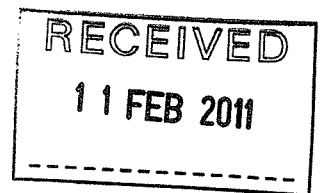




# Home Office

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HRJ (10-11)018



Dr Hywel Francis  
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09 FEB 2011

*Dear Dr Francis*

## **Certificate of Approval Scheme: O'Donoghue v UK**

Thank you for your letter of 22 December to the Home Secretary regarding the European Court of Human Rights judgment in O'Donoghue v UK issued on 14 December 2010 which relates to the Certificate of Approval (COA) scheme. I am sorry for the delayed response but we wanted to consider carefully the implications of the judgment and seek legal advice.

You have requested further information concerning the judgment in relation to the Committee's work on the Asylum and Immigration (Treatment of Claimants, etc) Act 2004 (Remedial) Order which aims to abolish the COA scheme.

### *Grand Chamber*

The Government has decided not to seek a referral of this case to the Grand Chamber. As you will be aware, the judgment becomes final in 3 months unless either side requests a referral to the Grand Chamber or indicates they will not do so. Accordingly, the judgment will become final on 14 March 2011.

### *Compensation and repeat violations or clone cases*

The Government is aware of the risk of "clone case" litigation. However we know of only one similar case lodged with the European Court of Human Rights. We anticipate there may be some new cases alleging similar violations in light of the Court's judgment but it is impossible to predict accurately the number of any such cases. The judgment in O'Donoghue v UK is fact specific and does not automatically entitle others to compensation. If similar claims are received in due course, they will be considered on their individual merits. It has, however, been open to individuals to pursue claims in relation to the COA scheme for a considerable period of time and the Government would expect the majority of individuals with an interest in pursuing such claims to have made them by now. Accordingly, the Government does not consider that there is a significant risk of multiple repeat cases alleging similar violations.

## Statistics

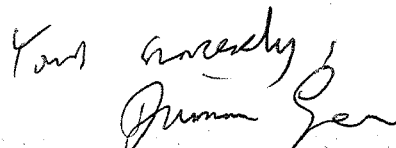
We do not hold statistics on the number of individuals prevented from marrying by their exclusion from the COA scheme. Some individuals will not have applied for a COA since any such application would have been bound to fail unless there were exceptional, compassionate circumstances; others may have waited and submitted an application once the terms of the scheme were widened in May 2006 and subsequently in June 2007.

However, local management information<sup>1</sup> indicates that between the inception of the scheme and 14 December 2010, 1,993 COA marriage applications and 62 COA civil partnership applications were refused on the basis that the applicant had no valid leave. For completeness, the Committee may wish to know that in total approximately 120,000 applications for a COA were received over the same period. Of these, almost 10,000 were duplicate applications (where the applicant has applied for a COA more than once). The total number of applicants refused a COA was 5,463. In addition to the 2,055 applications refused on the basis that the applicant had no valid leave, there were 3,408 refusals for other reasons, including the applicant not being free to enter into a marriage or civil partnership.

Similarly we are unable to quantify the number of individuals prevented from marrying by the level of the fee imposed by the scheme. It may, however, be relevant to note that the number of "needy" applicants applying to the UK Border Agency for fee repayment has been small. At the end of January<sup>1</sup>, there had been 1,213 requests for fee repayment; 170 had been granted; 994 refused; and 49 cases remain outstanding.

### *Implications of O'Donoghue v UK for other cases*

We have considered carefully the wider implications of the award of just satisfaction in O'Donoghue v UK. As stated above, the O'Donoghue judgment does not automatically entitle others to compensation. If we receive similar claims they will be considered on their individual merits, but in doing so we will seek to avoid costly litigation that is neither in the interests of the taxpayer nor the individual.



**DAMIAN GREEN MP**  
**MINISTER FOR IMMIGRATION**

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<sup>1</sup> Unverified management information is provisional and subject to change.