

Tel: 0118 958 4407  
Mobile: [REDACTED]  
Email: [REDACTED]@andrewstorch.co.uk  
Secure: [REDACTED]@michaelphillips.cjsm.net  
[www.andrewstorchsolicitors.com](http://www.andrewstorchsolicitors.com)

Citygate  
95 Southampton Street  
Reading, RG1 2QU

Government Legal Department  
102 Petty France  
Westminster  
SW1H 9GL

My Ref: MP:MP3515

Date: 2 November 2020

Dear Sir/Madam

**Our client - Rev Ade Omooba et al**

This letter is a formal letter before claim, in accordance with the pre-action protocol for judicial review under the Civil Procedure Rules.

**The claimants:** Please see the enclosed schedule of names and addresses (Appendix 1).

**The proposed defendant:** The Secretary of State for Health and Social Care

**GLD's ref.:** Z2006192/HHS/HO17 (HC Claim CO/2238/2020)

**The details of the claimants' legal advisers:** see details at the top of this letter

**Details of the matters being challenged:**

On 31 October 2020, the Prime Minister announced the government's decision to re-introduce a 'lockdown' across England from 5 November 2020. It is understood that the relevant legislation will be introduced in the House of Commons shortly, to be passed before that date. In the meantime, the Cabinet Office has published a guidance document titled *New National Restrictions from 5 November*, available at <https://www.gov.uk/guidance/new-national-restrictions-from-5-november> ("the Guidance"). Section 5 of the Guidance materially provides:

*Places of Worship will be closed, unless they are being used for:*

*Funerals*



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*To broadcast acts of worship*

*Individual prayer*

*Formal childcare or where part of a school*

*Essential voluntary and public services, such as blood donation or food banks*

*Other exempted activities such as some support groups.*

The Claimants intend to challenge, by way of judicial review, any legislation which enforces a closure of churches in England.

We are instructed to commence the pre-action protocol process at the stage, prior to formal legislation being passed, in view of the inherent urgency of this matter, the history of litigation between our respective clients in relation to the closure of churches in March-June 2020, and in the hope that a mutually acceptable compromise can be negotiated ahead of 5 November so that litigation would be unnecessary.

## **The Issues**

We refer to the previous litigation between our respective clients in relation to *The Health Protection (Coronavirus, Restrictions) England Regulations 2020 (HC case CO/2238/2020)*. For ease of reference, we enclose our clients' Statement of Facts and Grounds relied upon in that claim as Appendix 2.

Our clients attended a large number of meetings with you client during April-June 2020 in an effort to resolve the dispute.

The order of Mr Justice Swift made on 26 June 2020 observed that the claim "raise[d] significant matters", some of which were similar to those in *Hussain [2020] EWHC 1392 (Admin)*. Swift J declined to abridge the time for your client's Acknowledgement of Service, to enable your client to consider the issues properly and if necessary, take account of any further recommendation of Places of Worship Taskforce.

Following that order, on 4 July 2020 your client revoked the contentious provisions of the Regulations by the *Health Protection (Coronavirus, Restrictions) (No. 2) (England) Regulations 2020*. By letter dated 7 July 2020, you reassured our clients on behalf of your clients that "with effect from 4 July 2020, there is no legal restriction in respect of opening of places of worship, including churches". On that basis, our clients agreed to withdraw the claim by consent.

We are aware that similar claims by others in that period have also attracted a favourable reaction from the Court, and were resolved by the revocation of the Regulations. In particular:

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- In *R (Hussein) v Secretary of State for Health and Social Care* [2020] EWHC 1392 (Admin), Mr Justice Swift granted permission for judicial review of the Regulations on the grounds that the Regulations were in breach of Article 9 ECHR.
- Similarly, Mr Justice Lewis granted permission for judicial review in relation to the challenge to the church closure (albeit not other aspects of the national ‘lockdown’) in *R (Dolan, Monks et al) v SSHSC* [2020] EWHC 1786 (Admin).

Given this history, our clients are extremely disappointed that the government has now announced its intention to enforce the closure of churches again, without due regard to the constitutional issues highlighted by that litigation.

In the event such legislation is enacted, our clients intend to file a further claim for judicial review, on substantively the same grounds as in their first claim in June 2020 (see Appendix 2). In summary only, those grounds are:

- 1) The enforced ‘lockdown’ of churches, backed by a threat of criminal sanction, is in breach of Article 9 ECHR (in particular, without limitation, the principle of ‘church autonomy’ protected by Article 9); and
- 2) Any secondary legislation imposing such ‘lockdown’ would be *ultra vires* the enabling primary legislation, read in context of the constitutional liberties of the Church enshrined in c. 1 of *Magna Carta 1297*, *Church of England Assembly (Powers) Act 1919*, Article 37 of *Articles of Religion 1562*, and in the common law.

Assuming that your client intends to introduce the ‘lockdown’ by means of secondary legislation, our clients will seek a quashing order in relation to the relevant provisions, and/or a declaration, and/or a mandatory order.

In the event the ‘lockdown’ is introduced by primary legislation, our client will seek a *declaration of incompatibility* with Article 9 ECHR, under s. 4 of the Human Rights Act 1998, and/or a further declaration that the relevant provisions are overridden by Article 10 of the EU Charter of Fundamental Rights and as such, would be of no effect.

Our clients fully acknowledge the seriousness of the Coronavirus pandemic and the need for drastic precautions to prevent the spread of the virus, including in churches. However, such precautions may only be lawfully introduced by the churches themselves, taking due account of the government’s advice and guidance, not by binding legislation backed by a threat of criminal sanction. Our clients are gravely concerned about this infringement of the constitutional liberties of the church by the secular government.

### **Action(s) that the defendant is expected to take**

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We respectfully invite your clients to ensure that any legislation intended to introduce a further 'lockdown' in England does not contain any binding prohibition of church services.

Our clients acknowledge your client's right, and good practice, of issuing non-binding advice or guidance to churches on the appropriate precautions to prevent the spread of the virus in churches.

### **ADR proposals**

Our clients acknowledge the importance of your client's concern about preventing the spread of Coronavirus. Our clients are keen to resolve this dispute amicably if possible, avoiding the need for litigation.

For those reasons, our clients would be willing to meet with your clients as a matter of urgency to discuss (1) the appropriate precautions to prevent the spread of the virus in churches during the period of the new 'lockdown' in England during November and (2) the guarantees of preserving the constitutional liberties of the churches in the present extraordinary circumstances.

We consider that, to give negotiations any chance of success, such a meeting must be with the Secretary of State personally. Our clients have considerable experience of meetings with officials in relation to those issues, and value the fact that they were consulted in that way. However, the important constitutional issues raised in this dispute require a policy decision, and a precisely defined agreement which adequately protects the liberties of the church from any infringement by the government. It is therefore necessary for such negotiations to be carried out by those with the power to make the necessary policy decision.

### **Details of any information sought / details of any documents that are considered relevant and necessary**

Please disclose all scientific and other evidence the Secretary of State relies upon for the purposes of justification under Article 9(2) ECHR.

### **Proposed reply date**

This matter is, by its nature, urgent. However, in the hope that the issues may be resolved without litigation in a constructive dialogue with the Secretary of State, our clients are willing to afford your client to respond to this letter by **Thursday 5 November at 4pm**. This is without prejudice to our clients' right to apply to expedite any claim that may need to be made after that date.

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We look forward to hearing from you.

Yours faithfully,



**Andrew Storch Solicitors**

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