Neutral Citation Number: [2014] EWHC 2371 (QB)

Case No: CO/676/2014

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

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 14/07/2014

Before :

MR JUSTICE WARBY

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Between :

THE QUEEN (on the application of O)	**Claimant**
- and -	
SECRETARY OF STATE FOR INTERNATIONAL DEVELOPMENT	**Defendant**

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Ms Jessica Simor QC and Mr Nikolaus Grubeck (instructed by **Leigh Day**) for the Claimant
Mr James Eadie QC and Ms Naina Patel (instructed by the **Treasury Solicitor**) for the Defendant

Hearing date 3 July 2014

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Approved Judgment

I direct that pursuant to CPR PD 39A para 6.1 no official shorthand note shall be taken of this Judgment and that copies of this version as handed down may be treated as authentic.

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MR JUSTICE WARBY

Mr Justice Warby:

1. This is an application for permission to apply for judicial review of the conduct of the Secretary of State for International Development in connection with the grant of development assistance to Ethiopia under Section 1 of the International Development Act 2002.

2. The Claimant is an Ethiopian citizen who claims to have been a victim of human rights abuses perpetrated in the course of an Ethiopian Government programme for the resettlement of individuals from rural communities in new and larger "communes". This programme is known officially as the Commune Development Programme ("CDP") but also known as "villagisation". It is said to involve forced internal relocation and consequent or related human rights violations. Following what he says is brutal treatment at the hands of State actors in the course of this programme in 2012 the Claimant fled to Kenya, it is said, leaving his family in Ethiopia. The Claimant alleges that he is far from being alone in suffering in this way, and refers to evidence gathered by human rights organisations and NGOs of widespread human rights abuses in Ethiopia in the context of the villagisation programme and otherwise.

3. The Claimant maintains that UK development assistance money provided by the Defendant to the Ethiopian Government contributes to such human rights violations, including those allegedly carried out in connection with the villagisation programme from which he claims to have suffered. He alleges, in particular, that there is evidence that the villagisation programme is partly funded by payments made by the Defendant and others into a programme called the Promotion of Basic Services Programme ("PBS"). The PBS is a very large programme, currently in its third phase, with a budget of some £510 million allocated until the end of January 2018. It aims to channel money to regional and district governments.

4. The grant of development assistance under s 1 of the Act of 2002 is governed by policies set out in a policy paper of 2005, in the production of which the Defendant participated, entitled *Partnerships for Poverty Reduction: Rethinking Conditionality*. These policies acknowledge the need for governments which are partners in the grant and receipt of aid to respect and uphold human rights, and the need for the UK government as a donor to reconsider aid decisions if recipient countries are found to be in significant violation of human rights. A "How to note" of 2009 sets out guidance on the implementation of such policies, including the methodology by which compliance with human rights is to be assessed. The Defendant's policies also contain provision as to transparency. Commitments to transparency and accountability are reflected in the 2005 paper, the "How to note" of 2009, and the Defendant's "Open Data Strategy April 2012 – March 2014".

5. It was against that background that between 2012 and 2014 the Claimant's solicitors corresponded with the Defendant complaining of a failure to apply properly or at all her policies on conditionality and transparency and, on 14 February 2014, the Claimant issued these proceedings. The claim advances two grounds of challenge. First, it is alleged that the Defendant has failed to have in place any sufficient process to assess Ethiopia's compliance with the express conditions for receiving UK aid which are mentioned above, or to follow any such process, or both. Secondly, the Claimant alleges that the Defendant has acted unlawfully in refusing to make her assessment public, in breach of her stated policies on transparency.

6. The first ground is focused on the Defendant's most recent Partnership Principles Assessment in relation to Ethiopia, dated November 2013 ("the PPA"). This is a substantial document setting out, among other things, details of evidence assembled as to the Ethiopian Government's human rights record, assessments of that evidence, and conclusions as to the actions to be taken by the Defendant, based upon that assessment. Extracts of the PPA were sent to the Claimant's solicitors on 19 November 2013 under cover of a letter of from the Treasury Solicitor, acting on behalf of the Defendant. The Claimant's second ground of challenge arises from a further letter from the Treasury Solicitor dated 10 December 2013 by which the Defendant made clear that she objected to the extracts of the PPA which she had provided earlier being put into the public domain.

7. The relief sought by the Claimant is first, a declaration that the Defendant has acted unlawfully in failing to have or to apply a proper assessment process so far as Ethiopia's compliance with human rights is concerned, and secondly an order requiring the publication of the most recent assessment of Ethiopia's compliance, namely the PPA of November 2013. No challenge is made, and no relief is sought, in respect of any decisions by the Defendant to grant aid to Ethiopia.

8. On 26 March 2014 the Defendant filed an Acknowledgment of Service and Summary Grounds of Resistance. The Grounds of Resistance assert that significant parts of the claim are out of time, that the Claimant does not have standing to bring the claim, and that in any event there is no properly arguable basis for any aspect of the claim. When the papers came before Nicola Davies J on 2 May 2014 she granted the Claimant anonymity and directed that the application for permission be adjourned into court for oral hearing, observing that besides the general merits two preliminary points required determination: whether parts of the challenge were out of time, and the legal standing of the Claimant to bring the claim. Nicola Davies J noted that no Witness Statement had been filed on behalf of the Claimant.

9. Subsequently, on 1 July 2014, a Witness Statement was filed in the name of the Claimant. Unsigned and undated, it had been confirmed by telephone by the Claimant whom I was told does not read or write. Its contents reflected broadly what had been alleged in the Statement of Facts and Grounds accompanying the Claim Form. The matter then came before me on 3 July 2014 for consideration of the three issues then arising: the time issue, the standing issue, and the question of whether the claim was arguable on its merits.

Time

10. This aspect of the case proved uncontroversial in the event. The Claimant's Grounds made reference to documents of earlier dates than the November 2013 PPA. Mr Eadie QC explained that for this reason the Defendant had put a marker down, to ensure that she could not be suggested that some free-standing ground of challenge arose, based on earlier decisions. Ms Simor QC made clear that the Claimant's challenge related only to the November 2013 PPA. That assessment made reference to information contained in other, earlier documents. It is only in that respect, however, that the Claimant relied on such documents. None of the earlier matters are separately challenged.

Standing

Legal principles

11. The right to seek judicial review of administrative action is governed by s 31 of the Senior Courts Act 1981. Section 31(3) provides that:-

> "No application for judicial review shall be made unless the leave of the High Court has been obtained in accordance with rules of court; and the court shall not grant leave to make such an application unless it considers that the applicant has a sufficient interest in the matter to which the application relates."

12. The requirement of a sufficient interest is a jurisdictional threshold, and whether a person has a sufficient interest is a matter of judgment, not a matter of discretion. It is also clear, however, that the sufficient interest requirement is one which allows the court "to decide what in its own good judgment it considers to be a 'sufficient interest' on the part of [a claimant] in the particular circumstances of the case before it": *R v Inland Revenue Commissioners, ex parte National Federation of Self-Employed and Small Businesses* [1982] AC 617, 642 *per* Lord Diplock. The test excludes a claimant who is a mere "busybody" (ibid. 646 per Lord Fraser) but is otherwise liberal and inclusive. Standing ought not to be treated narrowly, as a preliminary issue, but should be assessed in the legal and factual context of the whole case: *R v Secretary of State ex parte World Development Movement* [1995] 1 WLR 38, 395E-396A. Thus, where the circumstances justify it, the court has been ready to recognise standing on the part of persons and organisations who cannot demonstrate that they are directly and individually affected by an administrative measure, such as NGOs and representative bodies.

13. The requirement of standing to seek judicial review has been recently considered by the Supreme Court in two Scottish cases, *AXA General Insurance Ltd & Ors v HM Advocate & Ors* [2011] UKSC 46, [2012] 1 AC 868 and *Walton v The Scottish Ministers* [2012] UKSC 44. It was common ground that these cases, whilst dealing with the supervisory jurisdiction in Scottish law, are to be treated as giving authoritative guidance on the English law requirement of standing. In *Walton* Lord Reed summarised the position in this way:

> "90 In *AXA General Insurance Ltd and others v HM Advocate and others* [2011] UKSC 46; [2012] 1 AC 868; 2011 SLT 1061, this court clarified the approach which should be adopted to the question of standing to bring an application to the supervisory jurisdiction. In doing so, it intended to put an end to an unduly restrictive approach which had too often obstructed the proper administration of justice: an approach which presupposed that the only function of the court's supervisory jurisdiction was to redress individual grievances, and ignored its constitutional function of maintaining the rule of law.

91 As was said by Lord Hope and myself at paras 62 and 170 respectively, an applicant has to have sufficient interest: that is to say, an interest which is sufficient to justify his bringing the application before the court. In further explanation of that concept, Lord Hope said (para 63):

> "I would not like to risk a definition of what constitutes standing in the public law context. But I would hold that the words 'directly affected' which appear in rule 58.8(2) capture the essence of what is to be looked for. One must, of course, distinguish between the mere busybody, to whom Lord Fraser of Tullybelton referred in *R v Inland Revenue Comrs, Ex p National Federation of Self-Employed and Small Businesses Ltd* [1982] AC 617, 646, and the interest of the person affected by or having a reasonable concern in the matter to which the application related. The inclusion of the word 'directly' provides the necessary qualification to the word 'affected' to enable the court to draw that distinction. A personal interest need not be shown if the individual is acting in the public interest and can genuinely say that the issue directly affects the section of the public that he seeks to represent."

92 As is clear from that passage, a distinction must be drawn between the mere busybody and the person affected by or having a reasonable concern in the matter to which the application relates. The words "directly affected", upon which the Extra Division focused, were intended to enable the court to draw that distinction. A busybody is someone who interferes in something with which he has no legitimate concern. The circumstances which justify the conclusion that a person is affected by the matter to which an application relates, or has a reasonable concern in it, or is on the other hand interfering in a matter with which he has no legitimate concern, will plainly differ from one case to another, depending upon the particular context and the grounds of the application. As Lord Hope made plain in the final sentence, there are circumstances in which a personal interest need not be shown.

93 I also sought to emphasise that what constitutes sufficient interest has to be considered in the context of the issues raised. I stated (para 170):

> "A requirement that the applicant demonstrate an interest in the matter complained of will not however operate satisfactorily if it is applied in the same way in all contexts. In some contexts, it is appropriate to require an applicant for judicial review to demonstrate that he has a particular interest in the matter complained of: the type of interest which is relevant, and therefore required

> in order to have standing, will depend upon the particular context. In other situations, such as where the excess of misuse of power affects the public generally, insistence upon a particular interest could prevent the matter being brought before the court, and that in turn might disable the court from performing its function to protect the rule of law … What is to be regarded as a sufficient interest to justify a particular applicant's bringing a particular application before the court, and thus as conferring standing, depends therefore upon the context, and in particular upon what will best serve the purposes of judicial review in that context."

> 94 In many contexts it will be necessary for a person to demonstrate some particular interest in order to demonstrate that he is not a mere busybody. Not every member of the public can complain of every potential breach of duty by a public body. But there may also be cases in which any individual, simply as a citizen, will have sufficient interest to bring a public authority's violation of the law to the attention of the court, without having to demonstrate any greater impact upon himself than upon other members of the public. The rule of law would not be maintained if, because everyone was equally affected by an unlawful act, no-one was able to bring proceedings to challenge it."

Facts

14. The CDP involves the resettlement of very large numbers of people living in four remote areas of Ethiopia, its aim being to move populations from small and scattered rural settlements into larger, planned settlements, with the stated aim of improving the delivery of basic services to those communities. Estimates of the overall numbers involved range from 1.5 million to as many as 4 million people including, according to a DFID submission of 6 June 2012, "all the rural population of Gambella".

15. The Claimant's witness statement gives an account of his own experiences which can be summarised as follows. He was a subsistence farmer in Gambella, with a wife and six children, living and working on land that had been passed from generation to generation from time immemorial. In November 2011 the Claimant's village was visited by soldiers, police officers and civilian district officials who had forced the population to leave their land immediately. Many were said to have been beaten up for raising objection. All of this took place at harvest time. The district officials in the Claimant's area of Gambella were actively involved in the villagisation programme, says the Claimant, "in that they were present and assisted in our forced movement and the appropriation of my land." The villagers were then transported to a new "village". Conditions there were so poor, however, that the Claimant and his family felt compelled to return to their home village. Shortly after they did so soldiers arrived, took the Claimant away, beat him, and insisted he leave and not return. He fled the region and the country to a refugee camp in Kenya. There, he has heard from fellow refugees of other similar experiences, including rapes, having taken place in

Gambella. His family remained behind, somewhere in Gambella. He does not know where.

16. Although the Claimant's statement did not give dates for all of these events, his case as set out in the Statement of Facts and Grounds is that the return to the home village took place in early 2012 and the beating of the Claimant in around April 2012. Reports from Human Rights Watch of January and June 2012 describe similar experiences on the part of individuals from Gambella and other regions of Ethiopia. Another NGO, Survival International, has reported evidence of similar behaviour in the South Omo region.

17. The link between all of this and UK aid is said to arise via the PBS programme. The PBS programme is a funding strategy designed to supplement government spending in five sectors: health, agriculture, roads, water and education. UK aid contributes to the PBS programme along with a number of other sources of funding which include the World Bank. Payments by donors such as the UK are made via the Ethiopian Government which provides Federal Block Grants to regional authorities which are mandated to provide basic services. DFID funding under this programme is controlled, so that it can only be spent on local government recurrent expenditures (salaries, operations and maintenance). It is said on behalf of the Claimant, however, that Ethiopia is a highly centralised state in which local government implements central government strategy and that this includes the villagisation programme.

18. On 24 September 2012 two representatives of a group of 26 individuals from Gambella submitted a complaint to the Inspection Panel of the World Bank, alleging that the villagisation programme had been carried out by force "and accompanied by gross violations of human rights" and that this had been made possible in part by the Bank's support for the PBS Programme. On 9 October 2012 the request was found by the Bank's Inspection Panel to raise issues of harm "which may plausibly have resulted from the [PBS] Project and from alleged actions/omissions of the Bank." On 19 November 2012 a report by World Bank management stated that "there is no basis to claim" that the third phase of the PBS Programme (to which UK aid contributes) is "directly or indirectly linked to villagisation". The World Bank Inspection Panel concluded however that that an investigation was required in order to assess whether funding of the PBS programme had indeed been linked to the villagisation programme. A report of August 2013 outlined a plan of action for such an assessment and it appears that this is currently in progress.

Submissions

19. The Defendant's submission was that the Claimant had to show either that he had himself been "affected in some identifiable way" by the decisions under challenge, or that the claim involved issues of real and significant public interest which would not otherwise be raised, such that adherence to the rule of law required that the challenge be allowed to proceed.

20. The first of these tests was drawn by Mr Eadie QC from dicta of Arden LJ in *R (Chandler) v Secretary of State for Children, Schools & Families* [2010] LGR 1 at [77] which were cited and applied by Eady J in *R (Unison) v NHS Wiltshire Primary Care Trust* [2012] EWHC 624 (Admin). The Claimant's case was said to fail this test as the accounts of events given in his Grounds and witness statement were internally

inconsistent and in any event an inadequate foundation for asserting any link between the Claimant's experiences and the Defendant's decision-making. Mr Eadie pointed to the World Bank management report of November 2012.

21. As to the second and alternative test of standing proposed by the Defendant, reference was made to paragraph [94] of the judgment of Lord Reed in *Walton v The Scottish Ministers.* It was submitted that the requirement of a significant public interest was manifestly not met here and that the rule of law did not require this challenge to proceed, there being plenty of other mechanisms by which the Defendant could be held to account for the conduct which the Claimant seeks to challenge.

22. Ms Simor QC argued for the Claimant that the test of standing derived from *Chandler* and applied in *Unison* was specific to its context, and narrower than the general test. She emphasised that the general test is a liberal one, and that standing ought not to be treated narrowly, but in the overall legal and factual context of the case. Ms Simor drew particular attention to Lord Reed's warning in paragraph [90] of *Walton* against an "unduly restrictive approach" to review, and to the encapsulation in paragraph [91] of *Walton*: that a sufficient interest is "an interest which is sufficient to justify his bringing the application before the court".

23. Ms Simor submitted that the present claim raises serious public interest issues arising from the acknowledged need to ensure that development aid does not go to governments involved in grave human rights breaches. In relation to those issues the Claimant is not a mere busybody advancing a bare allegation of public law error. The Claimant has a direct interest in the grant of aid to his government. That includes, in particular, a direct interest in having his government's human rights compliance properly assessed for that purpose. He has been directly affected by the CDP, which has resulted in the seizure of his land and brutality affecting him personally, in a context where similar or worse abuses have been carried out against others. There is a credible basis, she submitted, for contending that UK aid has contributed to the CDP and hence to the human rights violations of which complaint is made.

Discussion

24. Ms Simor is right, in my view, when she says that *Unison* should not be treated as providing authoritative guidance on the right approach to standing in the present case. It is important to recall the point made so clearly by Lord Reed in *AXA* at [170], and repeated in *Walton* at [93], that the requirements of standing in any particular case depend critically upon context.

25. In *Unison* the issue was whether the trade union claimants had standing to challenge decisions of the defendant Primary Care Trusts to outsource Family Health Services which had previously been provided in-house. The outsourcing decisions were said to have involved breaches of the Public Contract Regulations 2006. Regulation 47 of those Regulations imposes certain duties on pubic bodies towards "economic operators" enabling the latter to pursue statutory civil remedies in the event of breach. This raised the question of the extent, if any, to which public law remedies could be available in addition to and alongside the specific private law remedies provided for. In *Chandler* Arden LJ had observed that the Court was inclined to the view that a public law remedy could in principle be available for non-compliance with the Regulations at the instance of an individual who was not an "economic operator" but

was "affected in some identifiable way" by the alleged breach of the Regulations. In *Unison* Eady J adopted and applied that criterion, holding that the trade union claimants were not so affected.

26. The context was however entirely different from that of the present case. It was one in which it was, in Lord Reed's words, "appropriate to require an applicant for judicial review to demonstrate that he has a particular interest in the matter complained of".

27. I should instead take my lead from the guidance given by Supreme Court in *AXA* and *Walton*, which both Counsel agreed is the latest word on the subject. Key points which I derive from the passages cited above are these. First, the court should avoid an unduly restrictive approach, which treats judicial review exclusively as a means of redressing individual grievances. Secondly, the concept of a "sufficient interest" is not one that lends itself to exhaustive definition, but is inherently elastic depending on the particular context and circumstances. Third, a person will not have standing if they are a mere busybody in the sense that they are interfering in a matter in which they have no personal interest and no reasonable or legitimate concern; but it is not necessary to demonstrate a personal interest if the individual is acting in the public interest and can genuinely say that the issue directly affects the section of the public that he seeks to represent. This, to my mind, is a less rigid and more graduated standard than the binary approach advocated by Mr Eadie.

28. In applying these considerations I also bear in mind that the issue of standing should normally be disposed of at the permission stage only if the issue is obvious: *R v IRC ex parte National Federation of Self-Employed and Small Businesses* [1982] AC 617. This is a matter of particular significance if, as is the position here, there are factual issues the resolution of which may be material to the question of what interest or reasonable concern the Claimant has in respect of the matters complained of.

29. I should at this stage treat the account of the facts contained in the Claimant's witness statement as an accurate one. The statement was served late, and Mr Eadie was understandably critical of this. He also sought to cast doubt upon it by drawing attention to what were said to be discrepancies between the statement and the account of the facts in the Claimant's Statement of Facts and Grounds. However, the fact remains that the witness statement has not been contradicted by the Defendant. Whilst Mr Eadie was entitled to seek to undermine it, I could not reject the Claimant's factual case on that account. The Claimant has at this stage presented a sufficient basis for asserting that he has been personally and directly affected by the CDP. It is true that the experiences of abuse which he relates occurred in 2011 and 2012, before the decisions challenged in this action. He is entitled however to say that he remains affected, as someone who remains ousted from his ancestral land and a refugee from his home country. Further, he can say that he is a family member with relatives from whom he has been and remains separated as a result of the way the CDP has been implemented, with those relatives remaining somewhere in Ethiopia.

30. That, of course, is not enough to afford the Claimant a sufficient interest in the claim he brings in these proceedings. The Claimant has however also presented a sufficient factual case of likely linkage between the provision of UK aid and the CDP, and he has done so not only in relation to the past but also in relation to the present and future. In approving funding for PBS Phase III the Defendant relies on the assessment by her department of Ethiopia's compliance with the partnership principles laid down

in the 2005 policy paper. That includes the Department's assessment of compliance with the requirement to uphold and respect human rights. The contention that the CDP has been at least indirectly funded via UK contributions to the PBS certainly cannot be rejected at this stage. It is therefore reasonable for the Claimant to contend that the Defendant's approach to the assessment of Ethiopia's human rights record, and hence to the disbursement of aid, may have had a causal impact on the implementation of the CDP in the past, and that the same is likely to be true as regards current and future disbursements.

31. The impact, or prospective impact on the Claimant and his family could be described as indirect but it is not remote. In those circumstances it is not fanciful but fair to say that the Claimant is affected by or has a reasonable concern in the Defendant's present and future policy and practice with regard to the assessment of Ethiopia's human rights record. That, in my judgment is enough to satisfy the requirement of a sufficient interest. I do not consider that the Claimant can properly be described as a "busybody" interfering in something with which he has no legitimate concern. For these reasons I would not dismiss this application on the basis that the Claimant has no sufficient interest.

32. I should perhaps make clear, in case of any doubt, that in reaching this conclusion I do not consider myself to be doing any more than applying to the particular facts of this case, as they presently appear, the law as stated by the authorities I have relied on above and in particular the decisions of the Supreme Court in *AXA* and *Walton.*

Arguability and permission

33. The purpose for which the rules of court require a Claimant to obtain the Court's permission to seek judicial review is to eliminate at an early stage claims which are hopeless, frivolous or vexatious. Permission should be granted only if the Claimant shows an arguable case that a ground for judicial review exists which merits full investigation at a full oral hearing with all the parties and all the relevant evidence. If such a case is shown, however, permission will ordinarily be granted unless there is another ground for refusal, such as delay or the availability of an alternative remedy.

34. The Claimant's case in support of ground 1, that the Defendant has unlawfully failed properly to create or to follow a sufficient system to assess Ethiopia's human rights record, has two aspects to it. His primary complaint is that the Defendant has acted in breach of the duty owed by any public body to take reasonable steps to obtain the information relevant to the discharge of its functions: *Secretary of State for Education and Science v Tameside Metropolitan Borough Council* [1977] QC 1014. The Claimant emphasises that in contexts calling for anxious scrutiny, that is to say those involving fundamental rights, this duty is enhanced and encompasses a duty, where evidence calls for an explanation, to seek such an explanation: *R v Secretary of State for the Home Department, ex p Gashi* [1999] Imm AR 415 (CA). The Claimant alleges that the Defendant has no established mechanisms for collecting or assessing evidence as to Ethiopia's compliance with the conditions for the grant of aid. The Defendant has neither a system for assembling information itself, nor any mechanism for a third party to undertake inquiries on her behalf, nor any means of enabling third parties to draw relevant information to her attention, it is said.

35. The Claimant's further complaint is that the Defendant has, without good reason, acted in breach of an express requirement of her own policy document, namely the "How to note" of 2009, that she formulate objective benchmarks against which to measure compliance.

36. The Defendant does not dispute the existence of the duties of inquiry relied on by the Claimant. She responds however that the *Tameside* duty requires only reasonable steps, and that the standard which the law requires her to meet in discharging her functions in this regard is that of rationality and no more. Subject to that requirement, it is for the public body to decide upon the manner and intensity of inquiry appropriate to the function in question: *R (Khatun) v London Borough of Newham* [2005] QB 37, [35]. The principles have been recently rehearsed in *R (Plantaganet Alliance) v Secretary of State for Justice* [2014] EWHC 1662 (Admin) at [100] where it was emphasised, among other things, that

> "3. The court should not intervene merely because it considers that further inquiries would have been sensible or desirable. It should intervene only if no reasonable authority could have been satisfied on the basis of the inquiries made that it possessed the information necessary for its decision."

37. The Defendant characterises the Claimant's case in this respect as one involving a series of assertions as to how the Defendant should discharge her duty, by which the Claimant seeks to impose a "straightjacket" on the rational exercise of judgment by her.

38. As for the Claimant's second complaint, the Defendant has a simple response: rationality does not require the setting of benchmarks, and the policy of setting benchmarks that was put in place by the "How to note" was modified by an Addendum of June 2013, prior to the PPA of November 2013. The Defendant's only obligation was to follow the policy in force at the time of the decision at issue.

39. I have only summarised the rival arguments in the above paragraphs because I have reached the conclusion that on this first ground the Claimant has put forward a case that is reasonably arguable and deserves a full hearing. There is clearly force in the arguments advanced on behalf of the Defendant. However, I can also see force in the Claimant's observation that it has not been explained, either in the PPA or elsewhere, just how the overall process of collection and assessment of evidence is conducted or on what basis a decision is made. The Claimant maintains that the Defendant has in effect ignored, or chosen not to enquire further into, factual allegations which are plainly relevant to the assessment. The Claimant also points to elements of the assessment contained in the PPA which are said to involve attention being paid to irrelevant considerations. I do not believe I can dismiss these criticisms out of hand. Since these arguments will be advanced on a future occasion it is undesirable for me to say any more than that.

40. I have reached a different conclusion on the Claimant's second ground. His case as to transparency is again one of failure to comply with stated policy. The Claimant relies on the undoubtedly substantial number of statements contained in the Defendant's

policy documents, asserting a commitment to transparency. These are framed in a variety of ways but perhaps the high point is a statement in Part 2 of the "How to note" of 2009 that "We will publish all project evaluations from May 2012 onwards". The Defendant's response to this ground of challenge is to submit that whilst many references to transparency can be found there is no case advanced of any specific commitment to transparency in the relevant respect and no case that the Defendant has committed herself to publishing the PPA. This, it is said, is a classic area where what is necessary to meet transparency must be a matter for decision by the Defendant. That is especially so given the inherently sensitive nature of assessments of this kind.

41. These submissions of the Defendant seem to me to be unanswerable. It is beyond doubt that the Defendant has made commitments to transparency in decision-making about aid. What is not arguable in my view is that the Defendant has, by using the term "transparency" in the ways that she has, committed herself to making the PPA as a document public either in whole or in part, or that she has made a commitment to publishing a class of document of which the PPA is an example. I do not, in saying this, rule out an argument that the publication of aspects of the Defendant's assessments of Ethiopia's record is a necessary component of a lawful process of assembling and assessing relevant evidence. That is a separate issue from the case advanced in support of the Claimant's second ground of challenge, which is that the Defendant has failed to comply with her stated policy on conditionality by refusing to make the assessment public.

42. I therefore grant permission to seek judicial review on Ground 1, but refuse it on Ground 2. The refusal of permission on Ground 2 is without prejudice to the Claimant's right, if so advised, to rely on non-publication of the PPA in support of Ground 1.