Senior-Milne v The Institute of Chartered Accountants in England & Wales (Ref: CO/11766/2010)

Notice of renewal (Form 86B), section 3 – Grounds for renewing application.

1. The Acknowledgement of Service was due to be filed by 9/12/2010, 21 days after the filing of the application (CPR 54.8(2)(a)). It appears that this deadline was not met and I have still not been served with a sealed copy. In any event, a copy of the Acknowledgement of Service should have been sent to me within 7 days of 9/12/2010; that is, by 16/12/2010. A copy was actually sent to me by a letter dated 22/12/2010, which did not reach me until after 1/1/2011.
2. The defendant has given no good reason for this failure to comply with time limits.
3. The order of 7/1/2001 refusing my application for permission to apply for a judicial review states *'The actual complaint in relation to PricewaterhouseCoopers (PwC) has been considered by the defendant on two previous occasions – 4th March 2008 and 6th October 2009. Accordingly, the complaint has been investigated.'* My **ACTUAL** complaint (i.e. what it factually was – see a dictionary) was against the auditors of the **EIGHT** life companies referred to in the Parliamentary Ombudsman's report on the Equitable Life crisis and it makes **no mention** of PwC. I do not know whether PwC was one of these auditors, the ICAEW does not know, the ICAEW's legal representative (J M Trotter of Bates, Wells & Braithwaite) does not know and the judge (HHJ Behrens) certainly does not know. Given this and the fact that it is possible that PwC were in fact **NOT** one of these auditors, on what basis has HHJ Behrens decided that my complaint relates to PwC and **ONLY** to PwC? The answer is quite plainly that he has **no basis whatsoever** for coming to such a conclusion.
4. **In addition, HHJ Behrens gave no reasons for reaching this conclusion. This renders his order unlawful, as explained below.**
5. HHJ Behrens' assertion that my complaint relates to PwC is therefore not only unjustified but it is unjustifiable.
6. In this context it should be noted that my earlier complaint to the ICAEW against PwC was not rejected on the basis that it was the same as the previous complaint made by others against Ernst & Young (which led to Sir Jonathan Parker's report) even though both complaints related to a failure to make proper disclosure of GAR liabilities in the 1998 accounts of the companies concerned (Equitable Life and Scottish Widows).
7. The question is that if these two complaints against two different auditors (Ernst & Young and PwC) were deemed **NOT** to be the same complaint even where both relate to a failure to qualify the 1998 accounts of the companies concerned in respect of GAR liabilities, why did the ICAEW reject my later complaint against the auditors of the eight other life companies on the basis that it **WAS** the same complaint? Even if PWC had audited **ALL EIGHT** of these companies and even if one of these eight companies had been Scottish Widows there would still effectively be **SEVEN NEW AND SEPARATE COMPLAINTS**, each of which should be investigated (each one is a potential Equitable Life on its own).
8. HHJ Behrens states that *'In my view the defendant was entitled to take the view that the report of Sir Jonathan Parker in relation to Equitable Life did not effect the position and that there was no new evidence.'*
9. **In the first place HHJ Behrens gives no reasons for his decision; he has given a mere statement of his conclusion without explaining how he came to that conclusion. This renders his order unlawful, as explained below.**

10. In the second place, because my complaint was NOT against PwC it is invalid to assess the evidence against the evidence in my previous complaint against PwC. The evidence I submitted in relation to my later complaint should be assessed on its own merits and not by reference to whether it is 'new' in relation to a previous complaint.
11. Sir Jonathan Parker concluded that Ernst & Young should have qualified the 1998 accounts of Equitable Life in the absence of specific legal advice to the effect that they did not need to do so. This gives rise to the very reasonable question of why the accounts of the eight other life companies whose GAR liabilities were, according to the Parliamentary Ombudsman, a cause for at that time (1998) were not qualified.
12. One **CANNOT** conclude that because the 1998 accounts of these other eight life companies were not qualified that the auditors of these companies **DID** obtain legal advice to the effect that they did not need to qualify those accounts. On the contrary, because we **KNOW** that these liabilities were a cause for concern (meaning that they were large enough to threaten the survival of the life companies concerned) we can reasonably conclude that no-one would have been prepared to give such legal advice **(Who on earth would be prepared to give legal advice to the effect that it is unnecessary to qualify the accounts of a company which clearly might go bust in the near future, as Equitable Life did? *'Excuse me, Mr. Lawyer. We have a company here that might go bust in the next few months. Will you give us a legal opinion which says that we do not need to qualify their accounts in respect of the matter which might make them go bust? Thank you.'*)**.
13. We can therefore say to ourselves *'Given that it is extremely unlikely that anyone would have been prepared to give legal advice to the effect that it was not necessary to qualify the accounts of these eight other life companies, this **MUST** logically mean that the auditors of those eight other life companies issued unqualified audit reports **WITHOUT** having obtained such legal advice; the advice which Sir Jonathan Parker's report it makes clear should be obtained where there are significant GAR liabilities.'*
14. With regard to the defendant's assertion that my complaint was *'generalised and unspecific'* (para. 2 of the Summary Grounds for Contesting the Claim) I refer to a letter dated 13/12/1991 to Sir Tam Dalyell from the Chief Constable and Deputy Chief Constable of Lothian & Borders Police in which they said said: *'the police have a duty to investigate all criminal matters that come to their notice, either as a result of a direct report or allegation, or as a product of information received. Such information would include rumour and speculation, some of which is true but so often false, and facts reported to us by known informants. It is not our practice to ignore reports falling within these categories, but our duty is to investigate all criminal matters arising from these reports and submit all the evidence gathered to the Crown, through the Procurator Fiscal.'* ('The Report on an Inquiry into an Allegation of a Conspiracy to Pervert the Course of Justice in Scotland' dated 26 January 1993, para.12.22).
15. It is quite clear, on this basis, that:
    a. it is the duty of a regulatory authority, such as the ICAEW, to carry out investigations to ascertain the facts;
    b. it is not the duty of the complainant to present a 'finished case' to a regulatory authority and it is unreasonable for the regulatory authority to expect the complainant to do so;

c. the complainant will often have no authority to carry out an investigation to ascertain the facts and their only duty is to report their concerns to the relevant authority; indeed, in some cases (whistleblowers for instance) complainants are **officially** advised NOT to carry out an investigation but merely to report their concerns (e.g. Audit Scotland's guidance note on whistleblowing (ISBN 1 904651 14 3));
d. it is therefore not only unreasonable but preposterous for the ICAEW to reject a complaint on the basis that the complainant has not provided information which could only be ascertained by an investigation. As I have made clear that is their job, not mine;
e. the critical point is that I have given the ICAEW enough information to allow them to ascertain the facts; that is all that is required;
f. my complaint is about the ICAEW's refusal to ascertain those facts.

16. With regard to costs CPR 44.5(3)(f) says that the court **must** also have regard to *'the time spent on the case'*. There is no information on the time the defence has spent on the case, which means that the court cannot have taken this matter into account. **This renders the order in relation to costs unlawful.**
17. With regard to HHJ Behrens' failures to give reasons, as noted above, I would note as follows:
    a. In Vernon v Spoudeas & Anor [2010] EWCA Civ 666 at 44 it states *'The appellant is plainly entitled in my judgment to a properly reasoned decision* [my emphasis]*... it cannot be inferred or assumed that the District Judge reached a considered judgment on the merits of the application by reference to the evidence before her and the criteria in CPR Rule 3.9'*. This makes it clear that if a judge does not give proper reasons for a decision it cannot be assumed that he has reached a considered judgement based on the arguments and evidence before him. This is binding on HHJ Behrens.
    b. In Bhamjee v Forsdick & Ors (No 2) [2003] EWCA Civ 1113 at 4, and with reference to litigants in person, it states *'We must stress that in many, if not most, of these cases the litigant in question has been seriously hurt by something that has happened to him in the past. He feels that he has been unfairly treated, and he cannot understand it when the courts are unwilling to give him the redress he seeks. Judges must, as always* [my emphasis]*, listen to his case carefully and be astute to see whether there is any point of legal merit in what he is saying to them. And if they are unable to help him, they must give their reasons clearly, in language he will understand* [my emphasis]*.'* This is binding on HHJ Behrens.
    c. With regard to the adequacy of reasons I would refer to the words of Lord Brown in South Bucks District Council and another v Porter [2004] 4 All ER 775 at 36:

    'The reasons for a decision must be intelligible and they must be adequate. They must enable the reader to understand why the matter was decided as it was and what conclusions were reached on the "principal important controversial issues", disclosing how any issue of law or fact was resolved.'

d. According to *'A Practical Approach to Civil Procedure'* (Sime, Stuart, Oxford, 9th Ed., p. 521) *'short reasons are usually all that is given on a refusal of permission'*. This is based on Hyams v Plender [2001] 1 WLR 32 at 17. But if we look at this reference it says:

'There is one other point to which I would draw attention. This arises from a complaint by Mr Plender that the decision of Evans-Lombe J breached Article 6 of the European Convention on Human Rights. The Human Rights Act 1998 comes into force on 2nd October. A litigant will have a right to a reasoned decision under Article 6. On an application for leave the judge dealing with the application can, in my view, properly be brief in explaining his conclusion. <u>But, as will be apparent from this judgment, merely to say that the Part 52 Practice Direction has not been complied with may give rise to a real difficulty in knowing what requirement of that Practice Direction has, in the judge's view, not been met. In my judgment the judge should have identified how the Practice Direction was not complied with. I emphasise that this can be done briefly. But it should not be left to the conjecture of the litigant.</u> [my emphasis]'

This makes it clear that although reasons can be brief they must still be adequate. As LJ Gibson makes quite clear '*it should not be left to the conjecture of the litigant*'. This means that it is not sufficient to say, as HHJ Behrens did, that the defence was entitled to take a certain view, the <u>basis</u> on which the he has come to that conclusion must be explained. In short, Hyams v Plender is not an authority for giving short reasons, it is an authority for requiring reasons to be adequate even if they are short.

18. My question is *'Why would HHJ Behrens <u>deliberately</u> misrepresent my case in such a blatant and obvious (and frankly criminal*) manner?'* I can understand why the defence would do so (indeed, did so) but not a judge. Further *'Why would HHJ Behrens issue an order which was not doubly but triply unlawful, on the basis that he twice failed to give reasons for a conclusion and that he acted in clear breach of CPR (the rules of his own court) in relation to costs?'* Is HHJ Behrens really unaware of the fact that he must give reasons for his decisions? Is he really unaware of the rules relating to costs? I don't think so. I can only assume that he is confident that he will not be held to account for his actions (the lazy contempt of unaccountability) and that he will be backed up by his fellow criminals in the seething cesspit of the judiciary.

*The offence of perverting the course of justice is committed when an accused does an act or series of acts which has or have a tendency to pervert and which is or are intended to pervert the course of justice (Archbold 28-1 to 28-28).

19. This document will be permanently available on the internet at www.happywarrior.org.
20. I believe that the statements made in this document are true.

Graham Senior-Milne