Wedlake Bell

By email

Date 6 May 2020

Your ref [redacted]

Our ref [redacted]

Direct Dial [redacted]

Direct Fax [redacted]

Email [redacted]

[redacted]
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Litigation Group
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London
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Dear Sirs

THE HEALTH PROTECTION (CORONAVIRUS) (ENGLAND) REGULATIONS 2020; THE PUBLIC HEALTH (CONTROL OF DISEASES ACT) 1984

We refer to your letter of today's date in which you have requested an extension of time for a response by the Secretary of State for Health and Social Care ("the SoS") to our client's pre-action letter of 30 April.

We are disappointed that you are unable to provide us with a substantive response by tomorrow's deadline.

We are aware that many of the issues raised in our letter had already been the subject of third party correspondence with your department only last week. Indeed, the whole question of whether or not the Regulations are *ultra vires* has not only been aired in the press, including in articles by eminent lawyers, but they were also raised during the "debate" in the House of Commons to which you refer. The Minister for Health, Edward Argar, stated in Parliament in response to an earlier question in the debate by Steve Baker MP, that it was the Government's position that the Regulations were not *ultra vires*.

Further, we need hardly remind you that under the very legislation that is the subject of the potential judicial review, the SoS had a positive statutory duty to have regard to the proportionality of the measures he was about to propose, as well as the compatibility of those measures with the requirements of the Human Rights Act 1998. This means that he must have been in receipt of detailed, carefully considered legal advice on all these points prior to laying the Regulations before Parliament. The amended statutory instrument now known as The Health Protection (Coronavirus, Restrictions) (England) Regulations 2020 specifically records that:

> *"The Secretary of State considers that the restrictions and requirements imposed by these Regulations are proportionate to what they seek to achieve, which is a public health response to that threat."*

The SoS must therefore be in a position to address the points made in our letter of 30 April. Otherwise, how could that statement have been made?

Finally, since a considered decision was evidently made to introduce the Regulations under the 1984 Act, rather than via the Civil Contingencies Act 2004 (or indeed as part of the Coronavirus Act 2020) that again suggests that fully considered advice on the SoS's powers etc must have been provided at the time – and be available now to those charged with responding to our letter.

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For all those reasons therefore, we do not accept that the SoS should require further time beyond our original deadline of 7 May within which to deal with such matters.

We do note, however, that the Prime Minister is now apparently intending to make an announcement about the lockdown measures in a statement to be delivered on Sunday 10 May, rather than immediately following the result of the review of the Regulations that must take place by tomorrow.

In view of this development, our client is prepared to afford the SoS further time within which to respond fully to the pre-action letter, both so as to take account of the review and of the Prime Minister's statement.

However, given the enormous damage and disruption that the lockdown continues to cause in the meantime (estimated in financial terms alone at over £2.5 billion per day) this case remains extremely urgent. Our client cannot be expected to allow the SoS any longer than is strictly necessary for a response or to allow this damaging situation to continue.

If the lockdown measures are not eased as envisaged in our letter of 30 April, this is a case which clearly needs to be brought before the Court with all possible speed.

Our client is therefore prepared to extend the time for a substantive response to our letter until **5.30pm on Tuesday 12 May 2020**.

We look forward to hearing from you by then. All our client's rights remain reserved in the meantime.

Yours faithfully

Wedlake Bell LLP

Wedlake Bell LLP

cc [redacted]