



19 January 2011

## PRESS SUMMARY

**R (on the application of Coke-Wallis) (Appellant) v Institute of Chartered Accountants in England and Wales (Respondent) [2011] UKSC 1**  
*On appeal from the Court of Appeal [2009] EWCA Civ 730*

**JUSTICES:** Lord Phillips (President), Lord Rodger, Lord Collins, Lord Clarke, Lord Dyson

### BACKGROUND TO THE APPEAL

This appeal concerns the relevance and application of the principles of *autrefois acquit*, *res judicata* and abuse of process in the context of successive proceedings before a regulatory or disciplinary tribunal. In particular it concerns the application of the general principle that *nemo debet bis vexari pro una et eadem causa*, that is that nobody should be vexed twice in respect of one and the same cause.

The appellant, Mr Coke-Wallis, is a chartered accountant and a member of the respondent Institute of Chartered Accountants in England and Wales (‘the Institute’) which is responsible for the regulation of chartered accountants. Mr Coke-Wallis formerly practised in Jersey where he and his wife were directors and shareholders in a number of trust companies carrying out regulated financial services work. In September 2003 Mr Coke-Wallis and his wife were convicted in Jersey of failing to comply with a direction of the Jersey Financial Services Commission that no records or files in respect of the companies were to be removed from the offices of the companies, having been caught by police attempting to take via the ferry to St Malo suitcases containing documents and records relating to the companies from the jurisdiction of the Jersey authorities.

In November 2004, the Institute’s Investigation Committee preferred a complaint (‘the first complaint’) against Mr Coke-Wallis, alleging that he was liable to disciplinary action under bye-law (4)(1)(a) of the Institute’s bye-laws, relying on the Jersey conviction. Bye-law 4(1)(a) provides that a member was liable to disciplinary action if in the course of carrying out professional work or otherwise he has committed any act or default likely to bring discredit on himself, the Institute or the profession of accountancy. Bye-law 7(1) provided that a conviction outside England and Wales of an offence corresponding to one which was indictable in England and Wales was conclusive evidence of an act or default likely to bring discredit on the institute or profession. The first complaint was dismissed by a disciplinary committee (‘the tribunal’) in April 2005 on the basis that the tribunal was not satisfied that the offence of which Mr Coke-Wallis was convicted in Jersey corresponded with any indictable offence in England and Wales. In March 2006 the Investigation Committee preferred a second complaint (‘the second complaint’) alleging discreditable conduct, relying on the conduct which had led to Mr Coke-Wallis’ conviction in Jersey.

Mr Coke-Wallis applied to have the second complaint summarily dismissed on the grounds of *autrefois acquit*, *res judicata* or abuse of process, arguing that the first and second complaints made the same allegations and so the same complaint had already been dismissed. After a preliminary hearing the tribunal held that the two complaints did not allege the same thing: the first was based on the fact of the conviction, while the second was based on the underlying conduct. The tribunal dismissed the application. Mr Coke-Wallis issued an application for judicial review of that decision. On 6 November

2008 Owen J dismissed the application for judicial review, a decision which was upheld by the Court of Appeal. Mr Coke-Wallis appealed to the Supreme Court.

## JUDGMENT

The Supreme Court unanimously allowed the appeal and held that the principle of res judicata required that the second complaint be dismissed. The substantive judgment is given by Lord Clarke, with additional judgments from Lord Collins and Lord Dyson.

## REASONS FOR THE JUDGMENT

Lord Clarke (with whom all the members of the Court agreed) stated that the two complaints alleged the same breach of bye-law 4(1)(a). On the true construction of bye-law 7(1) the role of a conviction was only to provide conclusive evidence of a breach of bye-law 4(1)(a): [14]-[16]. It followed that the conviction was not capable of itself being the act complained of as being a breach of bye-law 4(1)(a). In these circumstances the act complained of as being discreditable conduct in the first complaint was not being convicted but failing to comply with the direction of the Jersey Financial Services Commission. That was precisely the same complaint as was advanced in the second complaint: [17]-[20], [33].

The principles of res judicata and not those of autrefois convict apply to disciplinary proceedings, which are civil in nature: [22]-[24], [27]-[32]; [57]-[59]. Res judicata is a generic term of which cause of action estoppel and issue estoppel are two species. The distinction between the two species is of potential importance because the former creates an absolute bar whereas the latter does not. In this case Mr Coke-Wallis relied upon cause of action estoppel: [25]-[26].

There are a number of constituent elements in a case based on cause of action estoppel. They are that: (i) the decision, whether domestic or foreign, was judicial in the relevant sense; (ii) it was in fact pronounced; (iii) the tribunal had jurisdiction over the parties and the subject matter; (iv) the decision was – (a) final; (b) on the merits; (v) it determined a question raised in the later litigation; and (vi) the parties are the same. In the instant case it was not in dispute that all those elements were established except (iv) and (v): [34]-[35]. As to (iv) and (v), the Court finds that the first decision of the tribunal was both final and on the merits. If the tribunal had held that the Jersey conviction was based on an offence which corresponded to an indictable offence in England and Wales, it would have found the complaint proved because the conviction would have been conclusive evidence of a breach of bye-law 4(1)(a). There could have been no doubt that such a decision would have been final and on the merits. The same was true of the decision to dismiss the complaint: [36]-[43].

As a general principle, the bar created by a cause of action estoppel is absolute with no exception for special circumstances. There was force in the Institute's submission that a public interest exception to the strict application of the doctrine of cause of action estoppel should be recognised in the disciplinary context where an application of the absolute principle might put the safety of the public at risk. However, whether and in what circumstances to permit such an exception is essentially a matter for Parliament and not for the courts: [45]-[51].

This conclusion makes the question of whether the second complaint should be dismissed or stayed on the ground of abuse of process academic and it would not be appropriate for the Court to express an opinion on this issue: [52].

*References in square brackets are to paragraph numbers in the judgment.*

## **NOTE**

**This summary is provided to assist in understanding the Court's decision. It does not form part of the reasons for the decision. The full judgment of the Court is the only authoritative document. Judgements are public documents and are available at:**

[www.supremecourt.gov.uk/decided-cases/index.html](http://www.supremecourt.gov.uk/decided-cases/index.html)