IN THE HIGH COURT OF JUSTICE **Claim No: CO/1860/2020**

QUEEN'S BENCH DIVISION

ADMINISTRATIVE COURT

BETWEEN

(1) MR SIMON DOLAN
(2) MS LAUREN MONKS

Claimants

and

(1) SECRETARY OF STATE FOR HEALTH & SOCIAL CARE
(2) SECRETARY OF STATE FOR EDUCATION

Defendants

SKELETON ARGUMENT ON BEHALF OF THE DEFENDANTS

For the hearing on permission, listed for 2 July 2020 before Lewis J

References to paragraphs of: the Amended Statement of Facts and Grounds are denoted by SFG §x, of the Supplementary Grounds by SG§x, of the Claimants' 'Permission Document' by CPD§x, of the Summary Grounds of Defence by SGD§x.

Bundle references for the claim bundle are [CB/x] and the supplementary bundle are [SB/x]. Authorities [Auth/x] and Supplementary Authorities [Supp Auth/x]

Suggested pre-reading

- *The Statement of Facts and Grounds [CB/16]*
- *The Summary Grounds of Defence [SB/A2]*
- *The Claimants' Permission Document [SB/A9]*
- *The Health Protection (Coronavirus, Restrictions) (England) Regulations 2020 as amended [Supp Auths/3]*
- *The Explanatory Memorandum to the Regulations [SB/A6]*
- *Our Plan to Rebuild: The UK Government's COVID-19 Recovery Strategy' [CB/538]*

I. INTRODUCTION

1. The Claimants seek permission to challenge (i) "*all provisions*" of the "*existing and former*" Health Protection (Coronavirus, Restrictions) (England) Regulations 2020 ("**the Regulations**"); and (ii) the *"the decision of the Second Defendant, made on 20 March 2020 and announced by the Prime Minister on that date, to direct the closure of all schools and other educational establishments and asks the Court to quash that public law decision and direction"*.

2. The Claimants raise numerous, wide-ranging grounds of challenge across 87 pages in the SFG, now supplemented by a further 13 pages of grounds in the SG (for which they have neither sought, nor been granted permission[1]). They attempt a root and branch attack on the Regulations, which lie at the heart of the legislative steps taken by the Government in relation to the Covid-19 pandemic to protect the public and seek to save lives by ensuring social distancing. They seek to do so on an impermissible 'rolling' basis.

3. The situation has moved on significantly since this claim was issued.[2] The Regulations have been amended on 2 further occasions.[3] Further substantial amendments to the Regulations are imminent – following the Prime Minister's announcement on 23 June 2020[4]. Schools have been requested, and have begun from 1 June 2020, to expand their on-site provision on a phased basis. The Chronology contained at SGD §11 has been updated and is annexed to this Skeleton argument.

4. The Claimants persist, however, in seeking to challenge the Regulations in all forms up to and including the date of the hearing, despite the amendments to key provisions (e.g. the original reg. 6 no longer applies, and reg. 7A has now been introduced to broaden the groups of people able to meet without restriction).[5] They continue to seek – as their sole relief – the quashing of the Regulations. It is unclear what relief they seek in respect of the alleged directions in relation to schools.[6]

5. It is submitted that permission should be refused on all grounds. The Secretaries of State rely on the detail set out in the Summary Grounds - the matters relied upon are summarised below. This skeleton also addresses the additional matters raised since by the Claimants.

6. At root, the Claimants invite the Court to substitute its own judgment on the need for, and proportionality of, the various measures for that of the Government.[7] The Court is asked to reach its own view on the myriad of scientific evidence which has been considered by SAGE (amongst others), and to conduct its own "*evaluation of comparative evidence*" (SFG §126) as part of its consideration of whether the restrictions are necessary and proportionate, and to substitute its own assessment for that of the Government. Moreover, it is asked to do so on a rolling basis – see CPD §2.

7. This is not the proper role of the Court:

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[1] By §2 of the Order of Lewis J of 26 June 2020, the Claimants were directed to file and serve by a document of no more than 10 pages identifying: (1) which provisions of the existing or former Regulations they seek permission to challenge by way of judicial review; (2) which decisions relating to schools they seek permission to challenge by way of judicial review and (3) by reference to paragraphs in the amended claim form, on which grounds they seek to challenge a particular provision or decision. [**SB/D1.1**]. The Defendants understand this to be the Permission Document.
[2] On 21 May 2020.
[3] SGD §5
[4] Available here and [Supp Auth/220]
[5] CPD §7
[6] The relief in section 7 of the claim form is limited to an order quashing the Regulations. At SFG §246, the Claimants ask for the Regulations "*and the Order of the Secretary of State to be quashed*". At CPD §28, it is stated that the Claimant seek to quash the Regulations in full. The SGs are silent on the issue of relief.
[7] See §125 SFG and the unusual alternative relief sought at section 7 of the claim form

a. The correct approach in principle is that summarised in SGD §§2-4 – with all the weight of authority (including authority relating to the pandemic) thoroughly against the sort of exercise or approach which this claim advocates.
b. Moreover, the Courts have repeatedly cautioned against "*rolling*" or "*evolving*" judicial review, and the risk that the Court becomes part of a "*rolling administrative decision–making process*": see, for example, *R (Spahiu) v Secretary of State for the Home Department* [2019] 1 WLR 1297 per Coulson LJ at §62,[8] setting out the position summarised by Lloyd-Jones L.J in *R (Tesfay) & ors v Secretary of State for the Home Department* [2016] EWCA Civ 415 at §78. That is precisely the role which the Claimants ask the Court to adopt in this case.

II. THE CONTEXT

8. The Defendants have set out the background to this claim at SGD §8-11, and key factors which must be borne in mind when considering this claim at SGD §4. The following points are emphasised.

9. SARS – CoV2 is a virus which emerged for the first time in late 2019. Since its emergence, scientists across the world have been working to understand the characteristics of the virus That work is ongoing There is, as yet, no known cure for or vaccine against the illness it causes. That being the case there was – and is – no established way of responding to the virus, and the real risks it posed, and continues to pose, to the UK population.

10. In deciding how to respond to the pandemic, and, critically, how to protect the fundamental Article 2 rights of the population, the Government has had to make a series of judgment calls, based on the best scientific evidence and advice available to it at any given time.

11. It has, for obvious reason given the scale and severity of the threat posed by the virus, proceeded on a precautionary basis. Fundamental rights, including the right to life, are at stake. Evidence as to the characteristics, transmission and effects of the virus have been and, although understanding has developed at pace, remain uncertain.

12. The Government has, throughout, been acutely aware of the impacts of the Regulations, and restrictions they contain, on the day to day life of people in England. It has kept those restrictions under continual review, including at the regular formal review stage, and has now made 4 sets of amendments to them.

13. Its overall strategy for easing the restrictions was set out in the document it published on 11th May 2020 - '*Our Plan to Rebuild: The UK Government's COVID-19 Recovery Strategy*' 2020 (CP 239) ("the Strategy").[9] This set out a 'roadmap' detailing the progress the UK had made to date in tackling the coronavirus outbreak and setting out the plans for moving to the next phases of its response to the virus, with indicative dates for those different steps. Those phased steps reflect the Government's judgement as to the order in which steps should be taken to reduce the impact and reach of the restrictions in the

[8] [Supp Auth/87 at 100]
[9] [CB/538]

Regulations, guided by the scientific advice and balancing the risks, rights and interests involved at all stages. The amendments to the Regulations, and other relaxations on restrictions announced to date, reflect the phased approach set out in the Strategy. They are in line with the indicative timetable set out in the Strategy.

14. The fact the Government has amended the Regulations to reflect gradual easings of the restrictions on the basis of the scientific advice available at the particular time plainly does not mean or support a case that the initial restrictions were either unnecessary or were not proportionate. To the contrary: the fact the Government has been able to do so indicates that the earlier restrictions were in fact effective in meeting the public health objectives which they were designed to achieve, and that they have been reduced gradually as had always been intended. They have only been maintained for so long as was judged necessary and proportionate.

15. Parliament has debated and approved the Regulations and all the amendments made to them by way of subsequent affirmative resolution procedure (see s.45Q) (save that the House of Commons has not yet approved the 4th set of amendments).

16. In all these circumstances, the margin or respect for the Government's (and Parliament's) decision making in this context is very considerable for all the reasons summarised in SGD §§2-4. That includes decisions about the order in which steps are taken in the Regulations. Swift J was correct to hold in *Hussain v Secretary of State for Health and Social Care* [2020] EWHC 3192 (Admin)[10] that "*[w]hat steps are to be taken, in what order and over what period will be determined by consideration of scientific advice, and consideration of social and economic policy. These are complex political assessments which a court should not lightly second-guess*."

III. THE CHALLENGE TO THE REGULATIONS

(1) Delay

17. This is addressed at SFG §32-34. The claim was not issued until 21 May 2020, just short of 2 months after the Regulations were made on 26 March 2020. The Regulations have now been amended on 4 occasions since 26 March 2020, and further, substantial, amendments are imminent. The – necessarily – rapidly evolving response by Government to the current health crisis, and the significant changes which have been made (and are shortly to made) to the Regulations underscore the importance of any challenge to the Regulations have been brought promptly. It is difficult to envisage a stronger case for prejudice to good administration than the present – in circumstances where the Regulations have been at the heart of the legislative steps taken by the Government in relation to the Covid-19 pandemic and the population of England has been moderating its conduct in line with the provisions in the Regulations (as amended) since March.

[10] § 21 [Supp Auth/181 at 187] [SB/A3]

(2) Ground 1 (*vires*)

18. The merits of Ground 1 are addressed at SGD §35-42. It is submitted that the Regulations are plainly within the enabling powers of Part IIA of the Public Health (Control of Disease) Act 1984. Indeed, those enabling powers were specifically designed and introduced for just this sort of situation.

(3) Grounds 2 and 3 (domestic and ECHR challenges)

Academic

19. In respect of Grounds 2 and 3, the claim is now academic. The restrictions primarily complained of by the Claimants (reg 6: restrictions on movements; reg 7: restrictions on gatherings; regs 4-5: restrictions on businesses and other facilities such as places of worship) have been substantially amended since the claim was issued.[11] Further significant amendments are imminent. The Article 5 ECHR claim is plainly academic. There are now no longer any material restrictions in respect of Articles 8 and 9 ECHR.

20. Academic issues cannot and should not be determined by courts

> "… *unless there are exceptional circumstances such as where two conditions are satisfied in the type of application now before the court. The first condition is in the words of Lord Slynn in Salem (supra) that "a large number of similar cases exist or anticipated" or at least other similar cases exist or are anticipated and the second condition is that the decision in the academic case will not be fact-sensitive. If the courts entertained academic disputes in the type of application now before the court but which did not satisfy each of these two conditions, the consequence would be a regrettable waste of valuable court time and the incurring by one or more parties of unnecessary costs."(R. (on the application of Zoolife International Ltd) v Secretary of State for the Environment, Food and Rural Affairs* [2007] EWHC 2995 (Admin) (Silber J) at §36[12], citing (*inter alia*) Lord Slynn in *R v SSHD ex parte Salem* [1999] 1 AC 450).

21. The starting point here is that there are powerful arguments against engaging in academic litigation at this time – both court and Government resources are, and are likely for the foreseeable future, to be under particular strain. Government, including on the legal side, is at full stretch seeking to ensure that the myriad of issues thrown up by the pandemic (including 'live' claims) are dealt with as effectively and efficiently as possible. In any event, neither of the *Zoolife* criteria is made out in this case: i) there are not a large number of similar cases, and ii) the ECHR issues are, or should be, fact-sensitive but instead here are being advanced on a generic basis.

22. The Claimants suggest that the claim is not academic, in respect of the restrictions contained in the previous versions of the Regulations, "*because of the threat to re-impose*

[11] SGD §5
[12] [Supp Auth/66 at 75]

them": CPD §3. This is understood to be a reference to the Government's position, set out in sections 3.1 and 4 of the Strategy,[13] that if the data suggests the virus is beginning to spread, then it may have to re-impose restrictions. But as section 4 of the Strategy makes clear, if it becomes necessary to re-impose restrictions, the Government "*will seek to do so in as limited and targeted a way as possible, including reacting by re-imposing restrictions in specific geographic areas, or in limited sectors where it is proportionate to do so"* [CB/556]. It is thus very far from clear (or decided) precisely what form any possible new restrictions might take. But whatever form they take, they are likely to be different from those previously in place. Their lawfulness, including their necessity and proportionality, will need to be judged (if challenged) on the basis of the context in which they are introduced including the particular situation to which they are responding, the scientific evidence at the time and their nature and form. The Secretary of State submits that a future contingent possibility of restrictions is not a good reason to permit an otherwise academic claim.

Merits

23. Grounds 2 and 3 are also unarguable on their merits for the reasons set out at SGD §44-59 (Ground 2) and at SGD§59-71(Ground 3).

24. The ECHR claims are even less meritorious in light of the amendments made since the claim was issued – and in light of the forthcoming further changes – for example:

    a. Reg 7A (linked households – "*support bubbles*") eases any interference with private and family life and Article 8 ECHR;
    b. Reg 5(6) now permits private prayer at places of worship (and from 4 July 2020 their intended reopening for communal worship has been announced), relevant to Art 9 ECHR;
    c. Various non-essential retail outlets have been permitted to reopen (relevant to A1P1).

25. In respect of the **A1P1** issue, the Claimants appear to have misunderstood the First Defendant's case. Firstly, the First Defendant does not dispute that the First Claimant is potentially a victim for the purposes of A1P1 – see SGD §6d - contrary to what is suggested at CPD22. At SGD §77, the Defendants stated that the First Claimant concedes he is not a victim for the purposes of **A2P1**, i.e. the right to education. That is factually correct; it appears the Claimants have confused the two rights.

26. Secondly, the First Defendant does not contend that A1P1 cannot be engaged by loss of good will in a business (cf what is suggested at CPD §21. The First Defendant's submission is that any interference alleged by reason of the restrictions in the present case would, at most, constitute either a control of use (in respect of restrictions on use of business premises), or fall more generally under the first A1P1 rule – 'peaceful enjoyment of possessions'. There is simply no support for the suggestion that any alleged loss of business revenue and/or goodwill complained of in respect of the First Claimant's business interests

[13] [CB/555-6]

constitutes a "*deprivation*" under the second rule in A1P1.[14] Either way, the fair balance has plainly been struck in this respect in any event, bearing in mind the need to protect life and the wide margin of appreciation to be accorded to the Defendants in matters of public health such as these. The contrary is unarguable.

(4) Supplementary Grounds

27. The Claimants have neither sought, nor been granted, permission to amend their claim as they seek to do through this document. Lewis J in his order of 16 June 2020 requested clarification of the existing grounds because of the already lengthy materials. Instead, the Claimants now seek to introduce a variety of new or more detailed points into their original grounds. This is involves using the Court as a "rolling" administrative process (contrary to *Tesfay* (supra)). These additional points are also unarguable in any event.

28. In respect of the 'five tests' **(Ground 2A)** (SG §3-5), this is addressed at SGD §44-46. The Defendants add that SG §4 proceeds on the same partial account of the basis on which restrictions could be re-imposed addressed at §22 above.

29. In respect of **Ground 2C (irrationality)** (SG §6-9), the Claimants take issue with the "*inconsistent application*" and "*impossibility of enforcing*" various parts of regs 6 – 7A. This is part of their "*rolling challenge"* and should be rejected. But in any event, the Claimants do not grapple with the fundamental purpose of the Regulations. The basic principle at the heart of the Regulations is to reduce the degree to which people gather and mix with others not of the same household, thus reduce transmission through reduced contact between different households where that can reasonably be required. They do not, and have never sought to, prevent all contact between persons not in the same household. The Regulations have sought, in particular, to reduce such contact in an indoor environment – reflecting SAGE's advice that the risk of infection outside is significantly lower than inside.[15]

30. The changes made to reg 6 reflect this advice. So does the differentiation between gatherings indoors and outdoors in reg 7.

31. In respect of reg 7A, linked households, this change was foreshadowed in the Strategy at [**CB/560-1**]. It is an easing of restrictions not an imposition of new ones. As stated above, the underlying principle of the Regulations was to reduce the risk of transmission through reduced contact between different households. As the position with the pandemic has moved on (particularly, as the transmission rate has been reducing), the Government has considered that some relaxations can be made to restrictions on interactions between households. It has chosen to prioritise households with a single adult, for the reasons

[14] The Defendants also identified in SLG §6d that the alleged interference was not evidenced by the First Claimant – noting the very limited information provided in the First Claimant's Witness Statement [CB/269]. It appears that the Claimants are now seeking to make good this deficiency by means of Mr Gardner's 4th Witness Statement [SB/E1]. The Defendants would note that they do not appear to have sought, nor received, permission to file this additional evidence, and are surprised that such information is being provided as – as it surely must be – hearsay evidence, rather than by the First Claimant himself.

[15] See, for example, section 4.1 of the Strategy, under the heading '*public spaces'* [CB/557]

explained in the Strategy. A '*linked household*' is expected to respond in the same way as a single household in the event that one member of the linked household displays symptoms of coronavirus – thus seeking to avoid the potential for further transmission in the community in the same way as for an infected person in a non-linked household.

32. These restrictions are necessarily finite - and are, in any event, subject to imminent amendment, following the Prime Minister's announcement of 23 June 2020. At the time they were introduced, they were considered a proportionate response to the then situation with the pandemic. As the situation, and scientific advice changes, so too will the restrictions.

33. The point that there may, in practice, be some difficulties with enforcement is a bad one. As the Supreme Court indicated in *Secretary of State for the Environment, Food and Rural Affairs v Meier* [2009] UKSC 11 [2009] 1 WLR 2780 at §§79-84 the fact that there may be practical difficulties with enforcement (in that case, of an injunction) does not mean without more that it should not be granted. The same principle applies here. That there may be practical difficulties in detecting, or enforcing, a breach of reg 6 or 7 does not mean that those restrictions are therefore worthless or irrational. This Court is entitled to proceed on the basis that the existence of these restrictions in legislation, with sanctions for non-compliance, will have the intended effect – of reducing behaviours or activities which are considered likely to increase the transmission of the virus (or at least, the risk of transmission) – and that the population will, in general, abide by those restrictions, not least where they have been introduced for their own protection.

IV. THE CLAIM IN RESPECT OF SCHOOLS

34. The amendments to the SFG sought by the Application Notice dated 17 June 2020 do not change the matters challenged. So far as the challenge to the Regulations may bear on schools, this is dealt with at SGD §72. So far as the remainder of the claim relating to schools is concerned, the decision challenged is *"the decision of the Second Defendant, made on 20 March 2020 and announced by the Prime Minister on that date, to direct the closure of all schools and other educational establishments and asks the Court to quash that public law decision and direction"* ("the Alleged Direction"). It is sought to add a third claimant for the purposes of this challenge. The sole ground of challenge to the Alleged Direction is that it was in breach of A2P1. (Insofar as the Claimants' document entitled "*Supplementary Grounds*", served on 23 June 2020, seeks to challenge any other matter, or to challenge it on any grounds not pleaded in the SFG, that is impermissible. The Claimants are not entitled to circumvent the procedural rules on amending claims[16].)

35. In relation to the Alleged Direction, the Defendants submit as follows. **First**, the challenge has not been brought promptly. The challenge is solely to a decision said to be made on 20 March 2020 (though in fact made on 18 March 2020). Whether or not the Third Claimant is added as a party, the claim has been brought too late: see SGD §§78-81. In their "*Supplementary Grounds*", the Claimants submit that their delay should be excused

[16] See the Administrative Court Guide at §6.10.1: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/825753/HMCTS_Admin_Court_JRG_2019_WEB.PDF

because the Defendants did not answer questions about their defence after the claim had been issued. That misses the point, which concerns the delay in issuing. The Claimant's pre-action correspondence did not threaten a challenge to the Alleged Direction. This was added as an afterthought.

36. **Secondly**, the challenge has become academic. Whatever the true nature of the decision on 18 March 2020, that decision has been overtaken: see SGD §§82-83. Indeed, matters have moved on further since the date of the SGD: the Secretary of State encourages primary schools to welcome back all children (not merely those in particular year groups), providing there is capacity and protective measures are in place[17]. The Secretary of State is working towards the return of all children to school in September 2020.

37. **Thirdly**, the decision challenged was not arguably in breach of the A2P1 right of any of the Claimants. The pleaded case, as amended, is that the decision breached the Third Claimant's A2P1 right because he had no school classes between 20 March 2020 and 1 June 2020 and two days a week of school classes from that date (Amended SFG §196). However:

    i. The decision of 18 March 2020 was not a "*direction*", as pleaded. The Secretary of State asked that schools sites not be used except in respect of vulnerable children and the children of key workers[18]. The Secretary of State has a power to close schools under the Coronavirus Act 2020, but has not exercised it: see SGD §73.

    ii. Nor was it a request that any pupil cease to receive education. Quite the contrary. The Secretary of State took numerous and significant steps to further the continuing education at home of those pupils not attending school sites, and there is no challenge to the steps taken: see SGD §74.

    iii. Accordingly, the Secretary of State did not request that the Third Claimant cease to receive education; still less did he direct it. On the correct legal analysis, what has happened in the Third Claimant's case is that his school did not permit him to attend the site (until, apparently, 1 June 2020); but the Secretary of State took unchallenged steps to support pupils, including the Third Claimant, to continue to receive education.

    iv. Accordingly, the Secretary of State's decision of 18 March 2020 cannot have breached the Third Claimant's A2P1 right. A2P1 does not afford a right for a pupil to attend his school's site to receive education, or to receive education in classes, or indeed to receive education at a school: see the *Lord Grey* case esp. at [24]: SGR §85[19]. The Third Claimant was not denied education by any action of the Secretary of State, and continued to have access to the education prevailing

[17] https://www.gov.uk/government/news/primary-schools-to-be-given-flexibility-to-bring-back-more-pupils

[18] https://www.gov.uk/government/news/schools-colleges-and-early-years-settings-to-close.

[19] The Claimants' "Supplementary Grounds" refer to *Timishev v Russia* [2005] ECHR 55762/00. That was a very different case. The children of the applicant had been refused formal admission to a particular school in Russia because the father was not a registered resident of the area in which it was located. The European Court of Human Rights held that, since Russian law did not allow the exercise by children of the right to education to be made conditional on the registration of their parents' residence, there had been a violation of A2P1: see [66].

in the State for pupils in his position. A2P1 does not guarantee any further "*minimum standard*" of education: see *A v Essex County Council* [2010] UKSC 33 [2011] 1 AC 280 at §§15, 99, 129, 157.

v. Even if the Secretary of State acted so as to restrict the Third Claimant's A2P1 right, the restriction was very obviously proportionate in light of the risk posed by the virus, applying the substantial margin of appreciation.

V. OTHER APPLICATIONS BEFORE THE COURT

38. There are two further applications before the Court and the matter of disclosure.

39. The Defendants' submissions on the **application to intervene** are set out in their representations dated 12 June 2020 [**SB/B2**]. The Defendants question the extent to which the matters raised by the proposed intervener (should permission be granted) will assist the Court.

40. The Defendants' submissions on the **application to add an additional claimant** are set out in their representations dated 19 June 2020 [**SB/C5**]. This only arises if the A2P1 claim overcomes the threshold hurdles identified above. In the Order dated 23 June 2020, adjourning that application for consideration at this hearing, Lewis J requested that the parties be prepared to address the issue of anonymity, with relevant authorities, at the hearing if required [**CB/D3**] Anonymity is addressed in an Annex to this skeleton.

41. The Claimants are also pursuing an application for specific **disclosure** of the minutes and supporting documents of SAGE (CPD §27). All minutes of SAGE meetings and a significant number of documents are being published on its website. The minutes of SAGE meetings, and the documents submitted to SAGE for its consideration, are not within the ownership or control of the Defendants. SAGE has set out its position on publication of minutes and documents on its website[20]:

> *"The minutes of SAGE meetings and supporting documentation (scientific data and analysis used to inform SAGE discussions) are typically published at the conclusion of the relevant emergency. This reflects the need to balance building the public's understanding of the advice provided by the Group, with the need to protect any national security or operational considerations, and ensure there is a safe space in which Group can provide – and Ministers can consider - free and frank advice.*
>
> *We have revisited this approach in the light of the current exceptional circumstances, recognising the high level of public interest in the nature and content of SAGE advice, the likely need for the provision of advice over an extended period, and the very wide-ranging impact across UK society.*

[20] https://www.gov.uk/government/groups/scientific-advisory-group-for-emergencies-sage-coronavirus-covid-19-response

Specifically in respect of its work on coronavirus, SAGE will publish:

- *all past minutes and supporting documents. Papers will be published chronologically and thematically in the coming weeks.*
- *future minutes and supporting documentation will be published within 1 month of the meeting having taken place, and earlier where possible."*

42. If permission were granted, the Defendants will expect to file Detailed Grounds of Defence and evidence in support of its position in the usual way. It is premature for the Court to entertain such an application, before the Defendants have had the opportunity to file their evidence in response to the claim and in circumstances where the Claimants already have access to a significant amount of the information they seek. If any further documents (including any from SAGE) are relevant and disclosure of those documents is appropriate, they will be provided in accordance with the Defendants' duty of candour if not already publicly available.

VI. CONCLUSION

43. For the reasons set out above, and in the SGDs, the Court is invited to refuse permission and to order the Claimants to pay the Defendants' costs of the Acknowledgment of Service.

SIR JAMES EADIE QC
ZOE LEVENTHAL
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TOM CROSS

30 June 2020