The Supreme Court unanimously held that the Secretary of State had acted procedurally unfairly by failing to promptly tell the appellant that his tier 2 sponsor’s licence had been revoked. Four of the five judges (Lord Wilson, Lady Arden, Lord Kerr and Lady Black JJSC) held that this procedural unfairness vitiated the decision to refuse the appellant’s application for further leave to remain in the circumstances so that the decision had to be quashed. Lord Briggs JSC dissented, holding that although the SoS had acted procedurally unfairly, this did not make a difference in the instant case and the unfairness did not vitiate the decision.

Lord Wilson and Lady Arden JJSC held that the entitlement to procedural fairness imposed on the SoS a duty to give the appellant reasonable time to respond to notice of the licence revocation. Lord Kerr and Lady Black JJSC, who provided a joint judgment, held that the duty to act procedurally fairly was a negative one, a “*duty not to deprive, not an obligation to create*” (para. 108). They therefore disagreed with Lord Wilson and Lady Arden JJSC, who held that a positive duty to allow an opportunity to respond to notice of a licence revocation arose. Lord Briggs JSC held that a duty to give time to the appellant to respond to a licence revocation was substantive, not procedural, and therefore outside the scope of the doctrine of procedural fairness.

There are thus different majority judgments on what the Court saw as the two issues in the case. On the first issue- was it procedurally unfair not to give the appellant notice of his sponsor’s licence revocation so that the SoS’s decision to refuse his application should be quashed?- Lord Wilson, Lady Arden, Lord Kerr and Lady Black JJSC answered in the affirmative, and Lord Briggs JSC in the negative.

On the second issue- was there a positive duty on the SoS to provide time to the appellant to respond to the licence revocation?- Lord Kerr, Lady Black and Lord Briggs JJSC agreed that the answer was “no”; and Lord Wilson and Lady Arden answered affirmatively.

Note, Lord Kerr and Lady Black held that the appellant (and those in a similar position) should be given as much opportunity as reasonably possible to accommodate and deal with a decision to revoke his sponsor’s licence (para. 107) and held that the SoS could not contrive to defeat the entitlement to prompt notice by shortening the time between revocation and a decision to refuse an application (para. 110). While they reasoned that the law goes even further, this negative protection is arguably supported by Lord Wilson and Lady Arden’s judgments too (see for eg Lord Wilson at paras. 218(a) and 219(a)).

The Court’s reasoning will have substantial implications for immigration law and for public law more generally and will repay close analysis.