

IN THE COURT OF APPEAL, CIVIL DIVISION
ON APPEAL FROM THE HIGH COURT OF JUSTICE
QUEEN’S BENCH DIVISION
THE ADMINISTRATIVE COURT
The Honourable Mr Justice Lewis

Appeal No.
Claim No. CO/1860/2020

AND IN THE MATTER OF THE HEALTH PROTECTION (CORONAVIRUS, RESTRICTIONS)
(ENGLAND) REGULATIONS 2020;
AND IN THE MATTER OF THE PUBLIC HEALTH (CONTROL OF DISEASE) ACT 1984;

B E T W E E N :

THE QUEEN

(On the application of

(1) SIMON DOLAN

(2) LAUREN MONKS

(3) AB a child by his litigation friend CD)

Claimants/Appellants

- and -

THE SECRETARY OF STATE FOR HEALTH AND SOCIAL CARE

First Defendant/First Respondent

- and -

THE SECRETARY OF STATE FOR EDUCATION

Second Defendant/Second Respondent

GROUND S OF APPEAL

- (A) Each of the Judicial Review Grounds (‘the JR Grounds’) challenging each iteration of the Regulations were arguable; and (if the Court of Appeal agrees to determine the judicial review substantively) should be upheld; and the Claimants should have been permitted to amend the claim to challenge the interferences to Article 11 and to Article 1 of Protocol 1 to the Convention by the Regulations as amended on 1 June 2020, in addition to their earlier form.
- (B) The learned judge erred in refusing permission to amend the JR Grounds to allow a challenge to the Second Defendant’s instruction or request to schools to close, in refusing to give that ground

permission; and, if the Court of Appeal agrees to determine the judicial review substantively, it is asked to uphold that ground;

- (C) The learned judge erred in finding that any parts of JR Grounds 2 and 3 of the JR Grounds challenging earlier versions of the Regulations that applied before 2 July were academic; and, recognising that the Court of Appeal would be considering permission to proceed with a judicial review after they were amended, it is asked to find that considering any of the earlier versions of the Regulations before they were amended on 3 July 2020 would not be academic. This is on the grounds that the threat to reimpose them amounts to a ‘proposal’ to breach Convention rights, contrary to s 7(1) of the HRA. Alternatively, the learned judge erred in finding that it was not in the public interest to proceed with the judicial review (*inter alia*) in circumstances where such a threat has been made and (as set out in the evidence before the Court and highlighted in para 22 of the JR Grounds) 15,000 people had been fined for breaches of the Regulations.

Further and alternatively, the Court of Appeal is asked to give permission to challenge the current iteration of the Regulations (as amended on 3 July) on the Grounds that they continue to be *ultra vires* the 1984 Act (JR Grounds 1), the First Defendant fettered his discretion about the circumstances in which they could be eased, failed to take relevant considerations into account, acted irrationally and disproportionately (JR Ground 2) and that they are a disproportionate breach of the Claimants’ rights under Articles 8 and 11. If, contrary to the Claimants’ position, the Court of Appeal considers that the amended Regulations restrict gatherings of more than 30 people inside public buildings (including religious buildings), permission is sought to challenge this interference with Article 9 rights.

PHILIP HAVERS QC

FRANCIS HOAR

WEDLAKE BELL LLP

13 July 2020