

**DETERMINATION BY THE SECRETARY OF STATE OF THE APPEAL OF
MANSFIELD COLLEGE**

And

THE ENVIRONMENT AGENCY

Under the CRC ENERGY EFFICIENCY SCHEME ORDER 2010

Introduction

1. This is a determination by the Secretary of State for Energy and Climate Change (“the Secretary of State”) of an appeal made under article 111 of the CRC Energy Efficiency Scheme Order 2010 (“the 2010 Order”). The appeal was made by Mansfield College (“the College”) against a civil penalty notice served by the Environment Agency (“the EA”) on 17 July 2013 for failing to provide an annual report to the CRC Registry by 31 July 2012, contrary to article 47(1) and (2) of the 2010 Order.
2. The Secretary of State appointed David Hart Q.C. under paragraph 14 of Schedule 10 to the 2010 Order to consider the appeal and to make recommendations or reasons for being unable to make recommendations to the Secretary of State.
3. After receiving written submissions, Mr Hart delivered his report, including recommendations, to the Secretary of State on 18 February 2014 (“the Report”).

Conclusions of the Report

4. The Report sets out, in paragraphs 25-28, Mr Hart’s conclusions on the appeal, followed by his recommendation.¹ These are set out below:

“My Conclusions

25. I accept the bulk of the EA’s submissions to the effect that [the bursar] and/or the College had plenty of opportunity to comply with the deadline, and that by a combination of a better handover and [the bursar] responding to the EA’s emails, the deadline could readily have been met, despite the pressures of work. But I do not accept any suggestion by the EA that the College was reckless over this period.

¹In summary, Mr Hart’s factual conclusions were that though [the bursar] did not become aware of the CRC issue until 1 August 2012, he was in fact sent 4 emails prior to this date during the June and July and hence his tenure, which referred to the Scheme and the deadline for the annual report.

26. I agree with the EA that a civil penalty is warranted for these failures. I also agree with the EA that it is not appropriate to levy the default amounts set out in article 94 of the Order

27. However, in applying the guidance I have set out above, I do consider that a penalty of £4,000 remains a harsh one, particularly given the relatively small size of the college. I think that the point is made well by [the bursar] when [the bursar] explains that £4,000 is equivalent to the full funding the College receives for one undergraduate – it has just over 200 undergraduates. I do not think that the EA took sufficient account of the size of the college, and I note that there is no reference to this factor in the EA's decision-making process until the EA's statement of case, and hence after the EA's decision to impose a £4,000 penalty.

28. I would therefore vary the penalty to £2,500. In my view this would fairly balance the College's failures with the mitigating factors I have identified. I would add that any penalty (and certainly one of £2,500) would operate as a deterrent in this case; the response of [the bursar] in August was exemplary, and there was no question of the delay leading to any financial gain by the College.

Recommendation

I recommend to the Secretary of State that Mansfield College's appeal be allowed and the civil penalty notice of 17 July 2013 be varied so that the civil penalty be £2,500 instead of £4,000."

5. The Secretary of State agrees with and adopts the conclusions set out in the Report.
6. In determining the appeal the Secretary of State has the power under paragraph 12 of Schedule 10 to the 2010 Order to cancel or affirm the civil penalty and where such civil penalty is affirmed, the Secretary of State may do so in its original form, or with such modifications as he sees fit.

Determination

The Secretary of State therefore determines that:

- i. The appeal by Mansfield College against the civil penalty notice served by the EA on 17 July 2013 for failing to provide an annual report to the CRC Registry by 31 July 2012, contrary to article 47(1) and (2) of the 2010 Order is allowed on the grounds set out above and in the Report.
- ii. The civil penalty notice of 17 July 2013 is accordingly varied so that the civil penalty be £2,500 instead of £4,000.

Signed by:



Niall Mackenzie

3rd April 2014

Head, Industrial Energy Efficiency Programme, Department of Energy and Climate Change