



Michaelmas Term
[2025] UKPC 51
Privy Council Appeal No 0109 of 2023

JUDGMENT

John Calder Hart (Respondent) v Dr Myron Wing-Sang Chin (Appellant) (Trinidad and Tobago)

**From the Court of Appeal of the Republic of
Trinidad and Tobago**

before

**Lord Sales
Lord Leggatt
Lady Rose
Lady Simler
Lord Clark**

**JUDGMENT GIVEN ON
30 October 2025**

Heard on 9 July 2025

Appellant
Richard Clayton KC
Rowan Pennington-Benton
(Instructed by Freedom Law Chambers)

Respondent
Lloyd Barnett
Anthony Bullock
Weiden Daley
Shaydia Sirjue
(Instructed by Simons Muirhead Burton LLP (London))

Interested Party
Daniel Feetham KC
Daniel Goldblatt
(Instructed by Charles Russell Speechlys LLP (London))

LORD CLARK:

1. Introduction

1. This appeal arises from a report issued by a Commission of Enquiry which carried out a public inquiry in Trinidad and Tobago. The public inquiry was about a house-building project that was set up by a state-owned enterprise. Serious problems arose with the project, causing substantial public costs. The Commission's report contained adverse comments and findings about Mr John Calder Hart (the respondent), who had been the chairman of the state-owned enterprise.

2. Mr Hart raised proceedings for judicial review. One ground relied upon was that, in advance of the report being issued, Mr Hart should have been given the opportunity to see the proposed adverse comments and findings and to put forward his response. The defendants in the action were the Commission and its three Commissioners: Mr Justice Mustapha Ibrahim, Dr Myron Wing-Sang Chin and Mr Anthony Farrell. The Attorney General of Trinidad and Tobago entered appearance as an interested party.

3. The claim by Mr Hart was rejected by the first instance judge, Harris J. Mr Hart appealed and the Court of Appeal found in his favour, quashing the decisions, findings and recommendations the Commission had made against him. This appeal before the Board seeks to challenge the Court of Appeal's decision. The appellant is Dr Chin, one of the Commissioners (the other two Commissioners are now deceased).

2. Factual background

4. Mr Hart was the chairman of the board of the Urban Development Corporation of Trinidad and Tobago (UDeCOTT) from January 2002 until September 2006. UDeCOTT is a state company and one of its roles is the construction of affordable housing in publicly funded projects. In 2002 UDeCOTT acquired land for that purpose at Lady Young Gardens, Morvant, at a cost of \$3,500,000. UDeCOTT was to provide project management and development services.

5. In 2004 the board of UDeCOTT approved and awarded the contract to construct the buildings to China Jiangsu International Corporation (CJIC), for the sum of \$67,620,000. Designs were prepared by Planning Associates Ltd (PAL). The contract was for the construction of nine four-storey apartment buildings containing a total of 297 apartments. The project was scheduled to begin in 2004 and to be completed by February 2007. The apartment buildings to be constructed were named as Las Alturas Towers ("the Towers").

6. In January 2005 concerns as to the suitability of the site for the construction of multi-storey apartments arose, when significant slope movement was observed. A large crack on the site was discovered in March 2005. CJIC was ordered by PAL to immediately cease construction of the housing blocks located in the unstable area. Construction continued on other blocks and in July 2006 the project was handed over to another state-owned enterprise, the Housing Development Corporation (HDC), which had recently been incorporated. In January 2008 HDC contracted with CJIC to construct 134 units at a cost of \$74,876,000. Construction of two other buildings began in December 2008 but the instability continued. In 2009 these buildings suffered structural distress, in the form of cracking, settlement and earth movement. Measures were taken to try to address the problems, but both buildings were eventually rendered uninhabitable. By 2011 partial demolition of the two buildings became necessary in the interests of public safety and some years later they were completely demolished.

7. On 2 December 2014 the Commission of Enquiry was appointed. The inquiry looked into the entire process which led to the construction of the Towers and all other acts, matters or decisions done or undertaken incidental thereto, including the subsequent demolition of the two buildings.

8. On 24 April 2015 the Commission sent a letter to Mr Hart, inviting him to participate in the inquiry. It referred to his position as the former chairman and said that his participation would be of great assistance to the Commission. His attorney responded, explaining that Mr Hart was away at that time. On 27 January 2016 his attorney advised the inquiry that Mr Hart was prepared to participate *via* video-link if and when all documents had been disclosed to him. He sought disclosure of contracts, correspondence, UDeCOTT's board submissions and minutes, staff and consultant reports and witness statements. The Commission responded on 17 February 2016 to say that all disclosures made by the Commission were available electronically.

9. Mr Hart instructed his attorney to again request documents and by letter dated 24 February 2016 the attorney asked for, among other things, all board minutes from 2002 to 2006 and the contractual agreement or engagement letter between UDeCOTT and PAL. On 29 February 2016 the Commission replied, stating that the material it had referred to earlier comprised all the disclosures made to the Commission by UDeCOTT. The chairman of the Commission directed that Mr Hart should file his witness statement by 7 March 2016. That period was extended to 18 March 2016, after another request for the documents. On 18 March, Mr Hart's attorney advised the Commission that Mr Hart was not in a position to provide a witness statement within the timeframe and would not be able to do so until he was provided with all pertinent information that had been requested.

10. A newspaper article was published on 29 March 2016 in the Trinidad Guardian, with the headline "COE unable to wind up because of Hart". On 4 April 2016 Mr Hart's attorney wrote to the Commission, noting concerns with the contents of the article. There

was no immediate response and the attorney sent another letter on 18 April 2016, to which the Commission responded on 25 April 2016.

11. The Commission's position was that none of the other information requested by Mr Hart could be supplied to him as the Commission was not in possession of it. This was said to have been clearly articulated in the previous correspondence. The Commission stated that it did make reasonable attempts to source the requested information from UDeCOTT, pursuant to a previous direction made by the Commission that all parties were to produce any and all relevant documents in their possession, custody and control. The Commission had disclosed the requested items which were in its possession and custody.

12. The Commission was advised by its counsel that it was not the function of the Commission to locate and supply documents requested by Mr Hart to facilitate him providing a witness statement or attending the hearing. That advice was relied upon by the Commission. It also believed that most of the documents requested (including the board minutes during the period when Mr Hart was employed at UDeCOTT) would have been within the possession, custody and control of UDeCOTT. These documents were not supplied to the Commission. At the hearing before the Commission, counsel for UDeCOTT advised that UDeCOTT had complied with the Commission's request for disclosure and that any other documents (including the documents requested by Mr Hart) were not in UDeCOTT's possession. The Commission considered that it had made its position clear to Mr Hart, who then provided no evidence to the Commission. The Commission took the view that Mr Hart was not willing to participate in the inquiry.

13. The Commission published its report on 30 August 2016 and made various adverse comments and findings about Mr Hart. It will suffice to summarise these in brief terms. Reference was made to the communications with him about giving evidence and the report stated that "Several excuses were given by his attorney to account for his non-appearance". The report then stated that the Commission was unable to comply with the requests for further information "and accordingly he refused to testify". Mr Hart was noted to be the chairman of the board of UDeCOTT and "was therefore fully in charge of the Project". He was also described in the report to have been the "managing director" of UDeCOTT at the time when the decision was taken to purchase the land and construct the buildings. The action and role played by Mr Hart as the then managing director "left UDeCOTT and HDC exposed to large losses as they proceeded to utilize the land for the purpose for which it was acquired at unnecessary expense to the public purse". The Commission made the following recommendations:

"1. UDeCOTT in purchasing the land for development of low cost housing units created a situation where it is clear that the land was generally unsuitable for that purpose. They, therefore,

should be held accountable and liable for the losses sustained thereby.

2. Mr Calder Hart was clearly the mind and the management of UDeCOTT with respect to this project. He failed to do that which a prudent buyer would have done in the purchase of the land. He was required to do an inspection of the land before purchase and if he had done that he would have seen all the facts that operate against its suitability for the project. He therefore should be held accountable and liable for the losses sustained in the execution of the project.”

3. Judicial review proceedings

14. Mr Hart’s affidavit in support of his application for judicial review set out details of some of the exchanges between his attorney and the Commission, including requests for disclosure of further information. It went on to refer to the adverse findings and recommendations about him made by the Commission. He then stated:

“21. The Commission did not provide me with notice of adverse findings or criticism to be made against me in the Report. Further, and I was not given an opportunity to be heard or to respond to the findings of the Commission.

22. I was not served with or provided with a copy of the Commission’s said Report although adverse findings and statements were made against me and I had to rely on the public media for information in respect thereof. I eventually obtained a copy of the Report on or around September 15, 2016.

23. As a result of the Commission’s decisions, I have suffered loss to my reputation and face the possibility that a civil action could be initiated against me based [on] recommendations made by the Commission.”

15. Mr Hart’s affidavit referred to correspondence with the Commission on a number of occasions, including the Commission’s letter of reply on 25 April 2016. This letter is one of many appended to the affidavit. In essence, the Commission said it was Mr Hart’s duty to source whatever additional documents were needed, that the Commission did not accept responsibility for what was published in the media, and that findings of criminal

and civil liability would be made only if there was credible evidence to make such findings.

16. Leave having been granted for judicial review, Mr Hart was required to prepare a Fixed Date Claim Form. His claim form quoted the adverse comments in the Commission's report and referred to the failure to produce relevant and important documents. It invited the court to quash the decisions of the Commission made against him and included this point:

“(i) There was a denial to the Claimant of natural justice and due process in that he was not provided with adequate notice of the contemplated adverse findings; ...”

17. Part of the letter from the Commission on 25 April 2016, not specifically referred to in Mr Hart's affidavit and not mentioned in the claim form, came to be treated by the Court of Appeal as significant. The letter stated:

“The Commission and its Counsel are fully aware of the well established cardinal principles of fairness outlined by the Royal Commission on Tribunals of Inquiry UK (*the 1966 Salmon report*) and wishes to give the assurance that it has always observed and will continue to adhere to those stated principles. Salmon letters will be issued if and when the Commission determines that any adverse findings are to be made against any person, institution or organization. The Commission has also taken a decision that no Salmon letters will be issued until all parties have tendered their final submissions.”

18. The Commission had the power to make procedural rules and did so. The rules included the following:

“8. The Commission may depart from these Rules when it considers it appropriate to do so.

9. The Commission may amend these Rules or dispense with compliance with them as it deems necessary in order to ensure that the hearing is thorough, fair and timely.

...

43. The Commission shall not make a finding of misconduct on the part of any person unless that person or, if the person is deceased, his estate, has had reasonable notice of the substance of the alleged misconduct and has been allowed full opportunity during the Enquiry to be heard in person or by Counsel.

44. Any notices of alleged misconduct shall be delivered on a confidential basis to the person to whom the allegations of misconduct refer.”

The affidavit and the claim form did not refer to rules 43 or 44, nor specifically claim that there was any breach of them by the Commission.

4. Natural justice, “Salmon letters” and “Maxwellisation”

19. The matter of procedural fairness (as an aspect of natural justice), along with specific points about Salmon letters and what is described as Maxwellisation, were raised in this case and referred to by the first instance judge and the Court of Appeal. The main principles have been explained by the Court of Appeal in England and Wales in *R (Hexpress Healthcare Ltd) v Care Quality Commission* [2023] EWCA Civ 238 (paras 33-39). As the judgment notes, the application of the well-established common law principles on fairness will depend entirely on the facts and circumstances of the case. The Royal Commission on Tribunals of Inquiry 1966 (Cmnd 3121), chaired by Lord Justice Salmon, identified a cardinal principle that a witness to a public inquiry should be informed of any allegations to be made against him and any evidence in support of the allegations. This led to the development of a practice of sending a letter setting out that information to the person who is to give evidence. These letters came to be described as Salmon letters.

20. There were then cases involving the late Robert Maxwell (*In re Pergamon Press Ltd* [1971] Ch 388 and *Maxwell v Department of Trade and Industry* [1974] QB 523) in which the Court of Appeal took the view that before inspectors condemned or criticised a person, he must be given a fair opportunity for correcting or contradicting what is said against him. However, this did not mean he had to have the opportunity to comment on a draft report. The practice then developed into what came to be known as Maxwellisation: the practice of notifying an individual (whether or not that person is a witness) of proposed adverse findings in an inquiry report and giving that person an opportunity to respond before the findings are formally made. This became part of the Inquiry Rules 2006 in England and Wales (SI 2006/1838). While expressed in different terms, there are broad similarities between rule 13 of the Inquiry Rules, which deals with Maxwellisation, and rules 43 and 44 of the Commission’s procedural rules in this case.

21. Accordingly, Salmon letters and Maxwellisation are two distinct kinds of notification to affected individuals, at different stages in the procedure. However, it is perfectly clear that the Salmon and Maxwellisation practices are only about potential means to an end in complying with the broader key principle of natural justice and fairness. The central question in the present case is whether notice had to be given to Mr Hart of adverse comments or findings in the report. Contrary to the positions taken by the parties, the point about a Salmon letter giving notice to a witness is of no relevance. Moreover, Maxwellisation arising from the Commission's rules is a point said not to have been pleaded by Mr Hart. Leaving aside any assurance given to the person that he will be given notice of adverse comments or findings, and also any procedural rules that there is a duty to give notice, the general principles of natural justice and fairness still fall to be applied.

22. Section 20 of the Judicial Review Act 2000 in Trinidad and Tobago endorses the fundamental principle that procedural fairness is a feature of natural justice:

“20. An inferior Court, tribunal, public body, public authority or a person acting in the exercise of a public duty or function in accordance with any law shall exercise that duty or perform that function in accordance with the principles of natural justice or in a fair manner”.

5. Decisions of the first instance judge and the Court of Appeal

23. In the written submissions made by Mr Hart in support of his claim for judicial review, an allegation was made of a denial of natural justice and due process in that he was not provided with adequate notice of the contemplated adverse findings. The submissions then mentioned (using the expression “very significantly”) the passage in the Commission's letter of 25 April 2016 quoted above but not mentioned in the affidavit or claim form. That point was then developed. The submissions also argued that in any event there was a legal duty to send Mr Hart a Salmon letter once it appeared to members of the Commission that they would probably make adverse findings against him. Reference was made to several authorities. Further lines of argument were made on legitimate expectation, based on rules 43 and 44 of the procedural rules, and then on alleged illegality and error of law.

24. In response, the defendants' written submissions contended that Mr Hart's written submissions had advanced a number of specific points for the first time, effectively seeking to ambush the Commissioners by raising new issues. One matter that was, however, quite properly not alleged to be a new ground, was the point made in the claim form and reiterated in the submissions of Mr Hart that there had been a denial of natural

justice and due process in that Mr Hart was not provided with adequate notice of the contemplated adverse findings.

25. The Attorney General, as an interested party in the action, provided submissions which referred to a number of authorities and to Maxwellisation. Rules 43 and 44 of the inquiry's procedural rules were quoted and it was argued that, in accordance with these rules, Mr Hart would have expected to receive reasonable notice of the substance of his misconduct. This was said to be underscored by the written assurance of the Commissioners in their letter of 25 April 2016 that they were aware of the obligations of fairness and were committed to issuing Salmon letters if adverse findings were forthcoming.

26. The matter came before Harris J, who considered the evidence given, principally in the form of affidavits. His key conclusions were that Mr Hart was not to be allowed to surprise or ambush the other parties and was prohibited from running the new points, but in any event Mr Hart had no case. The judge adopted the Commission's submissions on the Salmon letters, stating that warnings were issued to witnesses and not to any person who might be mentioned in the report and that Mr Hart had unreasonably failed to take part as a witness. The judge then went on to comment on Maxwellisation. As for the remaining issues raised by Mr Hart (legitimate expectation, illegality, error of law, irrationality), the judge precluded Mr Hart from advancing "any of the new challenges". But he held that, even if consideration of these issues was required, they were not sustainable. He therefore dismissed the application for judicial review.

27. In allowing the appeal, the Court of Appeal (Mohammed, Rajkumar, Wilson JJA) held that, despite not providing a statement or attending the inquiry, Mr Hart was nonetheless entitled as a matter of natural justice and procedural fairness to be given notice of the adverse criticisms prior to publication of the report. The Court of Appeal also held that Mr Hart had a legitimate expectation that the Commission would adhere to the procedure set out in its rule 43. The argument for the Commission that to allow the point of legitimate expectation to be raised would be an abuse of process was rejected on the basis that fairness, natural justice and legitimate expectation were all said to have been sufficiently raised in Mr Hart's grounds and affidavit. The appeal was allowed and the orders of the first instance judge were set aside. The findings and criticisms in relation to the appellant in the Commission's report were held to have been arrived at in breach of the principles of natural justice and to be of no legal effect. Those decisions, findings and recommendations of the Commission were quashed. Detailed guidance was then given in relation to procedural fairness, Salmon letters and Maxwellisation.

6. The questions raised in this appeal

28. In submissions on behalf of the appellant before the Board, Mr Clayton KC explained that there were essentially only two matters for resolution by the Board on this appeal: firstly, whether the first instance judge was entitled to hold that it was not open to Mr Hart to argue grounds of challenge other than common law fairness because he failed to comply with the obligation to plead a positive case, as required by the Civil Procedure Rule 56.7(4)(e); and secondly, whether the judge's conclusion was fair in the particular circumstances of the case, and the Court of Appeal had erred in disturbing the judge's conclusion.

29. Submissions on the first issue were made by Mr Clayton. The main line of argument was that, as a result of the failure to comply with the obligation to plead a positive case, the appellant had no opportunity to adduce any evidence in relation to the legitimate expectation claims said to arise out of the letter of 25 April 2016 and indeed rule 43. The reason was that neither of those two complaints was raised until Mr Hart's written submissions were lodged, which was long after the Commission filed its evidence. The second issue was dealt with in submissions made by junior counsel, Mr Pennington-Benton.

30. At the outset Mr Clayton accepted that, while this objection applies to the legitimate expectation argument, it does not go to the natural justice and procedural fairness argument. He also accepted, quite rightly, that the central allegation of unfairness does not depend on the letter of 25 April 2016 or the procedural rules and that it is just about whether there was a duty to give the person the opportunity to answer the findings before they were made.

31. As is explained in *Pathan v Secretary of State for the Home Department* [2020] UKSC 41, [2020] 1 WLR 4506 (at para 154), an allegation of procedural unfairness amounts to a distinct ground for judicial review. The appellant in the present case accepted that Mr Hart advanced in his affidavit and claim form the contention that there had been a denial of natural justice in failing to give him notice and an opportunity to answer the findings of wrongdoing on his part before they were made. The first instance judge also accepted that the issues of natural justice and fairness were pleaded, but decided that the legal test of procedural unfairness was not met. The Court of Appeal found in favour of Mr Hart on this matter, before going on to deal with legitimate expectation. Accordingly, at the outset, the point to be determined by the Board is whether the common law principles of natural justice and procedural fairness (embodied in section 20 of the 2000 Act) required the Commission to provide notice in advance to Mr Hart of the adverse findings that it was proposing to make.

7. The law on giving notice as a matter of natural justice and procedural fairness

32. The law on when a person should receive notice in advance of adverse comments or findings, as a matter of natural justice and procedural fairness, is well-established. It is covered in a number of authorities, but the key elements can be summarised as follows:

(i) The standards of fairness are neither immutable nor are they to be applied identically in every situation: *Pyaneandee v Lam Shang Leen* [2024] UKPC 27 (para 68).

(ii) Rather, the requirements of fairness in any given case depend crucially upon the particular facts and circumstances: *Permanent Secretary, Ministry of Foreign Affairs v Ramjohn* [2011] UKPC 20 (para 39), under reference to *R v Secretary of State for the Home Department, Ex p Doody* [1994] 1 AC 531, 560; and *R v Chief Constable of the Thames Valley Police, Ex p Cotton* [1990] IRLR 344, CA (para 60).

(iii) Fairness will very often require that a person who may be adversely affected by the decision will have an opportunity to make representations on his own behalf either before the decision is taken with a view to producing a favourable result, or after it is taken, with a view to procuring its modification, or both: *R v Secretary of State for the Home Department, Ex p Doody*, at p 560, referred to in *Pyaneandee v Lam Shang Leen* (para 69).

(iv) Since the person affected usually cannot make worthwhile representations without knowing what factors may weigh against his interests, fairness will very often require that he is informed of the gist of the case which he has to answer (*ibid*).

(v) While cases may arise in which it can properly be held that denying the subject of a decision an adequate opportunity to put his case is not in all circumstances unfair, that will rarely occur: *R v Chief Constable of the Thames Valley Police, Ex p Cotton* (para 60).

(vi) The more finality there is in the conclusions reached by an inquiry and reflected in its report and the greater the strength of their expression, the more that is required to be done by the inquiry to ensure that the process is fair: *Pyaneandee v Lam Shang Leen* (para 70).

(vii) Breach of the requirements of fairness is a serious matter even if it is devoid of practical consequences: *R v Chief Constable of the Thames Valley Police, Ex p Cotton* (para 65), under reference to *R v Chief Constable of Thames Valley Police, Ex p Stevenson* (unreported), 6 March 1987.

8. What did the law on natural justice and fairness require in this case?

33. As noted, the law does not lay down rules of universal application and it is the specific facts in this case which have to be considered. There is no doubt that the Commission's report contained a number of serious criticisms, adverse comments and findings about Mr Hart. These were final conclusions, strongly expressed. In these circumstances, there would have to be a proper basis identified to show that it was not unfair for these findings of wrongdoing to be made without first giving Mr Hart an opportunity to answer the criticisms which the Commission had provisionally concluded were well founded and should be included in the report.

34. The appellant submitted that giving notice to Mr Hart would have made no difference, because he was invited to give evidence but refused to do so. It was also argued that it could be inferred from Mr Hart's rationality challenge that the most he would have said was that, as chairman of the board of UDeCOTT, he could not be responsible for the decisions of the members. The Board does not consider that these points provide a justification for not giving notice. The fact that a person has not given evidence does not preclude that person's right to have notice and be given the opportunity to respond in relation to adverse comments or findings. It cannot be inferred from the fact that evidence was not given by Mr Hart that he could not, or would not, have had anything to say about the comments and findings. It was inappropriate to speculate about whether or not, if given notice, he would respond and, if so, what he would say, or indeed to assume that nothing he could have said would have made any difference.

35. In any event, as is made abundantly clear in the *Cotton* case, the law does not require the person against whom the adverse comments and findings have been made to show what the response would have been and how that could have affected the outcome. The failure to give notice may be unfair, even if devoid of practical consequences.

36. The suggestion that the allegations against Mr Hart were made clear from the outset in the Commission's terms of reference is also of no merit. While the terms of reference indicated the questions to be asked, those questions could not be interpreted as meaning that, in effect, Mr Hart was to be held liable and accountable for what had occurred. It is the proposed adverse comments and findings that need to be known, rather than the starting point of the investigation.

37. The appellant argued that the Court of Appeal erred in law in deriving and applying a broad duty of fairness applicable to the circumstances of this case from the very different context in the cases of *Doody* or *Ramjohn*, as those were not about public inquiries. The Board does not accept that contention. While the facts in these other cases were of course different, the point is that the general legal principles of natural justice and fairness were expressed and applied in each of them. Moreover, the judgment in *Pyaneandee* explains the application of these principles in the context of a public inquiry.

38. The argument for the appellant that it would have been inappropriate to extend the time of the inquiry by giving Mr Hart the opportunity to respond is also not supportable. The findings made by the Commission against Mr Hart were very serious and expressed in conclusive terms. Natural justice and fairness required that Mr Hart should have been given notice and allowed the opportunity to respond, and this outweighed any concerns about an extension of time.

39. The appellant submitted that the high test in *Cotton* is met, in essence that the comments and findings against Mr Hart were so overwhelming that fairness did not require notice and the opportunity to answer. This proposition cannot succeed. The appellant has not provided any satisfactory basis to show that the Commission's conduct in failing to give notice and an opportunity to respond was fair.

40. As a result, the Board is satisfied that the Commission did not comply with the law on natural justice and fairness, now embodied in section 20 of the 2000 Act.

9. Conclusions

41. Mr Hart's case before the first instance judge referred to a legal duty to send him a Salmon letter and this form of notice was also relied on by the Commission in its submissions. These references to a Salmon letter may have influenced the judge in focussing on whether information had to be given only to a person participating in the inquiry, rather than giving notice of the proposed adverse comments and findings to any person against whom they would be made. However, that approach does not properly address the actual requirements of natural justice and fairness. In this case, as already noted, the issue about the need for a Salmon letter simply does not arise.

42. The judge also found that the case of *Maxwell* did not afford the protections claimed by Mr Hart to a person merely mentioned in a report as opposed to a witness in the matter. That is incorrect, because the Maxwellisation approach is not limited to witnesses. The judge stated that the instances of reliance on certain principles enunciated in *Maxwell* were for the most part founded on the applicable UK rules which are not duplicated in Trinidad and Tobago. That is, at the very least, questionable, given the

Commission's procedural rules. But it is not necessary to embark on any further analysis or consideration of Maxwellisation here, when the requirements of natural justice and procedural fairness, as covered by section 20 of the 2000 Act, have not been met.

43. The Court of Appeal properly recognised that Mr Hart should have been afforded the opportunity to respond to, or defend himself against, proposed adverse findings or criticism, rather than being condemned unheard. However, the Court of Appeal then gave its detailed discussion and decision on legitimate expectation. This resulted in substantial parts of the written submissions for each side put before the Board, as well as the oral submissions by Mr Clayton, being about whether the arguments on legitimate expectation for Mr Hart could be made and whether or not they should succeed.

44. The Board can understand why, when Mr Hart was given the assurance in the Commission's letter that he would be given notice and in addition the Commission was bound to follow rules 43 and 44 (with no argument that it had exercised its discretion under rules 8 or 9 not to do so), the Court of Appeal might have felt it appropriate to consider these as significant factual matters, if they had been adequately pleaded. But even if the view is taken that those factual issues were not sufficiently set out in Mr Hart's claim form or affidavit and should not be considered, the requirements of natural justice and fairness were still not met.

45. In relation to the detailed guidance on the Salmon principles and Salmon letters given by the Court of Appeal, as the Board has explained, the Salmon letter procedure is not in issue and is irrelevant in this case. In those circumstances, while the Court of Appeal was endeavouring to provide helpful assistance in relation to future cases on requirements of notice in a public inquiry, the Board does not consider that the present case provides an appropriate vehicle for looking more widely at the legal points on Salmon letters and Maxwellisation. As the Court of Appeal correctly observed, "[w]hat fairness in general, and procedural fairness in particular, require will depend on the circumstances of the particular case": para 63(i).

46. For the reasons given, the Board dismisses the appeal.