

The Queen on the Application of Black

-v-

Secretary of State for Justice

Thursday 5th March

SUMMARY

This summary is provided to assist in understanding the Courts's decision. It does not form part of the reasons for the decision. The full judgment of the Court is the only authoritative document.

1. The main issue in this case was whether the Health Act 2006, which bans smoking in enclosed public places and workplaces, applied to all prisons, in particular state prisons, that is those prisons for which the Crown is responsible.
2. The Claimant is a serving prisoner at HMP Wymott. He is a non-smoker and suffers from a range of serious health problems. The Claimant is concerned about his exposure to second-hand smoke while he is in prison. It is generally estimated that around 80% of prisoners smoke. The Secretary of State's policy is that, in general, they are permitted to do so in their own cells but not in common parts. Similarly, prison staff are not permitted to smoke in common parts.
3. The Claimant argues that the Secretary of State is under a duty to allow all prisoners access to the NHS Smoke-Free Compliance Line (SFCL) on an anonymous and confidential basis. The Secretary of State denies that he is under any such duty because the relevant part of the Health Act 2006 does not apply to state prisons, only to private prisons. Accordingly, on that argument, local authorities do not have any powers of enforcement in relation to state prisons. There would therefore be no point in allowing access to the SFCL.
4. Although this case concerns prisons, the main issue of law would apply to all Government buildings. The Secretary of State argues that the Health Act 2006, so far as material, does not apply to any Government buildings or spaces, on the ground that the relevant part of the Act does not bind the Crown.
5. In this case the High Court has held that it was the intention of Parliament that the 2006 Act should apply to all public places and workplaces which fall within its scope, including those for which the Crown is responsible. In its view, the purpose of the Act would be wholly frustrated if the Crown were not bound by it.

6. Furthermore, the express reference to the possibility of an exemption being made in respect of prisons in section 3(2) of the Act is a statutory indicator that Parliament did envisage that, unless an exemption applied, prisons would be covered by the Act.
7. Therefore the court held that the relevant part of the Health Act 2006 (Chapter 1 of Part 1) does apply to state prisons and not only private prisons: see paras 49 and 82.
8. The Court rejected two other arguments made on behalf of the Claimant. It rejected the argument based on the Human Rights Act 1998: see paras 95, 102 and 104.
9. The Court also rejected the Claimant's argument that there had been a breach of the Prison Rules 1999: see paras 108, 111 and 113.
10. The Court granted the Secretary of State permission to appeal. In view of the importance of the issues it granted a stay of its order pending any appeal.