

UPDATE

W v JFSC – Administrative appeals: duty of administrative body to give reasons

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This recent decision highlights the expectation that the JFSC, and other administrative bodies, give reasons for their decisions. In this case, the Court ordered the JFSC to give clarification of their reasons for a decision to issue a public statement, even if the reasons document had to be provided separately to the public statement itself. This was to allow the person affected by the decision to know why a decision has been reached and what material was relied upon.

Introduction

A recent decision of the Master of the Royal Court has considered the obligation of the Jersey Financial Services Commission (JFSC), and administrative bodies generally, to give reasons for their decisions.

The JFSC regulates financial services business in Jersey. It has extensive powers under the Financial Services (Jersey) Law 1998 (**Financial Services Law**). As well as power, in certain broadly defined circumstances, to revoke the registration of a financial services business, the JFSC has a number of other important powers, including a wide power to give directions under Article 23 and power under Article 25 to make public statements concerning businesses and individuals.

As part of its investigation into the affairs of a Jersey trust company, the JFSC gave directions (under Article 23 and certain other regulatory laws) to one of its directors and owners, referred to as W, and further resolved to issue a public statement regarding him. W is appealing the decision to issue a public statement, because the decision to issue a public statement is under appeal, the proceedings have been anonymised by the court. The present judgment relates to an interlocutory application by which W sought a detailed statement of findings of fact made by the JFSC, justifying the proposed public statement and specific requests for further and better particulars or for details of certain paragraphs of the proposed public statement.

Law

The Master noted that the decision of the JFSC had been communicated to W by a letter which referred to the public statement as containing the reasons for the decision to issue directions. Article 23(5)(a) of the Financial Services Law requires a notice of a direction to specify the reasons for giving directions. Each of the directions issued by the JFSC also referred to the reasons for the directions being the findings set out in the public statement.

The Master also noted that Article 25A of the Financial Services Law provides in summary that where the JFSC intends to issue a public statement identifying any registered or formerly registered person (which would include W), notice of this intention must be given to the person concerned. The notice is also required to set out the reasons for issuing a public statement.

However neither the board minutes recording the decision to issue a public statement in respect of W, nor the letter, nor the public statement itself nor any of the affidavits filed on behalf of the JFSC contained any reasons for the decision to issue a public statement. This was a breach of Article 25A.

Looking at the matter from a more general perspective, the Master referred to *De Smith's Judicial Review* 7th Edition, 7-102 - 1-03, *Finance and Economics Committee v Bastion Offshore Trust Company* [1994] JLR 370, *Interface Management Limited & Ors v JFSC* [2003] JLR 524, *Anchor Trust v JFSC* [2005] JLR 428 and *Anchor Trust v JFSC* [2006] JCA 040, and drew the following conclusions:

- There is an obligation on an administrative body to give reasons.
- The extent of the reasoning required is to allow the person affected by the decision to know exactly why a decision has been reached and what material has been relied upon by the decision maker in reaching that decision.
- The reasons can be brief; indeed brevity is to be encouraged as long as the obligation in the preceding sub-paragraph is met.
- Reasons do not need to indicate why the material relied upon was preferred to other evidence.
- Clarity of the explanation given is particularly important where any finding involves a conclusion as to the honesty or other similar characteristic of the person about whom a decision is being made.
- Any breaches of duty or codes of practice relied upon should be identified expressly.

Decision

In an administrative appeal, the Master held that he had power under the Royal Court Rules to compel a party to take the step of clarifying reasons or evidence where that evidence is not understood, in order to ensure the efficient conduct of such proceedings.

On the facts of this case, the Master held that further reasons were required to be given by the JFSC. Its error was to have used the public statement as the reasons for its decision. The essence of a public statement, the Master said, is ultimately to warn individuals, whether in Jersey or elsewhere, not to deal with the subject matter of the public statement. Such statements are likely to be concise and only contain an outline or summary of the matters that have led to the necessity for a public statement. The obligation to give reasons however fulfils a different function. It is so that the person affected knows why the decision has been made and what material has been relied upon in making that decision. The more difficult the issue being considered by the JFSC, the more potential there is for tension between the simplicity required by a public statement and the level of detail needed to meet the applicable legal obligations when giving reasons. The Master encouraged the JFSC to reflect on its current practice and whether or not it should keep separate any public statement, if it decides to issue one, from any reasons it is required to provide.

The additional reasons or facts required were to be provided by way of supplemental affidavit. The JFSC was being asked to expand upon the reasons for its decision at the time, not to formulate additional reasons or conclusions above and beyond those already reached. To the extent that the JFSC was unable to provide any further reasons, then this should be made clear in its affidavit, including setting out why it was unable to expand any further at this point in time. It would then be for the Court at the substantive hearing or upon any appeal to evaluate the response contained in the affidavit.

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