Case No: CO/4676/2002

IN THE HIGH COURT OF JUSTICE
QUEENS BENCH DIVISION
ADMINISTRATIVE COURT
NEUTRAL CITATION NO. [2003] EWHC 1761 (ADMIN)

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 21 July 2003

Before :

THE HONOURABLE MR JUSTICE MAURICE KAY

Between :

I – CD PUBLISHING LTD	**Claimant**
- and -	
THE SECRETARY OF STATE	**Defendant**
THE INFORMATION COMMISSIONER	**Interested Party**

Miss Fenella Morris (instructed by **Cumberland Ellis Peirs**) for the Claimant
Jonathan Crow and Steven Kovats (instructed by **Treasury Solicitors**) for the Defendant
Jane Collier appeared for the Information Commissioner.

Hearing dates : 20 May 2003

JUDGMENT : APPROVED BY THE COURT FOR HANDING DOWN (SUBJECT TO EDITORIAL CORRECTIONS)

Mr Justice Maurice Kay:

1. In **R (Robertson) v. Wakefield MDC** [2002] QB 1052 ("Robertson No 1") I held that the supply of the electoral register to purchasers pursuant to regulation 48 of the Representation of the People (England and Wales) Regulations 2001 for the purposes of direct marketing without giving an individual elector the opportunity to object was unlawful by reason of section 11 of the Data Protection Act 1998, Article 14(b) of Directive 95/46/EC, Article 8 of the European Convention on Human Rights (ECHR) and Article 3 of the First Protocol to the ECHR. As a result, the offending parts of the 2001 Regulations were repealed by regulation 3 of the Representation of the People (England and Wales) (Amendment) Regulations 2002. Regulation 15 of the 2002 Regulations inserts new regulations 92-115 into the 2001 Regulations. The position which now obtains is that electoral registration officers are required to compile two registers – a full register and an edited register. Electors are able to require that they be excluded from the edited register. Regulation 111 prohibits the sale of the full register except in circumstances falling within regulation 113 or 114. Regulation 113 relates to the sale of the full register to Government departments for limited purposes. It is not directly relevant to this case. Regulation 114 then provides:

> "(1) Subject to regulation 112 (2) above [which concerns the availability of sufficient copies] the registration officer shall supply on request and on payment of a fee calculated in accordance with regulation 111 above copies of a relevant document to a credit reference agency which is registered under Part III of the Consumer Credit Act 1974 (by virtue of section 147 of that Act) and which is carrying on the business of providing credit reference services.
>
> (2) For the purposes of regulation 112(3) above, the relevant restrictions apply except for the purposes set out in paragraph (3) below.
>
> (3) Those purposes are –
>
> > (a) vetting applications for credit or applications that can result in the giving of credit or the giving of any guarantee, indemnity or assurance in relation to the giving of credit;
> >
> > (b) meeting any obligation contained in the Money Laundering Regulations 1993, the Money Laundering Regulations 2001 or any rules made pursuant to section 146 of the Financial Services and Markets Act 2000; and
> >
> > (c) statistical analysis of credit risk assessment in a case where no person whose details are included in the full register is referred to by name or necessary implication.

> (4) The registration officer may require a credit reference agency to provide such evidence that it is carrying on the business of providing credit reference services as he shall reasonably require.
>
> (5) In this regulation –
>
> > 'application for credit' includes an application to refinance or reschedule an existing credit agreement; 'credit' includes a cash loan and any other form of financial accommodation; and 'credit reference service' means the furnishing of persons with information relevant to the financial standing of individuals, which is information collected by the person furnishing it for the purpose of so furnishing it."

Regulation 112 prohibits any person in an organisation from using the full register for purposes for which the organisation itself would not be able to use it.

2. It is plain that the policy underlying the 2002 amendments was that, whereas Robertson (No 1) prohibited the sale of the full register for direct marketing purposes, it remained possible and was desirable to permit it for credit reference purposes. As it happens, the same Mr. Robertson mounted a challenge to the amended Regulations on the basis that the sale of the full register for credit reference purposes is unlawful because it falls foul of Robertson (No 1) and/or Article 3 of the First Protocol. However, in a judgment handed down on the same occasion as this judgment, I have ruled against that challenge: Robertson (No 2). The present case is in the form of an application by I-CD Publishing Limited (I-CD), which seeks to challenge regulation 114 from the opposite perspective. Whereas Robertson (No 2) was a challenge on the basis that regulation 114 does not go far enough, the case of I-CD is that it goes too far.

The context

3. It is common ground that, historically, two large credit reference agencies – Experian and Equifax – have dominated the sector. More recently, they have been joined by a third, Call Credit. These companies provide sophisticated and relatively expensive credit reference services which are based on a number of sources, including the full register. They are able to bring themselves within regulation 114. I-CD provides a more limited and less expensive service under the style 192.com. It is based on the full electoral register. It is made available on CD-ROM or, more recently, on the internet. On behalf of I-CD, Miss Morris describes it as "a low-cost identity – verification service, particularly for businesses which wish to carry out basic credit-vetting without utilising the more extensive and more costly services of the big credit reference agencies". One of the differences is that, unlike Experian, Equifax and Call Credit, I-CD does not include information about any judgments against prospective borrowers. Although I-CD is registered as a credit reference agency by the Office of

Fair Trading, it claims that it is now prevented from carrying on its business because it does not fall within regulation 114.

The present challenge

4. In its re-amended form, I-CD's application falls into two parts. The first part comprises three conventional grounds of challenge which seek to attack regulation 114 on the basis of a failure of consultation, irrationality and an insufficiency of reasons. By the second part, I-CD seeks declaratory relief essentially to the effect that, if it were now to modify its business in various ways, it would come within regulation 114. I now turn to consider these matters.

Ground 1: consultation

5. I-CD's case on consultation is set in a historical context. That history does not begin with Robertson (No 1). A useful starting point is the Final Report of the Working Party on Electoral Procedures under the chairmanship of George Howarth MP ("the Howarth Report") of October 1999, which recommended the introduction of an edited register based on a right of individual electors to opt out of their inclusion in the register in the form supplied to commercial interests. Coming on top of Directive 95/46/EC and the Data Protection Act 1998, this provided the Government with impetus for legislation. The Representation of the People Bill included clause 9 which became section 9 of the 2000 Act. It enabled the making of regulations to provide for preparation of two registers – the full register and the edited register. This resulted in the 2001 Regulations and their later amendment by the 2002 Regulations. This potted history simply serves to demonstrate that reform was in the air well before Robertson (No 1), in which judgment was handed down on 16 November 2001.

6. In February 2000 I-CD wrote to the Minister at the Home Office, the Opposition spokesman in the House of Lords and the Data Protection Registrar expressing concern about the potential impact of the Bill and any subsequent regulations on its business. It emphasised its claims to provide a valuable low-cost service to businesses which cannot afford the services of Experian and Equifax. On 8 March 2000 Mike O'Brien MP, the Parliamentary Under Secretary of State replied, appreciating I-CD's concern. The letter concluded:

> ".....details of the new regime will be contained in regulations which will be drafted once the Bill has received Royal Assent. We are still in discussion with those, like yourselves, who have an interest in these regulations and the views expressed will be taken into account in the drafting process."

On 20 April, in reply to a further letter from I-CD, Mr. O'Brien said:

> "We are still trying to work out exactly how the regulations will work in practice and consequently how they will be framed.

> But they will be published in draft form and no doubt you will wish to comment further at that stage."

According to George Scott, a barrister then employed by I-CD, he had a telephone conversation with a civil servant (who is now deceased) in October 2000 in which

> "he informed me that the most appropriate time for me to convey my comments was when the draft regulations were published. However, he told me that the draft regulations would be sent to us in due course. He assured me that the claimant would be sent a copy of these as and when they were published and that we could take it from there. He made no reference to the Departmental website or to the Stationary Office at any stage."

7. The 2001 Regulations, in their original form, came into force on 16 February 2001. Further draft regulations were published on the Home Office website on 2 May 2001 and responses were invited from interested persons by 11 June 2001. The Secretary of Sate did not proceed with this draft, perhaps because Robertson No 1 was pending.

8. In December 2001, shortly after Robertson (No 1), Dominic Blackburn of I-CD learned indirectly that there was to be a meeting at the Department of Transport, Local Government and the Regions (to which election policy had been transferred). He made contact with the Department and attempted to be invited but was unsuccessful. He was told that the meeting was full.

9. On 13 May 2002 the Secretary of State published and placed on the Departmental website a consultation paper which set out proposals for regulations. At the same time he sent notification to the British Bankers Association, the Direct Marketing Association, the Institution of Charity Fund Managers, the Confederation of British Industry, the Advertising Association and the Federation of Small Businesses. He asked these organisations to bring the consultation paper and an accompanying questionnaire to the attention of their members and encouraged them to copy them to other interested parties. According to a letter from the Treasury Solicitor they were also sent to "individuals and organisations who had specifically asked to receive papers". However, they were not sent to I-CD. Its case is that it was only after the 2002 Regulations had been made on 18 July that it came to know of them – in or about September. This is the factual background against which I-CD seeks to challenge regulation 114 on the basis of a failure to consult.

10. Any consideration of I-CD's case on a lack of consultation must begin with an examination of the chronology of events. Plainly the letters upon which reliance is placed – those of 8 March 2000 and 20 April 2000 – related to the earlier draft regulations and not the ones which became the 2002 Regulations. They predated **Robertson (No 1)** by a considerable margin. So too did the involvement of Mr. Scott. The judgment in **Robertson (No 1)** was handed down on 16 November 2001. It can have left no one in any doubt that the Government would have to take steps to amend

the 2001 Regulations to enable electors to object to the sale of the full register for use in direct marketing. It is clear that the business of I-CD involved the dissemination of information derived from the full register for purposes that included direct marketing. That is readily apparent from its publicity material and is no doubt the reason why Mr. Alastair Crawford of I-CD accepts in his second witness statement that I-CD now "needs fundamentally to change the way in which it offers this type of service".

11. The purpose of the meeting of 7 December 2001 was to explain to the invitees the Government's position in the light of **Robertson (No 1)**. I do not consider that I-CD had a right to attend that meeting, either by invitation or on request. Mr. Crawford concedes that I-CD are not direct competitors of Experian and Equifax, which, he says, provide "full credit references.....to larger UK businesses". I am satisfied that from **Robertson (No 1)** onwards the widening of the permitted uses of the full register beyond those that eventuated by way of the 2002 amendment was never, and could never have been, a serious possibility.

12. It is also obvious that I-CD, which had been concerned to engage the Government in relation to the effect of the proposed changes in 2000, must have been fully aware that its problems had been intensified by **Robertson (No 1)**. Although Mr. Crawford says that he did not know "precisely" what the 7 December 2001 meeting was about, there can be no doubt that he knew enough to realise that change was on the way and that it would be to the detriment of I-CD. It would be unrealistic of me to approach the matter on any other basis. Following the meeting, I-CD could have taken steps to make representations to the Government but it did not do so because, in Mr. Crawford's words, "I simply did not feel that we were being given a right to have our say or have our representations noted". He decided to await events, expecting that "we would be informed if matters were progressing". He describes the attitude of his colleagues and himself over the ensuing period as "somewhat fatalistic". They felt that to complain or make representations would be "fruitless".

13. However, there is no doubt that I-CD could have made representations at any time after 7 December 2001, whether or not the actual consultation exercise in May-June 2002 came to its notice. In the event, the case for I-CD is that it did not know about the consultation exercise or even the Regulations themselves until 2 September. If that is true (and I have to say that, having regard to the history, I find it barely credible), it shows that I-CD was at the very least seriously culpable. The consultation exercise received a great deal of publicity, not only through the Departmental website, but also by way of questions in both Houses of Parliament, a Departmental press release and press and radio coverage. I-CD has a history of active and timely involvement in such circumstances. I simply do not understand why it held back on this occasion – or, if it did not know what was going on, why it did not know.

14. In the course of her reply, Miss Morris finally came to identify the essence of I-CD's complaint about its perceived exclusion from the consultation process. First and foremost it is that it was denied the opportunity to ascertain, through the consultation exercise, whether it would qualify as a credit reference agency and, if not, what steps it would have to take in order to qualify. That rather let the cat out of the bag. Even if

there had been consultation with I-CD, it is not incumbent upon the Government to engage in a dialogue with a consultee such that it crosses the boundary from the conscientious consideration of representations into the giving of advice as to future compliance. That would be to go way beyond what the law requires of consultation: **R v. North and East Devon Health Auhtority, ex parte Coughlan** [2001] QB 213.

15. All this leads me to the following conclusions:

(1) After **Robertson (No 1)** there was no prospect that the inevitable amendment of the 2001 Regulations would result in a significantly wider provision for the sale of the full register than the one that materialised.

(2) Consultation directly with I-CD would not and could not have changed that reality.

(3) There was no legal obligation of direct consultation specifically with I-CD at any time after **Robertson (No 1)** and the consultation exercise which took place in May and June 2002 was lawfully devised and executed.

(4) If I-CD had made representations – whether or not it knew of the consultation exercise – they would have been considered but, realistically, they could not have achieved what they might have sought, either in relation to the content of the Regulations or in the form of any advice as to compliance with them.

(5)Such was the culpability of I-CD during the relevant period when it buried its corporate head in the sand that, as a matter of discretion, I would have been disinclined to grant relief at this stage even if it had established a breach of duty to consult.

Accordingly, this ground of challenge must fail. A further issue was canvassed before me, namely delay. Having considered the matter substantively (and, in one respect, in relation to discretion), and having found against I-CD, it is not strictly necessary for me to deal with the issue of delay. However, I shall do so briefly. These proceedings were issued on 10 October 2002 – almost three months after the 2002 Regulations were made on 18 July. Mr. Crow submits that that was not prompt in all the circumstances of this case. Miss Morris submits that time could not have started to run until 18 July (rather than, say, the publication of the consultation document) and that, because I-CD knew nothing of the Regulations until 2 September, I should consider promptness only from that date. I am unpersuaded by the second of those submissions for the reasons of culpability (and credibility) to which I have referred. Miss Morris then submits that, in the light of dicta in **R (Burkett) v. Hammersmith and Fulham London Borough Council** [2002] 1 WLR 1593 (per Lord Steyn at p 1611, Lord Hope of Craighead, at p 1612, 1614) I should take the plunge and find the requirement of promptness (CPR Part 54.5) to be non-compliant with Article 6 of the

ECHR because of its uncertainty. However, I am not disposed to do so. Mr. Crow pertinently observes that the House of Lords, in **Burkett** did not consider **Lam v. United Kingdom**, an admissibility decision of the Strasbourg Court on 5 July 2001 (41671/98), in which the contention that the promptness requirement breached Article 6 was declared inadmissible. The present case is certainly not the one to come to a contrary conclusion.

16. My conclusion on the delay issue is that I-CD has not acted promptly in bringing these proceedings. In view of its culpability it is not appropriate to discount the time between 18 July and 2 September. In a challenge to Regulations which impact on a national level, it is incumbent upon a claimant to bring proceedings as soon as reasonably practicable, particularly where the complaint is confined to an alleged breach of duty to the claimant alone rather than, say, inherent incompatibility with the ECHR, an EU Directive or something of that sort. Miss Morris' final submission on delay is that, even if I-CD did not act promptly, I should extend time because of the public importance of the issue. However, I find no such public importance. No one is seeking to advance or support this challenge apart from I-CD itself and, given the nature of the challenge and the narrowness of the Government's room for manoeuvre after **Robertson (No 1)**, this would not have been a case for extending time.

Ground 2: irrationality

17. This ground of challenge is to the effect that Regulation 114 is irrational because, by requiring a credit reference agency which is registered under Part III of the Consumer Credit Act 1974 also to be "carrying on the business of providing credit reference services" in order to be eligible to purchase the full register, the Regulation excludes those concerns which were not "carrying on the business of providing credit reference services" at the material time. Miss Morris seeks to put this in two ways. First, she submits that, in order to be eligible, a credit reference agency would have to have been "carrying on the business of providing credit reference services" on the date when the Regulation came into force and, on that basis, there is an irrational exclusion of those who only come to satisfy that test at a later date. Eligibility was thereby limited to two or three companies. I am not persuaded by this submission. It misconstrues the Regulation. The time when the prospective purchaser has to be "carrying on the businesses of providing credit reference services" is the point at which it requests to purchase the full register.

18. Secondly, Miss Morris suggests that the Regulation is irrational because only those who are already purchasing the full register can be said to be "carrying on the business of credit reference services". Again, this limits eligibility to companies such as Experian and Equifax and excludes a company such as I-CD which has traditionally provided a service of low-cost identity verification to the benefit of the very type of credit provider and borrower whom the Government is anxious not to exclude. In my judgment, this submission also fails. Regulation 114 is neutral as to the number of eligible credit reference agencies. The evidence discloses that a third company – Call Credit – has been able to establish eligibility since the Regulation came into force. Although Mr. Crawford accepts that, at the moment, I-CD "needs fundamentally to

change the way in which it offers this type of service" in order to be eligible (and a cursory examination of its website with its reference to enabling "direct marketers to target their prospects" confirms this), the Regulations do not prevent I-CD or any other company from achieving eligibility as Call Credit has done. I reject the suggestion that the Regulation confines eligibility to a monopoly , a duopoly or even an oligopoly.

19. Furthermore, I have to keep in mind that Regulation 114 and the other amendments represent legislative provision approved by Parliament after a process of lawful consultation (as I have held it to be) by the Government. It is the articulation of a balance between competing interests in a socio-economic context. I have addressed this in **Robertson (No 2)** in the context of justification where a Convention right is engaged. It is incumbent upon the court to approach the issue with appropriate deference. All in all, I do not find any irrationality in Regulation 114. Moreover, my conclusions about discretion and delay are equally referable to this ground.

Ground 3: reasons

20. This ground of challenge falls away with the previous two. In her Skeleton Argument Miss Morris submitted:

> "No reasons, or no adequate reasons have been given by the Secretary of State for these two aberrant aspects of the Regulation – the failure to consult with the business so affected by them and the creation of an exclusionary monopoly which may serve to defeat one of the fundamental justifications for the Regulations."

Having rejected the premise – "aberrant aspects" – I can find nothing in this ground of challenge. There was no unlawful failure to consult, nor was there a creation of an exclusionary monopoly. Once again, discretion and delay would stand in I-CD's way in any event.

Declaratory relief

21. This is a fallback application on behalf of I-CD but it raises an important issue. It arises in this way. If regulation 114 stands, I-CD would seek to operate with confidence within it. In a witness statement Mr. Crawford says:

> "I-CD wishes to continue offering identity verification services in the context of credit referencing and anti-money laundering legislation utilising the full electoral register. It recognises that in order to conform with the new electoral register regulations it needs fundamentally to change the way in which it offers this type of service."

22. Accordingly it has detailed a "proposed business model". It is not necessary for me to describe the minutiae. It is sufficient to say that it would separate the credit referencing and anti-money laundering service from the directory enquiry service, which would be based on the edited register. Those using the credit referencing and anti-money laundering service would go through a separate registration process and would then be provided with a separate user identification and password for access to the full register. In other words it would be a more secure system. The re-amended application seeks a number of declarations including declarations that "on the facts before the court", I-CD's proposed business is a "credit reference service" within the meaning of regulation 114(3). Such declarations and others, submits Miss Morris, would allow I-CD to proceed to invest in its business without thereby exposing itself, its directors and staff to the risk of criminal liability under the amended 2001 Regulations.

23. This brings us into controversial territory which has received considerable judicial attention. Miss Morris submits that the authorities justify the proposition that the Court may make a declaration as to the lawfulness of a future course of conduct where:

> (1) it has a clear picture of the course of conduct contemplated;
>
> (2) the declaration relates to prospective rather than existing conduct;
>
> (3) it is a declaration of non-criminality rather than of criminality;
>
> (4) criminal proceedings are not in existence;
>
> (5) the declaration would not otherwise usurp the functions of the criminal courts;
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> (6) the High Court is an appropriate forum for deciding the issues raised; and
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> (7) the declaration will avoid the claimant having to go to considerable expense in relation to a course of conduct which might expose it and others to criminal liability.

It is therefore necessary for me to examine the authorities which are said to support these submissions.

24. It is common ground that the starting point is **Imperial Tobacco Ltd v. Attorney General** [1981] AC 718 in which the plaintiff sought a declaration that a lottery scheme which it had started to operate and which was already the subject of criminal proceedings was lawful. Viscount Dilhorne said (at p741):

> " Donaldson J thought [the Court] could [grant a declaration] but did not grant it as he thought that the....scheme was a

> lottery and an unlawful competition. The Court of Appeal, holding that it was neither, granted it. That decision, if it stands, will form a precedent for the Commercial Court and other civil courts usurping the functions of the criminal courts. Publishers may be tempted to seek declarations that what they propose to publish is not a criminal libel or blasphemous or obscene. If in this case where the declaration sought was not in respect of future conduct but in respect of what had already taken place, it could properly be granted, I see no reason why in such cases a declaration as to future conduct could not be granted. If this were to happen, then the position could be much the same as it was before the passing of Fox's Libel Act 1792 when judges, not juries, decided whether a libel was criminal, blasphemous or obscene."

He added (at p 742):

> ".....it is not necessary in this case to decide whether a declaration as to the criminality or otherwise of future conduct can ever properly be made by a civil court. In my opinion it would be a very exceptional case in which it would be right to do so. In my opinion it cannot be right to grant a declaration that an accused is innocent after a prosecution has started."

Lord Scarman agreed with Viscount Dilhorne as did Lord Edmund-Davies. Lord Fraser of Tullybelton delivered a concurring speech without expressly addressing future conduct. Lord Lane considered that there was jurisdiction to grant a declaration "in these circumstances" (p 750) but added (at p 752):

> "Counsel appearing before your Lordships' House were unable to find any case in which a defendant in criminal proceedings already properly and not vexatiously instituted had applied for a declaration that the criminal proceedings were unfounded or based on a misapprehension as to the true meaning of the criminal statute. I do not find that dearth of authority surprising. It would be strange if a defendant to proper criminal proceedings were able to pre-empt those proceedings by application to a judge of the High Court.

It seems to me that, on analysis, the ratio of **Imperial Tobacco** on this issue is that the court will not grant a declaration in relation to past or existing conduct, particularly if criminal proceedings have already commenced. However, the case also contains very strong dicta to the effect that it would be a "very exceptional case" in which a declaration would be granted in relation to the criminality of future conduct.

25. Chronologically, the next authority is a decision of Woolf J (as he then was). In **Attorney General v. Able** [1984] 1 QB 795 he considered **Imperial Tobacco**, recalled that he had himself granted a declaration at first instance in **Royal College of**

Nursing v. DHSS [1981] AC 800 and that had not been criticised in the Court of Appeal or the House of Lords, and maintained that "there can be circumstances where it is appropriate to grant declaratory relief". He added (at p 807-808):

> "Declarations are being sought that certain conduct is criminal, not that certain conduct is not criminal. The declarations are addressed to future distributions of the booklet and it is a real possibility that if a declaration is granted, but despite this further distributions take place, there could be a criminal prosecution. This makes it particularly important that this court should bear in mind the danger of usurping the jurisdiction of the criminal courts.....While of course recognising the advantages of the application of the law being clear in relation to future conduct, it would only be proper to grant a declaration if it is clearly established that there is no risk of it treating conduct as criminal which is not clearly in contravention of the criminal law."

The Attorney General's application for a declaration failed. I take from that authority that the door was left open for a declaration as to the prospective criminality of future conduct but the ratio is not distinguishable from Viscount Dilhorne's "very exceptional case".

26. Counsel on both sides have taken me through the interesting line of authorities to which this has given rise, including **Airedale NHS Trust v. Bland** [1993] AC 789, **R v. DPP ex parte Camelot Group PLC** (DC, unreported, 14 April 1997, **R (Pretty) v. DPP** [2002] 1 AC 800 and **Rusbridger and Toynbee v. Attorney General** [2002] EWCA Civ 397. Since the hearing concluded on 21 May, the House of Lords has heard and determined the appeal in **Rusbridger**: [2003] UKHL 38. Lord Steyn, having set out the above passage from the speech of Viscount Dilhorne in **Imperial Tobacco**, added that "the exceptional nature of such a declaration by a civil court has on a number of occasions been emphasised" (para 16). He considered the authorities to which I have just referred and added (at para 19):

> "Normally, the seeking of a declaration in a civil case about the lawfulness of future conduct will not be permitted. But in truly exceptional cases the court may allow such a claim to proceed."

He then considered possible criteria of "truly exceptional cases", including the absence of fact-sensitivity and the presence of a cogent public or individual interest. He accepted (para 24) that the jurisdiction "is in no way limited to life and death issues.....it may be a matter of constitutional importance". Lord Rodger of Earlsferry said (at para 56):

> "The authorities do not spell out what constitutes a very exceptional case for these purposes. In ordinary cases people must take and act on their own legal advice. So, broadly speaking, a very exceptional case must be one where,

> unusually, the interests of justice require that the particular claimant should be able to obtain the ruling of the civil court before embarking on, or continuing with, a particular course of conduct which, on one view, might expose him to the risk of prosecution."

27. On the basis of these authorities it seems to me that Miss Morris is attempting to push back the frontiers when they have been authoritatively and recently positioned. I find nothing in the authorities to suggest that the present case comes anywhere near to being the sort of truly or very exceptional case which could give rise to declaratory relief. She seeks to draw support from **Pyx Granite Ltd v. Ministry of Housing and Local Government** [1960] AC 260. However, the factual and legal context there was very different. In my judgment, declaratory relief directed to I-CD's proposals for its business would be contrary to principle.

Conclusion

28. This application for judicial review fails. If counsel are able to agree the form of order that is to follow, it is unnecessary for anyone to attend when this judgment is handed down. I should record that, at the hearing, I received some interesting and helpful submissions from Miss Collier on behalf of the Information Commissioner as interested party. However, to the extent that they did not impinge upon the dispute between I-CD and the Secretary of State, it is inappropriate for me to rule upon them.