

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

Ref:

**IN THE MATTER OF AN APPLICATION FOR PERMISSION FOR JUDICIAL
REVIEW**

BETWEEN:-

**MR JOHN STUART WHEELER
(The Queen on the application of)**

Claimant

v

THE PRIME MINISTER

First Defendant

and

**SECRETARY OF STATE FOR FOREIGN AND
COMMONWEALTH AFFAIRS**

Second Defendant

STATEMENT OF FACTS AND GROUNDS OF CLAIM

Bundles: 3
Time estimate: 2 days

Recommended reading:

- 1 Claim Form
- 2 'The Lisbon Treaty and European Constitution: a side by side comparison' Open Europe (CB/Tab 9)

(I) The Issue

- 1 This claim is brought in respect of the Defendants' decision not to hold a referendum on whether the United Kingdom should ratify the Treaty of Lisbon ("the Lisbon Treaty"), which was signed on 13 December 2007.

- 2 There is a single ground of claim: that in reneging on their promise to hold a referendum, the Defendants have frustrated the Claimant's legitimate expectation that a referendum would take place, in which he could vote.

(II) The Facts

The Constitutional Treaty

- 3 The Constitutional Treaty was the result of a process of EU institutional reform that began on 15 December 2001, when the European Council issued the "Laeken Declaration", committing the European Union to greater "democracy, transparency and efficiency" and preparing a Constitution for European citizens. A European Convention on the Future of Europe ("the Convention"), convened by the Laeken Council, was held from 28 February 2002 to the 20 June 2003 to prepare for the Inter-Governmental Conference ("IGC"). On 10 July 2003 the Convention adopted a draft Constitutional Treaty. The IGC started on 4 October 2003. On 12-13 December 2003 the member states failed to agree on voting rights. Finally, on 17-18 June 2004 the Constitutional Treaty was agreed. It was signed by all Member States on 29th October 2004.

The initial position of the Defendants regarding a referendum

- 4 Until April 2004 the Defendants took a clear stance that a referendum on the Constitutional Treaty was not required because these were matters for Parliament to resolve and the Treaty did not involve any constitutional change to the relationship between the EU and its member states: [debate 29.10.03 Col. 298]¹.

The Defendants' change of heart

- 5 On 20th April 2004 the Prime Minister (then Tony Blair) announced to the House of Commons that although his position on the Constitutional Treaty remained the same, namely that it did not involve any fundamental constitutional change in the relationship between the EU and its member states, the perpetuation of myths on 'Europe' were such that it was necessary to 'let the people have the final say' by way of a referendum. He stated:

¹ CB/Tab 16

“The new Constitutional Treaty is designed both to answer the challenge of enlargement and to bring together in one treaty what is currently found in two separate treaties. Indeed, a significant part of the new treaty is the repetition of articles that are already in force. I want to make it clear that Britain will co-operate fully in helping Europe to work better, but to work better as a Europe of sovereign nation states. Maintenance of control of our affairs is essential in certain areas of policy. The national veto must remain in areas such as taxation, foreign policy, defence, social security, how the essentials of our common law and criminal justice system work, and treaty change, and we will insist on the necessary amendments to the current draft treaty to ensure beyond doubt that it does. *On that basis, the treaty does not and will not alter the fundamental nature of the relationship between member states and the European Union.*” [Col. 155] (Emphasis added)

“Provided that the treaty embodies the essential British positions, we shall agree to it as a Government. Once agreed—either at the June Council, which is our preference, or subsequently—Parliament should debate it in detail and decide upon it. *Then, let the people have the final say.* The electorate

“should be asked for their opinion when all our questions have been answered, when all the details are known, when the legislation has been finally tempered and scrutinised in the House, and when Parliament has debated and decided.”—
[Official Report, 21 May 1997; Vol. 294, c. 735.]

The question will be on the treaty, but the implications go far wider—as I believe we all know. It is time to resolve once and for all whether this country, Britain, wants to be at the centre and heart of European decision making or not; time to decide whether our destiny lies as a leading partner and ally of Europe or on its margins. Let the Eurosceptics, whose true agenda we will expose, make their case. Let those of us who believe in Britain in Europe—not because of Europe alone, but because we believe in Britain and our national interest lying in Europe—make our case, too. Let the issue be put and let the battle be joined. [Col. 157]².

6 He further stated:

² CB/Tab 17

“I believe the treaty to be right for Europe and right for Britain. I believe that the constitutional treaty is necessary if we are going to make the historic enlargement of the European Union work. *I also believe that it does not alter fundamentally the nature of the relationship between the European Union and the member states.* I would not agree to a treaty that put us on a path to a federal superstate. I will only agree to one that maintains the rights of sovereign independent states. I must accept that it is not merely that many people in this country want this matter decided finally in a referendum, but that, frankly, it is time to dispel the myths about Europe. *The reason why I think people should have their say is not that I agree with the hon. Gentleman—I do not—but that the question of myth versus reality on Europe should finally be laid to rest.*

... At the moment, the substance of the constitutional treaty is drowned out by the call that we are denying people a say because we are trying to conceal some terrible thing that the constitutional treaty is doing.

“Mr. Ian Taylor (Esher and Walton) (Con): ...Why has the Prime Minister suddenly changed his mind on such a fundamental principle of Westminster democracy?

“I have not changed my mind on the constitutional treaty, but it is the right moment for those of us—in the Conservative party, frankly, as well as on the Labour Benches—who believe passionately that Britain's place is at the centre of European decision making, particularly when Europe evolves into a European Union of 25, 27 and then 28, to make our case. We may believe, rightly, that parliamentary democracy is the normal way in which these things ought to be decided...None the less, the hon. Gentleman and I must accept that if we are to make the case, we will have to take it out and make it to the British people. [Col. 166]

7 The Prime Minister also made clear that the referendum would go ahead even if another country rejected the Constitutional Treaty in its referendum: [Col. 164]³.

8 Moreover, he made clear that the proposed referendum was intended to be determinative of whether the United Kingdom would ratify the Treaty and was not merely an exercise to take the view of the public, which would then subsequently be ignored by putting another amended version before the British people until they said yes. He stated:

³ CB/Tab 18

- “What you cannot do is have a situation where you get a rejection of the treaty and bring it back with a few amendments and say, ‘Have another go’. You cannot do that...If the people vote no they vote no. You can’t then start bringing it back until they vote yes.” (Independent 23 April 2004).
- 9 On 21 June 2004 in response to a question from Frank Field (Lab) in the House of Commons, the Prime Minister emphasized that the referendum would take place irrespective of what happened in other member states:
- “**Frank Field:** Will the Prime Minister give an undertaking that if other countries veto the constitution before he calls a referendum, the British people will still have their say on what they think of this move?
- The Prime Minister:** Yes. There is no question of any constitutional treaty going through without the express consent of the British people....Regardless of how other members vote, we will have a referendum on the subject.” [Hansard Vol. 422, Col. 1090]
- 10 On 29 October 2004 the Prime Minister and the Foreign Secretary (then Jack Straw) signed the Constitutional Treaty. The Foreign Secretary informed the BBC that Britain was likely to hold its referendum on the EU constitution early in 2006.
- 11 On 25 January 2005 the Government introduced the European Union Bill (“the EU Bill”) providing for the Constitutional Treaty to pass into law, subject to the outcome of a referendum. A copy of the Bill is at CB/Tab 7.
- 12 The Explanatory notes provide:
6. The Prime Minister gave a commitment to Parliament on 20 April 2004 that the British people would be consulted on the ratification of the Constitutional Treaty through a referendum. The Treaty was signed by all member states in Rome on 29 October 2004. This Bill establishes the details of the referendum that will be held in order to fulfil the Government's commitment. It also makes provision for the Constitutional Treaty to be given effect in United Kingdom law if the referendum approves its ratification.⁴
- 13 The relevant clause of the EU Bill provided:

⁴ CB/Tab 8

“6 Holding a referendum

(1) A referendum shall be held throughout the United Kingdom and Gibraltar on the day specified by an order made by a Minister of the Crown.

(2) The question to be asked in the referendum is—

“Should the United Kingdom approve the Treaty establishing a Constitution for the European Union?”

.....

14 The EU Bill was given a second reading on 9 February 2005 by 345 votes to 130.

15 On 13 April 2005 the Prime Minister launched the Labour Party manifesto in which he repeated his earlier promises, as set out in the EU Bill, of a referendum:

“The EU now has 25 members and will continue to expand. The new Constitutional Treaty ensures the new Europe can work effectively, and that Britain keeps control of key national interests like foreign policy, taxation, social security and defence. The Treaty sets out what the EU can do and what it cannot. It strengthens the voice of national parliaments and governments in EU affairs. It is a good treaty for Britain and for the new Europe. *We will put it to the British people in a referendum and campaign wholeheartedly for a ‘Yes’ vote to keep Britain a leading nation in Europe*⁵.” (emphasis added)

Events after the general election of 5 May 2005

16 The Labour Party won the general election of 5 May 2005.

17 On 18 May 2005 the Prime Minister was asked to confirm that a referendum would go ahead irrespective of whether the Constitutional Treaty was accepted in referenda in other member states. David Heathcoat-Amory (Con) asked:

“Will the Minister confirm that the referendum on the European constitution will go ahead in any event? Before he answers, I remind him that I asked the Prime Minister that question last year and raised the possibility that the Government might cancel the

⁵ CB/Tab 2

referendum here if another member state turned down the constitution. The Prime Minister said from the Dispatch Box:

"No, of course not. The referendum should go ahead in any event."—[Official Report, 20 April 2004; Vol. 420, c. 164.]

Will the right hon. Gentleman confirm that unambiguous assurance that the referendum will go ahead in this country regardless of what happens in any other country?

Mr. Alexander: I am conscious that the right hon. Gentleman was a member of the Convention and has some expertise in these matters. Let me quote the Prime Minister, who said on 18 April 2005:

"I've always said we'll have a vote on the constitution. It doesn't matter what other countries do; we'll have a vote on the constitution."

...those in this country who peddle the idea that the treaty is the end of Britain as we know it would do well to look across the channel where, at the moment, its opponents are arguing that the treaty is too British and too liberal—in short, too much a model of an Anglo-Saxon European Union. As the House is aware, the Government will be introducing legislation, as a matter of priority, to provide for a referendum on the treaty, and I welcome the discussions we shall have.

...

Mr. Alexander: I can certainly confirm that it is the Government's policy to ratify the treaty that was signed by the Prime Minister in Rome, and that as part of that process of ratification there will be a vote by the people of Britain.

..

Peter Luff (Mid Worcestershire) (Con): Have the Government had second thoughts? Will they enable this national Parliament to express its view separately on the question of the ratification of the constitution and on the question of a referendum? Many of us would like to vote no to one and yes to the other.

Mr. Alexander: The House will be aware that during the previous Parliament we introduced a Bill that dealt with both the ratification of the treaty and the referendum.

That would be our intention in terms of the Bill that we will introduce in due course.”
[Hansard vol. 434 col. 155-156]⁶

18 In accordance with those statements, the Government reintroduced the EU Bill in the House of Commons on 24 May 2005, signaling its continued intention to hold a referendum.

19 The Defendants repeated the promise that there would be a referendum on numerous occasions to the media in the context of newspaper interviews, press conferences, radio and television interviews. A few examples are shown at CB/Tab 1.

20 On 29 May and 1 June 2005 respectively, French and Dutch voters rejected the Constitutional Treaty. The UK ratification process was consequently postponed. The Foreign Secretary stated in Parliament on 6 June 2005 that:

“like any other EU Treaty, it requires ratification by every one of the EU’s member states – now 25 – before it can come into force. To date, nine countries have approved the treaty through their parliamentary process, and one-Spain-by referendum. In the last week however, as the House and the country are very well aware, in referendums the electors in France voted no by 55 to 45 per cent, and in the Netherlands by 62 to 38 per cent.

The constitutional treaty is the property of the European Union as a whole. It is now for European Union leaders to reach conclusions on how to deal with the situation...

I should emphasise that it is not for the United Kingdom alone to decide the future of the treaty, and it remains our view that it represents a sensible new set of rules for the enlarged European Union. We reserve completely the right to bring back for consideration the Bill providing for a UK referendum should circumstances change, but we see no point in doing so at this moment.” [Hansard vol. 434 col. 991-992]⁷

21 The EU initiated a year-long “period of reflection” on the future of constitutional reform. In June 2006, the European Council extended this period of reflection until June 2007 and gave Germany a mandate to conduct extensive bilateral consultations with Member

⁶ CB/Tab 20

⁷ CB/Tab 21

States as well as the European Parliament and European Commission, and between the President of the European Council and her opposite numbers.

- 22 The German Presidency presented a report on the reform process on 14 June 2007 that concluded that the best approach was to “preserve the substance of the innovations agreed upon in the 2004 IGC” while returning to the traditional method of Treaty amendment, rather than replacement of the Treaties with a single Constitutional Treaty. The Presidency proposed that an IGC be convened as rapidly as possible and published a draft IGC mandate (including the recommended terms of the new Treaty) on 19 June 2007. The mandate provided at paragraphs 1, 4 and 18 for almost the entire contents of the draft Constitution to be brought about by changes to the existing treaties. A copy of the mandate is at CB/Tab 10.
- 23 On 23 June 2007 the member states agreed to an outline of the Reform Treaty (subsequently the Lisbon Treaty) and to the convening of an IGC in July finally to conclude the terms of the Reform Treaty. Annex 1 to the Conclusions of the Presidency of 21-22 June 2007, published 20 July 2007 (doc 1117/1/07) set out the mandate for the IGC. A copy is at CB/Tab 11.
- 24 On 24 June 2007 the Prime Minister stated in the BBC Politics Show that “[t]he manifesto is what we put to the public. We’ve got to honour that manifesto. That is an issue of trust for me with the electorate”.
- 25 The IGC was launched on 23 July 2007. A draft text of the EU Reform Treaty (Lisbon Treaty) was published on the same day. EU leaders reached final agreement on the text of the Reform Treaty at the informal European Council meeting of 18-19 October 2007. The final text of the Reform Treaty was published on 30 October 2007. Member states, including the UK, signed the Reform Treaty at Lisbon on 13 December 2007, at which point it became ‘the Treaty of Lisbon’.

The Lisbon Treaty is in all material respects the same as the Constitutional Treaty

- 26 There is no material difference between the Constitutional Treaty and the Lisbon Treaty: see House of Commons European Scrutiny Committee (ESC) initial report on the EU inter-governmental Conference in October 2007 at CB/Tab 15, which contains in its Annex a detailed table shows that, in accordance with the IGC mandate, the Lisbon

Treaty will introduce all “the innovations resulting from the 2004 IGC (apart from 1-8 on symbols). The Report concludes at paragraph 45:

“It also shows that wherever the Constitutional Treaty restated the provision of the EU and EC Treaties in an amended form, those amendments have been taken up in the Reform Treaty. Taken as a whole, the Reform Treaty produces a general framework which is substantially equivalent to the Constitutional Treaty. Even with ‘opt-in’ provisions on police and judicial cooperation in criminal matters, and the Protocol on the Charter, we are not convinced that the same conclusion does not apply to the position of the UK under the Reform Treaty. We look to the Government to make it clear where the changes they have sought and gained at the IGC alter this conclusion in relation to the UK.”

27 In respect of ‘foreign relations’, the Report of the House of Commons Foreign Affairs Committee of 16 January 2008, entitled “Foreign Policy Aspects of the Lisbon Treaty”, states:

“27. We conclude that there is no material difference between the provisions on foreign affairs in the Constitutional Treaty which the Government made subject to approval in a referendum and those in the Lisbon Treaty on which a referendum is being denied.”

28 The Government’s ‘red-lines’ on social security and foreign policy are almost identical to those asserted in relation to the Constitution. The other two red lines, on the Charter and Home Affairs have been altered in an immaterial way. The Defendants claimed that those red-lines were successfully asserted in relation to the Constitutional Treaty and that they have been equally successfully asserted in respect of the Lisbon Treaty, such that the United Kingdom’s constitutional position under the Constitutional Treaty is in no significant respect different from its current position under the Lisbon Treaty.

29 A comparative table showing the minor changes between the Constitutional Treaty and the Lisbon Treaty produced by ‘Open Europe’ is shown at CB/Tab 9.

The revocation of the promise to hold a referendum

30 On 13 December 2007 the Prime Minister signed the Lisbon Treaty. Four days later the European Union (amendment) Bill (“the Bill”) was put before Parliament on 17 December 2007 without a referendum clause [CB/Tab 4.].

31 During the second reading of the Bill on 21 January 2008, the Foreign Secretary stated that the Government would not hold a referendum on ratification of the Lisbon Treaty. He stated that: “[t]he real issue is the content of the treaty; and in its structure and consequence, as well as its content, it is different from the Constitution and does not meet the bar of whether it constitutes fundamental constitutional change.”

32 However, he admitted that the original promise of a referendum had never been premised on the Treaty meeting any bar ‘of fundamental constitutional change’ or of it ‘altering the basic relationship between Europe and the member states’ but had been an idea of the Prime Minister ‘to clear the air’. He accepted:

“...that the Constitution did not constitute fundamental constitutional change.... [the Prime Minister] had the idea [of holding the referendum in order] that we should “clear the air”. No doubt historians will debate the wisdom or otherwise of that for many years to come. There was absolute clarity however, that the constitution did not constitute fundamental constitutional change.” [Hansard debate 21.01.08 col. 1243]⁸

33 He further stated:

“I certainly agree that there was no way on the basis of constitutional significance that it [the Constitutional Treaty] merited the decision [to hold a referendum] that was taken.”

34 When asked to explain why it was not possible to have a referendum, the Foreign Secretary stated:

“...the answer is because it is in the House that we make decisions about how the govern our country. It is in the House that we make the laws of our contrary and it is in the House that people elect us to make those difficult decisions not to dodge them.” [Hansard debate 21.01.08 col. 1251]⁹

⁸ CB/Tab 22

⁹ CB/Tab 22

35 In other words, the Government had returned to the position it held in 2003, which was that it was for the Houses of Parliament to decide on Treaty ratification, not for the people to do so by way of referendum.

(III) Legal grounds

36 The Defendants made clear, unambiguous representations, devoid of relevant qualification, that following full Parliamentary debate the Constitutional Treaty (and by implication any document with a different name having equivalent effect) would be put to the electorate in a referendum. Some of those representations are set out above and include statements in Parliament, to the Press and in the manifesto.

37 The reason for the decision to hold a referendum was explained as being that it was necessary to dispel the myths surrounding ‘Europe’ and allow the British people to decide once and for all. See paragraphs 5, 32 and 33 above. The Foreign Secretary explained in January this year that the Prime Minister had the idea of ‘clearing the air’ but that there was absolute clarity that the Constitutional Treaty did not involve any fundamental constitutional change.

38 Accordingly, the Defendants’ repeated promise that there would be a referendum gave rise to a legitimate expectation on the part of the Claimant that he would have an opportunity to vote in a referendum on whether to incorporate of the Constitutional Treaty, or by implication, any alternative Treaty having largely equivalent effect, irrespective of its title.

39 In *Attorney-General of Hong Kong v Ng Yuen Shiu* [1983] 2 AC 629 Lord Fraser of Tullybelton at 638F explained the basis for protecting a legitimate expectation:

“... it is in the interest of good administration that [a public authority] should act fairly and should implement its promise, so long as implementation does not interfere with its statutory duty.”

40 Laws L.J. restated this principle in *Nadarajah v Secretary of State for the Home Department* [2005] EWCA Civ 1363 at para 68:

“The search for principle surely starts with the theme that is current through the legitimate expectation cases. It may be expressed thus. 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 judgment 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.”

- 41 It is well-established that a legitimate expectation may arise from a promise made to the general public: see *Ng Yuen Shiu* (above) in which the Privy Council held that the Attorney General had acted unlawfully in failing to follow his stated policy in relation to immigrants from Macau.
- 42 The Defendants made clear and unequivocal representations to the public that a referendum would be held on whether the United Kingdom should ratify the Constitutional Treaty. Moreover, that promise was initially given partial effect since the EU Bill was re-introduced in Parliament on 24 May 2005.
- 43 Accordingly, as a matter of law, the promise of a referendum must be treated in the same way as any other representation made by a public body. The fact that the promise was repeated in the Labour Party manifesto does not have the effect of depriving it of legal consequences, irrespective of whether manifesto promises can ever give rise to a legitimate expectation, which remains a matter to be determined: *R v Education Secretary ex parte Begbie* [2000] 1 WLR 1115 p. 1134 per Sedley L.J. and 1126B and cf. *Bromley London Borough Council v Greater London Council and another* [1983] 1 AC 768, 829 C-G per Lord Diplock.
- 44 The position here is that the executive made a promise and put forward a Bill, which affirmed the seriousness of that promise. In those circumstances, the Claimant had a legitimate expectation that the promise would be fulfilled, absent a legitimate and reasonable justification for not doing so.
- 45 There is no need for ‘reliance’ in the case of a statement of policy. In *Begbie*, Sedley LJ stated at 1133 E:

- “I have no difficulty with the proposition that in cases where government has made known how it intends to exercise powers which affect the public at large it may be held to its word irrespective of whether the applicant had been relying specifically upon it. The legitimate expectation in such a case is that government will behave towards its citizens as it says it will.”
- 46 This reasoning was approved by Kennedy L.J. in *R (Wagstaff) v Health Secretary* [2001] 1 WLR 292 at 314C.
- 47 Since there is no ‘reliance’ requirement, there can be no requirement to show detriment, which is necessarily consequent on reliance. Schiemann L.J. considered the question of detriment in *R (Bibi) v Newham London Borough Council* [2002] 1 WLR 237 at 246E. He reasoned:
- “In our judgment the significance of reliance and of consequent detriment is factual, not legal ... In a strong case, no doubt there will be both reliance and detriment; but it does not follow that reliance (that is, credence) without measurable detriment cannot render it unfair to thwart a legitimate expectation.”
- 48 Accordingly, the Claimant does not need to show either reliance or detriment in order to establish that the promise engendered a legitimate expectation.
- 49 Effect should be given to the promise unless the Court is satisfied that the Defendants have shown ‘an overwhelming reason to resile from it’. It is for the court ‘to judge the adequacy of the reason advanced for the change of policy, taking into account what fairness requires’: *R v North and East Devon Health Authority ex parte Coughlan* [2001] QB 213 at 241G-242C.
- 50 The limits of ‘good reason to depart’ from a promise were explained by Laws L.J. in *Nadarajah*, (paras 68-69):
- “...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 overtly 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 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....

Proportionality will be judged, as it is generally to be judged, by the respective force of the competing interests arising in the case.” (emphasis added)

51 No legitimate justification has been provided for renegeing on the promise to hold a referendum. The reason given by the Foreign Secretary is that the original promise was a political error; the decision on ratification being a matter, in his view, for Parliament. That cannot be a legitimate or proportionate reason for a breach of the Claimant’s legitimate expectation.

52 The circumstances are in no material way different from those at the time the promises were made:

52.1 no one has suggested that the original reason for promising a referendum has changed: the ‘myths’ surrounding ‘Europe’ remain the same;

52.2 the Lisbon Treaty and the Constitutional Treaty are in no material respect different;

52.3 according to the Defendants neither Treaty involved fundamental constitutional change;

52.4 according to the Defendants, the Government successfully maintained its red-lines in relation to both treaties.

53 Accordingly, the Defendants do not pass the first stage of the test articulated above, namely they have not shown that their decision to resile from their promise pursued a legitimate aim in the public interest.

54 In summary, the Defendants have acted unlawfully in frustrating the Claimant’s legitimate expectation that he would be able to vote in a referendum.

The Timing of this Claim

55 It was not until 13 December that the Defendants signed the Lisbon Treaty. The Bill was put before Parliament on 17 December. The Bill did not contain a referendum. Significant pressure has been put on the Defendants by members of Parliament from all parties to reinstate the referendum clause, which was in the earlier Bill relating to the Constitutional Treaty.

56 On 28 January 2008 the Claimant sent the Defendants a letter before claim in accordance with the judicial review pre-action protocol. A response was received on 11 February 2008. The Defendants argued that the claim was not justiciable, that a manifesto promise was not enforceable, that the promise was in any event in respect of the Constitutional Treaty and finally, that detriment had not been shown. The Defendants reserved their position on timing. By letter of 18 February 2008 the Claimant clarified that he was relying on numerous promises that had been made by the Defendants that there would be a referendum, including in statements to the public through the media, as well as in Parliament. By their response dated 20 February 2008 the Defendants asked for details of all promises made in relation to the Lisbon Treaty. The Claimant responded on 21 February that all the promises had been made in respect of the Constitutional Treaty, which was the same in all but name as the Lisbon Treaty.

57 Accordingly, this claim has been brought promptly.

58 In the event that the Court considers that there has been undue delay, the very serious nature of the issues and the great public interest in this challenge are such that the Court is invited to exercise its discretion to extend time. In that regard, it should be noted that no prejudice is suffered by the Defendants since they had always said that the referendum would follow full Parliamentary debate on ratification and would not therefore in any event, take place until the Parliamentary process was completed.

(IV) RELIEF

59 A declaration that the refusal to hold a referendum is unlawful as in breach of the Claimant's legitimate expectation.

60 Costs.