view whether disciplinary charges should be brought against the appellant. The Commission decided to grant Mr Nanan additional time to continue his enquiries.

17. Following this meeting, on 30 August 2016 the Director, for the Commission, wrote to the appellant to suspend him pursuant to reg 88 and wrote to Mr Nanan to grant him an extension of time for his report until 9 September 2016. Thus the Commission expected to have Mr Nanan's report about the incident shortly after the suspension took effect.

18. On 5 September 2016, the appellant received the letter to him of 30 August. Also on 5 September 2016, the COP wrote to the appellant referring to his suspension from duty and, among other matters, requiring that he return his uniform and service card.

19. On 9 September 2016 Mr Nanan submitted his report to the Commission. The report is not in evidence. Nor is there any evidence about whether the Commission reviewed the report or the decision previously taken by it. However, the reason for this is that the appellant has not sought to mount a legal challenge against the Commission regarding its action or inaction at this stage.

20. On 9 December 2016, the appellant commenced this claim for judicial review of the decision.

21. In a judgment dated 17 November 2017 Rahim J, so far as is relevant for present purposes, held that the decision was unfair and therefore quashed it. Although there was no general right to a hearing prior to suspension pursuant to reg 88, in this case fairness required that the Commission should have granted the appellant the opportunity to be heard or should have considered his representations as set out in the 19 July letter before suspending him. The Commission had failed to take into account relevant matters when taking the decision, in the form of the contents of the 19 July letter which it had received but misfiled. Further, the decision was unreasoned and appeared to be based on general policy rather than the particular circumstances of the case (the appellant no longer pursues this last point, accepting that the decision was not the product of some blanket policy adopted by the Commission).

22. By a notice of appeal dated 28 December 2017, the Commission appealed. On 6 July 2018, before the hearing of the appeal in March 2019, the Commission wrote to the appellant to say that it was not proceeding with any charges against him in relation to the allegations and was lifting his suspension from duty. No explanation was given for this change of position, but it is not a matter in issue in these proceedings. It also appears from this letter that by this time the Commission had still not made any final decision whether to interdict the appellant from performance of his duties under the distinct power in reg 89.

23. By a judgment dated 11 June 2019, the Court of Appeal allowed the Commission's appeal. The substantive judgment was given by Rajkumar JA, with whom Moosai JA and Smith JA agreed. In the relevant part of the judgment, Rajkumar JA held that fairness (or natural justice) did not require the Commission to provide the appellant with an opportunity to be heard before taking the decision to suspend him. The Regulations set out a comprehensive statutory code which includes the right to be heard at various points in a disciplinary process, so in his view there was no scope for any right to an additional hearing to be implied into reg 88. So much had been decided by the Court of Appeal in its previous decision in *Police Service Commission v Murray* (Appeal No 143 of 1994) (unreported) 7 February 2000 ("*Murray*"), which should be followed. Moreover, since there was no right to be heard at the suspension stage, it followed in Rajkumar JA's view that there was no separate duty of fairness applicable at that stage, and the failure of the Commission to consider the appellant's representations in the 19 July letter was not in breach of any such duty and did not violate any right of the appellant. The appellant appeals to the Board in relation to this part of the decision of the Court of Appeal.

Discussion

24. In the Board's view, the Commission could rationally and legitimately consider that the loss of the appellant's firearm and ammunition in circumstances where it was suggested he had not taken proper care of them was a serious matter affecting the reputation of the prison service, as part of the public service, to a degree which engaged the power of suspension in reg 88. The loss of a service firearm by theft, with the result that it may enter into circulation in the criminal world, is clearly contrary to the public interest and if this occurred because of a failure of a prison officer to take proper steps to secure the weapon when it was at his home that could undermine public confidence in the public service.

25. Mr Ramesh Maharaj SC, for the appellant, submitted that this position was qualified by the long delay from March 2016 before the Commission's decision to

suspend the appellant at the end of August 2016. He suggested that the delay showed that the Commission was not greatly concerned by the incident of the loss of the firearm and ammunition and that there was no good explanation why it suddenly decided to take action only in August. However, the Board is satisfied on the evidence that the Commission only had notice about the alleged misconduct by the appellant from Mr Nanan's letter of 2 August 2016 and it proceeded to make the decision to exercise its power to suspend under reg 88 at a meeting held a relatively short time after that, which was the first occasion on which it considered the matter. Although the delay in notification of the Commission was unfortunate, as was the misfiling of the 19 July letter, it is clear that the Commission's decision to exercise its power of suspension under reg 88 did not represent any unexplained change of heart on its part. There is no basis for any inference that it did not in fact think that the allegations against the appellant were sufficiently serious to warrant the exercise of its power under reg 88.

26. The primary submission by Mr Maharaj, however, is that the Commission acted unfairly, and hence unlawfully, in exercising its power under reg 88 without giving the appellant an opportunity to make representations and in disregard of the representations he in fact made to the Commission in the form of the 19 July letter which was sent to the Director, on behalf of the Commission. As an alternative way of putting this point, Mr Maharaj submits that the decision was unlawful because it was taken without regard to relevant considerations, namely the representations made to the Commission via the Director as set out in the 19 July letter.

27. The Court of Appeal dismissed these submissions by relying on *Murray*, which concerned an equivalent disciplinary regime in relation to police officers set out in the Police Service Commission Regulations. The Court of Appeal in *Murray* held that there was no implied right to a hearing before the Police Service Commission exercised its power to suspend a police officer under reg 79 of those Regulations, which is materially the same as reg 88 of the Public Service Commission Regulations: see p 15 per Nelson JA. It is common ground in the present case that *Murray* is correct on this point and that the same is true as regards reg 88. The Board sees no reason to doubt this.

28. But the point decided in *Murray* is of comparatively narrow scope, namely that there is no automatic right to a hearing before the relevant power of suspension (in the present case, under reg 88) is exercised. That much appears from contrasting the absence of any indication that there is such a right in reg 88 with reg 90, which makes express provision for an officer to have an opportunity to make representations. Also, the Board considers that three features of the context in which reg 88 falls to be applied, taken together, are relevant as indicating that neither the basis for a decision

under that provision nor the consequences for an officer of suspension pursuant to that provision are of a character or seriousness which could justify the implication of a right to be heard applicable in every case where the power under reg 88 is exercised. Those features are: (a) the grounds to justify a suspension under reg 88 are the public interest or the reputation of the public service, which are matters about which information does not have to be sought from the officer himself; (b) suspension pursuant to reg 88 is on full pay (this is in contrast with the position in a New Zealand case particularly relied on by Mr Maharaj, *Birss v Secretary for Justice* [1984] 1 NZLR 513, which involved suspension with loss of pay); and (c) suspension pursuant to reg 88 will usually occur as part of a process which provides for representations to be made under reg 90 and which is supposed to lead to a decision within a relatively tight timetable as to whether a disciplinary charge will be brought against an officer and whether to proceed with a suspension by way of interdiction under reg 89.

29. However, with respect to the Court of Appeal in the present case, it does not follow from this that there is no scope in the context of exercise of the power of suspension under reg 88 for the application of a general duty of fairness which might, depending on the circumstances of the particular case, require some form of action on the part of the Commission. Fairness is another name for natural justice, so for convenience the Board will refer to fairness or the duty to act fairly. Legislation is to be construed in the light of values recognised under the common law and which it is presumed the legislature also recognises, so that where legislation confers a discretionary power to take action against an individual there is a presumption that the power must be exercised fairly. What fairness requires depends on the context in which the power arises and the circumstances in which it falls to be exercised.

30. It is sufficient to refer to two leading statements about the duty to act fairly. First, in *R v Secretary of State for the Home Department, ex p Doody* [1993] UKHL 8; [1994] 1 AC 531, a case concerning the procedure to be followed by the Secretary of State in setting tariff periods of mandatory imprisonment for prisoners serving life sentences, Lord Mustill said (p 560):

“What does fairness require in the present case? My Lords, I think it unnecessary to refer by name or to quote from, any of the often-cited authorities in which the courts have explained what is essentially an intuitive judgment. They are far too well known. From them, I derive that (1) where an Act of Parliament confers an administrative power there is a presumption that it will be exercised in a manner which is fair in all the circumstances. (2) The standards of fairness are not immutable. They may change with the passage of time, both

in the general and in their application to decisions of a particular type. (3) The principles of fairness are not to be applied by rote identically in every situation. What fairness demands is dependent on the context of the decision, and this is to be taken into account in all its aspects. (4) An essential feature of the context is the statute which creates the discretion, as regards both its language and the shape of the legal and administrative system within which the decision is taken. (5) Fairness will very often require that a person who may be adversely affected by the decision will have an opportunity to make representations on his own behalf either before the decision is taken with a view to producing a favourable result; or after it is taken, with a view to procuring its modification; or both. (6) Since the person affected usually cannot make worthwhile representations without knowing what factors may weigh against his interests fairness will very often require that he is informed of the gist of the case which he has to answer.”

And in *Lloyd v McMahon* [1987] UKHL 5; [1987] AC 625, 702-703, Lord Bridge of Harwich said:

“... the so-called rules of natural justice are not engraved on tablets of stone. To use the phrase which better expresses the underlying concept, what the requirements of fairness demand when any body, domestic, administrative or judicial, has to make a decision which will affect the rights of individuals depends on the character of the decision-making body, the kind of decision it has to make and the statutory or other framework in which it operates. In particular, it is well-established that when a statute has conferred on any body the power to make decisions affecting individuals, the courts will not only require the procedure prescribed by the statute to be followed, but will readily imply so much and no more to be introduced by way of additional procedural safeguards as will ensure the attainment of fairness.”

31. In Trinidad and Tobago, the presumption that a power conferred by legislation is to be exercised fairly is reinforced by section 20 of the Judicial Review Act 2000, which provides:

“An inferior court, tribunal, public body, public authority or a person acting in the exercise of a public duty or function in accordance with any law shall exercise that duty or perform that function in accordance with the principles of natural justice or in a fair manner.”

As pointed out in *Doody and Lloyd v McMahon*, what fairness requires will vary according to the context and circumstances in which a decision falls to be taken.

32. The first question in the context of the present case is whether, even though, in line with the decision in *Murray*, there is no automatic right either to a hearing or to be invited to make representations before a decision is taken under reg 88, fairness required the Commission in these particular circumstances to invite the appellant to make representations before it took the decision to suspend him pursuant to reg 88. In the Board’s view this was not required. The circumstances of this case were not of a kind to give rise to such a right as an incident of the duty of fairness.

33. The decision was taken in the context of an ongoing preliminary investigation under reg 90. By his letter of 2 August which was before the Commission Mr Nanan, the investigating officer appointed by the COP, had asked for an extension of time to continue with his investigation into the alleged breaches of the prison officers’ Code of Conduct. Accordingly it was clear that his investigatory work to that date, including after review of any explanation the appellant had given pursuant to reg 90(3), had disclosed that there was sufficient substance in the allegation to require further examination before a recommendation could be made whether to bring disciplinary charges or not. Although the Commission did not know the details of the appellant’s response since it did not have before it the letter of 19 July, it was clear from Mr Nanan’s letter that the appellant had disputed the allegation against him, since otherwise further investigation would have been unnecessary. The extension requested meant that Mr Nanan would soon produce his report, in early September 2016.

34. In these circumstances, the Board considers that there was no unfairness to the appellant involved in the Commission suspending the appellant on full pay in exercise of its powers under reg 88 without first giving him a hearing or inviting him to make representations. The decision was taken in the course of the operation of the procedure under reg 90 which meant that a designated investigating officer was actively examining the facts of the case and would report shortly. He was better placed than the Commission to do this. In view of the short time before the investigating officer would report, the opportunity for the appellant to make representations to the investigating officer in the course of his investigation, and the limited impact of

suspension under reg 88 on the appellant, the Commission was entitled to consider that it was appropriate to leave the investigation of the facts at this very preliminary stage to the investigating officer rather than try to conduct a separate investigation of its own. Fairness did not require the Commission to pre-empt Mr Nanan's investigation.

35. The Board would observe that once the Commission received the report of the investigating officer, accompanied by relevant documents, it should have reviewed the position in the light of it. The report would have set out relevant information which ought to be taken into account when deciding whether or not the appellant could return to his duties. The evidence does not reveal what happened after Mr Nanan completed his report, but this is because the appellant brought no legal challenge directed to the Commission's conduct after it took the decision to suspend him in the first place. The Board would also point out that in other contexts fairness might require the Commission to give an opportunity to make representations before deciding whether to exercise the power under reg 88. For example, the power in reg 88 is not limited to cases in which an investigation is taking place under reg 90 and, if no one is conducting an investigation of the facts, it might be incumbent on the Commission to examine them itself to some degree.

36. This leaves the issue whether the decision should be quashed because the Commission misfiled the 19 July letter sent to the Director by the appellant and also by his attorney, and so did not consider the representations it contained before deciding to exercise its power under reg 88. In the Board's view, even though the Commission was not obliged to invite the appellant to make representations before it took the decision, if it had appreciated that the appellant had written to it to explain things fairness would have required that it consider those representations before suspending him. Mr Thomas Roe QC, for the respondent, accepted that it is possible to envisage that an officer against whom an allegation is made might be able to give an explanation which is so convincing (eg if supported by corroboration from a witness of unimpeachable character with knowledge of the relevant incident) that it could persuade the Commission that there is nothing in the allegation and that it would be wrong to suspend him. It is one thing to say that the Commission does not have an obligation to give an officer an opportunity to make representations, but quite another to say that if the Commission has in its hands a letter containing representations from the officer it is fair not to read it before deciding how to proceed. Further, since such a letter contains information relevant to the decision to be taken and reading it would involve no delay nor any other impediment or burden before the Commission would be in a position to decide whether action should be taken under reg 88, it would be irrational for it not to take account of it before deciding what to do. Fairness and rationality go hand in hand on this point.

37. In the Board's view, the failure of the Commission to consider the appellant's representations in the 19 July letter did constitute a breach of its duty under public law. The misfiling of the letter, with the result that the Commission did not consider it, was the responsibility of the Director or other agents of the Commission. Their actions are attributable to the Commission. The position is therefore as if a decision-maker put a document containing relevant information in his or her desk and did not look at it before deciding how to proceed, which would be both unfair and irrational. It is also analogous to a case in which an official of a public body inaccurately summarises representations received from interested parties so that the public body is misled into overlooking some relevant consideration which was improperly omitted from the summary, which is a basis for the decision of the body to be quashed: see eg *R (Palmer) v Herefordshire Council* [2016] EWCA Civ 1061; [2017] 1 WLR 411, para 8 (Lewison LJ); *R (Mansell) v Tonbridge & Malling Borough Council* [2017] EWCA Civ 1314; [2019] PTSR 1452, para 42 (Lindblom LJ).

38. However, the Board is also satisfied that if the Commission had considered the 19 July letter it could not have made any difference to the decision to suspend the appellant pursuant to reg 88. The letter would have told the Commission nothing of relevance more than it knew already: the appellant disputed the allegation of misconduct and he had offered an explanation which required investigation and was being investigated in the appropriate way. Those were the circumstances known to the Commission which had led to it taking the decision to suspend the appellant in exercise of its power under reg 88.

39. Since this is not a case in which there was a right to a hearing before the decision was taken and it is clear that the element of unlawfulness present has had no impact on the decision, it is appropriate that relief should be refused and that the decision should not be quashed. The case law is consistent on this point: on breach of the duty of fairness which clearly has no impact at all on a decision, see *SH (Afghanistan) v Secretary of State for the Home Department* [2011] EWCA Civ 1284, paras [15] and [24] (Moses LJ) and *Sanusi v General Medical Council* [2019] EWCA Civ 1172; [2019] 1 WLR 6273, para 99 (Simler LJ); on failing to take account of relevant considerations or taking into account irrelevant considerations, see *Simplex GE (Holdings) Ltd v Secretary of State for the Environment* (1989) 57 P&CR 306, 325-326 (Purchas LJ) and *R (First Division Association) v Secretary of State for Work and Pensions* [2012] EWCA Civ 332; [2013] 1 WLR 444, paras 67-68 (Lord Neuberger of Abbotsbury MR); and on inaccurate summary of representations, see *Smech Properties Ltd v Runnymede Borough Council* [2016] EWCA Civ 42.

Conclusion

40. For the reasons given above, which are somewhat different from those given by the Court of Appeal, the Board dismisses the appeal.