

IN THE IDGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION
ADMINISTRATIVE COURT

27 SEP 2021

Claim No. CO/3355/2020

BETWEEN:

THE QUEEN
On the application of
DR GLYNN EVANS



v

SECRETARY OF STATE FOR DEFENCE

Defendant

CONSENT ORDER

ORDER BY Mr Justice Cavanagh

UPON the Claimant issuing proceedings on the 18th of September 2020 for permission to seek judicial review of the Defendant's policy set out in Defence Instructions and Notices 2016DIN02-029 ("DIN2016")

AND UPON the Defendant having considered the Claimant's Claim and decided to conduct a review of the policies bearing on trade union activities by members of the Armed Forces, including specifically contacts with the media by members of the Armed Forces

AND UPON the Defendant indicating that this review will result in new policies compliant with Articles 10 and 11 of the European Convention on Human Rights which are intended to be promulgated in the New Year

AND UPON the Claimant agreeing to withdraw his claim brought against the Defendant in the Leeds Employment Tribunal claim (Case No. 1805174/2019)

AND UPON consideration of the documents on the court file and the statement filed by the parties of the matters relied on as justifying the proposed agreed order

BY CONSENT IT IS DECLARED THAT:

1. DIN2016 was not in accordance with the law insofar as it lacked clarity in relation to the position of the Armed Forces and trade union activities.
2. Requiring the Claimant to agree to comply with DIN2016, given its lack of clarity, constituted an unjustified interference with his rights under Arts 10 & 11 ECHR.

AND BY CONSENT IT IS ORDERED THAT:

3. The Army Board's determination in respect of the Claimant dated 19 June 2020 is quashed and will not be the subject of a re-determination.
4. The Defendant pay the Claimant the sum of £10,000 within 21 days of this order.
5. The claim shall be treated as discontinued upon compliance by the Defendant with §4 above.
6. The Defendant pay the Claimant's reasonable costs of this claim, to be subject to detailed assessment if not agreed.

Signed

Signed

For and on behalf of the Claimant

For and on behalf of the Defendant

Matters relied on as justifying the proposed agreed order

The Court is referred to the Statement of Reasons annexed to this Consent Order.

20 September 2021

IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION
ADMINISTRATIVE COURT

BETWEEN :

THE QUEEN on the application of DR GLYNN EVANS

Claimant

-and-

SECRETARY OF STATE FOR DEFENCE

Defendant

AGREED STATEMENT OF REASONS

Introduction

1. This claim is a challenge to the Army Board's determination dated 19th June 2020 not to uphold the Claimant's service complaint. In general terms, the Claimant's service complaint arose from the Claimant's concern that the Army had improperly sought to restrict his statements to the media in his capacity as Chair of the Armed Forces Committee (AFC) of the British Medical Association (BMA) and his concern that, as a result of comments he had made to the media, an intention had been formed to procure his resignation from his position as a reservist officer with the Royal Army Medical Corps.

2. In summary the Claimant relies on the following grounds:
 - (1) The Defendant's policy on service personnel contact with the media contained in DIN2016 is incompatible with Articles 10 and 11 ECHR.
 - (2) The interference with Articles 10 and 11 is not justified in this case.
 - (3) There was a failure to hold an oral hearing into the complaint which was procedurally unfair and contrary to Article 6 ECHR.
 - (4) The Defendant's failure to consider the position of Reservist Parliamentarians constituted a failure of its duty to carry out a reasonable investigation.

Reasons for the Consent Order

3. At the time of the Service Complaint and the issues underlying it, the Defendant's policy on contact with the media was set out in DIN2016.
4. Since this claim was issued, the Claimant further complained about the determination of the Army Board to the Ombudsman. The Ombudsman's report concluded that the Defendant's media policy at the time of the issues giving rise to this claim was unclear (§113 second sentence).
5. The Defendant accepts that conclusion and acknowledges that the policy did not provide any guidance as to the extent and means by which Trade Union representatives such as the Claimant, could raise legitimate trade union matters with the media; It is accepted that there were no clear limits or permissive provisions which allowed the Claimant to understand how the policy would apply to his Trade Union activities.
6. Due to the absence of a clear policy on that issue, the Defendant accepts that the Claimant's Article 10/11 rights were breached in the manner set out in the consent order by requiring the Claimant to comply with a media policy which did not in fact make clear provision as to media contact by Trade Union Representatives.
7. As a consequence of this concession, the Defendant further accepts that the Army Board determination must be quashed because it applied the DIN2016 policy when reaching its conclusions which the Defendant now recognises lacked sufficient clarity. The remaining challenges to the Service Complaint and Army Board Determination (Grounds 3 and 4) are thereby academic and are no longer pursued.
8. The Defendant is undertaking a review of its media policy, including specifically the manner in which media contact by Trade Union representatives is governed. The

Defendant anticipates that a new policy which complies with Articles 10 and 11 in that regard should be ready for issue in the new year.