

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

15 December 2010

Before:
Judge MACKIE QC, Sitting as a judge of the High Court

Between:

THE QUEEN (on the application of PETER STRAWSON LIMITED
Claimant
- and -

SECRETARY OF STATE FOR THE ENVIRONMENT
FOOD AND RURAL AFFAIRS
Defendant

JUDGE MACKIE QC:

1. This application for judicial review is brought by Peter Strawson Limited, a company with a farm near Grimsby, claiming that the Defendant, the Secretary of State for Environment Food and Rural Affairs, in its capacity as the Rural Payments Agency ("RPA"), has acted unlawfully by making an error of law and/or breaching the Claimant's legitimate expectations by withholding subsidy payments due under the EC Common Agricultural Policy and upholding a penalty. The application challenges a decision by RPA on 27 August 2009 rejecting an appeal by the Claimant.
2. The application was brought on the 13 November 2009 and permission was given by His Honour Judge Pearl on 19 February 2010. I have two bundles of documents including witness statements from Mr Peter Strawson for the Claimant, and Ms Kath Graves, Ms Rachel McManus and Ms Pauline Johnson for the Defendant.

Legislative background

3. The relevant regulations are numerous, lengthy and complex and I will in this judgement refer to them only briefly except where they are at the heart of the case.
4. The Rural Payments Agency ("RPA") is the Department for the Environment, Food, and Rural Affairs' ("DEFRA's") executive agency responsible for discharging DEFRA's obligation under the Common Agricultural Policy ("CAP").
5. The Single Payment Scheme ("SPS") is the principal agricultural subsidy scheme in the European Union. At all relevant times the SPS was governed by Council Regulation 1782/2003 ("the Council Regulation"), Commission Regulation 796/2004 ("Regulation 796/2004") and Commission Regulation 795/2004 ("Regulation 795/2004") (together "the Community legislation").
6. The Community legislation is directly effective. It is supplemented by the Common Agricultural Policy Single Payment and Support Scheme Regulations 2005 (as amended) ("the domestic

Regulations”) which largely concern matters left to the discretion of Member States by the Community legislation in relation to CAP payments.

7. The Single Payment Scheme Handbook and Guidance for England 2006 (“the Handbook”) was published by the RPA and set out the rules in relation to SPS payments.
8. The RPA is obliged by virtue of Council Regulation 1290/2005 (see in particular Article 9(1) and Commission Regulation 885/2006 to allow only such expenditure as is in accordance with Community legislation and to disallow expenditure where it identifies irregularities in farmers’ applications.
9. Article 19 of Commission Regulation 795 states:

“Adjustment of obvious errors

Without prejudice to articles 11-18, an aid application may be adjusted at any time after its submission, in cases of obvious errors recognised by the competent authority”.

Outline of entitlements

10. To be eligible for SPS, an applicant must be a farmer and must be entitled to payments under the Community legislation and the domestic Regulations. SPS payments were made pursuant to annual schemes. The relevant scheme for this case was the 2007 scheme.
11. In 2007, one of the requirements which determined whether a farmer was entitled to SPS was that he had land used for certain purposes which had been at his disposal for at least 10 months beginning on any date between 1 October 2006 and 1 April 2007. The start date could be selected by the applicant. Indeed if the Applicant failed to specify a date at all it would be treated as having applied nonetheless but on 1 February 2007. The requirement of specifying a date was replaced after 2007.

Facts

12. The Managing Director of the Claimant is Mr Peter Strawson. He had applied for payments for his farm East Ravensdale Farm under the 2006 scheme taking 1 October as being the start date for the 10 month period needed to qualify. He took the same date for his 2007 application but claimed for not only the 660 or so hectares he had previously applied for but also nine fields totalling 65.92 hectares which he had acquired on 1 December 2006. This was an error because the nine new fields had only been at his disposal from 1 December 2006, not from 1 October. The error did not change the Claimant’s underlying eligibility because he could have inserted 1 December 2006 or a later date as a start date for the 10 month eligibility period. Indeed he could have left the entry blank because he would have been taken to apply with a 1 February 2007 date. So the error could not have improved the Claimant’s entitlement to payment or to the amount which was calculated to be £14,193.70. Selection of 1 October could have gained no additional benefit for the Claimant and it exposed him to the detriment of receiving no payment and also of incurring penalties.
13. RPA commendably checks all field data on applications and they found that the nine fields had been declared by the previous owner, as part of his 2006, not 2007, claim so there was an overlap. There was no risk of double payment. RPA wrote to the Claimant on 1 October 2007 about eight of the fields pointing this out. Under the heading “What you need to do” the letter stated:

“Please check the field numbers shown above are correct and you wish to claim on these fields:

- If they are incorrect, you should write to us with details of the correct field numbers.
- If the 10 month rule date is incorrect you should write to us with the correct dates.
- If the field numbers are correct you need to contact the other claimant to resolve this dual claim – JB & UD Walker, Ravendale, Top Farm, West Ravendale, DN37 0RY.
- If you can agree between yourselves who is eligible to claim these fields, please send us evidence of this agreement, signed by all parties.
- If you are not eligible to claim on the fields in question, cannot agree, or you don't reply to this letter, penalties may be applied to your 2006/2007 claim.
- We need you to reply within 21 days of the date of this letter to resolve this Dual Claim and continue processing your claim."

14. As I read the sense of those provisions the Claimant is invited to check the field numbers and that he still wishes to claim, and if the 10 month rule date is incorrect, to correct it in writing. If there is an error with the field numbers then the Claimant needs to contact the other claimant and reach an agreement. If however the Claimant is not eligible to claim on the fields in question, cannot agree with the claimant or does not reply, there may be penalties.
15. Mr Strawson recalls that he telephoned Ms McManus on 4 October, apologised for the mistake on the application form regarding the start date for the nine new fields and asked what to do. He says that he was told that he should write in to the RPA and amend the form by requesting the substitution of start date B which could be designated as 1 December 2006 for start date A which had been incorrectly put in as 1 October 2006. He was told that the amended application would then be considered and the administrative error ignored. RPA at first denied that the telephone conversation took place but, challenged to produce telephone records to confirm this, the Claimant did just that. It is understandable that Ms McManus, who must receive many similar calls, has no recollection of a conversation when Mr Strawson, to whom the matter was important, remembers it well. I have no doubt that the conversation took place; the correspondence is consistent with it having done so. On 16 October Mr Strawson wrote to the RPA referring to the 1 October letter and the overlap and stating "Please can you alter the start date of our 10 month period from date A 1.10.06 to date B 1.12.06, to prevent the overlap". On 15 October RPA sent the Claimant a letter dealing with the ninth field in the same terms as the 1 October letter. On 18 October Mr Strawson replied referring specifically to the earlier telephone discussion explaining why this field was in the same position as the other eight and asking for a similar amendment.
16. On 24 October 2007 Ms McManus prepared an internal note which records, in relevant part, "Customer ... has replied to the 10 month overlap letter asking for start date B to be amended to 1/12/06 ... I have checked with support as the" (other). "customer ... has not replied but this information will resolve the claim and they have advised me to make the amendments and close task. I have amended start date B to 1.12.06 ... so overclaim is now resolved".
17. RPA wrote to the Claimant on 5 and 6 November and Mr Strawson accepts that both letters arrived on the same day. The 5 November letter refers to all nine fields and records that RPA have found that these are not eligible for payment for the 2006 application year and penalties may be applied. The Claimant was advised it need take no action unless it disagreed with the letter. The Claimant had made no 2006 application. The letter heading refers to the 2007 scheme. The 6 November 2007 letter refers to the field checks on the eight fields and records "We have made the following changes. The amended area of column C10 will be the area used to process your claim ... start date B has been amended from 1 February 2007 to 1 December 2006". Under

“What you need to do” the Claimant is told that he need take no action unless it disagrees with the contents.

18. On 7 November 2007 the Claimant received a letter dealing with the ninth field confirming that “You are entitled to claim for the following fields for this scheme year ... we will now continue to process your claim”. As a result of this letter RPA does not challenge the Claimant’s claim for this field although at one point in the process it described the 7 November letter as being an error.
19. On 8 November 2007 the Claimant wrote to RPA referring to the 5 and 6 November letters and to having inadvertently used the 1 October start date when completion of the purchase of the nine fields was not until 1 December “We were advised in October by your good self that if we formally amended the start date the administrative error could be disregarded. We wrote on 16 October formally changing the start date. We apologise most sincerely for this error in our claim. Frankly the loss of some £15,000 is a very real blow to our cashflow and arises before the increase in commodity prices has worked itself into our system. Please will you accept our apology for this error of start date. It was entirely unintentional and had no bearing on the financial payment. Indeed we gather that the start dates will be discontinued for 2008”. On 16 November RPA replied to the Claimant “Regarding the dual claim penalties applied to your claim”. Reference was made to the possibility of penalties having been mentioned in the 1 October letter. RPA issued a claims statement under the single payment scheme for 2007 on 14 May which disallowed the payment as to £14,193.70 and imposed a penalty of £36,311.79.
20. The Claimant invoked stage one of the appeal procedure under the scheme, relying on Article 19. After some delay for which RPA apologised it rejected the appeal. The Stage 1 appeal decision rejects an appeal on this ground on the basis that “As a general rule, obvious errors have to be detected from the information given on the claim form and supporting documents ... it was not obvious from the application or supporting documents that Peter Strawson Limited intended to start the 10 month period for these fields from a later date and there were no other contradictions within the application”.
21. RPA also said, in effect, that the Claimant should have resolved all issues concerning whether the land was at his disposal before making a claim. The Claimant pursued a second stage appeal which led to a hearing on 20 January 2009. The Panel recommended that RPA’s decision be upheld considering “That the error was not obvious from the information provided in the application and supporting documents ... It was clear to the panel that there was no intent of fraud and that this was a genuine error on the part of the Appellant when completing his claim form. However the Panel does consider that the penalty appears out of proportion to the error made by the Appellant”. It was not until 26 August 2009 that RPA communicated its decision after apologising for the latest delay. The letter attaches the recommendations of the Panel and records that the Minister like the Panel expressed concerns about the level of penalty but considered that it was determined by legislation and could not be varied. The letter drew attention to the possibility that the Minister’s decision may be open to judicial review.
22. The Witness Statements fill out the picture of the correspondence and those submitted on behalf of RPA explain how, internally, events occurred. Very little of this evidence was referred to at the hearing and it is useful background rather than directly relevant to the court’s decision.

Further provisions of the Community legislation

23. Article 15 of Regulation 795/2004 permits amendments to applications in certain circumstances. This article does not however assist the Claimant because any such amendments must be notified in writing by 31 May, in this case 2007. Furthermore RPA says that an amendment would not in any event have been permitted because Article 15.3 prevents amendment “where the competent authority has already informed the farmer of irregularities in the ... application”. “Irregularities” are defined in Article 2 as “any non-respect of the relevant rules for the granting of the aid in question”.

24. Article 33 of the Council Regulation establishes a farmer's right to access to the SPS. An applicant must have payment entitlements (and it is conceded that the Claimant had these) accompanied by an equal number of "eligible hectares". Under Article 44 an "eligible hectare" is defined to include in effect the fields in issue in this case and the farmer is required to declare "the parcels" corresponding to the "eligible hectare". For most purposes "these parcels shall be at the farmer's disposal for a period of at least 10 months, starting from a date to be fixed by the Member State". Regulation 795/2004 puts this into effect permitting Member States to fix the beginning of the 10 month period between 1 September of one year and 30 April of the next or to "leave it at the farmer's choice within the fixed period", as occurred in the United Kingdom.
25. Article 50 deals with the basis of calculation for areas declared providing that "If the area declared in a single application exceeds the area determined for that crop group, the aid shall be calculated on the basis of the area determined for that crop group". "Area determined" is defined in Article 2(22) as:
- "The area for which all conditions laid down in the rules for granting the aid have been met; in the case of the single payment scheme, the area declared may be deemed as determined only if actually being accompanied by a corresponding number of payment entitlements".
26. The liability to penalty arises from Regulation 796/2004. Article 51 provides "If, in respect of a crop group, the area declared for the purposes of any area-related aid schemes ... exceeds the area determined ... the aid shall be calculated on the basis of the area determined reduced by twice the difference found if that difference is more than either 3% or 2 hectares, but no more than 20% of the area determined". By Article 68 (2) the penalty does not apply if the farmer informs the competent authority that the aid application is or has become incorrect but only if the authority "has not already informed the farmer of any irregularity in the application". The effect of Article 50(c) and 51(1) is that if the area declared exceeds that determined then that determined prevails and the penalty is twice the difference between what is declared and what is determined.
27. The RPA issues a "Single Payment Scheme Handbook and Guidance for England", in this case being the 2006 edition updated for 2007. The Handbook explains the scheme and applies it to English conditions. Under the heading "obvious error" Paragraph 30 provides:—
- "P30. Mistakes that can be classified as obvious errors can be corrected without reduction at any time, provided RPA recognises that you acted in good faith and that there is no risk of fraud. The following types of mistake may be classified as obvious errors, but each case will be considered on its own merit:
1. clerical errors such as missing information, empty boxes or incorrect statistical information. These kinds of errors must be obvious to RPA from a simple examination of the application;
 2. contradictions that come to light when RPA compares information in the same application, either manually or by computer. Examples of these kinds of errors include arithmetical mistakes and inconsistent information (declaring the same parcel twice in a single claim or declaring the same parcel for two types of usage);
 3. anomalies involving parcel numbers or references detected when the application is cross-checked against databases – for example, reversed figures (parcel no. 1169 instead of 1196), mistakes in map reference numbers, or mistakes in parcel numbers as a result of a map-reading error."
28. Guidance about the concept of obvious error is provided by European Commission working document AGR49533/2002. These four pages first emphasise "several underlying conditions". Decisions depend on the overall facts and circumstances of each case. The authority must be satisfied with the obvious nature of the error involved "consequently the concept of obvious error

may not be applied in a systematic manner but should involve an examination of each and every case individually”. There are similar references throughout emphasising that the document cannot specify every kind of potential error. Following those conditions the Commission sets out guidance over three pages starting “as a general rule, an obvious error has to be detected for information given in the aid application form submitted”. Examples are given of irregularities that may usually be considered as obvious errors. These include matters obvious during a basic examination of the claim and inconsistencies detected as a result of checking the coherence of the application.

Submissions of the Parties

- 29 By the time of the hearing Mr Wolfe’s challenge on behalf of the Claimant was made in four ways.
30. Meaning of over-declaration. First he argues that there was a misdirection of law. The RPA has proceeded, as one sees at Stage 1 of the Appeal on the assumption that “in cases of over-declaration RPA is required to apply reductions ...” but as a matter of law there was no over-declaration at all. Provisions of community law have to be construed having regard to their objective. As the recital to Regulation 796/2004 makes clear the measures invoked are to combat fraud and irregularities in order to protect the financial interests of the Community. The objective is to ensure that farmers only claim for areas which they had at their disposal for 10 months in the relevant period. The Claimant did not make a claim for any fields which did not meet the relevant conditions. What was declared was in a sense precisely the same as that which was determined and there is therefore no lawful basis to reduce the claim or impose a penalty.
31. Ms Holmes, for RPA, points out that the Claimant’s approach overlooks the legislative framework. An area declared can only be one which has been at the farmer’s disposal for a period of at least 10 months starting from the date nominated by that farmer. The date is used by the Member State to determine entitlement. The Claimant made a declaration for parcels which had not been at its disposal for a period of at least 10 months before 1 October 2006. Under the legislation there is thus a clear difference between the amount declared and the amount determined. Further, under Article 50 of Regulation 796, the basis for calculation for areas declared must be the “area determined” which is defined, as the area remaining once all the relevant rules have been applied to the claim. This approach should fail for lack of merit but Ms Holmes points out that, if it were the correct one there would be no or very limited need for the amendment provisions in Article 15 of Regulation 796.
32. This ground fails for the reasons given by Ms Holmes.
33. Article 15 amendment. Secondly, Mr Wolfe submits that the Claimant was entitled to amend under Article 15 as the error was not an “irregularity” as defined as “non-respect of the relevant rules”. This expression requires more than simply minor or immaterial factual error from which no gain could have followed. The French text equivalent of “non-respect” is “atteinte”, an attack, offence or a violation. The aim is to prevent and discourage attempts to obtain some improper advantage. There is no suggestion of that in this case.
34. Ms Holmes points out that whatever the other merits of that argument there can be no valid amendment unless notified in writing by 31 May of the relevant year. It follows that there is and was no opportunity to amend after May 2007. I agree. The second ground fails.
- 35 Obvious error and Article 19. Thirdly, Mr Wolfe submits that this was an obvious error so amendment should have been permitted at any time under Article 19. While the guidance about what is an obvious error suggests that this will generally be a mistake that is evident on the face of the application, it is made clear that each case depends on its own facts. Further some of the non-exhaustive list of examples provided in the guidance include those which arise from the checking of databases, as in this case. Those errors are obvious but they are not plain on the face

of the application. It is difficult to think of an error more obvious than the selection of a date which would, to the knowledge of anyone familiar with the area, invalidate a claim and generate penalties when numerous available alternative dates or the choice of no date would not.

36. Ms Holmes relies upon the guidance in the handbook and in the European Commission working document and upon considerations identified by the Court of Appeal in Northern Ireland in *McAlinden and Hennity's Applications* [2009] NICA56. Ms Holmes submits that the court concluded that obvious error should be given a very restricted meaning. She cites paragraph 18 of the single judgement of the court which draws from the French text reference to principles of French Administrative Law justifying the intervention by administrative tribunals to correct errors. That jurisdiction only arises if there is something relating to the application "which shows a mistake which is manifest, flagrant, open and clear". She also relies on observations in paragraph 22 that "The scheme of the regulations imposes a duty on the farmer to make the application in clear terms and it does not impose on the Department a duty to act as his advisor or the guardian of his best interests". Adding: "Unless the relevant official designated to scrutinise the application would be bound to conclude that the applicant has made a mistake and that the form cannot have represented the true intent of the applicant, the error is not obvious ... if the official is left to speculate whether the application might have made an error or even might well have made an error, it cannot be said that there is an obvious error ..."
37. The Court of Appeal also points out that a provision which permits correction regardless of time must be approached cautiously in circumstances where other rights to amend or change are time sensitive and where other minor lapses, such as a failure to lodge the application in time, have effects no more draconian than those in this case.
38. Before deciding whether this was an obvious mistake I turn to the case of *McAlinden* in which the Court of Appeal in Northern Ireland was directly concerned with the meaning of "obvious error" in Article 19. The facts are relatively complex but in Mr McAlinden's case the application related to 27 fields but the area of the final field, 70 acres, was not inserted and the box was left blank so that on the face of the form no claim was being made for that land. The court concluded that Mr McAlinden's application did not contain an error which could be described as an obvious one applying what the court saw as the proper test. The court pointed out that the position would have been different if the Applicant had filled in one box but not the other. It would have been obvious that an error had been made. On the face of the application the Applicant had not made a claim and there were commercial reasons identified in the judgement why a farmer might choose not to claim. The Department could not have known either way what was intended. The contrast drawn by Mr Wolfe here is that the RPA was able, by cross-checking, to spot precisely that an error had been made and to invite correction of it.
39. The judgement concludes that there are clear underlying Community law reasons for giving Article 19 a strict interpretation. National authorities cannot be expected to carry out checks and verification of all statements made and the onus is on farmers to get their applications right. In addition to decisions of the ECJ the court refers to a decision of Aldous J in *R v Comptroller General of Patents (ex parte Celltech Limited)* [1991] RPC 475. In that case the judge applying apparently similar rules observed that "What must be obvious is not simply that there has been some mistake but also what the error is so that it can be rectified. If extraneous evidence of the applicant's intentions is necessary to show that there has been an error, then that error cannot be an obvious error". Further, in rejecting the approach of the judge at first instance as imposing too high a duty of inquiry on the Department, the Court of Appeal added "Unless the relevant official designated to scrutinise the application would be bound to conclude that the applicant has made a mistake and that the form cannot have represented the true intent of the applicant, the error is not obvious".
40. In my judgement this was an obvious error accepting, as I do, that the approach is a strict one and has to be in the interests of preventing and reducing fraud throughout the European Union. The fact that the approach is a strict one does not as I see it, necessarily require the error must be

obvious on the face of the application itself. The examples given in the handbook include those which come from checking databases. Examples are just examples and both the Handbook and the working document rightly emphasise that it all depends on the circumstances of the case. Moreover, the Court of Appeal in Northern Ireland pointed to the dictionary meaning of 'obvious' including two shades both "clearly perceptible" and "indubitable". There are many obvious errors which may not be apparent on the face of a document. Mr Wolfe, not unfairly, drew attention to the inclusion in a letter in the correspondence bundle of what was obviously a wrong date. But it was not obvious on the face of the document and became so only when the context was examined.

41. In this case RPA identified an anomaly and Mr Strawson explained his simple error. Unlike the position in *McAlinden* Mr Strawson could have no possible reason for putting in 1 October. Instead of enabling him to obtain the payments which would have resulted had he used a later or no date he used one which would deprive him of his payment and subject him to a penalty. There was no conceivable benefit and could be no hidden motive for him making the choice which he did where he was putting in what was the right date for the great majority of his eligible land. Armed with the right context the "relevant official" identified in *McAlinden* would have no difficulty in concluding that the Applicant had made a mistake. The objective of reducing fraud is a vital one. It is of course essential for there to be no grey areas within which the dishonest can benefit from fraud if undetected but, if found out, escape by relying on mistake or other error. The Claimant is not in that grey area.
42. I gratefully follow guidance from higher courts on this issue even if it is not binding. But I am not necessarily helped by applying to the facts of this case encapsulations of the meaning of the words "obvious error" correctly and helpfully formulated for application to the facts of other cases. I should look primarily at the meaning of the words in context and the published guidance. That guidance tells me that a strict approach must be taken to determining whether an error is obvious. The guidance provides for exceptional cases and in my judgement this is plainly one. I am to an extent fortified in that conclusion by what appears to have been the sensible approach by RPA to be found in the exchanges leading up to the letter of 6 November 2007 for eight fields and to that of the 7 November (which is not contested by RPA) for the ninth. I recognise however that RPA sees its approach as having been an oversight.
43. As I see it this was an obvious error within Article 19.
44. Legitimate expectations. Fourthly, Mr Wolfe claims that the Claimant had a legitimate expectation that the amended dates of 1 December 2006, which was a product of the telephone calls on 4 October and 8 November and the letters of 18 October and 6, 7 and 8 November, would be accepted. The RPA had told Mr Strawson that if the Claimant wrote to clarify the date then the mistake in the original claim would be rectified without further problems. The RPA had also acknowledged the Claimant's formal amendment to the date and stated that the amended area, including the new fields, would be used to process its claim. Mr Wolfe points to the acknowledgement by the RPA at Stage 1 of the appeal that the letters and advice provided by RPA to Mr Strawson may have led him to believe that he could amend the 10 month start period without penalty. The Claimant argues that RPA has acted inconsistently by not processing the Claimant's application with the amended date and by applying a wrongful penalty as a result of the original incorrect date. In this way RPA has acted unlawfully by thwarting the Claimant's legitimate expectation without any reasonable justification.
45. The RPA disputes that Mr Strawson was told that his claim would be rectified without further problem but has no evidence to refute his witness statement which I have referred to above. It is also suggested that the relevant passage in the letter of 6 November refers to the area being used to "process" your claim and says nothing about the basis on which it would be determined. Ms Holmes argues that the statement by RPA, when the letter of 6 November is read in its entirety, is at most a representation that it would use the amended start dates to allow the claim to be processed. "Processed" is an expression used within RPA to mean entered into the computer for a

decision to be made as Ms Graves explains in her witness statement. Ms Holmes argues that the statement is incapable of amounting to a promise or adopted practice which represented that the RPA would consider the Claimant's application for payment on the basis of the amended start date. As I see it when one looks at the substance of what was being communicated to Mr Strawson that distinction is not justified. I do not consider that the ordinary reader would take it that way. If the error was to be corrected at the start of the process only to be treated at the decision stage as if it had not been put right this should have been explicitly set out. Furthermore it is not consistent with RPA's own internal note of 24 October which refers to the start date having been amended and the "over claim" now resolved.

46. Ms Holmes also points to the fact that Mr Strawson received the letters of 5 and 6 November at the same time and sought clarification in his letter of 8 November. It follows that any expectation created fell away. Mr Wolfe responds that the legitimate expectation created by what was said by RPA about amendment caused him to write confirming that the amendment should be made rather than consider and perhaps adopt the other option apparent from the face of the letter of 1 October ("please check the field numbers ... and you wish to claim on these fields"). If the claim had been withdrawn the Claimant would not have received its payment but would have been spared the penalty. Ms Holmes responds that it was not in any event open to the Claimant to withdraw his claim except in circumstances permitted by Article 22. This prevents withdrawal of an aid application after the competent authority has informed the farmer of irregularities in the aid application. Mr Wolfe's reply is that the letter of 1 October does not inform the Claimant of an irregularity. It informs him of an inconsistency and offers choices. He argues that what RPA did to create the legitimate expectation discouraged the Claimant from adopting the option which would have spared him the penalty thereby exposing him to the detriment of that penalty, (albeit not the loss of the payment because this would have followed from the decision to withdraw).

47. There was no dispute between the parties about the identity of the leading authorities on legitimate expectation albeit each drew attention to different points of emphasis. Mr Wolfe drew attention to *Nadarajah and another v Secretary of State for the Home Department* [2005] EWCA Civ 1363 and to the following passage in particular:–

"Where a public authority has issued a promise or adopted a practice which represents how it proposes to act in a given area, the law will require the promise or practice to be honoured unless there is good reason not to do so. What is the principle behind this proposition? It is not far to seek. It is said to be grounded in fairness, and no doubt in general terms that is so. I would prefer to express it rather more broadly as a requirement of good administration, by which public bodies ought to deal straightforwardly and consistently with the public. In my judgement this is a legal standard which, although not found in terms in the European Convention on Human Rights, takes its place alongside such rights as fair trial, and no punishment without law. That being so there is every reason to articulate the limits of this requirement – to describe what may count as good reason to depart from it – as we have come to articulate the limits of other constitutional principles overly found in the European Convention. Accordingly a public body's promise or practice as to future conduct may only be denied, and thus the standard I have expressed may only be departed from, in circumstances where to do so is the public body's legal duty, or is otherwise, to use a now familiar vocabulary, a proportionate a proportionate response (of which the court is the judge, or the last judge) having regard to a legitimate aim pursued by the public body in the public interest. The principle that good administration requires public authorities to be held to their promises would be undermined if the law did not insist that any failure or refusal to comply is objectively justified as a proportionate measure in the circumstances".

48. Mr Wolfe also places reliance on passages in *Bhatt Murphy v The Independent Assessor* [2008] EWCA Civ 755, particularly at paragraph 46 in which Laws LJ recognises that a promise made specifically and directly to an individual or small group has the greatest force.
49. Ms Holmes argues that the foundation for legitimate expectation is an abuse of power. Any representation must be clear, unambiguous and devoid of relevant qualification and the RPA

must have acted with “conspicuous unfairness” or something similar. She relies on passages from *R v Secretary of State for Education and Employment, Ex parte Begbie* [2000] 1WLR 111; *R (on the application of Emmanuel Joseph) v Secretary for the Home Department* [2002] EWHC 758 and *R (on the application of Zeiger) v Secretary of State for The Home Department* [2002] UKHL6. Whilst accepting that a detriment is not a prerequisite for establishing illegitimate expectations in this case she points to *The Queen v Secretary of State for the Home Department* (unreported, dated 7 June 2000). This was a case where a mistaken statement as to the Claimant’s right of appeal was later corrected and the then Mr Justice Sullivan said:–

“Whilst reliance is not essential, lack of reliance will often be relevant in deciding whether or not it would be fair and/or in the interests of good administration to correct a mistake. There was no reliance here”.

50. Finally, Ms Holmes points out that a legitimate expectation cannot require the RPA to act contrary to its legal obligations which prevented it from making payments for the relevant year in respect of the fields and required it to impose the penalties.
51. In my judgement this is a legitimate expectations case. The Claimant was, for good reason, led to believe that any issue created by the letter of 1 October would be cured by the amendment he was advised to make. He did make that amendment and expected that to be an end of the matter. While not strictly relevant it is the case that the RPA, at least for a period, was of the same view. If the RPA was going to refuse payment and impose a penalty it should not have led the Claimant to form the belief which it did. It is not helpful for the RPA, at this late point, to point to words in the letter of 6 November which if read literally, which they should not be, might reduce the extent of the expectation created. The promise was made to the Claimant alone, and not to a wider group, and he could reasonably have been expected to rely upon it. He suffered a detriment in that he did not consider withdrawal of his application or the possibility of other evasive action. I am not satisfied that the letter of 1 October did notify an irregularity to the Claimant so as to make it not possible for him to withdraw. He was in effect offered that opportunity to withdraw. Neither the nature of the inconsistency identified nor the tone of the letter and the options it offered seemed consistent with notification of an irregularity as such. But that is not a point that I need to or should decide given that detriment is not a strict prerequisite for relief. Further even the chance of an opportunity to withdraw or take other action, once lost, was a detriment to the Claimant. It follows from the conclusions which I have reached about obvious error that the legitimate expectation created in this case would not be requiring the RPA to act contrary to its legal obligations.
52. It is not necessary for my decision on legitimate expectations to consider such matters but I am fortified in the result by the exceptional and unusual nature of the error in this case, by the fact that the Appeal Panel considered the penalty which would otherwise result to be out of proportion to the error made by the Appellant and to the concerns about these consequences felt by the Minister himself.

Conclusion

53. It follows that the Claimant has established that its claim of error of law based on the obvious error in this case succeeds as does its claim based on legitimate expectation. It appears to follow from that that the relief granted to the Claimant should extend to resolving the payment claim in his favour and the cancellation of the penalty rather than remission of the decision to the Minister. However, I invite the parties to endeavour to agree a form of order and consequential matters. If that proves possible no-one need attend the hand down of this judgement. I invite the parties to let me have corrections of the usual kind, a draft order, if not agreed, and a note of any points to be raised at the hand down of the judgement and to do so not less than 48 hours before the hearing.