

**AMEC RESPONSE TO MOD/0/31**

1. We accept that **MOD/0/31** accurately recites the guidance that is available as to the scope of re-examination. The most authoritative statements are to be found in *Halsbury's Laws [Vol 17(1)]* at paragraph 1026, in *Cross and Tapper [11<sup>th</sup> Edition]* at page 346 and in *Phipson [16<sup>th</sup> Edition]* at paragraph 12-41.
2. Each of the authorities to which the MOD refers is elderly and/or is unilluminating on the simple (but fact-sensitive) issue with which this application (and that made on 23<sup>rd</sup> July) is concerned. We therefore concentrate on the expressions of principle as they appear in the textbooks.
3. Looking at the matter simply, it must be remembered that what is or is not permitted in examination in chief, cross-examination or re-examination are all matters which are controlled by the inquiry (or Court) as a matter of its general discretion. We quote *Halsbury*  
  
*"...This paragraph must be read in the light of the court's discretionary power to control the evidence"*.
4. On analysis, this application is, in effect, a challenge to the exercise of that discretion. It can only be made if the discretion can be shown to have been exercised irrationally or on the basis of an approach to practice and procedure which is manifestly unsound.
5. Vincent Fraser QC conducted a careful and detailed cross-examination of Sq Ldr Coleman. The Inspector's ruling to the effect that the answers were entirely clear and allowed no scope for further clarification and/or revision was entirely reasonable and, we would submit, certainly correct for the reasons given. There does, after all, have to be some limit to the extent to which the MOD can be permitted to further extend or develop its evidence, find a new basis for its

- arguments or re-formulate its case. As we have submitted previously, that time actually arrived long before 5.30 pm on 23<sup>rd</sup> July 2008.
6. Even from a more technical point of view, it would seem from what Mr Coppel said in his original application and what now appears in paragraphs 2 and 5 of **MOD/0/31**, that counsel was hoping that, if taken back to the material generated by Amec [**AMEC/10/5**] and Messrs James/Spaven [**SWFL/12**] (though only the Amec document was mentioned on the day), Sq Ldr Coleman might be encouraged to revisit the entirely unqualified answers he had already given to Mr Fraser QC.
  7. Yet, as we said at the time, that might have been permitted as a potentially fruitful or legitimate exercise had there been evidence within the case with which Sq Ldr Coleman was previously unfamiliar so that something which was unclear or incomplete merited or required clarification.
  8. On the contrary, in the present case. Sq Ldr Coleman's own rebuttal proof of evidence [**MOD/0/4**] contained a number of references to that very material (see paragraphs 1-2, 5, 8, 10, 14-26 and so forth). What did Mr Coppel hope for, we ask rhetorically? That, given the opportunity to re-read all that material, Sq Ldr Coleman might be persuaded to change the clear evidence already given to Mr Fraser QC?
  9. Unless Mr Coppel were to have cross-examined his own witness (which is not permitted), he would be unlikely to have got anywhere. But, even if allowed to try some questions, then assuming the questions (however formulated) generated answers which were different to those already given to Mr Fraser QC, they would have had negligible evidential value. Then, as a matter of fairness, it would inevitably have required Mr Fraser QC and perhaps the other developers to have been given a further opportunity to cross-examine. And so ad infinitum, presumably.

10. Plainly, Sq Ldr Coleman's answers to Mr Fraser QC were unequivocal and soundly based on the evidence. At no stage did he say (or was it suggested by Mr Coppel at the time) that a line of question and answer should be ignored or suspended because the witness was over-tired. Indeed, our recollection is that the witness was asked from time to time if he was happy to continue and replied in the affirmative (c.f paragraph 13 of **MOD/0/31**).

11. In this case, therefore, the Inspector took an approach which was entirely correct in practice (and was certainly within his wide discretion). That is borne out by the following short statement of principle (from *Phipson*, paragraph 12-41) which we endorse as accurate

*“The right to re-examine exists only when there has been cross-examination, and must be confined to the explanation of matters arising from the cross-examination. ....Matters not properly explanatory, or new facts, cannot be introduced in re-examination”*

12. Put shortly, then, the present application should be refused.

**3<sup>rd</sup> September 2008**

**William Norris QC**  
**39 Essex Street Chambers**