

## IN THE COURT OF APPEAL, CIVIL DIVISION



REF: C1/2020/1117



## The Queen, on the application of

(1) Simon Dolan (2) Lauren Monks (3) AB a child by his Litigation Friend CD

-v-

(1) Secretary of State for Health and Social Care  
(2) Secretary of State for Education**ORDER made by the Rt. Hon. Lord Justice Hickinbottom**

On consideration of the appellant's notice and accompanying documents, but without an oral hearing, in respect of an application for permission to appeal, against the refusal of the High Court to grant permission to apply for judicial review and for expedition

**Decision:** Application for permission to appeal be adjourned into open court on a rolled up basis. If permission to appeal or to apply for judicial review is granted and the claim retained, on any grounds, the parties should be prepared to argue the merits at the substantive hearing which will immediately follow.

Permission to appeal: Application adjourned as above

OR

Permission to apply for judicial review:

Where permission to apply for judicial review is granted, the application should be returned to the Administrative Court

OR

There are special reasons (set out below) why the application should be retained in the Court of Appeal

**Reasons**

In this claim, the Claimants/Applicants make a root-and-branch challenge to the Health Protection (Coronavirus, Restrictions) (England) Regulations 2020, which imposed restrictions on people and businesses in response to the coronavirus pandemic, in their original and amended forms. In Orders dated 6 and 22 July 2020, Lewis J (i) refused permission to amend the grounds essentially to include a challenge to the Second Respondent's instruction or request to schools to close, and (ii) refused permission to proceed with any of the grounds of challenge on the basis that each was academic and/or unarguable. The Applicants now apply for permission to appeal on the basis of each of the grounds relied upon below. Perhaps ambitiously, they also seek to challenge the successor to the Regulations, namely the Health Protection (Coronavirus, Restrictions) (England) (No 2) Regulations 2020, which were made after Lewis J's judgment.

Lewis J's judgment is impressive and cogent. Ultimately, it may well be found to have been correct. However, the claim and now this appeal raise important issues: not only did/do the challenged Regulations impose possibly the most restrictive regime on the public life of persons and businesses ever – certainly, outside times of war – but, they potentially raise fundamental issues concerning the proper spheres for democratically-accountable Ministers of the Government and judges. Furthermore, albeit not in the same form, substantial restrictions on public life remain in place; and it is possible that further restrictions will be (re)imposed in the future. Therefore, I am persuaded that the grounds should be considered by the full court in open court, and the Applicants given an opportunity to make good their case at least on arguability.

To ensure that the issues raised in this appeal are ultimately resolved without any undue delay, I shall adjourn the application of permission to appeal into open court but on a rolled up basis, so that the parties should be prepared at the hearing to make full submissions of any grounds upon which the court are minded to give either permission to appeal or permission to bring judicial review proceedings and the court decides to retain the claim.

The Applicants contend that expedition is required – and I agree. I shall direct that the hearing be set down before a full court in the week commencing 28 September 2020. How long the hearing will take will depend, to an extent, on how much progress the Applicant make with their application for permission. I will give a time estimate of 2 days which should, in any event, be sufficient. It is likely that the court will wish to hold the hearing as a live (rather than remote) hearing, with all advocates and judges in court, and with hard copy documents. The hearing can be live-streamed to ensure that everyone with an interest in the case will be able to view and hear it live. The Listing Office will confirm administrative arrangements for the hearing in due course; but the parties should notify their preferences in these regards within 7 days of service of this Order.

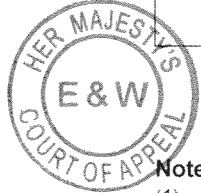
The Applicants also seek an order that, despite the usual restriction on supplementary bundles, the original judicial



review bundles should stand as a supplementary bundle in the appeal. That seems to me to be a sensible course in this application/appeal, and I so direct.

**Where permission has been granted, or the application adjourned, any directions to the parties (including, if appropriate, any abridgement of the 35 day time limit for filing evidence provided for in CPR 54.14)**

1. The Listing Office shall notify the parties as to whether the hearing is to be remote or in person at the RCJ; and whether the documents and authorities should be filed electronically or in hard copy or both. The parties shall within 7 days of service of this order, notify the Listing Office of their preferences.
2. Notwithstanding the requirements of CPR 52 PD paragraph 27(11), the four-volume original judicial review bundle as before Lewis J shall stand as a supplementary bundle in the appeal.



Signed: *By the Court*  
Date: *4<sup>th</sup> August 2020*

**Notes**

- (1) Rule 52.6(1) provides that permission to appeal may be given only where –
  - a) the Court considers that the appeal would have a real prospect of success; or
  - b) there is some other compelling reason why the appeal should be heard.
- (2) Where permission to appeal has been refused on the papers, that decision is final and cannot be further reviewed or appealed. See rule 52.5 and section 54(4) of the Access to Justice Act 1999.
- (3) Rule 52.15 provides that, in granting permission, the Court of Appeal may grant permission to appeal or permission to apply for judicial review. Where the Court grants permission to apply for judicial review, the Court may direct that the matter be retained by the Court of Appeal or returned to the Administrative Court.

Case Number: **C1/2020/1117**

DATED 4TH AUGUST 2020  
IN THE COURT OF APPEAL

**ORDER**

Copies to:

Wedlake Bell LLP  
DX 307441  
Cheapside  
Ref: [REDACTED]

Constitutional And Social Care Public Law Team  
Government Legal Department  
DX 123243 Westminster 1 2  
Ref: [REDACTED]

Lower Court Ref: CO/186/ 2020