

M Gardner
Claimant
4th
23/06/20
Exhibits: MG7

IN THE HIGH COURT OF JUSTICE

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;

ADMINISTRATIVE COURT

BETWEEN

THE QUEEN

(on the application of

(1) SIMON DOLAN

(2) LAUREN MONKS *[and*

(3) A.B (acting by his litigation friend "C.D")]

Claimants

and

(1) THE SECRETARY OF STATE FOR HEALTH & SOCIAL CARE

First Defendant

(2) THE SECRETARY OF STATE FOR EDUCATION

Second Defendant

FOURTH WITNESS STATEMENT
OF MICHAEL GARDNER

I, MICHAEL GARDNER, of 71 Queen Victoria Street, London EC4V 4AY, WILL SAY as follows:

1. INTRODUCTION & BACKGROUND

1.1 I am a solicitor and partner in Wedlake Bell LLP. My firm represents the Claimants, in the above judicial review proceedings. I have already made three earlier witness statements in

this matter. This, my fourth statement, is being made to assist the Court in connection with the hearing on 2 July 2020 at which the Court will consider whether to give permission for the Claimants' judicial review to proceed.

The need for this statement

1.2 The need for this statement arises because there have been a considerable number of important developments since my first witness statement was made on 20 May in support of the original claim ("my First Statement"). In particular, since the amended claim form was issued on 26 May:

1.2.1 there have been further "reviews" by the Government of the legislation under challenge¹ (which in I shall continue to refer to as "the Regulations") albeit nothing has been published by the Government in relation to such reviews;

1.2.2 two further sets of substantive amendments to the Regulations under challenge have been made;

1.2.3 a new statutory instrument has been made to impose quarantine obligations on travellers to England;

1.2.4 important data and information have been published, including the minutes of SAGE meetings, data showing the effect of the lockdown on the UK economy and up to date information about Covid-19 mortality and critical care bed availability;

1.2.5 the Government has belatedly put forward the basis on which it now says that most schools in England were closed and have remained so during the lockdown; more evidence has emerged as to the harm being caused by lack of access to education.

1.2.6 the Government has warned that national lockdown measures could still be reintroduced in the future.

1.3 Under the order of Lewis J dated 16 June 2020, the Claimants were ordered to file a document of no more than 10 pages setting out what exactly they wished to continue to challenge in their judicial review. Given that so much has happened between the date of issue and the date on which the application for permission is being heard, I believe it would help the Court considerably for me to provide a brief update on the relevant factual developments that have occurred since my First Statement was made. I also briefly provide

¹ i.e. the Health Protection (Coronavirus, Restrictions) (England) Regulations 2020 SI 2020 350 as amended

some additional evidence in relation to a specific matter raised by the Government in its summary grounds of defence which were served on 12 June ("the Summary Grounds").

- 1.4 There is now produced and shown to me marked Exhibit "**MG7**" some further documents to which I shall refer in this statement. In what follows, references to page numbers are, unless otherwise indicated, references to the pagination of the supplemental bundle in which that statement appears. References to pages in the "JR Bundle" are references to the numbering in the original judicial review bundle.

2. RECENT DEVELOPMENTS ON COVID-19 MORTALITY AND PROPORTIONALITY

Covid-19 mortality in England

- 2.1 In paragraphs 5.51 – 5.52 of my First Statement (pages 241 to 242 of the JR Bundle), I stated that according to figures for deaths in hospitals in England published by NHS England up to 14 May 2020, it was a fact that just 3 people under the age of 20 with no pre-existing health conditions had died with Covid-19. For those under the age of 40, in the whole of England, 184 people in total had died in hospital with Covid-19 of whom 30 had no pre-existing health conditions. For under 60s, the deaths of those without pre-existing health conditions totalled 253.

- 2.2 It is important to note that the figures from the same source have barely changed more than a month on. According to the latest figures from NHS England, up to 16 June (see page 2), it remained the case that out of a total of 28,137 deaths in hospital in England of those with Covid-19, out of those under 60 years old with no pre-existing health conditions, there had still only been 297 deaths comprised as follows:

2.2.1 3 deaths in the 0-19 years old age range;

2.2.2 33 people in the 20 – 39 age range;

2.2.3 261 in the 40 – 59 age range.

- 2.3 To put these death statistics into perspective, as well as showing the latest Covid-19 death statistics for those who have died in English hospitals with and without pre-existing conditions, also at page 2 is a table showing the total number of deaths in these age groups recorded in 2018 (the latest year for which full published figures are available).²

² Unlike the Covid-19 figures, the general death statistics figures include Wales as well

Fall in Covid-19 cases

- 2.4 There is little point in comparing Covid-19 testing statistics from early in the pandemic to the present because small numbers of tests were previously carried out and almost entirely on people with symptoms. Between 1 April – 9 April inclusive, according to figures released at Government press conferences just over 90,000 tests were conducted of which just over 35,000 were positive. But since the issue of the claim, testing has been at a much increased level with between 100,000 and 200,000 tests a day carried out but only a tiny percentage of around 1500 or so people have been testing positive. According to the Government's press conference presentations, there has been a steady decrease in the rate of deaths attributed to Covid-19, the rates of hospital admissions and the rate of new cases. This has continued since the issue of the claim. At pages 3 - 22 are copies of the slides presented by the Government at its daily Coronavirus press conferences on 1 June³ and 12 June⁴ (the dates on which amendments to the Regulations were introduced) and 19 June⁵ the date of preparation of this statement.
- 2.5 On 12 June, the National Audit Office published a report entitled "Readying the NHS and adult social care in England for Covid-19".⁶ According to this report (see page 23):

"..between 17 March – 12 April the number of available beds in the NHS increased from 12,600 to 53,700, while the proportion of those occupied by Covid-19 patients peaked at 29%. The proportion of critical care beds occupied by Covid-19 patients in England was highest between 5 April – 14 April at 50% or just over. The NHS additionally increased capacity through a deal to access up to 8,000 beds in independent hospitals and by establishing temporary Nightingale hospitals although use of these was limited...."

Demand for respiratory support has been lower than forecast. The number of unoccupied beds with ventilator or oxygen support more than doubled during April from 16,900 to 34,900..."

3

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/890481/2020-06-01_COVID-19_Press_Conference_Slides.pdf

4

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/892096/2020-06-12_COVID-19_Press_Conference_Slides_with_Annex.pdf

5

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/893769/2020-06-19_COVID-19_Press_Conference_Slides.pdf

⁶ <https://www.nao.org.uk/wp-content/uploads/2020/06/Readying-the-NHS-and-adult-social-care-in-England-for-COVID-19.pdf>

2.6 The Prime Minister's own statement on 16 June⁷ (see pages 24 – 25) revealed that there were just 385 people in mechanical ventilation beds in the UK, down from a peak of 3,301 on 12 April. But what does seem clear from the above is that there is a huge spare NHS capacity in place to deal with any second spike in Covid-19 cases and that capacity is much greater than it was when the lockdown was first introduced.

Further ONS data concerning impact on the economy

2.7 Since the issue of proceedings, further facts concerning the impact on the economy have been published by the Office of National Statistics (ONS). According to the latest bulletin published by the ONS⁸ on 19 June, (see pages 26 - 27) the UK's borrowing in so far this financial year (i.e. most of April and the whole of May) was £103.7 billion – the highest since records began. The UK's national debt is now officially greater than the country's entire annual GDP of the United Kingdom for the first time in 57 years. Meanwhile, according to the latest update from HMRC, as of 21 June, 9.2m people were "furloughed" on the Government's Coronavirus job retention scheme at a cost to date of £22.9 billion.⁹ A further 2.6m claims had been made by self-employed people under the equivalent scheme for self-employed workers at a cost of £7.6 billion (see pages 28 – 30). Billions of £s in VAT have been deferred by businesses and billions of £s in short term loans made to businesses. The damage to the UK's economy from the continued imposition of the Regulations is clearly enormous.

Threat to reintroduce tougher lockdown measures

2.8 On 1 June, the First Defendant warned that although there has been an attempt to move from "national blanket measures" the Government was prepared to reintroduce such measures if it felt they were necessary¹⁰ (see pages 31 – 35).

3. THE CHANGES TO THE REGULATIONS SINCE THE ISSUE OF PROCEEDINGS

3.1 The Regulations, came into force on 26 March 2020 and have been amended 4 times since their introduction. It was originally a requirement of the Regulations that they be subject to a

⁷ <https://www.gov.uk/government/speeches/pm-statement-at-the-coronavirus-press-conference-16-june-2020>

⁸ <https://www.ons.gov.uk/economy/governmentpublicsectorandtaxes/publicsectorfinance/bulletins/publicsectorfinances/may2020>

⁹ https://www.gov.uk/government/collections/hmrc-coronavirus-covid-19-statistics?utm_source=ad21db6c-731d-49ac-b4d2-e181126a2b56&utm_medium=email&utm_campaign=govuk-notifications&utm_content=immediate

¹⁰ <https://www.itv.com/news/2020-06-01/matt-hancock-leads-government-s-daily-coronavirus-press-conference/>

review at least every 21 days (latterly 28 days). The Government has not published any documents evidencing any of these reviews.

- 3.2 The Regulations in their original form, required certain types of businesses to close and stay closed for the "emergency period" and permitted only limited operations by other specified businesses. They also imposed draconian restrictions on civil liberties including confining people to their homes (except where they had a "reasonable excuse" to leave the place where they were living) and banning gatherings. On 22 April, the Regulations were amended – again using the "urgent" procedure without any prior scrutiny by Parliament. The principal change was to tighten up the restrictions on individuals so that it became illegal for anyone not just to "leave" the place where they were living without a reasonable excuse, but to "be outside" of that place again, without reasonable excuse.
- 3.3 On 13 May, the Regulations were amended again.¹¹ This time there were some relaxations of the rules concerning leaving the home so as to meet other persons in public places – though not in private places. People were, however, allowed to visit other households for the purposes of viewing homes for sale or rent (with no restriction on how many such visits there could be).
- 3.4 Since my first statement was made on 20 May and since the issue of proceedings, the Government has further reviewed the Regulations and made two further sets of amendments to them. The first of these came into force on 1 June¹² and the second was on 12 June (see pages 36 – 41).¹³ To assist the Court in bringing the factual background up to date, I shall explain what these are.

Amendment No.3 made on 1 May 2020, coming into force on 1 June ("Amendment 3")

- 3.5 Amendment 3 added some additional types of premises such as social clubs, model villages and indoor attractions that were obliged to close by the Regulations. Amendment 3 introduced detailed provisions to allow so-called "elite athletes" to make use of sporting facilities for the purposes of their training. However, of more importance to the general population, the amendment altered the structure of the existing regulations so that a new regulation 6 replaced the existing provisions on persons leaving or being outside the place where they were living.
- 3.6 Under Amendment 3, regulation 6 was changed to remove the restrictions on people leaving or being outside their homes without reasonable excuse. These were replaced by a prohibition on an individual staying overnight anywhere but in their own home without

¹¹ Health Protection (Coronavirus, Restrictions) (England) (Amendment) No.2) Regulations 2020/500

¹² Health Protection (Coronavirus, Restrictions) (England) (Amendment) (No.3) Regulations 2020/558

¹³ Health Protection (Coronavirus, Restrictions) (England) (Amendment) (No.4) Regulations 2020/588

reasonable excuse. The "reasonable excuses" for staying somewhere else overnight largely mirrored those which had applied to people leaving or being outside of their homes under the previous version of the Regulations. Thus, the previous, qualified house arrest of individuals in their own homes was replaced by a qualified form of overnight curfew.

3.7 Regulation 7 was also substantially amended by Amendment 3. The Regulations now provided that subject to the exceptions set out in reg7(2), no person could participate in a gathering whether in a private or public place outdoors where more than 6 persons was involved, or indoors where 2 or more persons were involved. Among the exceptions to this were where reasonably necessary for work purposes. Gatherings for funerals were permitted, but under reg 7(2)(iii) friends of the deceased could only attend a funeral if no members of the deceased's household or close family members were in attendance.

3.8 The definition of "gathering" under the Regulations for these purposes is where:

*"two or more people are present together in the same place in order to engage in any form of social interaction with each other **or to undertake any other activity with each other.**" [emphasis added].*

3.9 The scope of these restrictions thus remained extremely onerous. Notwithstanding Amendment 3, as of 1 June it remained a criminal act under the Regulations for two people not of the same household to gather inside a private property for any purpose not covered by the exceptions in reg 7. Thus, for example, a person could not lawfully invite a friend or family member over for a coffee at their house if the visitor and host both sat inside the house – even in different rooms. But up to six people could lawfully gather on a small roofless balcony outside someone's flat for drinks since that would count as being "outdoors".

3.10 One other change introduced by Amendment 3 was to extend the "review" period for the regulations from 21 days to 28 days.

Amendment No.4 to the Regulations¹⁴ ("Amendment 4")

3.11 The most recent amendment to the Regulations, "Amendment 4" was introduced by the Government – again using the urgent procedure without prior Parliamentary scrutiny – on 12 June 2020.

3.12 The changes introduced by Amendment 4 included changes to allow further "non-essential" retail premises to open. and to clarify the basis on which business which were otherwise closed could continue to offer food or drink for off premises consumption. As a result of these

¹⁴ SI 2020 588

changes, many more shops in the High Street were able to open again from 15 June, although their ability to attract sufficient footfall from shoppers remains seriously impaired by the Government's guidelines on social distancing. Another significant change the Regulations introduced by Amendment 4 was the introduction of the "linked household" at reg 7A of the Regulations.

- 3.13 It was also noted in only the second debate on the Regulations in the House of Commons on 15 June, that despite the statutory requirement that the Government should review the Regulations every 28 days, at no stage since they were first introduced, has the Government published any document setting out details of the review, what matters were considered and why the review concluded as it did. Mr Justin Madders MP, made these observations about the reviews and Parliamentary scrutiny:

"It is important that this Chamber has a role because these are not minor or consequential changes that can be nodded through without debate. They affect millions of people's lives, and we know that if we get it wrong, the consequences will be devastating. Debating them weeks after the event, and in some cases when they have been superseded by the next set of regulations, demeans parliamentary democracy. Changes such as these should always be accompanied by a statement to Parliament, not just showcased at Downing Street press conferences. We are not merely a rubber-stamping exercise to create the veneer of a democratic process. We should not be debating these measures late, and we should not be debating them without seeing the full extent of the information on which the Government based their decisions. We know that the next review of the regulations must take place on or before 25 June. If that review leads to further relaxations, will the Minister commit today that any regulations introduced off the back of that will be debated here before they are implemented and not retrospectively?"

The reviews, which are legally required to happen under the regulations, took place on 16 April, 7 May and 28 May. I ask the Minister: where are they? In a written question, I asked the Secretary of State whether he would publish those reviews. I received a reply last week stating that the Department of Health and Social Care had indicated that it would not be possible to answer the question within the usual time period. Why on earth not? If the Government have conducted these reviews, why are they not in a position to disclose them? I find this absolutely incredible. Here we have the most far-reaching impositions into everyday life in this country, yet we have no idea what the Government's own reviews of them say. These are reviews that are required under legislation."¹⁵ (see pages 42 - 43)

¹⁵ <https://hansard.parliament.uk/Commons/2020-06-15/debates/D38A42EF-77BA-410E-9E46-0382DD500705/PublicHealth>

The new regulations concerning travel

- 3.14 On 8 June 2020, despite widely reported protests from the aviation and travel sectors as to the further damage that they would likely do to those industries, the Government implemented the Health Protection (Coronavirus, International Travel) (England) (Regulations) 2020¹⁶ ("**the Travel Regulations**"). These imposed a compulsory self-isolation requirement on anyone travelling into England from outside the common travel area. On 4 June I sent a letter about the Travel Regulations to the Home Secretary (who had presented the new quarantine scheme to Parliament) (see pages 44 – 51). This was responded to on 5 June by the Government Legal Service who requested that a formal pre-action letter be sent (see pages 52 – 53). I then sent such a letter dated 8 June to the First Defendant who laid the regulations in Parliament (see pages 54 – 62). My letters complained, inter alia, about the evident irrationality of the Travel Regulations and the fact that there was, on the face of it, no evidence of any scientific basis for introducing them. The Government responded to the pre-action letter on 12 June (pages 63 – 69). In the event, although the Government refused to suspend the Travel Regulations as the Claimants had requested, it is understood that certain airline companies such as IAG which owns British Airways, have launched their own separate legal challenge to the Travel Regulations. It was therefore unnecessary for the Claimants themselves to do so as well.
- 3.15 Since the Travel Regulations themselves are not under challenge in these proceedings, I do not need to deal with them here in detail, other than to make one brief, observation.
- 3.16 In the Travel Regulations, the Government has actually imposed even stronger restrictions on the personal liberty and freedoms of the individuals affected (and thus interference with their Convention rights) than was the case with the Regulations – even in their original form. For example, under reg 4(9) of the Travel Regulations, a person who is obliged to self-isolate is not only required by law not to leave or be outside the place where they are living during their isolation period, but unlike with the Regulations, there is no "reasonable excuse" defence. This is in spite of the fact that the Travel Regulations would allow the same person to travel legally to their place of self-isolation on public transport and to travel (again via public transport) for the purposes of leaving England.

4. SAGE MINUTES

- 4.1 The Government's response to the request in the Claimants' pre-action letter to disclose the minutes of SAGE was dismissive (JR Bundle pages 917 to 918 and pages 937 to 938).

¹⁶ SI 2020 568

However, a few days after the Claimants' proceedings were served, the Government belatedly published minutes from SAGE up to 7 May 2020. On 19 June, further SAGE minutes up to 21 May were published. The Claimants did not therefore have sight of any of the SAGE minutes at the time the claim was issued and its evidence prepared.

4.2 The Claimants' claim to disclosure of further SAGE minutes remains live as not all of the minutes have yet been published and the Government has not conceded that it is obliged to disclose them. Nor were any SAGE minutes produced which evidence support for the Travel Regulations.

4.3 I have read the SAGE minutes published by the Government. From reading the minutes published in the crucial period leading up to the decision by the Prime Minister to announce a lock down on 23 March there is nothing in any of the SAGE minutes that amounts to advice to the Government to order such a lockdown as it did on 23 March. Nor did SAGE conclude in any of the minutes up to and including 23 March that such a general lockdown should happen. The SAGE minutes for the meeting on 18 March do show that SAGE advised a national shut down of schools.

5. EDUCATION AND SCHOOL CLOSURES

5.1 On 18 March 2020, the Prime Minister made a statement from 10 Downing Street and said this in relation to schools:

"So looking at the curve of the disease and looking at where we are now – we think now that we must apply downward pressure, further downward pressure on that upward curve by closing the schools.

So I can announce today and Gavin Williamson making statement now in House of Commons that after schools shut their gates from Friday afternoon, they will remain closed for most pupils – for the vast majority of pupils- until further notice....." (see pages 355 - 357 of the JR Bundle)

5.2 On the same day, Gavin Williamson, the Secretary of State for Education said this to the House of Commons:

"After schools shut their gates on Friday afternoon, they will remain closed until further notice. This will be for all children except to those of key workers and where children who are most vulnerable." (see page 70)

5.3 The Department of Education's own website referenced these statements as follows:

"Following the announcement that all educational settings would close from Friday 20 March - except for children of critical workers and vulnerable children.."¹⁷ (see page 71)

- 5.4 Thus, with effect from 20 March, schools were closed to over 90% of the school population (see page 72).¹⁸ And they remained closed until the beginning of June at which point the Government announced it wished them to reopen more widely for certain pupils. (In correspondence from 22 May onwards, I specifically sought clarification from the Government as to what its position on school closures was (see pages 73 - 77) but the Government declined to answer this until it served the Summary Grounds on 12 June).
- 5.5. The effect of the Government's announcements that schools would close was dramatic. According to the most recently available official figures, the total school population in England is 8.8 million¹⁹ children in primary and secondary education (see page 78). As a result of the closure announcements by Ministers, attendances plummeted. According to the Government's own data, school attendance was just 3.7% on the first day of lockdown closures and then fell to below 1% of pupils (see pages 79 - 80).²⁰ According to the Government's own published reports on pupil attendance²¹ rose to between 2% and 3% of the school population during May (see page 81). On 1 June, when the reopening of schools to some classes of pupils was supposed to start, attendance grew but to just 6.9% of the school population. By 11 June, attendance was up again, but only to 9.1% of pupils. The vast majority – about 8 million children – were still not attending school.

The Government's claims to have mitigated the impact of school closures

- 5.6 At paragraph 74 of the Summary Grounds, the Government sets out a list of measures which it says were designed to mitigate the effect of its "request" to schools. The reality of the effectiveness of these measures, is rather different, as the evidence I reported in my Third witness statement in relation to the proposed Third Claimant and in a growing body of independent evidence on the subject.

¹⁷ <https://www.gov.uk/government/organisations/department-for-education/about/statistics>

¹⁸ The Education Secretary told the House of Commons on 18 March that the children of vulnerable groups and those of key workers made up about 10% of the school population

¹⁹

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/812539/Schools_Pupils_and_their_Characteristics_2019_Main_Text.pdf

²⁰ <https://schoolsweek.co.uk/coronavirus-school-attendance-around-1-finds-dfe-analysis/>

²¹ <https://www.gov.uk/government/publications/coronavirus-covid-19-attendance-in-education-and-early-years-settings>

- 5.7 For example, on 15 June, a report was published by the UCL Institute of Education into a study led by Professor Francis Green ("the UCL Report") (see pages 82 to 101). The findings of this report²² – based on a survey of over 4,500 households – were widely reported in the press (see for example Telegraph²³ and Guardian²⁴ articles at pages 102 – 107. In summary, the UCL report found:
- 5.7.1 Children locked down at home in the UK spent an average of only 2.5 hours each day doing schoolwork;
 - 5.7.2 Most homework consisted of assignments, worksheets and watching videos;
 - 5.7.3 The extent of online lessons provision in state schools was minimal: 71% of state school children received no or less than one daily online lessons;
 - 5.7.4 Over a fifth of pupils (i.e. over 2 million children) did no schoolwork at home, or less than an hour a day
 - 5.7.5 Only 17% put in more than 4 hours a day
 - 5.7.6 Inequalities between social groups and regions was substantial
 - 5.7.7 Virtually all private school children (97%) had access to a computer at home whereas one in five of those on free school meals had no access to a computer at home;
 - 5.7.8 Despite the Government's intentions for schools to "welcome back" certain pupils in June, this has in practice happened only to a very limited extent.
- 5.8 As regards the Government's mitigation measures referred to in paragraph 74 of the Summary Grounds is concerned, the Government announced a scheme to help those children without access to the internet (estimated at over 700,000²⁵ (see pages 108 - 110) or IT equipment on 19 April nearly a month into the lockdown. But according to the

²² https://www.llakes.ac.uk/sites/default/files/LLAKES%20Working%20Paper%2067_0.pdf

²³ <https://www.telegraph.co.uk/news/2020/06/15/two-million-children-have-done-almost-no-home-learning-lockdown/>

²⁴ <https://www.theguardian.com/education/2020/jun/15/2m-children-in-uk-have-done-almost-no-school-work-in-lockdown>

²⁵ <https://www.theguardian.com/technology/2020/jun/15/uk-children-reliable-broadband-coronavirus-lockdown-education>

Government's own progress report published on 16 June²⁶, deliveries of laptops and 4G routers only began a month later on 18 May (see pages 111 - 112). As of 14 June, only 22,518 routers and 114,536 laptops/ tablets had been "delivered or dispatched" to Local Authorities or trusts (i.e. not to the children themselves).

- 5.9 The Government had attempted to persuade schools to reopen again from the beginning of June for primary school pupils. But this has met with resistance from teachers' unions. But also, its own social distancing guidance has made life very difficult for schools given the near impossibility of expecting small children to comply with such restrictions and the impact on class sizes. On 9 June the Education Secretary admitted in Parliament that not all primary school children would be able to attend school for a full month before the summer holidays and that he would be "*working to bring all children back to school in September*" (see extract from Hansard at pages 113 – 115.²⁷ As I have said, the overall figure for the percentage of the school population who had returned as of 11 June was just 9.1% as of 11 June according to the Government's own figures.
- 5.10 On June 18 more than 1600 paediatricians wrote an open letter to the Times (see pages 116 – 118) calling on the Government to reopen schools or risk scarring the life chances of a generation of children".²⁸

6. INTERFERENCE WITH ENJOYMENT OF POSSESSIONS– ARTICLE 1, PROTOCOL 1

- 6.1 The First Claimant is the owner of a number of businesses based in England. These include Jota Aviation Ltd ("Jota") a company of which he is the sole legal and beneficial owner. A copy of the Register of Members for Jota is at pages 119 – 127 showing his 100% share ownership of the company. I have spoken to the First Claimant about this business and how it has been affected by the Regulations. He has explained to me and I believe, that Jota has been damaged as a result of the Regulations. For example, the Regulations made it unlawful for anyone to leave the place where they were living without a reasonable excuse. Later, the Regulations were amended so that people could leave their homes but not stay overnight anywhere else. This destroyed demand for flying so passenger trade was hit. Jota provides back up planes on a "wet lease" basis to other airlines, such as British Airways, Air France and others. With virtually no travel possible, this business dried up. Jota did undertake some repatriation flights but this did not compensate for the lost business. Another of the First

²⁶

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/892510/Devices_and_4G_wireless_routers_data_ad_hoc_stats.pdf

²⁷ <https://hansard.parliament.uk/Commons/2020-06-09/debates/1FB411B2-E5C6-4E6B-A9F2-1DDBF5F5E8B1/EducationSettingsWiderOpening>

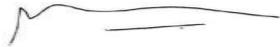
²⁸ <https://www.thetimes.co.uk/article/get-all-children-back-to-school-hundreds-of-paediatrics-doctors-tell-boris-johnson-royal-college-of-paediatricians-75dkqfhhbx>

Claimant's businesses is a The PHA Group Ltd ("PHA") a PR business. He is a 70% shareholder in PHA and in control of the Board of Directors. With so many businesses forced to close by the Regulations and economic activity severely curtailed, PR was heavily affected and he believes this has reduced revenues of PHA by £2.4m.

Statement of truth

I believe that the facts stated in this witness statement are true. I understand that proceedings for contempt of court may be brought against anyone who makes, or causes to be made, a false statement in a document verified by a statement of truth without an honest belief in its truth.

Signed



Dated 23 June 2020

Michael Gardner