13 Feb 2014

[2014] UKPC 5
Privy Council Appeal No 0017 of 2013

JUDGMENT

The Attorney General (Appellant) *v* HMB Holdings Ltd (Respondent)

From the Court of Appeal of Antigua and Barbuda

before

Lord Neuberger
Lord Mance
Lord Kerr
Lord Hughes
Lord Toulson

JUDGMENT DELIVERED BY

Lord Hughes

ON

26 February 2014

Heard on 27 and 28 January 2014

Appellant
Peter Knox QC

(Instructed by Charles Russell LLP)

Respondent
Timothy Corner QC
Lisa Busch
(Instructed by Howard Kennedy FSI LLP)

LORD HUGHES:

1. The respondent company HMB Holdings Ltd ("HMB") owned some 108 acres by the sea at Half Moon Bay in Antigua. The site included extensive beach frontage on what was described by the Government as a particularly beautiful bay. A hurricane destroyed HMB's hotel on the site in 1995. After some years had passed with no re-development, the Government compulsorily purchased the site. There was unsuccessful litigation to challenge its right to do so which brought the case as far as the Board in 2007, but the Government took possession on 23 July 2007, which was the date as of which the site had to be valued for the purposes of compensation. A three-person Board of Assessment comprising a judge and the nominees of each side made an award of US$ 23,820,999 on 5 January 2010. HMB appealed that decision to the Court of Appeal which, on 5 December 2011, allowed its appeal and substituted an award of $45,499,102.09. This is an appeal by the Government against the determination of the Court of Appeal.

2. Before the Board of Assessment the critical issue debated was the correct method of valuation. It was agreed that the basis was the price which a willing seller would obtain from a buyer in the market. But whereas the Government contended for a standard sales comparison method, HMB advanced a residual land value method, based upon a prediction of what completed hotels, villas and other property, once built on the land, could be expected to fetch, less the costs of development and the

developers' profit. Leaving aside one valuation on which nobody in the end relied, the Government relied on two surveyors' valuations, from PCS Property Services ('PCS') and Deloittes, which were on the former basis. These put the value of the site at just over $23m and at $22.7m respectively. HMB relied on a valuation by Mr Kent Kerr of the firm CB Richard Ellis of Miami which, on the residual land value basis, arrived at a figure of $60m. HMB's nominee member of the Board supported this residual land value basis, but the other two determined that the sales comparison method was the correct one. In due course the Court of Appeal upheld the decision that the correct basis for valuation was the sales comparison method, and HMB no longer argues otherwise. No more need be said about the now abandoned residual land value method, except to note the very significant consequence that debate about it before the Board, and to a lesser extent before the Court of Appeal, appears to have meant that there was extremely limited evidence and argument about what the correct figure ought to be if the sales comparison method was adopted.

3. This matters because, whilst rejecting HMB's primary case for residual land value method and working on a sales comparison method, the Court of Appeal accepted its secondary submission that the only true comparable offered was a nearby property called Emerald Cove, and on that basis lifted the compensation figure from $23.8m to $45.5m. The principal issue on this appeal has been whether there was any proper evidential basis for the Court of Appeal to do so.

4. The evidence before the Board consisted, first, of the three written reports by the three surveyors. Both PCS and Deloittes, addressing the sales comparison method

of valuation, listed various possible comparable properties. The PCS report said in general terms that the sales comparison method involved "direct comparison of sales and listings of similar properties and adjustments for variances". It then stated that "We have valued the land based on the following comparable transactions of large parcels of land in Antigua over the relevant time period.". It listed some seven other properties, all in Antigua. It gave, in each case, some summary particulars by way of description (for example: "waterfront, heavily mangroved" or "beachfront, mostly inland". It gave the size of each. It stated a date and value; for some it said no more and it may be that those were completed sales, or understood to be such; for others it said either "listed" (which seems to have been taken to mean 'asking price') or "appraisal". The prices per acre varied from $44,000-odd to a little over $588,000. PCS did not set out any calculations or adjustments by means of which its advice on the value of Half Moon Bay had been derived from these comparables or other material, but simply stated that value at $215,000 per acre. From the value based on that per acre figure, PCS deducted $200,000 for the costs of demolition of the hurricane-damaged buildings, thus arriving at its valuation of $23,056,550. Neither of the two authors of this PCS report was called by the Government, and HMB, whilst not objecting to the admission of the report, did not call for either to attend for cross examination to explain what process they had adopted.

5. One of the seven properties in the PCS list was Emerald Cove which appeared with the legend: "150 acres, Waterfront and beachfront, close proximity to subject" and, critically, "March 2004 Appraised value". That appraised value was stated at

$46m, or $306,667 per acre. In a short paragraph underneath its list of comparables, PCS noted that "Emerald Cove can be considered one of the best comparables given its close proximity to the subject site, and excellent beachfront." It was clearly after factoring in Emerald Cove and that description of it that PCS arrived at its conclusion that a fair valuation of Half Moon Bay was $215,000 per acre. It had thus demonstrably not simply adopted the reported per acre figure for Emerald Cove, which was nearly half as much again.

6. Neither of the other two valuers' reports mentioned Emerald Cove. Mr Kerr, for HMB, did not address the application of a sales comparison method at all, either in his report or in his witness statement. He made limited reference to comparable sales-out of completed developments, in support of his residual land value method, but he said nothing at all about any comparable property sold or valued in an undeveloped state and on the conventional sales comparison method. When he came to give evidence, he was asked in chief why his completed unit sales comparables had not been in Antigua and he replied that he did not consider any Antiguan site comparable. In answering that question, he included Emerald Cove, in passing, amongst those he regarded as non-comparable for his purposes. He said no more about it. As to the rival sales comparison method, he confined himself to asserting that the Deloittes comparables were, in his view, also unsuitable for use in that exercise, and he offered the unexpanded opinion that some of the Deloittes adjustments "appeared overstated", whilst others were accurate, but he did not say which was which. He thus offered no evidence about what the result might be if the sales comparison method were to be

used. His evidence was entirely pinned to his advocacy of the residual land value method and it contained nothing at all which could help with the alternative method of valuation if that primary contention failed.

7. The Deloittes report was written by Mr Watson, who was called to give evidence in support of it. He had identified seven comparable sites, all in Antigua, only one of which was in the PCS list. Most of them were very much smaller than the subject site, four of them ten acres or smaller. The only one which was of similar size to Half Moon was a property called Pearns Point, which was the one listed in common with PCS, and was 130 acres. Mr Watson's report said that he concentrated on completed sales, registered if possible, apparently because the price paid was then reliably known. Unlike PCS, he set out his methodology for adjusting the values of the other sites in order to arrive at a value for Half Moon Bay. This involved either lifting or discounting the sales prices by stated percentages for plus or minus factors. After this, his report said that he had cross-checked the results against his general experience of the Antigua market. In this exercise, which he tabulated, he left out Pearns Point and one other property, which he had listed as merely reported sales. Whether he factored them in in some less arithmetical way is not clear. He made no reference at all to Emerald Cove. When he was called to give evidence no one asked him to consider it and he did not mention it.

8. Of the three members of the Board, only the chairman, Harris J, took Emerald Cove into account in reaching his assessment. Mrs Kentish, the nominee of HMB, who accepted the residual land value method, referred to Emerald Cove and to some

of the other comparables which appeared in the surveyors' reports, but did so only by way of discussing what she held were the limitations of the sales comparison reports. Mr Michael, nominated by the Government, did not refer to any comparable and accepted the Deloittes valuation (on the sales comparison method) of $21,025,000. The Chairman, however, having first rejected the residual land value method as wildly speculative, moved on to consider what the right figure was if one adopted the sales comparison method. He reviewed the two reports of PCS and Deloittes, including the mention of Emerald Cove in the former. He concluded that he should not disregard the comparables advanced by PCS and, in part because that report had described Emerald Cove as "the most useful comparable" (not exactly what PCS had said, which had been "one of the best"), he went on to say at paragraph 65:

> "For my part I am impressed with the Emerald Cove comparable and add it as the sixth comparable to the Deloitte calculation at pp 25 of the report.... Emerald Cove approximates the size of HMB, is on the same side of the island and was sold as one 'greenfield' parcel. Emerald Cove was purchased in March 2004, some 3 years prior to the July 2007 assessment date. Deloitte having assessed the value of HMB increasing by 11.27% per annum from 2002 to 2007, and by extension general mixed resort property market values in Antigua and Barbuda, I apply to the 2004 purchase price of Emerald Cove the same appreciation....Taking the mean per acre price of the 6 comparables - US $246,066.36 – and multiplying it with the 108.17 acres produces the value of US $26,616,998.00"

It will be noted that in making this determination, the Chairman equated the $46m "appraised value" for Emerald Cove, quoted in the PCS report, with an actual sale. His references to Emerald Cove having been "sold" at that figure, and to it being the "purchase price" were in fact unsupported by any evidence. As was conceded before

this Board, the only material in relation to Emerald Cove available for the assessment process was the bare statement in the PCS report that some unknown person had valued it, for some unknown purpose, and on some unknown methodology, at the figure reported. Whether it had been a report for a bank, or for a prospective vendor or purchaser, or for shareholders of one or other company, remains completely unknown. No one can know whether it was an appraisal on a sales comparison basis, or on some other, such as residual land value. Nor, since the identity of the author of the valuation is a mystery, can there be any knowledge of his expertise, or want of it. It is also right to note that when Mr Kerr had made the passing reference to Emerald Cove which he had, he had attributed to it some 190 acres, rather than the 150 acres stated in the PCS report. That inconsistency, which would substantially affect the acreage price, assuming that Emerald Cove could be considered at all, remains unresolved.

9. The Land Acquisition Act, under which this assessment was being conducted, contains in section 17(2) a tie-breaking method for resolving any differences if the members of the Board disagree. If, as here, all reach different figures, the result is to be the mean between the Chairman's award and the award nearest to it. In this case that meant the mean between the Chairman and Mr Michael, and the result was the Board's award of $23,820,999.

10. Having lost before the Board on the crucial method of assessment point, HMB mounted its appeal to the Court of Appeal mainly on the contention that the Board had been wrong on this issue and should not have rejected its residual land value method.

However, despite the paucity of evidence on the topic, it advanced as a secondary ground of appeal the contention that Emerald Cove was "the only true comparable" and that its 2004 appraised valuation, duly adjusted for inflation according to the Chairman's approach, should have resulted in a compensation figure of about $45.7m. This contention the Court of Appeal accepted. Giving the judgment of the court, Pereira JA quoted paragraph 65 from the Chairman's judgment, set out above, and continued at paragraph 37:

> "To my mind, the Emerald Cove property, as set out in the PCS report, represented the only true comparable and ought to have been treated as such rather than taking into account the smaller properties contained in the Deloitte report.....Emerald Cove comprised 150 acres inclusive of 'excellent beachfront' and fetched in March 2004 $46,000,000."

She went on to calculate a compensation figure based entirely on Emerald Cove, adjusted for inflation, with the deduction of the $200,000 which PCS had suggested as demolition costs, and thus arrived at the court's determination of $45,499,102.09. It is true that at an earlier stage in her judgment she had recited the terms used in the PCS report of Emerald Cove, that is as "appraised value", but it is clear that like the Chairman of the Board she must have treated the figure of $46m as an actual arms-length sale figure, for else she could not have referred to the property "fetching" that sum, and she would have corrected the Chairman's error in the paragraph of his determination quoted above.

11. Most of the argument before the Court of Appeal was clearly about the proper method of valuation, and its principal decision was to reject the residual land value

method, now abandoned. But HMB's secondary submission was clearly and distinctly made to the court. When in the course of the Government's oral submissions to that court, this point was raised with counsel, he responded by accepting that Emerald Cove had not been considered in the Deloittes report, and by seeking to justify the Chairman's approach. But what he certainly did not do was to point out either (a) that contrary to the Chairman's finding, the Emerald Cove figure was not known to be a sale price, indeed that no one had any idea what it was or the basis of it or (b) that the suggested relevance of Emerald Cove had never been ventilated before the Board and there was no expert evidence about it beyond the PCS treatment of it in its report, which had led not to its adoption as the sole comparable but to an assessment of $23m rather than of $45m.

12. Despite this absence of legal submission for the Government, it is completely clear that there was simply no evidential basis before either the Board or the Court of Appeal for a valuation based upon Emerald Cove except as assessed by PCS in its report. For HMB, the valiant submissions of Mr Corner QC, who did not appear below, has been that (i) the PCS report was put in by the Government, or at least relied on by it, (ii) that no one ever queried the figure of $46m to which it referred, (iii) that the Government conceded in the Court of Appeal that Emerald Cove had not been included in Deloittes' calculations and that therefore (iv) in that state of the evidence the Court of Appeal simply had to do the best it could with the material available, which included the reasoning on which it based its conclusion. One can indeed sympathise with the Court of Appeal, faced with an award which was flawed,

as will be seen, and exiguous expert evidence, almost entirely unexplored, on the subject of what ought to be substituted on the correct sales comparison method. But the difficulty with Mr Corner's argument is that although no one queried the $46m as a reported figure, what matters is what it meant and how it could properly be handled by an expert valuer en route to an assessment of Half Moon Bay. First, it was, as stated an "appraised value". With no further information it was of little or no use. Unless one knew whose valuation it was, on what basis it had been made, and for what purpose, it was impossible to assess its significance. Secondly, there was no expert evidence at all on how to handle this figure, even assuming that one knew what it meant. The figure as a figure may have passed unchallenged, but the face values of stated comparables do not represent the valuation process. The valuation process requires the application of a valuer's expertise to them, to adjust and assess as appropriate, before they can yield a valuation of the subject site. There was no valuer's evidence at all as to the impact which the unchallenged figure for Emerald Cove had on the valuation process. The Court of Appeal was being asked to act as its own expert, which it cannot do. PCS may have described Emerald Cove as one of the best comparables, but in applying their expertise the authors of its report had nevertheless concluded that the appraisal figure very far from determined the value of Half Moon Bay. It follows that the decision of the Court of Appeal about Emerald Cove was contrary to the only expert evidence about that site which had been adduced. Certainly, if the expert giving it had been cross examined and it had been demonstrated that his conclusion was unsatisfactory, the position might have been different, but that did not happen. Thirdly, the Court of Appeal was led into an

unsafe assumption that the figure represented a completed, arms-length sale when there is no evidence that it was, and indeed every indication that it was not a sale at all. It was, in fact, never open to HMB to advance its secondary submission before the Court of Appeal without some evidential basis. Since counsel for HMB had never adduced any evidence about Emerald Cove from either valuer who gave evidence, and the reports did not supply it, there was none. True it is that the Government did not provide the conclusive answer to the Court of Appeal, but that cannot vest that court with the status of expert valuer and the right to do what it did, whatever its impact might be on ancillary orders hereafter.

13. For these reasons, the decision of the Court of Appeal must be set aside. The question becomes: what follows? There could be no purpose in remitting the case to the Court of Appeal, which would be just as much without evidence as it was before. It would be open to the Board to recommend remission to a fresh Board of Assessment, but for entirely understandable reasons neither party asked for such an order after all the time which has passed. It is a further striking feature of this case that despite an award from the Board made in January 2010, which the Government has never challenged, not a penny of compensation has been paid. This Board was informed that it has proved difficult to sell the site and that the money is not available, in a very small community, until it is sold. Even assuming that that is correct, it provides no excuse for non-payment and it would work an injustice to HMB to require it to begin all over again when it has received nothing.

14. This Board is satisfied that it is not necessary to remit for a re-hearing. It is, however, necessary to examine a little further the determinations which lay behind the order of the Board of Assessment in order to understand why.

15. The determination of Ms Kentish, which was based on the erroneous and now abandoned residual land value basis of valuation, can have no input into the proper figure for compensation. There were also significant flaws in the determination of Mr Michael. Chief amongst them was his frank revelation that he had consulted the opinion of "a few trusted individuals" about at least the state of the Antiguan property market. Mr Knox QC asked the Board to infer from the shape of his written award that he had already independently arrived at his conclusion, and his friends could not have done more than confirm it. That may be, but no one knows. What the friends said cannot be known, and the parties to the assessment had no chance to explore or test it. That alone is enough to vitiate his determination. There was also a secondary error in it, because he included in his reasoning the proposition that expert valuations are often optimistic. If that had simply been based on the worldly-wise caution of a man of business, it might have been a legitimate use of his own experience. But he based that proposition on the statement that:

> "....almost always, when a Bank or other financial institution exercises a foreclosure on a property to recover monies owed by way of public auction, the best bid does not come close the amount of the expert valuation."

Comparison with forced sales was not a proper basis for arriving at a determination of value on a willing seller/willing buyer basis, which is what the legislation requires.

Taken alone, the second flaw might have resulted in no more than caution about his figure. But the two together make it impossible to rely properly on his determination.

16. For the reasons already explained, there was a flaw also in one aspect of the Chairman's careful and full written award. That lay in his treatment of Emerald Cove, which is affected by the same absence of evidence as was the determination of the Court of Appeal. But the Board notes that the Government did not challenge the award of the Chairman, even when faced by a substantial appeal by HMB against the whole assessment. In every other respect, the Chairman's award appears well founded on the limited expert evidence that there was; it was just a little higher than the PCS and Deloittes valuations. On this further appeal, the Government invites the Board to substitute the assessment reached at first instance, viz $23.8m. That, however, was arrived at by reducing the Chairman's award to the mean figure between his and that of Mr Michael. Given that Mr Michael's award ought not to be taken into account, as explained, and that the Chairman's award has never been challenged by the Government, this Board is satisfied that in all the circumstances the Chairman's award of $26,616,998 should be restored and substituted for the order of the Court of Appeal. It is also satisfied that this achieves substantial justice between the parties.

17. A further issue arose before the Board in relation to interest. Section 21 of the Land Acquisition Act 1958, under which the assessment proceeded, authorises the Board of Assessment to add to its award interest at 4% p.a. Subsequently the Constitution of Antigua was enacted and it contains in section 9 a general rule that no property may be purchased compulsorily except upon the payment of fair

compensation. At both of the previous stages of this extended assessment process the Government explicitly conceded that, given the cost of money in Antigua at the relevant times, 4% does not represent fair compensation. There was a marginal difference between the rate offered by the Government and that sought by HMB, which the Board split down the middle in awarding 10.25%. Some time after the decision of the Court of Appeal, the Government noticed that its concession had overlooked two important provisions of the Constitution and the Order giving effect to it. The Antigua and Barbuda Constitution Order 1981, SI 1981 No 1106 ("the order") established the constitution in law following independence. Article 3 of the order provides that the constitution, as set out in Schedule 1, "shall come into effect in Antigua and Barbuda on 1 November 1981 subject to the transitional provisions set out in Schedule 2 to this Order." In turn, Schedule 2 paragraph 9 provides as follows:

> "Nothing in section 9 of the Constitution shall effect (sic) the operation of any law in force immediately before 27 February 1967…"
>
> [there follow other savings which do not apply to the present case].

Having discovered this, the Government included in its appeal to Her Majesty against the decision of the Court of Appeal a challenge to the rate of interest. Its case is that the effect of paragraph 9 of Schedule 2 was to preserve the 4% limit contained in section 21 of the Land Acquisition Act. The concession that this was unconstitutional had been wrong in law. The preserved rule was plainly designed to offer protection to

the public purse. It contended that its former concession did not bind it, even if it might carry other consequences.

18. Late as the point has been taken, it is plain that the Government is right. The Board so held in *Blomquist v AG of Dominica* in relation to provisions which were materially identical in the Constitution of Dominica. The point is one of pure law, and it is not and cannot be suggested that HMB's conduct of the argument or the presentation of evidence was in any way affected to its detriment by reliance on the Government's mistaken concession. True it is, as Mr Corner submitted, that paragraph 9 of Schedule 2 is contained not in the constitution itself but in the order but it is, via article 3 of the order, a condition subject to which the constitution comes into effect. It is not possible to read paragraph 9, as Mr Corner submitted it should be read, as not detracting from the fundamental rights accorded by the constitution. On the contrary, paragraph 9's only content, at least in relation to pre 1967 laws, is that it does exactly that. For essentially the same reason, it is not possible to deploy either section 19 of the constitution or paragraph 2(1) of Schedule 2 to the order to sidestep paragraph 9. Certainly section 19 provides that:

> "Except as is otherwise expressly provided in this" Constitution, no law may abrogate, abridge or infringe or authorise the abrogation, abridgement or infringement of any of the fundamental rights and freedoms of the individual hereinbefore recognised and declared"

However, the constitution and the fundamental rights incorporated in it are expressly made subject to schedule 2 and thus to paragraph 9. Likewise, paragraph

2(1) of Schedule 2 to the order requires "the existing laws" to be construed with such modifications as may be necessary to bring them into conformity with the constitution but this general provision has to be read with the specific one in paragraph 9 of the same Schedule which makes particular, and contrary, provision for the purposes of section 9 of the constitution (which contains the fair compensation rule). A similar submission made in relation to an existing law providing a mandatory death penalty for murder failed in *Boyce and another v The Queen* [2004] UKPC 32; [2005] 1 AC 400; the fact that the equivalent to paragraph 9 of Schedule 2 to the order in the present case was in that case contained within the constitution itself cannot make the difference for which Mr Corner contends; the constitution and order must clearly be construed together and the former is made subject to the latter.

19. It must follow that the correct rate of interest in this and similar cases is limited to 4%. The Government, however, needs leave to amend, long out of time, to add this ground of appeal. For most of the period of assessment and until a very late stage in these proceedings it expressly conceded, on advice, that 4% was an unconstitutional rate. The history is as follows. For approximately eighteen months after Half Moon Bay was taken by the Government in July 2007, there is no sign of any question of interest being canvassed. But HMB asserted its claim to market-rate interest in its written skeleton argument for the Board of Assessment, filed on 2 February 2009. The Government made an express concession of the point at the hearing before that Board in July 2009, both in cross examination and in its closing submissions. Thus by

a time about two years after entry into possession in July 2007, the claim for market-rate interest had been explicitly made and conceded. The concession remained in force until sometime in 2013. The Government obtained leave to appeal from the Court of Appeal at the end of October 2012, but its grounds did not include this one. When on 15 January 2013 it filed its notice of appeal before the Board, it stated that it sought leave to add a ground relating to interest. It did so in these terms:

> "The Appellant also seeks leave to appeal on an additional ground:
>
> The Appellant submits that the rate of interest applied against the award was incorrect.
>
> The Court erred in law in adopting 11.27% as the prescribed annual rate of increase of the value of the subject property based solely and simply on the difference between the valuation of the property in 2002 and then in 2008 in accordance with the Deloitte Report.
>
> This ground of appeal is of great importance to Antigua and Barbuda and the Appellant respectfully requests that permission to raise this additional ground be granted."

Thus the point then identified was the different one relating to the rate by which the valuation had been raised to allow for inflation between the valuation date and the date of the assessment. Even if the opening words could, taken alone, have been taken to signal the point now relied upon, the subsequent explanation removes the possibility of such a reading. It was only at some later date, at the latest when the (undated) printed case was filed, that the point now relied upon was articulated in the court's papers. Whether it had been identified in the meantime as between the parties

is not revealed on the documents available to the Board. At all events, at the very earliest, the point was taken sometime later in 2013. HMB's presentation of argument and evidence could not have been affected if the correct view had been taken from the outset, and it advances no specific prejudice said to have been occasioned to it, other than the loss of interest to which it was not in law entitled. But it nevertheless cannot be assumed that, if the true position as to interest had been understood, HMB would not have taken steps to attempt to accelerate the process of assessment, although by how much cannot be known. It is after all conceded that an expectation of 4% interest would be well below the prevailing cost of money in Antigua, whereas the grant of a market rate would preserve its position in a manner roughly equivalent to payment of whatever was due. Since nothing at all has been paid, the likelihood of some attempt to advance the date of assessment, or of appeal either to the Court of Appeal or to Her Majesty, is increased. Moreover, the failure to pay even something on account goes to the justice of granting the Government the grace which it needs to argue this point out of time. The Board considers that although justice requires it to give leave to the Government to take the point, the exceptional features of this case provided by the long delay in taking the point coupled with the complete failure to pay, or even to offer the prospect of payment, equally require in justice that it should be permitted to do so only on terms that its interest-based challenge to the decisions below is restricted to a limited period. Taking into account all the circumstances here set out, the Board is satisfied that leave to appeal on this interest-rate ground should be granted only on terms that full interest at 10.25% remains payable for three and a half years of the total period of approximately

six and a half years which have elapsed since Half Moon Bay was taken into the Government's possession.

20. The Board will accordingly humbly advise Her Majesty that the appeal of the Government ought to be allowed on the substantive ground relating to the assessment of compensation. The judgment of the Court of Appeal ought to be set aside and an award of US $26,616,998 substituted. The Government should be allowed leave to amend its notice of appeal to rely on the 4% interest rate cap only on terms that the full rate of interest awarded by the Board of Assessment remains payable for the period of three and a half years. The parties should be invited to make submissions in writing as to the form of order and consequential matters including costs; the Government should do so within 14 days of receipt of this judgment and HMB should respond within 14 days thereafter.