

IN THE INFORMATION TRIBUNAL

UNDER THE FREEDOM OF INFORMATION ACT, 2000

BETWEEN

JAMES KESSLER QC

Appellant

-and-

THE INFORMATION COMMISSIONER

Respondent

-and-

HER MAJESTY'S REVENUE AND CUSTOMS

Additional Party

APPELLANT'S SKELETON ARGUMENT

FOR DIRECTIONS HEARING ON 16 JULY 2007

Submissions not seen by the Appellant (§11 of the proposed Directions)

1. The Respondent and Additional Party seek a Direction which would entitle them to make written submissions which would not be provided to the Appellant (§11 – text struck through in the attached draft).

2. This proposed Direction would contravene the requirements of a fair hearing under art. 6(1) of the European Convention on Human Rights (“the Convention”). In *Mantovanelli v France* , the European Court of Human Rights (“ECHR”) declared:

“The Court notes that one of the elements of a fair hearing within the meaning of Article 6 para. 1 (art. 6-1) is the right to adversarial proceedings; each party must in principle have the opportunity not only to make known any evidence needed for his claims to succeed, but also to have knowledge of and comment on all evidence adduced or observations filed with a view to influencing the court's decision”

3. It is submitted that the Tribunal is required by s.6(3) of the Human Rights Act 1998 to conduct its proceeding in accordance with art. 6(1) of the Convention. The requirement of a fair hearing in art. 6(1) applies to appeals as well as to first instance determinations: see *Delcourt v Belgium* at §§25-26.
4. Furthermore, the proposition expressed by the ECHR in *Mantovanelli* cited above is an elementary principle of nature justice and English law which should be strictly upheld: see e.g. *WEA Records v Visions Channel 4* [1983] 1 WLR 721 at 724G, 726G, 728D⁴.

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