

IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION
ADMINISTRATIVE COURT

BETWEEN:

THE QUEEN

(On the Application of REV. ADE OMOOBA MBE and Others)

Claimants

-and-

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

(2) THE WELSH MINISTERS

Defendants

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Essential reading is in italics and bold

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Judicial Review

Application for urgent consideration

This form must be completed by the Claimant or the Claimant's advocate if exceptional urgency is being claimed and the application needs to be determined within a certain time scale.

The claimant, or the claimant's solicitors must serve this form on the defendant(s) and any interested parties with the N461 Judicial review claim form.

To the Defendant(s) and Interested Party(ies) Representations as to the urgency of the claim may be made by defendants or interested parties to the relevant Administrative Court Office by fax or email:-

For cases proceeding in

London	Fax: 020 7947 6802 email: administrativecourtoffice.generaloffice@hmcts.x.gsi.gov.uk
Birmingham	Fax: 0121 250 6730 email: administrativecourtoffice.birmingham@hmcts.x.gsi.gov.uk
Cardiff	Fax: 02920 376461 email: administrativecourtoffice.cardiff@hmcts.x.gsi.gov.uk
Leeds	Fax: 0113 306 2581 email: administrativecourtoffice.leeds@hmcts.x.gsi.gov.uk
Manchester	Fax: 0161 240 5315 email: administrativecourtoffice.manchester@hmcts.x.gsi.gov.uk

In the High Court of Justice Administrative Court	
Claim No.	
Claimant(s) <i>(including ref.)</i>	REV. ADE OMOOBA MBE and Others
Defendant(s)	(1) THE SECRETARY OF STATE FOR HEALTH AND SOCIAL CARE (2) THE WELSH MINISTERS
Interested Party(ies)	

You must complete sections 1 to 5 and attach a draft order.

SECTION 1 Reasons for urgency

At the time of filing this claim, the English Regulations represent a continuing and serious interference with the religious freedoms of the Claimants and their congregations. It is strongly in their interest for the legal position to be clarified without further delay. Furthermore, it is in the public interest that the issues raised by this claim should be resolved before any consideration is given to extending the present lockdown measures or re-introducing them.

The Claimants adopted a reasonable approach in withdrawing their first claim when it appeared that the closure of places of worship to religious services was at an end. They are now reasonably entitled to ask for early consideration of their arguments.

SECTION 2 Proposed timetable

2.1 How quickly do you require the application (Form N463) to be considered?

This will determine the timeframe within which your application is referred for consideration.

- a) Immediately (**within 3 days**) – indicate in hours (eg. 2 hours, 24 hours etc.) Hours
- b) Urgently (**over 3 days**) – indicate in days (eg. 4 days, 6 days etc.) Days

2.2 Please specify the nature and timeframe of consideration sought.

- a) **Interim relief** is sought and the application for such relief should be considered within Hours/Days
- b) **Abridgement of time for AOS** is sought and should be considered with Hours/Days
- c) **The N461 application for permission** should be considered within Hours/Days
- d) **If permission for judicial review is granted**, a substantive hearing is sought by Date

SECTION 3 Justification for request for immediate consideration

Date and time when it was first appreciated that an immediate application might be necessary.

Date Time

Please provide reasons for any delay in making the application.

The Claimants bring this claim with great reluctance, having made extensive efforts to work constructively with the Government to achieve a mutually acceptable compromise, including under the pre-action protocol and via the government-sponsored 'taskforce' and 'roundtable' processes. Regrettably, following the second lock-down, this claim still appears necessary.

The Claimants' cooperative approach is commendable, and litigants should not be discouraged from taking it by a refusal of expedition due to a delay of this nature. The hopes that a dialogue would lead to a reasonably speedy resolution have proved to be wrong. However, the serious and ongoing breach of Article 9 has to be remedied as a matter of urgency.

What efforts have been made to put the defendant and any interested party on notice of the application?

Pre action letter was sent to the first defendant on 2 November 2020
Pre action letter was sent to the second defendant on 23 October 2020

SECTION 4 Interim relief (state what interim relief is sought and why in the box below)

A draft order must be attached.

SECTION 5 Service

A copy of this form of application was served on the defendant(s) and interested parties as follows:

Defendant

Interested party

by fax machine to _____ time sent _____
Fax no. _____ time _____

by fax machine to _____ time sent _____
Fax no. _____ time _____

by handing it to or leaving it with _____
name _____

by handing it to or leaving it with _____
name _____

by e-mail to _____
e-mail address _____
newproceedings@governmentlegal.gov.uk

by e-mail to _____
e-mail address _____
mailto:NewProceedings.WG.Legal@gov.wales

Date served _____
Date _____
13.11.2020

Date served _____
Date _____
13.11.2020

I confirm that all relevant facts have been disclosed in this application

Name of claimant's advocate

Claimant (claimant's advocate)

name _____
Michael Phillips

Signed _____


Judicial Review Claim Form

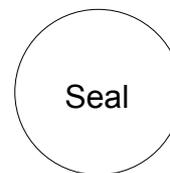
Notes for guidance are available which explain how to complete the judicial review claim form. Please read them carefully before you complete the form.

For Court use only	
Administrative Court Reference No.	
Date file	

In the High Court of Justice
Administrative Court

Help with Fees -
Ref no. (if applicable)

H W F - [] [] [] - [] [] []



Is your claim in respect of refusal of an application for fee remission? Yes No

SECTION 1 Details of the claimant(s) and defendant(s)

Claimant(s) name and address(es)

name
Rev. Ade Omooba and others (see attached list)

address

Telephone no. _____ Fax no. _____

E-mail address _____

Claimant's or claimant's legal representatives' address to which documents should be sent.

name
Andrew Storch Solicitors

address
**Citygate
95 Southampton Street
Reading,
RG1 2QU**

Tel. [REDACTED] Fax no. _____

E-mail address
[REDACTED]@andrewstorch.co.uk

Claimant's Counsel's details

name
Jonathan Hough QC

address
**4 New Square, Lincoln's Inn,
London, WC2A 3RJ**

Telephone no. **+44 20 7822 2000** Fax no. _____

E-mail address
general@4newsquare.com

1st Defendant

name
The Secretary of State for Health and Social Care

Defendant's or (where known) Defendant's legal representatives' address to which documents should be sent.

name

address
**102 Petty France
Westminster
SW1H 9GL**

Telephone no. _____ Fax no. _____

E-mail address
newproceedings@governmentlegal.gov.uk

2nd Defendant

name
The Welsh Assembly

Defendant's or (where known) Defendant's legal representatives' address to which documents should be sent.

name

address
**Welsh Government
Cathays Park
Cardiff
CF10 3NQ**

Telephone no. _____ Fax no. **(+44) 1443 845500**

E-mail address
NewProceedings.WG.Legal@gov.wales

SECTION 2 Details of other interested parties

Include name and address and, if appropriate, details of DX, telephone or fax numbers and e-mail

name _____

name _____

address _____

address _____

Telephone no. _____

Fax no. _____

Telephone no. _____

Fax no. _____

E-mail address _____

E-mail address _____

SECTION 3 Details of the decision to be judicially reviewed

Decision:
Corona-virus Regulations for England and Corona-virus regulations for Wales

Date of decision:
3 November 2022 and 21 October 2022

Name and address of the court, tribunal, person or body who made the decision to be reviewed.

name _____

address _____

SECTION 4 Permission to proceed with a claim for judicial review

I am seeking permission to proceed with my claim for Judicial Review.

Is this application being made under the terms of Section 18 Practice Direction 54 (Challenging removal)?

Yes No

Are you making any other applications? If Yes, complete Section 8.

Yes No

Is the claimant in receipt of a Civil Legal Aid Certificate

Yes No

Are you claiming exceptional urgency, or do you need this application determined within a certain time scale? If Yes, complete Form N463 and file this with your application

Yes No

Have you complied with the pre-action protocol? If No, give reasons for non-compliance in the box below.

Yes No

Have you issued this claim in the region with which you have the closest connection? (Give any additional reasons for wanting it to be dealt with in this region in the box below). If No, give reasons in the box below.

Yes No

Does the claim include any issues arising from the Human Rights Act 1998?

If Yes, state the articles which you contend have been breached in the box below.

Yes

No

SECTION 5 Detailed statement of grounds

set out below

attached

SECTION 6 Aarhus Convention claim

I contend that this claim is an Aarhus Convention claim

Yes

No

If Yes, indicate in the following box if you do not wish the costs limits under CPR 45.43 to apply.

If you have indicated that the claim is an Aarhus claim set out the grounds below, including (if relevant) reasons why you want to vary the limit on costs recoverable from a party.

SECTION 7 Details of remedy (including any interim remedy) being sought

Please see attached.

SECTION 8 Other applications

I wish to make an application for:-

SECTION 9 Statement of facts relied on

Please see attached.

Statement of Truth

I believe (The claimant believes) that the facts stated in this claim form are true.

Full name Michael Bertram Phillips

Name of claimant's solicitor's firm Andrew Storch solicitors

Signed  _____ Position or office held consultant

Claimant ('s solicitor)

(if signing on behalf of firm or company)

SECTION 10 Supporting documents

If you do not have a document that you intend to use to support your claim, identify it, give the date when you expect it to be available and give reasons why it is not currently available in the box below.

Please tick the papers you are filing with this claim form and any you will be filing later.

- | | | |
|---|-----------------------------------|--|
| <input checked="" type="checkbox"/> Statement of grounds | <input type="checkbox"/> included | <input checked="" type="checkbox"/> attached |
| <input checked="" type="checkbox"/> Statement of the facts relied on | <input type="checkbox"/> included | <input checked="" type="checkbox"/> attached |
| <input type="checkbox"/> Application to extend the time limit for filing the claim for | <input type="checkbox"/> included | <input type="checkbox"/> attached |
| <input checked="" type="checkbox"/> Application for directions | <input type="checkbox"/> included | <input checked="" type="checkbox"/> attached |
| <input checked="" type="checkbox"/> Any written evidence in support of the claim or application to extend time | | |
| <input type="checkbox"/> Where the claim for judicial review relates to a decision of a court or tribunal, an approved copy of the reasons for reaching that decision | | |
| <input checked="" type="checkbox"/> Copies of any documents on which the claimant proposes to rely | | |
| <input type="checkbox"/> A copy of the legal aid or Civil Legal Aid Certificate <i>(if legally represented)</i> | | |
| <input type="checkbox"/> Copies of any relevant statutory material | | |
| <input checked="" type="checkbox"/> A list of essential documents for advance reading by the court <i>(with page references to the passages relied upon)</i> | | |
| <input type="checkbox"/> Where a claim relates to an Aarhus Convention claim, a schedule of the claimant's significant assets, liabilities, income and expenditure. | <input type="checkbox"/> included | <input type="checkbox"/> attached |

If Section 18 Practice Direction 54 applies, please tick the relevant box(es) below to indicate which papers you are filing with this claim form

- | | | |
|--|-----------------------------------|-----------------------------------|
| <input type="checkbox"/> a copy of the removal directions and the decision to which the application relates | <input type="checkbox"/> included | <input type="checkbox"/> attached |
| <input type="checkbox"/> a copy of the documents served with the removal directions including any documents which contains the Immigration and Nationality Directorate's factual summary of the case | <input type="checkbox"/> included | <input type="checkbox"/> attached |
| <input type="checkbox"/> a detailed statement of the grounds | <input type="checkbox"/> included | <input type="checkbox"/> attached |

Reasons why you have not supplied a document and date when you expect it to be available:-

Signed _____ Claimant ('s Solicitor) _____

IN THE HIGH COURT OF JUSTICE

QUEEN'S BENCH DIVISION

ADMINISTRATIVE COURT

BETWEEN:

THE QUEEN

(On the Application of REV. ADE OMOOBA MBE and Others)

Claimants

-and-

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

(2) THE WELSH MINISTERS

Defendants

DRAFT ORDER

UPON the Claimants' application for permission for judicial review and application for exceptional urgency, considered on papers

IT IS ORDERED THAT:

1. Time for the service of the Acknowledgement of Service is abridged. The Defendant must file serve the Acknowledgement of Service by 17 November 2020.
2. The application for permission is to be considered on papers on an urgent basis, and the decision on permission by 18 November 2020.
3. In the event permission is granted on papers, the Defendant must file and serve the full Response, and any evidence relied upon, by 19 November 2020.
4. The full hearing (or, if permission not granted on papers, a 'rolled up' hearing, with full hearing to follow immediately if permission is granted) to be listed urgently, with a time estimate 1 day, on 20 November 2020 or the first available date afterwards.
5. Costs in the case.

IN THE HIGH COURT OF JUSTICE

QUEEN'S BENCH DIVISION

ADMINISTRATIVE COURT

BETWEEN:

THE QUEEN

(On the Application of REV. ADE OMOOBA MBE and Others)

Claimants

-and-

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

(2) THE WELSH MINISTERS

Defendants

STATEMENT OF FACTS AND GROUNDS FOR JUDICIAL REVIEW

References to the JR Permission Bundle are in the form: [Page].

Introduction

1. This is a claim for judicial review brought by a large group of faith leaders of Christian churches and congregations to challenge the lawfulness of the second set of COVID-19 lockdown measures introduced in England and Wales in the autumn of 2020, to the extent that they close, and criminalise the use of, places of worship for religious services (with very limited exceptions).
2. Specifically, the Claimants challenge the following:
 - (a) regulation 18(7) of the Health Protection (Coronavirus, Restrictions) (England) (No. 4) Regulations 2020 (SI 2020/1200) (“**the English Regulations**”); and

- (b) regulation 14 of the Health Protection (Coronavirus Restrictions) (No. 3) (Wales) Regulations 2020 (SI 2020/1149 (W.261)) (“**the Welsh Regulations**”).

The First Defendant (“**the Secretary of State**”) made the English Regulations, while the Second Defendants (“**the Welsh Ministers**”) made the Welsh Regulations. Both sets of Regulations were made using powers under the Public Health (Control of Disease) Act 1984 (“**the 1984 Act**”). The Claimants seek declarations that the regulations identified above are unlawful and/or any further or other relief which the Court thinks right.

3. In outline, the position of the Claimants is that the English and Welsh Governments have now introduced two successive sets of lockdown measures which have completely prohibited and criminalised public communal worship, a core aspect of religious life for the Claimants and their congregations. With these measures, the Governments have inflicted a terrible human cost, without rigorous consideration of less onerous restrictions, and as part of a package which leaves places of worship open for secular activities.

Summary of Grounds

4. In summary, the grounds of challenge are as follows:
- (1) Breach of Article 9, ECHR (General): The imposition of a legal order closing places of worship to practically all forms of religious service and prescribing criminal sanctions constitutes a disproportionate interference with the Article 9 rights of the Claimants, their congregations and other people of faith, in particular the right to manifest their religion or beliefs in communal worship, teaching, practice and observance.
 - (2) Breach of Article 9 and Article 8, ECHR (Baptism Services): Further or alternatively, the regime of restrictions constitutes a disproportionate interference with Article 9 rights, and with such rights read in conjunction with Article 8 rights, in prohibiting the use of places of worship for baptism services.

- (3) Breach of the public law duty of enquiry: Before imposing the restrictions in question, the Defendants failed to discharge their public law duty of enquiry, in particular by failing to ascertain: (a) the extent to which leaving open places of worship would risk contributing to the spread of COVID-19; and (b) the extent to which any such risk could be ameliorated by requiring COVID secure measures to be adopted.
- (4) Ultra vires / legality principle: The making of the specific regulations challenged was outside the legislative power conferred by the 1984 Act since only express statutory language could be used as a basis for interfering with the free exercise of religion and the autonomy of religious institutions, which is an important principle long recognised by English law and the constitution.

Background Facts

The Claimants

5. The Claimants are a group of faith and church leaders whose congregations and places of worship have been directly affected by the lockdown measures introduced in England and Wales. They include both English and Welsh ministers. The Claimants serve their communities both by providing places of Christian worship and also by undertaking other forms of socially beneficial service, including childcare; youth groups; food bank services; meals for the elderly; family counselling; community outreach; and pastoral care to vulnerable individuals. A summary of the positions and roles of a number of the Claimants is appended: see [35]. A number of the Claimants have provided letters in support of this claim: see [451].
6. For the Claimants and their congregations, regular communal worship is a core aspect of their religious faith and practice, it is not optional. The expert report of Dr Martin Parsons (a theologian) [189] explains in detail, with reference to biblical sources, the critical importance to many Christians of group worship and receipt of sacraments in public gatherings of their religious communities.

COVID-19

7. The disease COVID-19, a newly recognised infectious disease caused by the SARS-CoV-2 virus, was first identified in Wuhan, China, in December 2019. By February 2020, the disease had spread to Europe. The first documented transmission of the disease in the UK took place on 28 February 2020. It is a virulent disease which can result in a range of symptoms, from mild to very severe. In the most serious cases, it can lead to hospitalisation and death. Most countries have responded to the disease by introducing from time to time various measures which restrict movement and gathering of citizens for certain purposes.

The First Lockdown Measures and the Recovery Strategy

8. With effect from 26 March 2020, comprehensive lockdown measures were introduced across the United Kingdom, co-ordinated between the four nations. In England, the Health Protection (Coronavirus, Restrictions) (England) Regulations 2020 (SI 2020/350) were made under powers conferred by the 1984 Act. Regulation 5(5) provided that a person responsible for a place of worship was required to ensure that it was closed during an open-ended “emergency period”, except for uses permitted by regulation 5(6), which were: (a) for funerals; (b) for broadcasting services; and (c) for provision of “essential voluntary services or urgent public support services”. Regulation 7 prohibited any person from participating in a gathering of more than two people in a public place except for specified exceptions. Regulation 9(1) provided that any person contravening those requirements committed a criminal offence.
9. In May 2020, the UK Government published its COVID-19 recovery strategy document entitled “Our Plan to Rebuild” [112]. That document laid out a three-step process for lifting restrictions, with Step 1 being to permit return to work and some return to school; Step 2 being to permit further social contact and non-essential retail; and Step 3 being to re-open other businesses, leisure facilities, personal care and places of worship.

The Claimants’ Challenge to the First Lockdown Measures and Recovery Strategy

10. On 28 May 2020, a letter before claim was sent on behalf of a group consisting of many of the present Claimants to the Government Legal Department (“GLD”) [49], putting forward an intended challenge to the lawfulness of the then-current English regulations insofar as they affected places of worship and/or to the lawfulness of the recovery

strategy as it affected such places. The GLD responded by letter dated 11 June 2020 [60], disputing the proposed challenge. A reply was sent on 15 June 2020 [65], responding to the points made by the GLD and pressing for an ADR meeting. In answer, by letter dated 19 June 2020 [69], the GLD invited two of the proposed claimants (Pastor Ade Omooba MBE and Pastor Matthew Ashimolowo) to one of a series of round-table meetings to discuss the re-opening of places of worship. Pastor Thabo Marais and Dr David Muir had already been part of the Government's round table discussions since March.

11. Given the serious and ongoing effects of the restrictive measures, the group of Claimants filed a judicial review claim on 23 June 2020 [71], with a request for urgent consideration. The GLD responded by letter dated 24 June 2020 [321], disputing the request for expedition of the claim. It pointed to the fact that, on 23 June 2020, the Prime Minister had announced an intention to ease existing restrictions from 4 July 2020 in order to re-open places of worship for prayer and services. By order dated 26 June 2020 [325], Swift J refused the request for expedition and ordered the Secretary of State to prepare a response to the claim in the usual timescale.
12. With effect from 4 July 2020, the Health Protection (Coronavirus, Restrictions) (No. 2) (England) Regulations 2020 (SI 2020/684) were made, which lifted all restrictions on gatherings in places of worship. At about the same time, the Government published guidance which indicated that communal worship could take place, while advising that numbers attending be limited on the basis of capacity and to permit social distancing. Against that background, the GLD wrote to the solicitors for the Claimants on 7 July 2020, inviting them to withdraw their judicial review claim on the basis that it was now academic [327]. In the event, the claim was withdrawn because the restrictions were no longer in force and there was at that time no immediate prospect of them being re-introduced.

Other Judicial Review Claims

13. To the knowledge of the Claimants, two significant judicial review claims were considered by the Courts which addressed the compatibility of the first regulations with religious rights:

- (a) In *Hussain v Secretary of State for Health & Social Care* [2020] EWHC 1392 (Admin) [239], Swift J considered an application for interim relief to prohibit enforcement of the relevant regulations so as to permit Friday prayers at Barkerend Road Mosque. He refused relief, primarily on the basis that there was not a strong prima facie case that the regulations were incompatible with Article 9. However, he granted permission for judicial review on the basis that the point was reasonably arguable (see [33]).
- (b) In *Dolan v Secretary of State for Health & Social Care* [2020] EWHC 1786 (Admin) [520], Lewis J dealt with a range of applications for permission to seek judicial review of the regulations, including one claim based on an Article 9 point. He indicated (at [85]-[87]) that he had been minded to grant permission for judicial review, but that the claim may have become academic because following the hearing he had learned of the intention of the Government to lift the relevant restrictions on places of worship in early July.

The Period from July to October 2020

14. In the period from July to October 2020, places of worship in England and Wales were open for acts of communal worship without legal restrictions. Despite a lack of legal restrictions, as explained in various of the letters from a number of the Claimants in these proceedings [451 - 504], they took responsible measures to promote social distancing and COVID-safe practices within their premises.

The Second Lockdown Measures

15. The Welsh Regulations were made on 21 October and came into force on 23 October 2020. They imposed restrictions on business activities, gatherings and movements of individuals (including school closures). Regulation 14(1) [516] provided for closure of places of worship, community centres and crematoria as follows:

“A person who is responsible for premises of a kind listed in paragraphs 30 to 32 of Schedule 1 [places of worship, community centres and crematoria] must ensure that the premises are closed to members of the public, except for the uses permitted by paragraphs (2), (3) and (4).”

The exceptions provided by paragraph (2) allowed for places of worship to be open for funerals; weddings; broadcasting acts of worship; provision of “essential voluntary

services”; and provision of “public services upon the request of the Welsh Ministers or a local authority.”

16. The Welsh Regulations came to an end on 8 November 2020. However, in the period while they were in force, they affected the places of worship for which a number of the Claimants in these proceedings are responsible.

17. The English Regulations were made on 3 November and came into force on 5 November 2020. They have similarly introduced wide-ranging restrictions on business activities and the movement of individuals, although subject to a range of exceptions (including keeping schools open). Regulation 18(7) [518] provides:

“A person who is responsible for a place of worship must ensure that the place of worship is closed, except for uses permitted in paragraph (8) and regulation 11(18).”

The exceptions provided for in regulation 18(8) include: funerals (limited to 30 attending); commemorative events celebrating the life of a person who has died; broadcasts of acts of worship; provision of “essential voluntary services or urgent public support services”; childcare; and individual prayer. They do not extend to permitting any communal acts of worship (including baptismal services) or weddings. Significantly, the Government has published guidance on the use of places of worship for the permitted purposes, including on the subjects of risk assessment, ensuring social distancing and test and trace.¹

18. At the time the English Regulations were made, the Government’s Chief Scientific Adviser (Sir Patrick Vallance) and its Chief Medical Officer (Prof Chris Whitty) gave evidence at a session of the House of Commons Science and Technology Select Committee on 3 November 2020. Sir Patrick Vallance said (a) that the Government and its advisory body (SAGE) had no clear evidence on the effect on COVID-19 transmission of closing places of worship and (b) that there was no good data to answer the question whether previous closure of places of worship had had a material or negligible effect. Prof Whitty said that his understanding of the effects of people

¹ See: <https://www.gov.uk/government/publications/covid-19-guidance-for-the-safe-use-of-places-of-worship-during-the-pandemic-from-4-july/covid-19-guidance-for-the-safe-use-of-places-of-worship-during-the-pandemic-from-4-july>.

gathering for worship was largely “anecdotal”. See transcript of evidence, Q1531-Q1534.²

Response to the Second Lockdown Measures

The second lockdown measures have provoked significant public criticism from religious leaders. The Catholic Church Bishops’ Conference³ described the ban as a “source of deep anguish” and demanded that the Government give reasons for its decision to preclude acts of worship in the new lockdown measures. They added that they had “not yet seen any evidence whatsoever that would make the banning of communal worship, with all its human costs, a productive part of combatting the virus.”

Effects of the Closure of Places of Worship to Communal Worship

19. As explained in the various letters provided by the Claimants in support of this claim [451 - 504], the closure of places of worship to community acts of worship is a terrible blow to them and their congregations. Regular attendance at church is a central part of the religious life of these believers. It is also a source of great solace, comfort and social support for many people, especially at a time of widespread job losses, deprivation and related social ills.

The International Dimension

20. The effects of COVID-19 lockdown measures in prohibiting religious services have been the subject of successful legal challenges in a range of jurisdictions. In particular:
 - (a) In France, an interim relief judge of the Conseil d’État (the supreme administrative court) considered the proportionality of a comparable “lockdown” of places of worship in *W and others* (see [283] for a certified translation of the judgment). The Court found that the blanket ban on religious services in France, a constitutionally secular State, was a “serious and manifestly unlawful infringement” of a fundamental freedom (i.e. of Article 9 religious rights and of equivalent rights recognised in French and international

² See: <https://committees.parliament.uk/oralevidence/1122/default/>.

³ See published statements at: <https://www.cbcew.org.uk/statement-from-the-president-and-the-vice-president-of-the-conference-on-the-prime-ministers-statement/>; and <https://www.cbcew.org.uk/statement-on-the-four-week-national-lockdown-and-a-call-to-prayer/>.

law). The Court pointed out that there was no basis for saying that safety rules could not be drawn up to govern religious services or that they would not be observed in practice.

- (b) In Germany, the Federal Constitutional Court in the case of *F* (1BvQ 44/20), 29 April 2020, considered a challenge by a Muslim religious association and granted interim relief to permit Friday prayers at a mosque (see [305] for a certified translation of the judgment). The Court (unanimously) reasoned that a complete ban on communal acts of worship with no means to apply for exemptions was an impermissible interference with constitutional rights.
- (c) In the USA, the Circuit Court of Oregon granted a temporary injunction suspending orders of the Governor precluding religious services: see *Elkhorn Baptist Church et al v Katherine Brown, Governor of the State of Oregon* (Case # 20CV17482) (see [312] for the judgment). The Court concluded that the orders were not required for public safety in circumstances where the plaintiffs could observe social distancing, as in grocery stores and other businesses deemed essential by the Governor.
- (d) A similar claim was brought in Texas in the case of *Steven Horze et al* (Case 20-0249) (see report at [319]). In response, the Governor issued an executive order which included churches in the list of “essential services” which were permitted to remain open. Because it had achieved its objective, the claim was withdrawn.

21. A common feature of all these judgments is that the Courts recognised that complete bans on religious services are interferences with religious rights of a very high order. Another common feature is that the Courts concluded that such absolute prohibitions were disproportionate. To justify such bans, it was necessary to establish that less intrusive measures (such as guidance or legal requirements for social distancing and other COVID safe measures, or provisions allowing for exceptions) would be ineffective.

22. It should also be noted that a similarly rigorous assessment of the proportionality of lockdown measures in South Africa led the High Court to hold that in numerous respects the measures involved disproportionate interferences with fundamental rights: see *De Beer v Minister of Co-operative Governance and Traditional Affairs (Case No. 21542/2020)* (see [249] for the judgment). Although religious services were exempted from the lockdown in South Africa and were not considered by the Court, there were analogous restrictions on cultural practices connected to funerals (including night vigils) which the Court judged to be excessive and unjustifiable.

Protocol correspondence

23. The Claimants sent a judicial review protocol letter to the Welsh Ministers on 23 October 2020 [333] and received a response on 26 October 2020 which disputed the claim [343]. The Claimants replied on 29 October 2020 [351].
24. The Claimants sent a separate protocol letter to the GLD (on behalf of the Secretary of State) on 2 November 2020 [368] and received a response on 5 November 2020 which disputed the claim [382].

Ground (1): Breach of Article 9, ECHR (General)

25. The challenged regulations amount to interferences with Article 9 rights which are disproportionate and so infringe Convention Rights. They are therefore unlawful under section 6(1) of the Human Rights Act 1998. It should be noted that the UK Government (unlike some member states) has not derogated from Convention rights under Article 15 on the basis of national emergency. The protections afforded by the Convention and the 1998 Act apply in the usual way.
26. Article 9 (freedom of thought, conscience and religion) provides:
- “1. Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief and freedom, either alone or in community with others and in public or private, to manifest his religion or belief, in worship, teaching, practice and observance.
 2. Freedom to manifest one’s religion or beliefs shall be subject only to such limitations as are prescribed by law and are necessary in a

democratic society in the interests of public safety, for the protection of public order, health or morals, or for the protection of the rights and freedoms of others.”

The ECtHR has repeatedly recognised that Article 9 rights constitute “one of the foundations of a ‘democratic society’ within the meaning of the Convention”. In their religious dimension, they are “one of the most vital elements that go to make up the identity of believers and their conception of life”. They are also a “precious asset” for all in society, since “the pluralism indissociable from a democratic society, which has been dearly won over the centuries” depends upon them: see *Kokkinakis v Greece* (1993) 17 EHRR 397 at [31]; *Eweida v UK* (2013) 57 EHRR 8 at [79]; *Lee v Ashers Baking Co Ltd and others* [2020] AC 413 at [49].

27. The importance of Article 9 religious-based rights in the UK is given particular recognition by section 13(1) of the Human Rights Act 1998, which provides:

“If a court’s determination of any question arising under this Act might affect the exercise by a religious organisation (itself or its members collectively) of the Convention right to freedom of thought, conscience and religion, it must have particular regard to the importance of that right.”

28. The following features of Article 9 rights are of significance to this claim:

- (a) It is not for the State to assess the legitimacy of religious beliefs (e.g. as to the importance of public and collective worship), and not for the Court to enter into any controversy over what principles are to be considered central to a religion. Provided that a personal or collective conviction attains a certain level of cogency, seriousness, cohesion and importance, it is protected: see *R (Williamson) v Secretary of State for Education and Employment* [2005] 2 AC 246 at [22]-[23]; *Eweida* at [81]; *İzzettin Doğan and others v Turkey* (2017) 64 EHRR 5 (Grand Chamber) at [68].
- (b) The guarantee to manifest religion or belief in public or in private either alone or in community with others should not be seen as giving public authorities a choice to decide how believers may or should manifest their belief: see *X v United Kingdom* (App. No. 8160/78) (Commission Decision).

- (c) An act of worship or devotion which forms part of the practice of a religion or beliefs in a generally recognised form is a “manifestation” of belief, which is protected by Article 9: see *SAS v France* (2015) 60 EHRR 11 at [55]. It is not necessary that the act of devotion should be mandated. See also *Williamson* (cited above) at [23], [30] and [32].
 - (d) Article 9 specifically protects the right to manifest religion in community with others, in public and within the circle of other believers. It therefore protects the rights of believers to meet peacefully in order to worship in the manner prescribed by their religion: see for instance *Cyprus v Turkey* (2002) 35 EHRR 30 (Grand Chamber) at [243]-[246]. Measures impinging on places of worship may constitute interferences with this protected right: see for instance *Cumhuriyetçi Eğitim ve Kültür Merkezi Vakfı v Turkey* (App. No. 32093/10) (2 December 2014) at [41].
 - (e) Article 9 also protects the autonomy and independence of religious institutions. The right “encompasses the expectation that the [religious] community will be allowed to function peacefully, free from arbitrary State intervention. Indeed, the autonomous existence of religious communities is indispensable for pluralism in a democratic society and is thus an issue at the very heart of the protection which Article 9 affords”: see for example *Hasan and Chaush v Bulgaria* (2002) 34 EHRR 55 (Grand Chamber) at [62]; *Sindicatul “Pastorul Cel Bun” v Romania* (2014) 58 EHRR 10 (Grand Chamber) at [136].
 - (f) It is open for an ecclesiastical or religious body to exercise the rights guaranteed by Article 9 on behalf of its adherents: see *Cha’are Shalom Ve Tsedek v France* (App. No. 27417/95) (Grand Chamber) at [72].
29. In this case, the challenged regulations undoubtedly constitute an interference with Article 9 rights. First, they involve an absolute prohibition on manifestation of religion by acts of communal worship, which is a core tenet of belief and practice for many Christians. Secondly, they preclude many from undertaking what they regard as acts of regular obligatory worship and participation in religious sacraments. Thirdly, they interfere with the independence of religious institutions by requiring them to close

places of worship for some purposes but not others, effectively prescribing for what purposes churches may legitimately be used.

30. The challenged regulations may therefore only be justified in Article 9 terms if they are prescribed by law and necessary to serve one of the legitimate aims set out in Article 9(2). Subject to the arguments advanced under Ground (4), it is accepted that the measures in dispute are prescribed by law.
31. For a limitation on such fundamental rights to be “necessary”, it must satisfy a test of proportionality established in Convention and domestic case law. The four questions to be addressed are: (a) whether there is a legitimate objective sufficiently important to justify limiting a fundamental right; (b) whether the measures designed are rationally connected to the objective; (c) whether they are no more than reasonably necessary to accomplish the objective; and (d) whether they strike a fair balance between the rights of the individual and the interests of the community; See *R (Adath Yisroel Burial Society) v Inner North London Coroner* [2019] QB 251 at [99]; *R (Ul-Haq) v Walsall MBC* [2019] PTSR 1192 at [43]. These are tests for the Court to apply, and not for the decision-maker (subject only to supervisory review). At the third stage, the burden is on the authorities to prove that there is “no other means of achieving the same end that would interfere less seriously with the fundamental right concerned”: *Biblical Centre of the Chuvash Republic v Russia* (App. No. 33202/08) at [58].
32. The measures adopted in this case are disproportionate. It is not in doubt that limitation of the spread of COVID-19 is a legitimate objective and that it could be sufficiently important to justify limiting fundamental rights. The Claimants cannot say at present whether or not the measures in question (a blanket ban on communal acts of worship, rather than requirements or guidance to follow COVID safe practices) are rationally connected to the objective, since there has been no publication of any cogent evidence to show that a ban on religious gatherings will materially affect the spread of infections. In any event, the measures are disproportionate for the following reasons:
 - (a) They involve a complete prohibition on communal acts of worship, rather than any lesser restriction. Lesser measures might have included: (i) limiting the numbers of people attending communal services either per service or per square

metre of floor space in a place of worship; (ii) requiring social distancing to be observed in such services, with distances of two metres maintained between household groups; (iii) precluding people gathering in groups within or near the place of worship; (iv) preventing touching of devotional objects; (v) preventing singing or playing of musical instruments; and (vi) limiting numbers of services. Most of these measures feature as aspects of Government guidance on the use of places of worship for the (largely non-religious) purposes for which they are permitted to be used under the challenged regulations. The Claimants have obtained expert evidence from a microbiologist, Ian Blenkharn (see reports at [212], [228] and [433]), which makes clear that simple measures could be adopted which would make religious services substantially COVID safe. The letters provided by various of the Claimants in support of this claim make clear that they would make scrupulous efforts to comply with such measures.

- (b) The measures do not allow for any exception or exemption. For example, they do not permit places of worship, which can establish that they are observing COVID safe measures, to re-open for services of worship. They do not provide local authorities with the power to impose restrictions or conversely to grant exemptions.
- (c) The measures impose legal requirements (not guidance) which are backed by criminal sanctions (rather than, for instance, a civil penalty). As is well-established, the severity of applicable sanctions is a relevant consideration in the proportionality exercise: see *Biblical Centre of the Chuvash Republic* (cited above) at [60]. In particular, measures call for strict scrutiny if they involve criminal sanctions: see *Manoussakis v Greece* (App. No. 18748/91) at [44]. To the knowledge of the Claimants, there has been no public suggestion by Government ministers that those responsible for places of worship did not observe legal requirements or guidance in earlier phases of the pandemic.
- (d) The measures seek to ensure that places of worship may still be used for non-religious activities (e.g. childcare and welfare services) to which the Governments attach importance while preventing them from being used for the religious activities which are their *raison d'être*. They thereby privilege use of

religious premises for secular purposes. They permit what may in many cases be more regular and more crowded gatherings of people than would be permitted if religious services were allowed with restrictions. This illustrates that the ban is not reasonably required and that it does not strike a fair balance between the interests of the community and the rights of believers.

(e) The measures permit individual prayer, while criminalising acts of communal worship. This feature does not render the regulations defensible, since for many believers, individual prayer is not a substitute for worship as a community. However, it does give rise to bizarre consequences, such as that a large number of individuals may gather in a place of worship quite lawfully, but the gathering becomes unlawful as soon as a vicar or minister stands at the front and begins a communal prayer. Again, this shows that an absolute ban is not reasonably required and that it does not strike a fair balance between the interests of the community and the rights of religious people.

33. The argument may well be made by the Defendants, that they should be accorded a considerable margin of appreciation in imposing regulations for the good of public health. However, while the ECtHR affords Governments a certain margin of appreciation for restrictions on access to places of worship, restrictions on the freedom to manifest religion, punishable through the criminal law, call for very strict scrutiny: see *Manoussakis* (cited above). The recognition of a margin of appreciation by the Strasbourg institutions is not a prescription for complete deference at the national court level. Here, it does not legitimise a government imposing a blanket ban on religious services based on an unevidenced assumption or assertion that such a ban would be materially more effective as a public health measure than less intrusive options.

34. Moreover, when deciding how widely a margin of appreciation should be drawn, the Court may have regard to any consensus and common values emerging from the practices of member states: see *Bayatyan v Armenia* (Case No. 23459/03) (Grand Chamber) at [122]. In this regard, it is noteworthy that the great majority of European states have not prohibited religious services: see the ECLJ Report “Restrictions on Religious Freedom in Europe in the Name of the Fight against Covid-19” (4 November

2020).⁴ Only Great Britain and three other countries have imposed such a rule, whereas 28 have authorised religious services (including several which have otherwise imposed lockdown measures).

Ground (2): Breach of Article 9 and Article 8, ECHR (Baptism Services)

35. In addition to their general challenge to the regulations based upon Article 9, the Claimants specifically maintain that those regulations are unlawful in that they prohibit baptism services. Such services have a particular significance to many Christians. The interest in having an appropriate service of baptism take place at an appropriate time is protected by Article 9 and by that Article read in conjunction with Article 8 (right to respect for private and family life).
36. As explained in the report of Dr Parsons at [22]-[33], services of baptism represent a particular manifestation of belief in which an infant or convert is welcomed into the church community. For many, it is a central sacrament and aspect of faith. The timing of baptism of infants is important for many Roman Catholics and some Anglicans who believe that it is essential for salvation. Delaying baptism is likely to cause deep distress to such persons, since their belief would hold that, if the child died, it may be denied entry to heaven. The timing of baptism of converts is also important for many Christians especially Evangelicals, who believe that it should take place immediately after conversion.
37. It is well established that a rule or decision which prevents a religious ritual being performed within the time required or expected by the faith constitutes an interference with Article 9 rights. That point is made most clearly in the *Adath Yisroel* case (cited above), which concerned a coroner's decision the effect of which was to delay release of bodies for burial to families of the Jewish orthodox faith and Muslim faith. Accordingly, the challenged regulations represent an interference with Article 9 rights insofar as they prohibit services of baptism.
38. The interest of religious families in having baptismal services performed within the prescribed or expected period also engages Article 8 rights. The scope of the right to

⁴ See: <https://eclj.org/religious-freedom/coe/limitations-portees-a-la-liberte-de-culte-en-europe-au-nom-de-la-lutte-contre-la-covid-19>.

private and family life protected by Article 8 does not lend itself to exhaustive definition, but encompasses the right to personal development and to decisions concerning reproduction and bringing-up of children; see for instance *Paradiso and Campanelli v Italy* (2017) 65 EHRR 2 (Grand Chamber) at [159]. There may be an overlap in this regard between the protection afforded by Article 9 and that afforded by Article 8: see for instance *Folgero and others v Norway* (2008) 46 EHRR 47 (Grand Chamber) at [98].

39. The ban on baptismal services represents an interference with Article 9 and/or Article 8 rights which cannot be justified on grounds of proportionality. The following points are made in addition to the general matters set out under Ground (1):
- (a) Baptismal services are not sufficiently numerous or frequent that an exemption allowing them to proceed (subject to proper COVID safe practices) would be likely materially to increase the spread of disease infections in the community.
 - (b) Such services could easily be permitted subject to limitation of numbers of persons attending, as happens with exempted funerals and commemorative services. It is difficult to discern why no comparable exemption for baptismal services has been granted.
 - (c) The matter of baptismal services raises in particularly acute form the distress caused to the individual believer by the banning of a particular form of religious service as part of a poorly reasoned set of restrictive measures. As set out above, delaying baptism for weeks or months will often cause even greater distress than banning believers from attending other forms of service.

Ground (3): Breach of Public Law Duty of Enquiry

40. A public authority which chooses to exercise legislative power to impose restrictions in the interests of public health owes a public law duty of enquiry to establish an evidence base for the particular restrictions (at least insofar as a well-resourced government machine can do in the time available). In this instance, so far as the Claimants are aware, the Defendants did not carry out any rigorous assessment to determine that the measures absolutely preventing use of places of worship for religious

services (while leaving them open for other purposes) were likely to have a public health benefit sufficient to justify them. They thereby breached their duty of enquiry.

41. The duty of enquiry is one upon a decision-maker to “take reasonable steps to acquaint himself with the relevant information” to make his/her decision; see *R (Campaign Against Arms Trade) v Secretary of State for International Trade* [2019] 1 WLR 5765 at [58] (citing *Secretary of State for Education and Science v Tameside MBC* [1977] AC 1014 at 1065). It is a counterpart to the obligation of public authorities to act rationally, and just as subordinate legislation may be reviewed on rationality grounds (see *Javed v SSHD* [2002] QB 129) so it may be reviewed for failure to comply with the duty of enquiry.
42. In this case, there was apparently a failure by the Defendants to consider whether and to what extent the intended absolute ban on religious services would assist in the objective of reducing infection rates. In particular, the Claimants are not aware of any enquiries or modelling in England demonstrating: (a) the extent to which permitting some religious services would risk contributing to the spread of COVID-19; and/or (b) the extent to which any such risk could be mitigated by requiring COVID secure measures to be adopted. No evidence has been provided by the GLD in protocol correspondence to support its contention that the measures taken are proportionate to their suggested objective. The Claimants are apparently not alone in being unaware of any such evidence, given the statement of the Catholic Church Bishops’ Conference cited in paragraph 19 above.
43. The Select Committee evidence referenced in paragraph 18 above strongly indicates that no serious attempt has been made to assess or model either whether the previous closure of places of worship in England had a more than negligible effect on the transmission of the virus or whether closure of places of worship in the second lockdown period would have any material benefit. The Government appears to have been working from a mixture of anecdotal evidence and guesswork.
44. In protocol correspondence, the Welsh Ministers have referred to the conclusion of their Technical Advisory Cell (dated 19 October 2020) that a “firebreak” lockdown should include restrictions on places of worship in the interest of reducing the spread of

infections. However, there is no information on what modelling was carried out to reach this conclusion, and on its face, it appears very speculative. It acknowledged that “precise estimation [was] very difficult” and that risks would vary substantially with location. It does not appear to have considered the extent to which a lockdown would be more effective than requirements for safety precautions in places of worship.

45. Given the challenges brought in response to the first lockdown measures, it should have been very apparent to the Defendants that the measures which they proceeded to take in October and November respectively, would constitute interferences with Article 9 rights. The introduction of these measures was preceded by periods of discussions within the UK Government and public debate,⁵ during which the effects of different options (including lesser restrictions) could have been properly assessed or modelled. In view of the serious effect of the measures affecting places of worship, proper compliance with the duty of enquiry should have involved significant further work in this regard.

Ground (4): Ultra Vires / Legality Principle

46. The challenged regulations are outside the legislative power provided by the statutory provisions under which they were made. In accordance with the legality principle, the very general language of the enabling legislation cannot properly be used for the purpose of prohibiting communal acts of worship and/or dictating the use of places of worship, since that would contravene a basic constitutional principle recognising the autonomy and independence of religious institutions in England and Wales.
47. As noted above, both the English Regulations and the Welsh Regulations were made pursuant to the 1984 Act, and the disputed provisions were made pursuant to section 45C(1), which states:

“The appropriate Minister may by regulations make provision for the purpose of preventing, protecting against, controlling or providing a public health response to the incidence or spread of infection or contamination in England and Wales (whether from risks originating there or elsewhere).”

⁵ In particular, on 13 October 2020 the leader of the opposition, the Rt Hon Sir Keir Starmer, called for a short “circuit-breaker” lockdown in England of two to three weeks, following the release of documents showing that government scientific advisers had made a similar proposal three weeks previously: see <https://www.bbc.co.uk/news/uk-54528807>.

Section 45C(3) further provides that regulations under subsection (1) may include provision “imposing or enabling the imposition of restrictions or requirements on in relation to persons, things or premises in the event of, or in response to, a threat to public health.” The statutory language is exceptionally broad in scope and entirely generic in expression. There is nothing in the enabling Act specifically permitting interference with places of worship or religious services.

48. The principle of legality means that “[f]undamental rights cannot be overridden by general or ambiguous words”, since there is “too great a risk that the full implications of their unqualified meaning may have passed unnoticed in the democratic process”. Accordingly, “[i]n the absence of express language or necessary implication to the contrary, the courts... presume that even the most general words were intended to be subject to the basic rights of the individual.”: see *R v SSHD, Ex parte Simms* [2000] 2 AC 115 at 131E-G. This principle has been confirmed repeatedly at the highest level, for instance: *R v SSHD, Ex parte Pierson* [1998] AC 539 at 575A-D; *AXA General Insurance Ltd v HM Advocate and others* [2012] 1 AC 868 at [151]-[152]; *R (Evans) v Attorney-General* [2015] AC 1787 at [57]. Furthermore, and relatedly, even where a statutory provision authorises an intrusion upon a constitutional principle or fundamental right (such as access to a court or free exercise of religion), it is “interpreted as authorising only such a degree of intrusion as is reasonably necessary to fulfil the objective of the provision in question.”: see *R (UNISON) v Lord Chancellor* [2020] AC 869 at [80].
49. The respect of autonomy and independence of religious institutions has a long history in the constitutional law and history of England, Wales and the United Kingdom. For example:
- (a) C.1 of Magna Carta 1297 provides: “FIRST, We have granted to God, and by this our present Charter have confirmed, for Us and our Heirs for ever, that the Church of England shall be free, and shall have all her whole Rights and Liberties inviolable.”
 - (b) Even the assertion by Henry VIII of supremacy over the Church was embodied in specific primary legislation. The Elizabethan settlement which followed

adopted a division between state and church spheres of responsibility. Article 37 of the Articles of Religion states that “we give not to our Princes the ministering either of God’s Word, or of the Sacraments...”

- (c) Section 36 of the Offences against the Person Act 1861 (as still in force) makes it an offence to obstruct, by threats or force, any clergyman or minister from celebrating divine service in a place of worship or to arrest such a clergyman or minister upon civil process.
- (d) The Church of England (Powers) Act 1919 established the right of the Church of England authorities to legislate by measure on any matter concerning that Church.
- (e) The Church of Wales was disestablished by the Welsh Church Act 1914. Section 13(1) of that Act provided that nothing in any Act, law or custom should prevent the bishops, clergy and laity of that Church from framing “constitutions and regulations for the general management and good government of the Church in Wales and the property and affairs thereof.”
- (f) As noted above, when Parliament came to pass the Human Rights Act 1998, it used section 13(1) to give especial importance to “the exercise by a religious organisation (itself or its members collectively) of the Convention right to freedom of thought, conscience or religion.”; see *Aston Cantlow PCC v Wallbank and another* [2004] 1 AC 546 at [15].

50. In the long history of this country, there is no precedent for the temporal authorities prohibiting religious services on grounds of public health. There has been no comparable action in response to previous disease epidemics, up to and including the “Spanish flu” (H1N1) pandemic of 1918. The only precedent of which the Claimants are aware for a general “lockdown” of places of worship in this country is the suspension of church services and sacraments (except baptism) ordered by Pope Innocent III between 1208 and 1214, and that was a measure taken by ecclesiastical authorities (by Papal Interdict).

51. The Claimants do not suggest that Parliament cannot legislate on matters relating to or impinging upon the Church of England or any other religion. However, the respect for freedom to worship is written into the constitutional DNA of this country, just as is the right of access to a court (considered in the *UNISON* and *Evans* cases, cited above). It engages the principle of legality.
52. The Claimants' primary submission is that section 45C of the 1984 Act does not permit regulations to be made which: (a) preclude places of worship from being used for religious services; or (b) entirely preclude all forms of communal worship. Such measures involve a direct and serious interference with the independence of religious organisations and freedoms of religious people. They cannot be authorised by wording as broad and generic as is found in section 45C. If the Governments had intended to permit such measures to be taken, the proper course would have been to include specific provision in primary legislation (e.g. the Coronavirus Bill 2020) authorising restrictions on religious practice and/or places of worship, which would then no doubt have triggered a comprehensive debate about the proper limits of any such powers.
53. Alternatively, if that submission is not accepted, then section 45C of the 1984 Act should be read as only permitting regulations to be made interfering with the autonomy of religious institutions and freedom of worship to the extent reasonably necessary to serve the public health objectives. As set out above in relation to Article 9 proportionality, the measures which have been introduced are more intrusive than reasonably necessary.
54. In the further alternative, the Claimants submit that on any view section 45C of the 1984 Act does not permit the kind of micro-management of religious practice and use of places of worship which is provided for by the challenged regulations. Such a general provision cannot allow the temporal authorities to dictate the proper manner of prayer (individual as opposed to collective), rather than for instance determining whether a building should be open at all or whether COVID safe precautions should be taken.

Response to Potential Arguments that the Claim is Academic

55. The Welsh Ministers have argued in protocol correspondence that this claim is academic and should not be considered by the Court, because it is being brought after the Welsh Regulations ceased to have effect. It may be that the Secretary of State will make a similar argument, since (despite the request for expedition) this claim may well be considered after the present lockdown restrictions have been lifted.
56. The Claimants reserve the right to respond to any such arguments in a Reply to the Defendants' Summary Grounds, but would make the following points at this stage:
- (a) It has long been recognised that a public law challenge can and will be considered if it is in the public interest to do so, notwithstanding that it may not have any immediate effect on the parties: see for instance *R v Board of Visitors of Dartmoor Prison, Ex Parte Smith* [1987] QB 106 at 115 and *R v SSHD, Ex Parte Abdi* [1996] 1 WLR 298, and see generally *Fordham, Judicial Review Handbook (6th ed.)* at [4.6]. A question of legal and practical importance on which the Court can give useful guidance will often justify proper consideration of a claim: see for instance *R (Ullah) v SSHD* [2004] 2 AC 323 at [5]. If a problem may recur in the current or a very similar form, that may justify the consideration of a claim. In the context of religious rights, see *R (Rotsztein) v HM Senior Coroner for Inner North London* [2015] EWHC 2764 (Admin) at [15].
 - (b) There is a strong public interest in the Court considering and resolving this claim, having regard to its legal subject-matter. It raises important issues as to the proportionality of orders closing places of worship and as to the scope of the legislative powers granted by the 1984 Act.
 - (c) There is also a strong interest in the Court considering this claim for more practical reasons. It is entirely possible that either or both of the Governments will consider introducing equivalent or similar lockdown measures affecting places of worship in the future, and there is a strong public interest that they should do so in a lawful manner. A resolution of this claim would help ensure that objective.

- (d) Given that the history of the present pandemic is one of intermittent introduction and relaxation of restrictions, if claims are ignored on the basis of changing circumstances the result will be that the authorities will never be held to account or even given guidance by the Courts on the lawful exercise of extremely wide-ranging powers. Both the Welsh Ministers and the Secretary of State have acknowledged that a further lockdown is possible or likely in early 2021.
- (e) Declarations that the challenged measures are unlawful could in any event produce real and direct benefits for individuals. They could afford defences to individuals who may face prosecution for having breached the regulations: see *Boddington v British Transport Police* [1999] 2 AC 143. They could spare religious ministers who have not complied (or allegedly not complied) from a range of difficulties with insurers, landlords and the Charity Commission.

Reasons in Support of the Request for Expedited Consideration of the Claim

57. At the time of filing this claim, the English Regulations represent a continuing and serious interference with the religious freedoms of the Claimants and their congregations. It is strongly in their interest for the legal position to be clarified without further delay. Furthermore, it is in the public interest that the issues raised by this claim should be resolved before any consideration is given to extending the present lockdown measures or re-introducing them. The Claimants adopted a reasonable approach in withdrawing their first claim when it appeared that the closure of places of worship to religious services was at an end. They are now reasonably entitled to ask for early consideration of their arguments.

Conclusions

58. For all the reasons set out above, the Claimants ask that the Court grant permission for judicial review of the challenged regulations and that it grant declarations to the effect that they are unlawful, and/or such further or other relief as it thinks right.

JONATHAN HOUGH QC
CAN YEGINSU

The claimants

1. Rev. Ade Omooba MBE, Co-Chair, National Church Leaders Forum – NCLF, A Black Christian Voice.

[REDACTED]

[REDACTED]

2. Dr David Muir, Co-Chair, National Church Leaders Forum – NCLF, A Black Christian Voice.

[REDACTED]

[REDACTED]

3. Pastor Dr Kenny Ademosu, Deeper Christian Life Ministry, UK

[REDACTED]

[REDACTED]

4. Pastor Dr Dele Adewumi, Deeper Christian Life Ministry, UK

[REDACTED]

[REDACTED]

5. Pastor Dr Ayo Akinsanya, Deeper Christian Life Ministry, UK

[REDACTED]

[REDACTED]

6. Pastor Yemi Akinwande, Deeper Christian Life Ministry, UK

[REDACTED]

[REDACTED]

7. Pastor Paul Akowe, Deeper Christian Life Ministry, UK

[REDACTED]

[REDACTED]

8. Rev Trevor Allin, New Life Community Church

[REDACTED]

[REDACTED]

[REDACTED]

9. Pastor Oliver Allmand-Smith, Trinity Grace Church

[REDACTED]

[REDACTED]

10. Pastor Kweku Amosah, Trinity Baptist Church

[REDACTED]

[REDACTED]

11. Rev. Derek Andrews, Pastor, The Presence Of God Ministries

[REDACTED]

[REDACTED]

12. Dr. Gavin Ashenden, Former Chaplain to the Queen, Former Anglican Bishop

[REDACTED]

[REDACTED]

13. Pastor Matthew Ashimolowo, Senior Pastor, Kingsway International Christian Centre – KICC.

[REDACTED]

[REDACTED]

14. Rev Akinwale Babatunde, World Harvest Christian Centre

[REDACTED]

[REDACTED]

15. Pastor Dr. Jonathan Bayes, UK Director, Carey Outreach Ministries

[REDACTED]

[REDACTED]

16. Terry Bees, Immanuel Presbyterian Church,

[REDACTED]

[Redacted]

[Redacted]

17. **Pastor Peter Bellingham**, The Well Church,

[Redacted]

[Redacted]

18. **Bishop Lovel Bent**, Presiding Bishop, Connections Trust.

[Redacted]

[Redacted]

19. **Pastor Mark Bimson**, Bethel Prophetic Centre,

[Redacted]

[Redacted]

20. **Paul Brown-Ruling Elder**, Sheffield Presbyterian Church

[Redacted]

[Redacted]

21. **Richard Buckle - Elder**

[Redacted]

[Redacted]

22. **Pastor Stephen Casey**, Speke Baptist Church (FIEC)

[Redacted]

[Redacted]

23. **Apostle Elijah Israel Chanak**, Senior Leader, Qadosh Kingdom Embassy of London

[Redacted]

[Redacted]

24. **Rev. Ian Christensen**, AoG UK, Senior Minister, *New Life Christian Centre International*.

[Redacted]

[Redacted]

25. **Pastor Ryan Clarke**, Jacksdale & Selston Community Church

[Redacted]

[Redacted]

[Redacted]

26. Pastor Stephen Clayden, Christ's Forgiveness Ministries Essex & Director of Pesach Ministries.

[Redacted]

[Redacted]

27. Pastor Benjamin Conway, Tree of Life Church UK

[Redacted]

[Redacted]

28. Dr Paul Corney, Immanuel Presbyterian Church,

[Redacted]

[Redacted]

29. Father Mark Crowther-Alwyn, St Giles Parish Church

[Redacted]

[Redacted]

30. George Curry, Elswick Parish Church,

[Redacted]

[Redacted]

31. Peter Davies, Elder, Treboeth Gospel Hall,

[Redacted]

[Redacted]

32. Chris Demetriou, Senior Pastor, Cornerstone

[Redacted]

[Redacted]

33. Pastor Dr Chima Dioka, Deeper Christian Life Ministry, UK

[Redacted]

[Redacted]

[Redacted]

34. Nick Donnelly, Dukinfield Congregation Church,

[Redacted]

[Redacted]

35. Professor John Durodola, National Chairman, Overseas Fellowship of Nigerian Christians (OFNC).

[Redacted]

[Redacted]

36. Pastor Dr Victor Ebebuwa, Deeper Christian Life Ministry Yorkshire

[Redacted]

[Redacted]

37. Pastor Clare Elkins, Church Leader of the Christian Fellowship Norwich,

[Redacted]

[Redacted]

38. Rev. Duane Elkins, Church Leader of the Christian Fellowship Norwich,

[Redacted]

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39. Rev Edward Evans, Westgate Evangelical Chapel,

[Redacted]

[Redacted]

40. Sally Ewen, Director, Worshipping Friends

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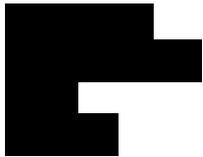
41. Pastor Dr Funso Fabiyi, Deeper Christian Life Ministry, UK

[Redacted]

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42. Rev. Dr Ian Farley,

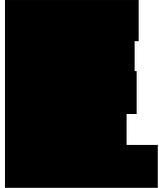
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43. Rev. David John Flanders, Souls Harbour Pentecostal Church,



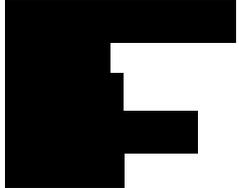
44. Rev Charles Fleming, Shekinah Christian Church



45. Darrin Gilchrist, Itinerate Minister



46. Rev. Asif Gill, Senior Leader, Ecclesia International



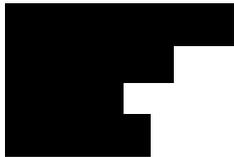
47. Dennis Greenidge, Senior Pastor, Worldwide Mission Fellowship.



48. Rev Stuart Gregg, Celebrate Church Bradford



49. Pastor Andrew Grimshaw, Grace Life Church – Manchester



50. Rev. Alex Gyasi MBE, Convener & Senior Pastor, Kingdom Culture Alliance & Highway of Holiness.

[Redacted]

[Redacted]

51. Rev. Dr David Hathaway D.D., President, Eurovision Mission to Europe.

[Redacted]

[Redacted]

52. Pastor Barry Hawthorne, New Beginnings Church,

[Redacted]

[Redacted]

53. Pastor John Hayward, Court Farm evangelical Church

[Redacted]

[Redacted]

54. Rev. Nathan Hilton, Sunderland Evangelical Presbyterian Church,

[Redacted]

[Redacted]

55. Rev. Jon Hobbs, Grace Church Haywards Heath,

[Redacted]

[Redacted]

56. Rev. Timothy Hodgins, Sandfields Presbyterian Church

[Redacted]

[Redacted]

57. Rev Stephen Holland, Westhoughton Evangelical Church,

[Redacted]

[Redacted]

58. Rev. Richard Holst, Christ Church Presbyterian,

[Redacted]

[Redacted]

59. Rev. Iestyn ap Hywel, Minister of the Presbytery

[Redacted]

[Redacted]

[Redacted]

60. Pastor Aaron Jarvis, Londonderry Baptist Church

[Redacted]

[Redacted]

61. Rev. Joshua D. Jones, Therfield Chapel

[Redacted]

[Redacted]

62. Pastor Regan King, The Angel Church,

[Redacted]

[Redacted]

63. Pastor Paul Levy, International Presbyterian Church, Ealing

[Redacted]

[Redacted]

64. Pastors Scott & Fiona Liston, Glory Fire Church

[Redacted]

[Redacted]

65. Rev. Steve Lomas, Arundel Baptist Church

[Redacted]

[Redacted]

66. Rev. Mrs. Mary Lunt, JP., Dunamis Christian Church

[Redacted]

[Redacted]

67. Pastor Thabo Marais, Senior Pastor, Christian Revival Church London

[Redacted]

[Redacted]

68. Canon Yaqub Masih MBE, Secretary General, UK Asian Christians; Secretary General & Founder, New Horizons

[REDACTED]

[REDACTED]

69. Rev. Douglas McCallum, Cambridge Presbyterian Church,

[REDACTED]

[REDACTED]

70. Rev Wade & Mrs Claire McLennan, New Hope Community Church

[REDACTED]

[REDACTED]

71. Stephen Metcalfe, Elder, Starbeck Mission

[REDACTED]

[REDACTED]

72. Deacon James Morecroft

[REDACTED]

[REDACTED]

73. Pastor Paul Naughton, Harvest Church

[REDACTED]

[REDACTED]

74. Rev. Dr Peter Naylor, Immanuel Presbyterian Church,

[REDACTED]

[REDACTED]

75. Bishop Michael Nazir-Ali, President, Oxford Centre for Training, Research, Advocacy and Dialogue – OXTRAD.

[REDACTED]

[REDACTED]

76. Graham Nicholls, Pastor of Christ Church Haywards Heath and Director of Affinity

[REDACTED]

[REDACTED]

77. Rev. Dr Brad Norman, Salvation for the Nations Intl. Churches.

[Redacted]

[Redacted]

78. Pastor Michael Ogunkanmi, Deeper Christian Life Ministry, UK.

[Redacted]

[Redacted]

79. Pastor Dr Samuel Ohiomokhare, Deeper Christian Life Ministry, UK.

[Redacted]

[Redacted]

80. Pastor Sunday Okenwa, Deeper Christian Life Ministry, UK

[Redacted]

[Redacted]

81. Chris Owen (Retired Baptist Minister) & Heather Owen (Christian Counsellor)
Sandfields Presbyterian Church

[Redacted]

[Redacted]

82. Rev Rich Owen

[Redacted]

[Redacted]

83. Pastor Frank Oyibo, Deeper Christian Life Ministry, UK

[Redacted]

[Redacted]

84. Pastor Peter Petra, North Church Leicester

[Redacted]

[Redacted]

85. Pastor George Platt, Highgate Road Chapel

[Redacted]

[Redacted]

86. Asst. Pastor Nicholas Pollock, Christchurch Loughborough,

[REDACTED]

[REDACTED]

87. Rev Fr Patrick Pullicino

[REDACTED]

[REDACTED]

88. Pastors John & Sally Quintanilla, Hebron Christian Faith Church, Coventry

[REDACTED]

[REDACTED]

89. Timothy Ramsay-Senior Leader, The Place of Grace

[REDACTED]

[REDACTED]

90. Adwoa Ramsay- Assistant Pastor, The Place of Grace

[REDACTED]

[REDACTED]

91. Minister Christopher Rees, Bethesda Chapel Narberth

[REDACTED]

[REDACTED]

92. Dr Christopher Richards, Elder, All Saints Presbyterian Church,

[REDACTED]

[REDACTED]

93. Pastor Stephen Ridgely, Christian Revival Church, Mamchester

[REDACTED]

[REDACTED]

94. Rev. Joshua Rieger, Minister, Hexham Presbyterian Church,

[Redacted]

[Redacted]

95. Joe Roberts, Heaven Yeah Church, Gosport

[Redacted]

[Redacted]

96. Rev. Dr. Matthew PW Roberts, Minister, Trinity Church York International Presbyterian Church

[Redacted]

[Redacted]

97. Rev. Dr. Peter Sanlon, Emmanuel Anglican Church,

[Redacted]

[Redacted]

98. Rev. Dr William M. Schweitzer, All Saints Presbyterian Church,

[Redacted]

[Redacted]

99. Felipe Sediles, Victory Chapel, Hamble

[Redacted]

[Redacted]

100. Pastor Fabio Silva, Ridley Hall Evangelical Church

[Redacted]

[Redacted]

101. Pastor Paul Song, London Shepherd Church

[Redacted]

[Redacted]

102. Pastor Kola Taiwo, Senior Pastor, New Wine Church.

[Redacted]

[Redacted]

[Redacted]

103. Pastors Joel & Evangeline Taller, Faith Life Centre

[Redacted]

[Redacted]

104. Gavin Taylor, Elder, Kingsmead Independent Baptist Church,

[Redacted]

[Redacted]

105. Pastor Peter Taylor, Immanuel Church

[Redacted]

[Redacted]

106. Rev. Clyde Thomas, Victory Church,

[Redacted]

[Redacted]

107. Rev. Matt Timms,

[Redacted]

[Redacted]

108. Rev Melvin Tinker, Director of Theology

[Redacted]

[Redacted]

109. Pastor Goddey Wariboko, Deeper Christian Life Ministry, UK

[Redacted]

[Redacted]

110. Rev. Keith Waters,

[Redacted]

[Redacted]

111. Rev. Florian Weicken, All Saints Presbyterian Church,

[Redacted]

[Redacted]

[Redacted]

112. Bishop Alfred Williams BA(Hons), LLB(Hons), LLM (Inter. Business Law), MCI Arb. Presiding Bishop, Christ Faith Tabernacle International Churches

[Redacted]

[Redacted]

113. Rev. Josh Williamson, Newquay Reformed Baptist Church

[Redacted]

[Redacted]

114. Mr Jonathan Winch, Elder, All Saints Presbyterian Church,

[Redacted]

[Redacted]

115. Rev. Benjamin Wontrop, All Saints Presbyterian Church,

[Redacted]

[Redacted]

116. Rev. Timothy James Wood, Wigmore Evangelical Free Church

[Redacted]

[Redacted]

117. Pastor Jonathan Woodrow, Christchurch Loughborough,

[Redacted]

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118. Pastor Thomas Yates, Maryport Street Baptist Chapel

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Citygate
95 Southampton Street
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My Ref: MP:MP3515

Date: 28 May 2020

Government Legal Department
102 Petty France,
Westminster,
London
SW1H 9GL

By email only to newproceedings@governmentlegal.gov.uk

Dear Sirs,

Our clients: 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

1. Revd Ade Omooba MBE, Co-Chair, National Church Leaders Forum – NCLF, A Black Christian Voice.

[REDACTED]

2. Dr David Muir, Co-Chair, National Church Leaders Forum – NCLF, A Black Christian Voice.

[REDACTED]

3. Rev. Derek Andrews, Pastor, The Presence Of God Ministries

[REDACTED]



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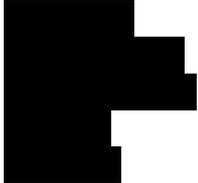




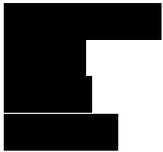
4. **Dr. Gavin Ashenden**, Former Chaplain to the Queen, Former Anglican Bishop



5. **Pastor Matthew Ashimolowo**, Senior Pastor, Kingsway International Christian Centre – KICC.



6. **Bishop Level Bent**, Presiding Bishop, Connections Trust.



7. **Revd. Ian Christensen**, AoG UK, Senior Minister, *New Life Christian Centre International*.



8. **Chris Demetriou**, Senior Pastor, Cornerstone



9. **Professor John Durodola**, National Chairman, Overseas Fellowship of Nigerian Christians (OFNC).



10. **Rev. Asif Gill**, Senior Leader, Ecclesia International



11. **Dennis Greenidge**, Senior Pastor, Worldwide Mission Fellowship.

Criminal
Defence Service



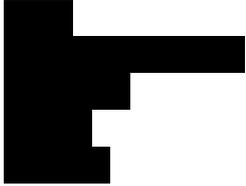
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12. **Revd Alex Gyasi MBE**, Convener & Senior Pastor, Kingdom Culture Alliance & Highway of Holiness.



13. **Revd. Dr David Hathaway D.D.**, President, Eurovision Mission to Europe.



14. **Pastor Thabo Marais**, Senior Pastor, Christian Revival Church London



15. **Canon Yaqub Masih MBE**, Secretary General, UK Asian Christians; Secretary General & Founder, New Horizons



16. **Bishop Michael Nazir-Ali**, President, Oxford Centre for Training, Research, Advocacy and Dialogue – OXTRAD.



17. **Revd Dr Brad Norman**, Salvation For The Nations Intl. Churches.



18. **Pastor Sunday Okenwa**, Regional Overseer, Deeper Christian Life Ministry



19. **Pastor John Quintanilla**, Hebron Christian Faith Church, Coventry



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[REDACTED]

20. Pastor Sally Quintanilla, Hebron Christian Faith Church, Coventry

[REDACTED]

21. Pastor Paul Song

[REDACTED]

22. Pastor Kola Taiwo, Senior Pastor, New Wine Church.

[REDACTED]

23. Rev. Melvin Tinker

[REDACTED]

24. Rev. Keith Waters

[REDACTED]

25. Bishop Alfred Williams BA(Hons), LLB(Hons), LLM (Inter. Business Law), MCI Arb. Presiding Bishop, Christ Faith Tabernacle International Churches

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

Defendant's ref.: The Health Protection (Coronavirus, Restrictions) England Regulations 2020 (SI 350/2020)

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

Details of the matters being challenged:

- (1) Regulation 5(5) of *The Health Protection (Coronavirus, Restrictions) England Regulations 2020*, dated 26 March 2020
- (2) Regulation 7, insofar as it applies to church services and rites
- (3) *Our plan to rebuild: The UK Government's COVID-19 recovery strategy*, dated May 2020, insofar as it applies to places of worship.
- (4) Failure to provide assurances that the restrictions on church activities will be relaxed and/or lifted as a matter of priority as part of the Government's 'lockdown exit strategy'.

The Issues

Introduction

The proposed judicial review is against the blanket 'lockdown' imposed on all churches by the Regulations, and the failure to prioritise the re-opening of churches as part of the Government's 'exit strategy'. In summary, our clients contend that the relevant Regulations are:

- a) disproportionate in the circumstances where the overwhelming majority of churches had closed down voluntarily in response to the Coronavirus pandemic, and the remainder had introduced far-reaching precautions against infection; and
- b) *ultra vires* the Health Secretary's powers under *Public Health (Control of disease) Act 1984*.

Our clients do not for a moment suggest that churches should be allowed to operate as before notwithstanding the Coronavirus epidemic. Rather, our clients' concern is that, as a matter of principle, the imposition of appropriate anti-epidemic measures in the Church is ultimately a matter for Church authorities rather than secular state authorities.

Our clients readily acknowledge that the *Regulations* were enacted by your client as a matter of urgency in very extreme circumstances. This being so, our clients are genuinely open to a constructive dialogue with your client to work out a pragmatic compromise which would be mutually acceptable both in principle and in practice.



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Churches' response to the epidemic

It should be stressed that the Regulations were made in the circumstances when the vast majority of churches had already adequately responded to the threat of Coronavirus, ranging from drastic anti-infection precautions to (most typically) a voluntary 'lockdown'. For example, the Catholic Bishops announced a suspension of all public acts of worship on 14 March 2020. The Church of England made a similar announcement on 17 March 2020, which envisaged that the churches would only remain open for private prayer. However, the Church of England removed that exception and announced a complete closure of churches on 23 March, in response to the Prime Minister's advice made in the televised address on the same day, and before the Regulations were made.

Church autonomy

The principle of Church autonomy is zealously protected both in ECHR jurisprudence under Article 9 (see *Metropolitan Church of Bessarabia v. Moldova*, no. 45701/99, ECHR Reports 2001-XII, 13 December 2001, § 118) and in the domestic constitutional tradition, starting at least from c. 1 of Magna Carta. The martyrdom of Thomas Beckett for that very principle is of enormous significance in the Church of England Tradition. The Acts of Supremacy were necessary to establish the status of the Monarch as the Supreme Governor of the Church of England precisely because ecclesiastical authority is recognised by the common law as distinct from the temporal authority. Henry VIII could dissolve monasteries only after, and because, he had assumed the supreme ecclesiastical office; the measure would have been *ultra vires* the temporal powers of the Crown. Since then, the government of the realm and the government of the Church were always distinct in our Constitution, despite the same Monarch being ultimately at the head of both. *Articles of Religion 1562* provide in Article 37: "*Where we attribute to the King's Majesty the chief government... we give not to our Princes the ministering either of God's Word, or of the Sacraments*". The Church government is subject to its own constitutional law, currently governed by the *Church of England Assembly (Powers) Act 1919*.

Whatever difficulties may sometimes arise in drawing a precise boundary between temporal and ecclesiastical matters, there is no doubt, and has never been any doubt, that closure and opening of churches for services and rites is a matter for ecclesiastical authorities and not for temporal ones. The only historical precedent for a 'lockdown' of churches similar to the one introduced in the present Regulations is the suspension of all the church services and sacraments (except baptism) from 23 March 1208 to 1214 pursuant to the Interdict of Pope Innocent III. The services were suspended by the English bishops pursuant to an Interdict from Vatican. The suspension was expressly against the wishes of the temporal government and contrary to its interests. However the lawfulness of that suspension was never questioned; nor has it ever been suggested that the temporal government had legal power simply to order a re-opening of churches.

Conversely, in the long history of epidemics and anti-epidemic measures in this country, up to and including the Spanish influenza in early 20th century, there is no precedent for state legislation which in any degree prohibits and criminalises church services or sacraments.

There is no basis for suggesting that this constitutional principle has become obsolete in modern times. On the contrary, the principle has been reinforced by Article 9 of the ECHR and the jurisprudence on Church autonomy which developed under it. It was further reinforced by s. 13 of the Human Rights Act 1998. Further, under the modern anti-discrimination law, the principle must apply equally to the Church of England and various other non-conformist churches and denominations.



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In the circumstances where the Church has responded adequately to the public health threat, there was no lawful basis for the state to interfere with its rights and liberties in this drastic fashion. If it was necessary to supplement the Church self-regulation with any degree of state regulation, that interference had to be proportionate, and confined to exercising the powers which have a proper basis in law. A blanket ban imposed by the state on all church activities (with three prescribed exceptions) does not meet those requirements.

While the short-term practical difference between state regulation and church self-regulation may be limited in present circumstances, the principle of Church autonomy is extremely important in the broader constitutional context, and must be protected for the benefit of present and future generations.

Rationale behind the principle

The principle identified above is important for the simple reason that a believer's worldview is radically different from a non-believer's worldview. It may seem natural for a temporal authority, well-meaning and intending no disrespect to religion, to see a church service as simply an example of a 'public event' which attracts a peculiar kind of people interested in it – roughly similar to entertainment. In that worldview, church services are important for welfare of those who need them, but obviously less important than things like steady food supplies and protection of health.

By contrast, in a believer's worldview, church services are part of our means for achieving eternal salvation of the soul, which is infinitely more important than even a survival of the body. The Bible and centuries of tradition oblige Christians to gather weekly for worship and witness around the Word of God and sacraments; we need one another to flourish in our service to Christ (Ex. 20: 9-11; 1 Cor. 16: 1-2; Heb. 10:24-25; Acts 2:42, 20:7). Neither confessional Christian faith nor the Church as an institution can *faithfully exist* without a Lord's Day gathering. The Church has adhered to that obligation through long periods of persecution, where fulfilling it meant a risk of death at the hands of temporal authorities. The church does not exist by *permission* of the state, for its establishment and rule is found in Jesus Christ himself.

This difference of worldviews inevitably entails a difference in priorities, and most importantly, in the underlying criteria. To illustrate the point, the 1208-1214 Papal Interdict made an exception for the sacrament of baptism, since it is considered necessary for the salvation of a soul. By contrast, the present lockdown makes an exception for funerals, because here, the church contributes to what the state sees as an important public function: disposal of dead bodies. The secular authorities did not, and cannot reasonably be expected to, give a similar or indeed any consideration to the disposal of living souls.

The restrictions imposed on the Church activity principally affect the believers. Hence it is important that the decisions about them are taken by believers – not by people who, in their minds and/or as a matter of professional duty, live in a wholly different world. If churches are to be closed, that must not be done by people who may well have never been to a church in their lives.

Churches in context of the government's wider 'lockdown' policy

The Government has taken an extremely wide range of measures to counter the threat of Coronavirus. Virtually all aspects of the society's life have been categorised according to their importance on the one hand, and epidemiological risks on the other. Restrictions of different severity were accordingly imposed. Very roughly, four different categories may be identified:



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- 1) 'Essential' services which have been allowed to remain open throughout the 'lockdown', such as food retailers, off licence shops, pharmacies, and other businesses listed in Part 3 Schedule to the Regulations.
- 2) Services prioritised to resume operations at 'Step 1' in *Our Plan to Rebuild* (e.g. schools and businesses important for the economy, such as construction).
- 3) Services which resume at 'Step 2' (e.g. non-essential retail, cultural and sporting events behind closed doors)
- 4) Services which will not resume until 'Step 3': that includes beauty salons, pubs, cinemas, and indeed churches.

At different stages, different levels of restriction apply to each of the different categories.

Another important distinction should be drawn between the two principal tools used to implement the anti-epidemic measures. In relation to some aspects of the national life, the government has limited its interference to giving advice or guidance. For example, as part of the latest modification of the Coronavirus policy, the Government has issued guidance documents for public transport, and for businesses to ensure safety at workplace. On the other hand, the Government has chosen to impose some of the other restrictions by means of binding legislation, with a criminal sanction for non-compliance.

Within this system, churches have been given the most unfavourable treatment possible. Churches have been placed in the bottom category of the most dangerous and least important services, subjected to severest restrictions for the longest period of time. Those restrictions are imposed by means of formal legislation with a criminal sanction; unlike many other organisations and individuals, churches are not trusted to follow advice.

The latter is the principal complaint of the Claimants: if it was appropriate to limit the state intervention to advice in some cases, that is certainly so in the case of the Church, whose independence of the state is protected by a fundamental constitutional principle, and who had responded to the epidemic sooner, and more effectively, than the government.

Alternatively, if the state is entitled to regulate the church services by criminal legislation, the proper place of churches in the list of priorities is higher than at the very bottom.

Disproportionate interference with Article 9 rights

It is undisputed that the Regulations are a significant interference with freedom of religion and religious assembly and, in particular, the principle of church autonomy. Any justification of that interference is to be assessed under the usual Article 9 principles. Article 15 ECHR gives member-states a right to derogate from the Convention in the event of a national emergency, by giving notice to the Secretary General of the Council of Europe. However, unlike several other member-states, the United Kingdom has chosen not to avail itself of that right. Therefore, Article 9 applies to the government's anti-Coronavirus measures in the usual way.

One of the most unwavering and established principles found in the jurisprudence of the European Court of Human Rights is the doctrine of church autonomy. A public authority may not interfere with the internal workings of a church or religious organization and may not impose rigid conditions on the practice or functioning of religious beliefs. See further: *Serif v. Greece*, No. 38178/97, Reports 1999-IX, 14 December 1999, §§ 51-53; *Manoussakis v. Greece*, No. 18748/91, Reports 1996-IV, 26 September 2000, § 82. So strong is this principle that it has been upheld three times by the Grand Chamber of the European Court of Human Rights. ECHR, *Hasan and Chaush v. Bulgaria* [GC],



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No. 30985/96, Reports 2000-XI, 26 October 2000, § 82; ECHR, *Case of Fernandez Martinez v. Spain* [GC], No. 56030/07, Judgment of 12 June 2014; ECHR, *Case of Sindicatul "Pastorul Cel Bun" v. Romania* [GC], No. 2330/09, Judgment of 9 July 2013. Most recently the Court again upheld the same principle regarding respect for the internal workings of religious organizations in a judgment against Hungary. ECHR, *Case of Karoly Nagy v. Hungary*, No. 56665/09, Judgment of 1 December 2015.

The forced closure of churches by the state is an extreme interference with Article 9 rights. That extremity is not mitigated by the exception in Reg. 5(6), which allows the churches to remain open only for social welfare purposes. On the contrary, this amounts to an enforced secularization of the purpose of churches. The state has usurped the right to prioritise certain aspects of the church life over others using its own criteria, and identified the spiritual aspects as dispensable.

Such a far-reaching and large-scale intervention may only be justified by the most compelling scientific evidence of a resulting benefit to public health. The broader the impact of the Regulations on the Convention rights, the more compelling must be the justification: *R (on the application of UNISON) v Lord Chancellor*.

For interference with freedom of worship to be legitimate, the interference in question must be *necessary in a democratic society*. The term 'necessary' does not have the flexibility of such expressions as 'useful' or 'desirable'. *Svyato-Mykhaylivska Parafiya v. Ukraine*, App. No. 77703/01 § 116 (Eur. Ct. H.R. June 14, 2007). Fundamentally, only convincing and compelling reasons can justify restrictions on a fundamental Convention freedom, see *Wingrove v. United Kingdom*, 1996-V Eur. Ct. H.R. 1937, 1956.

Proportionality in relation to Article 9, and the supervisory authority over any restrictions imposed on the freedom to manifest all of the rights inherent in freedom of religion, call for "*very strict scrutiny*": ECHR, *Manoussakis and Others v. Greece*, Reports 1996-IV: AFDI, 1996, p. 1354, § 44.

It is clear that the wholesale manner in which churches were closed is anything but a narrowly tailored means of achieving public health. Indeed, it appears that the Secretary of State has given hardly any consideration to balancing competing rights and interests, or to achieving his public health objectives by lesser interference with Article 9 rights.

Chapter 1 of Magna Carta 1297

In the domestic English law, the principle of church autonomy is of a much greater antiquity than, and at least as important constitutional status as under the Convention. C. 1 of Magna Carta 1297 provides:

FIRST, We have granted to God, and by this our present Charter have confirmed, for Us and our Heirs for ever, that the Church of England shall be free, and shall have all her whole Rights and Liberties inviolable.

The principle has always been understood to mean that the Church is to manage its own affairs just as the State manages its own affairs. Church authorities are at least, in principle, as capable as the state authorities in making



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decisions for themselves and in the interests of their congregations; and it is a constitutional right of the church to make those decisions without state interference.

It is now well established that Magna Carta 1297 is a prime example of a constitutional statute which is not subject to the doctrine of implied repeal: *Thoburn v Sunderland City Council* [2003] QB 151, paras 58-59, *R (Buckinghamshire County Council) v Secretary of State for Transport* [2014] 1 WLR 324, paras 78-79, 206-207; *R(Miller) v Secretary of State for Exiting the EU* [2017] UKSC 5: para 67. It follows that all later statutes (including, most importantly for present purposes, Public Health (Control of Disease) Act 1984) must be interpreted consistently with Magna Carta unless they expressly repeal its provisions. The 1984 does not authorise the Secretary of State to exercise his powers in a way which interferes with any of the “Rights and Liberties” of the Church within the meaning of c. 1 of Magna Carta.

The legislative powers of Parliament in relation to the Church of England are governed by the Church of England Assembly (Powers) Act 1919. The legislative authorities and procedure established by that Act leaves no constitutional place for an alternative procedure where a Secretary of State permits or prohibits church services by statutory instrument made under a different Act.

In today’s constitutional framework, the same principles apply to non-conformist and other churches outside the ecclesiastical jurisdiction of the Church of England. This is because:

- (a) The meaning of the expression “Church of England” in 1297 was different from the modern meaning. Magna Carta was passed before the series of schisms which separated the modern Church of England from Roman Catholics and non-conformist Protestants. Those schisms were ecclesiastical matters of no concern to the state; accordingly, all Christian churches which originate in the Church of England as it was in 1297 are entitled to the protection of Magna Carta.
- (b) In any event, the modern anti-discrimination law (Article 14 ECHR and the Equality Act 2010) prohibits state discrimination on the grounds of religion or belief. It follows that all denominations are entitled to the same constitutional rights as the Church of England.

Action(s) that the defendant is expected to take

Despite the importance of the principles which the proposed claim seeks to protect, our clients acknowledge the unprecedented difficulties faced by the Department at present and would like to avoid putting any excessive pressure on your clients.

The Secretary of State is in any event under an obligation to review the Regulations at least every 21 days. We understand the next review must take place on or before **18 June**. In the light of the points made above, we suggest it will be appropriate, by that date, to:

- (a) revoke Regulation 5(5),
- (b) amend Regulation 7 to provide for an exception for a reasonably necessary participation in a religious ceremony,
- (c) replace Regulation 5(5) with a Guidance for the appropriate precautions to be taken by churches at the next stage of the epidemic.



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The constructive approach set out above is without prejudice to our client's position that the Regulations in their present form are unlawful and liable to be quashed on judicial review. Alternatively, our clients will seek a mandatory order for the Regulations to be revoked within a specified timeframe, and/or a declaration.

ADR proposals

As indicated above, our clients are in sympathy with the pressures put on the Government by the epidemic, and are prepared to work constructively with your client for the legal errors identified above to be rectified in an orderly fashion.

We invite the Secretary of State to arrange an online conference with our clients (if necessary also attended by lawyers on both sides) to work out a mutually acceptable timetable for relaxation of the existing restrictions on church activities, and/or replacing the Regulations by an appropriate Guidance document which properly respects the principle of church autonomy.

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. Further, our clients sincerely hope that if the Secretary of State is willing to engage in a constructive dialogue, it shall be possible to work out a mutually acceptable solution by the time of the next review of the Regulations on 18 June. For those reasons, we request a substantive response to this pre-action letter within 7 days, by **4 June 2020**.

We look forward to hearing from you.

Yours faithfully



Andrew Storch Solicitors



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11 June 2020

Your ref: MP:MP3515
Our ref: Z2006192/HHS/HOI7

Dear Sirs

Pre-Action Response: Rev. Ade Omooba et al.

We act for the Secretary of State for Health and Social Care who is named as the proposed defendant in your letter and whom we agree is the correct defendant.

The Proposed Claimant

The 25 Claimants referred to in your pre-action letter, which are not repeated here.

The Proposed Defendant

The Secretary of State for Health and Social Care.

The Defendant may be contacted via the Government Legal Department (GLD) Due to COVID-19 and the current circumstances, any correspondence or service of documents should be addressed to Hannah Sladen and sent via email to hannah.sladen@governmentlegal.gov.uk to limit the handling of materials by post

Reference details

Our reference: Z2006192/HHS/HOI7

Please cite the above reference number on all future pre-action correspondence. Hannah Sladen is the GLD pre-action contact on behalf of the Defendant.

The Issues

1. Your proposed challenge is to the lawfulness of (a) regulation 5(5) and regulation 7 of the Health Protection (Coronavirus, Restrictions) England Regulations 2020 ("**the Regulations**"), (b) *Our Plan to Rebuild: The UK Government's COVID-19 Recovery Strategy*, published on 11 May 2020 (CP 239) ("**the**

Strategy”) and (c) an alleged “*failure to provide assurances that the restrictions on church activities will be relaxed and/or lifted as a matter of priority as part of the Government’s lockdown exit strategy.*”

2. Your letter raises two legal bases for this challenge:
 - a. firstly, that the Regulations are a disproportionate interference with Article 9 ECHR in circumstances where the vast majority of churches had already closed down voluntarily in response to the Coronavirus pandemic or adopted far-reaching precautions against infection; and
 - b. secondly, that the Regulations are *ultra vires* the Public Health (Control of Diseases) Act 1984 because the Secretary of State has no power to regulate churches pursuant to his powers under that Act. To do so is said to undermine the principle of church autonomy as enshrined in c.1 Magna Carta 1215.
3. You ask that the Secretary of State at the next review of the Regulations revokes regulation 5(5) and makes amendments to regulation 7 to allow a gathering for reasonably necessary participation in a religious ceremony. Your letter acknowledges the unprecedented difficulties faced by our client’s department at the present time. You have made an ADR proposal with a view to working constructively with our clients to resolve the issues raised.

Response

4. Before turning to the legal issues raised by your claim, we trust that you are aware that, since your letter was written, an announcement has been made to reopen places of worship shortly for individual prayer, in line with supporting guidance, to be published, on which we have consulted the Places of Worship Taskforce. We trust that this development will serve to demonstrate that the rights of your clients, and those of faith across England, are being carefully considered by the Secretary of State and across Government and that the restrictions placed on places of worship are being eased gradually, where possible and where supported by the scientific advice.

Proportionality in Article 9 ECHR terms

5. In terms of the proportionality of the Regulations in Article 9 ECHR terms, there are seven key points to make. **Firstly**, the population of England is presently affected by the public health pandemic caused by the virus known as COVID-19, as you recognise. The extremely serious risk to life and health posed by the virus has obliged the Government to take unprecedented, vital steps, including via the Regulations, to limit the ability of the virus to spread, and to reduce the burden on the National Health Service. Both of these aims seek to protect and reduce the risk to the lives of the population, in circumstances in which tens of thousands of people in England have died having tested positive for the virus.
6. **Secondly**, accordingly, there are fundamental Article 2 rights of the population at stake which the measures in the Regulations seek to protect. The UK has a positive obligation “*to take appropriate steps to safeguard the lives of those within its jurisdiction*” and to do “*all that could have been required of it to prevent...life from being avoidably put at risk*”: *LCB v United Kingdom* (1997) 27 EHRR 212 at §36. This obligation extends to the public health context: *Stoyanovi v Bulgaria* (App. No. 42980/04) at §60. This duty, in respect of the most fundamental right of all, weighs heavily in any balancing exercise, and in any assessment of the measures adopted in the Regulations.
7. **Thirdly**, the Secretary of State is acutely aware that the restrictions currently placed on places of worship interfere with the right to manifest one’s religious belief enshrined in Article 9 ECHR by limiting attendance in person by individuals at places of worship for those of all faiths. We acknowledge and respect the importance of your clients and their congregations place on communal worship and the central place of the church in the life of a believer. However, this is not a restriction on churches only, but applies equally to all places of worship and people of all faiths and beliefs. Moreover, they are not absolute: regulation 5(5) which requires places of worship to close is subject to the exception at reg 5(6) – and thus it has always been possible for faith leaders to provide services remotely from their churches; and no restrictions are or have been in place on people engaging in celebrations of religious rites and festivals

with members of their household. It is clear that the restrictions were at the time introduced, and still remain, proportionate in the interests of protecting life at a time of unprecedented public health emergency. Those measures are under careful review on a regular basis, and the Government has already published – as your letter acknowledges – a plan for the reopening of places of worship as part of Stage 3 of its strategy, currently planned to commence from 4 July 2020, subject to the scientific evidence supporting those steps at that time, and has announced changes for individual prayer. Thus, the ongoing interference is time-limited and under continual review.

8. **Fourthly**, this is based on the scientific advice to the Secretary of State that the virus is highly contagious and particularly easily spread in gatherings of people and indoors. In the Strategy, it explains: “*SAGE [the Scientific Advisory Group for Emergencies] advise that the risk of infection outside is significantly lower than inside*”. The basic principle underlying the restrictions in the Regulations is to reduce the degree to which people gather and mix with those outside of their household, particularly in indoor spaces. The opening of places of worship generally is inconsistent with this basic principle and not judged to be appropriate. This is not because churches (or other places of worship) have been placed in “the most dangerous and least important” category; but rather that there is “*a qualitative difference in terms of the risk of transmission of the virus between a situation such as a religious service where a number of people meet in an enclosed space for a period of an hour or more, and the transitory briefer contact likely in a setting such as that of shopping in a garden centre*” (as recognised by Swift J in his recent decision to refuse interim relief to a mosque from Bradford seeking an exemption from regulation 5(5) and regulation 7: *Hussain v SoS for Health* [2020] EWHC 1392 (Admin) (**copy attached**) (to which we return below).
9. **Fifthly**, a specific taskforce was established on 15 May – the Places of Worship Taskforce – which includes leaders and representatives from all the major faiths, including the Archbishop of Canterbury, to assist the Government in developing this phased plan. The Taskforce is currently working on guidance to enable changes to be made as soon as reasonably possible.
10. **Sixthly**, we note the point you make that it was not necessary to close places of worship when many churches were voluntarily closing down, and/or others had adopted various social distancing measures. The Regulations take a general approach to all places of worship as justified by the very important public health objective of protecting life – and thus the issue was wider than just the compliance that could be expected from Church of England churches. As you recognise, some churches may have been voluntarily complying but some were not, and the need for clarity and consistent rules across all places of worship was plainly justifiable in the interests of protecting public health given the grave risks at stake. As to the point about *vires*, this is addressed below. We note that you do not disagree that the measures in place are or were proportionate at the time imposed, but that churches should have been able to adopt them themselves. This goes to demonstrate their proportionality (however imposed or adopted).
11. **Finally**, for all these reasons, we consider that it is clear that any challenge by your clients on the basis the current restrictions breach Article 9 ECHR will fail. The Court will give a wide margin of appreciation to the Secretary of State in a case such as this, as it did in *Hussain*:

“21. In this way, the Claimant questions the Secretary of State’s priorities. Why are matters such as those mentioned above permitted when attendance at a place of worship in fulfilment of a religious obligation is not? While the Secretary of State’s order of priorities is a legitimate matter for public debate, in terms of whether the decision on it contained within the 2020 Regulations is lawful, he must be allowed a suitable margin of appreciation to decide the order in which steps are to be taken to reduce the reach and impact of the restrictions in the 2020 Regulations. What 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.”

12. In rejecting the application for interim relief, the Court i) emphasised that the interference with Article 9 ECHR rights is finite, ii) placed weight on the work of the Taskforce to develop guidance to allow, if possible, communal prayer to be commenced at Stage 3, and iii) noted that the Secretary of State was plainly entitled to take a precautionary stance; and that this was not a case where there was a “*single*

right answer". Thus, Swift J did not think that there was "any realistic likelihood that the Claimant's case on Article 9 will succeed at trial" (see §24).¹

Vires and Church autonomy

13. We note the points you make about Church autonomy, the effects of the Church of England Assembly (Powers) Act 1919 and so on. However:
- a. the concept of what the 'Church' is has clearly evolved since Magna Carta, not least with the Reformation and recognition of the Church of England as the established church in England. The relationship between (a) the Church of England and (b) Parliament, HM Government and the Crown is complex and beyond the scope of this letter for present purposes.
 - b. The critical point is that it is clear that Parliament can legislate for Church of England matters, most recently having done so in section 84 of the Coronavirus Act 2020. As a matter of constitutional law, Parliament remains sovereign.
 - c. There is thus no constitutional bar on what has been done under the Public Health Act (Control of Diseases) Act 1984 and the Regulations in public health terms in relation to Church of England premises. Indeed, there would be obvious and stark difficulties both in Article 9 (and Article 14) ECHR terms (in respect of which all religious beliefs are to be treated as equally valid and given equal respect), and similarly in constitutional terms, associated with the points you make i.e. that the Church of England should be deemed to be exempt from state public health control, whereas other faiths and religious groups are subject to the relevant restrictions and thus at risk of criminal penalties if they fail to comply.
 - d. Thus the relevant question (on which you agree we should focus) is whether the restrictions breaches the Human Rights Act, which we have addressed above, and in response to which the answer is no.

Conclusions

14. Accordingly, the Secretary of State does not intend to take the action proposed, namely to commit to revoking the relevant restrictions at the next review. There is active work underway to ensure that the restrictions on places of worship are lifted as soon as reasonably possible bearing in mind the risk to life which remains, and based on the scientific evidence as the appropriate approach. That carefully phased plan is taking account of the expertise of and engagement with informed representatives, such as yourselves, and has already produced the plan regarding individual prayer.
15. In light of this, and the ongoing work of the Taskforce, we consider that the legal action you propose is not justified.

ADR proposals

16. Accordingly, we do not consider that it is necessarily pragmatic to proceed with ADR at this juncture. However, that is not to say that officials within the Department of Health and Ministry of Housing, Communities and Local Government are not willing to meet your clients, if you still have concerns. At this stage, we consider it is likely to be more productive for your clients to contribute to the work already underway by the Places of Worship Taskforce. We understand that some signatories to your letter have also contributed already to multi-faith and Christian Roundtable meetings. Therefore, we would encourage you to make contact with the Faith team in MHCLG in order to ensure that your work feeds into this ongoing discussion. However, if you still consider that an ADR meeting remains essential, our clients are willing to consider that also.

Response to requests for information and documents.

¹ Despite this finding, he did grant permission to the Claimants in the particular circumstances of that case. However the position has moved on since, as above. The fact remains that there is no realistic prospect of success in that claim, or in your clients' proposed claim.

17. Advice from SAGE is referred to in the Strategy cited above (see paragraph 8). All SAGE minutes up to 7 May 2020 are available on the gov.uk website. We do not consider that it is necessary or proportionate to provide any further disclosure of scientific or other evidence at this time.

Please acknowledge receipt of this letter.

Yours faithfully

Hannah Sladen

**Hannah Sladen
For the Treasury Solicitor**

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My Ref: MP:MP3515

Date: 15 June 2020

Dear Sir/Madam

Our client - Rev Ade Omooba et al

Your Reference: Z2006192/HHS/H017

We acknowledge receipt of your letter of 11 June 2020. We write this letter in response to your position and to request a meeting at your earliest opportunity, at a time no later than 19 June 2020. Given the urgency of the matter, we ask for acknowledgment of service by return and a substantive response within 2 working days following receipt of this letter.

We would like to further address the following matters in relation to your letter:

The Issues

- (1) We contest the manner in which the issues have been framed in your response and in particular:
 - (a) In relation to paragraph 2(a), the fact that the vast majority of churches have voluntarily shut down has no bearing on either the churches that have not voluntarily shut, or more importantly, on the importance and application of Article 9 to the interference suffered by these churches and their membership by the ongoing restrictions.
 - (b) To clarify our position in relation to church autonomy, which you seek to define in paragraph 2(b) of your response, we wish to make clear that church autonomy is not only protected by the *Magna Carta 1215*, but much more recently by the European Court of Human Rights, including several judgments of the Grand Chamber. To list just a few of those judgments: ECHR, *Hasan and Chaush v. Bulgaria* [GC], No. 30985/96, Reports 2000-XI, 26 October 2000, § 82; ECHR, *Case of Fernandez Martinez v. Spain* [GC], No. 56030/07, Judgment of 12 June 2014; ECHR, *Case of Sindicatul "Pastorul Cel Bun" v. Romania* [GC], No. 2330/09, Judgment of 9 July 2013.



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Response

Using the numbering in your letter.

- (2) **Firstly**, we do not doubt the challenge posed by the Covid-19 pandemic nor its seriousness. Like most everyone in the United Kingdom, our clients grieve for the lives lost and the families affected. Nor do we minimise the need to have in place measures to help prevent the spread of the disease, which we acknowledge is a legitimate aim within the meaning of Article 9(2) of the Convention. Our clients do not challenge the government's aim to protect the health and safety of the population, our client's challenge centres on the Government's interpretation of proportionality, in that your client is of the view that church attendance is not deemed an essential service, and the principle of church autonomy.
- (3) We would ask you to consider the recent South African High Court judgment challenging their coronavirus restrictions, in *Reyno Dawid de Beer et al. v. The Minister of Cooperative Governance and Traditional Affairs*, Case no. 21542/2020. We accept this case is not binding in the UK, nonetheless we suggest that the High Court provided an important interpretive framework when considering proportionality in the context of Covid19. It is clear that the proper standard of review is whether a restriction is constitutionally justifiable, the High Court disapproved of the South African Government's paternalistic approach. We suggest, without proper justification, the UK government's approach is similar to that of the South African governments.
- (4) The *de minimus* disclosure you have provided, is indicative of the paternalistic manner in which these restrictions have been imposed. The public have not been provided with any insight to whether genuine debate and study was undertaken to determine whether shopping at Sainsbury's etc is an inherently safe activity than attending church.
- (5) **Secondly**, while we accept that the right to life is of fundamental importance, it is not the only consideration for the Government. Nor is the margin of appreciation as wide as you suggest. Section 13 of the Human Rights Act provides a higher standard of review for any case which may affect the ability of a church to exercise their Article 9 rights. The European Court of Human Rights has said that the standard of review for Article 9 cases requires a level of "*very strict scrutiny*". ECHR, *Manoussakis and Others v. Greece*, Reports 1996-IV: AFDI, 1996, p. 1354, § 44. Proportionality is judged on rational basis. If a church can be open as a food bank, why cannot it not be opened for prayer for more than one person at a time?
- (6) **Thirdly**, the fact that the restrictions are finite is largely irrelevant to the application of Article 9. A public authority either disproportionately, and therefore unlawfully, interferes with Article 9, or it does not. The length of time the interference takes place has no bearing on whether the Convention rights of churches and their members is violated. Our clients clearly understand the current restrictions apply to all religions and places of worship, the scope of this complaint is limited to the standing which they have, which is as leaders of Christian churches. However, that is irrelevant. Our clients have never claimed that your client's acts were limited to churches. It maybe that your actions unlawful actions extend much further than just the churches.



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- (7) **Fourthly**, given that your client has placed great weight on the scientific advice received from SAGE, this therefore falls to be disclosed. In any event, with the appropriate social distancing measures in place, and a limitation on the total number of people to be admitted to a church building, there is no reason why churches cannot open forthwith. Social distancing is perfectly possible in the vast majority of church buildings in the country.
- (8) **Fifthly**, we note your comments in relation to the taskforce. Our clients do not believe that the taskforce adequately represents the interests of much of Christianity in the church, in particular the growing churches and the BAME churches. Our clients would ask you to invite suitable representatives onto this taskforce that represent such interests.
- (9) **Sixth and Seventhly**, your response has failed to take into account the importance of freedom of religion to the life of a believer. *Cf. Hasan and Chaush v. Bulgaria* [GC], application no. 30985/96, judgment of 26 October 2000, §62. Article 9 is the only right which recognises the transcendent, making participation in the life of a church community wholly different than secular activities such as going to a gardening centre. Given this fact, as well as the emotional and psychological benefits of being part of a church community, church attendance should be viewed as essential.
- (10) We note that Swift J, in *Hussain*¹, decided only to reject the claimant's application for interim relief, but otherwise granted permission for judicial review. There is no indication in the judgment that the court had any scientific evidence before it when determining that church attendance was qualitatively more dangerous than going to a garden centre. The quote from the judgment you provide also omits the important qualifying phrase: "*it is possible to recognise...*", which clearly shows that this is obiter dicta and not a finding of fact.
- (11) As stated at the outset of this response, we believe that you have mischaracterised our position concerning the *Magna Carta 1215*. There has not been Government interference of the present nature for c.800 years. In any event, whether the relationship between the church and the government has evolved over time not germane given that the European Court have repeatedly held that the right to manifest one's belief in community is sacrosanct. In *Metropolitan Church of Bessarabia v Moldova*, the Court held that: "*the right of believers to freedom of religion, which includes the right to manifest one's religion in community with others, encompasses the expectation that believers will be allowed to associate freely, without arbitrary state intervention.*" ECHR, *Metropolitan Church of Bessarabia v. Moldova*, no. 45701/99, ECHR Reports 2001-XII, 13 December 2001, § 118.
- (12) Therefore, any constitutional justification on restrictions of freedom of religion must also take into account the importance of this principle, together with the heightened level of scrutiny enjoyed under Article 9. The term 'necessary', in relation to proportionality, does not have the flexibility of such expressions as 'useful' or 'desirable'. *Svyato-Mykhaylivska Parafiya v. Ukraine*, App. No. 77703/01 § 116 (Eur. Ct. H.R. June 14,

¹ [2020] EWHC 1392 (Admin)



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2007)². If there are less restrictive means of promoting health while at the same time respecting freedom or religion, they should be utilised. The possibility of some churches might not respect social distancing measures, against whom appropriate law enforcement measures could be taken, should not affect the rights of churches willing to follow the appropriate health measures. Similarly, the government is not proposing that shops will be preventing from reopening next week for fear that a few may breach the rules.

ADR Proposals

(13) Given the above, we make the following requests:

- (a) For the sake of transparency and to support your position that you are acting constitutionally justifiably, that our request for information and documents be reconsidered.
- (b) That an ADR meeting be convened at the earliest opportunity with the attendance of all our clients (should they wish to attend) and their legal representatives, to prevent the effluxion of time making the point of the meeting moot and at the very latest by 19 June 2020 4pm.

Yours faithfully



Andrew Storch solicitors

² <http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-81067>



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19 June 2020

Dear Sirs

Pre-Action Protocol Correspondence- Rev. Ade Omooba et al

We write to invite all of the claimants to a roundtable meeting at 2pm on Wednesday 24 June 2020. This will be hosted by Miriam Hodgson, Deputy Director for Faith, Integration and Communities at MHCLG. This meeting is part of a series of roundtable meetings allowing our clients an opportunity to discuss the reopening of places of worship and associated guidance and to listen to views on future easements as part of phase 3 of Government's Strategy Our Plan to Rebuild: The UK Government's COVID-19 Recovery Strategy'. Please advise the best way for our clients to contact the claimants to arrange the logistics of the meeting- the meeting will take place on Zoom. For the avoidance of doubt, there will be no lawyer participation at this meeting.

We will endeavour to respond to the substantive points raised in your letter dated 15 June 2020 by the end of next week.

Finally, we note that we have also received two reports under cover of email dated 18 June 2020, please confirm if you are also intending for us to comment on the reports.

Yours faithfully

Hannah Sladen

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SW1H 9GL**

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DX 123243, Westminster 12 www.gov.uk/gld

**Your ref: MP:MP3515
Our ref: Z2006192/HHS/HOI7**

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Your ref: MP:MP3515
Our ref: Z2006192/HHS/HOI7

23 June 2020

Dear Sirs

Pre-Action Protocol Correspondence- Rev. Ade Omooba et al

Further to our correspondence last week, officials have arranged to hold an online roundtable meeting with your clients this week to discuss the reopening of places of worship and associated guidance. That meeting had been scheduled for 2pm on Wednesday 24 June 2020.

As you know, our clients are anxious to ensure that the discussions with your clients are as constructive as possible. They have now advised me that due to ongoing discussions within Government a short delay in the timing of meeting would be very helpful in order to ensure that the dialogue is as productive as possible. I am therefore writing to ask if your clients would be willing to agree to reschedule the roundtable until 12 on 26 June.

If this is acceptable, please let me know as soon as possible. And as requested in my earlier letter I would also be grateful for the contact addresses of clients attending so that details of the zoom meeting can be forwarded.

Yours faithfully

Hannah Sladen

**Hannah Sladen
For the Treasury Solicitor**

D 0207 210 3439
F 0207 210 3480
E Hannah.Sladen@governmentlegal.gov.uk

IN THE HIGH COURT OF JUSTICE
QUEENS BENCH DIVISION
ADMINISTRATIVE COURT
APPLICATION FOR PERMISSION FOR JUDICIAL REVIEW
BETWEEN:

Her Majesty the Queen
(on the application of Rev. Ade Omooba et al.)

Claimants

-v-

Secretary of State for Health and Social Care

Defendant

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Judicial Review

Application for urgent consideration

This form must be completed by the Claimant or the Claimant’s advocate if exceptional urgency is being claimed and the application needs to be determined within a certain time scale.

The claimant, or the claimant’s solicitors must serve this form on the defendant(s) and any interested parties with the N461 Judicial review claim form.

To the Defendant(s) and Interested Party(ies) Representations as to the urgency of the claim may be made by defendants or interested parties to the relevant Administrative Court Office by fax or email:-

For cases proceeding in

In the High Court of Justice Administrative Court	
Claim No.	
Claimant(s) <i>(including ref.)</i>	R (Rev Ade Omooba et al)
Defendant(s)	Secretary of State for Health and Social Care
Interested Party(ies)	

London	Fax: 020 7947 6802 email: administrativecourtoffice.generaloffice@hmcts.x.gsi.gov.uk
Birmingham	Fax: 0121 250 6730 email: administrativecourtoffice.birmingham@hmcts.x.gsi.gov.uk
Cardiff	Fax: 02920 376461 email: administrativecourtoffice.cardiff@hmcts.x.gsi.gov.uk
Leeds	Fax: 0113 306 2581 email: administrativecourtoffice.leeds@hmcts.x.gsi.gov.uk
Manchester	Fax: 0161 240 5315 email: administrativecourtoffice.manchester@hmcts.x.gsi.gov.uk

You must complete sections 1 to 5 and attach a draft order.

SECTION 1 Reasons for urgency

The interference with the Convention rights of believers has been serious and took place at a mass scale. The fact that the restrictions will ultimately be lifted should not distract from the seriousness of the ongoing breach of Article 9.

The Government’s announcements at present do not even include an indication as to when the ban on church services and rites may be lifted or relaxed.

The serious and ongoing breach of Article 9 has to be remedied as a matter of urgency.

SECTION 2 Proposed timetable

2.1 How quickly do you require the application (Form N463) to be considered?

This will determine the timeframe within which your application is referred for consideration.

- a) Immediately (**within 3 days**) – indicate in hours (eg. 2 hours, 24 hours etc.) Hours
- b) Urgently (**over 3 days**) – indicate in days (eg. 4 days, 6 days etc.) Days

2.2 Please specify the nature and timeframe of consideration sought.

- a) **Interim relief** is sought and the application for such relief should be considered within Hours/Days
- b) **Abridgement of time for AOS** is sought and should be considered with ~~Hours~~/Days
- c) **The N461 application for permission** should be considered within ~~Hours~~/Days
- d) **If permission for judicial review is granted**, a substantive hearing is sought by Date

SECTION 3 Justification for request for immediate consideration

Date and time when it was first appreciated that an immediate application might be necessary.

Date Time

Please provide reasons for any delay in making the application.

The Claimants bring this claim with great reluctance, having made extensive efforts to work constructively with the Government to achieve a mutually acceptable compromise, including under the pre-action protocol and via the government-sponsored 'taskforce' and roundtable' processes. Regrettably, at the end of the 3-months time limit, this claim still appears necessary.

The Claimant's cooperative approach is commendable, and litigants should not be discouraged from taking it by a refusal of expedition due to a delay of this nature. The hopes that a dialogue would lead to a reasonably speedy resolution have proved to be wrong. However, the serious and ongoing breach of Article 9 has to be remedied as a matter of urgency.

What efforts have been made to put the defendant and any interested party on notice of the application?

A detailed pre-action letter was sent to the Government Legal Department on 28 May 2020.
A full response was received on 11 June 2020.
A further letter was sent on behalf of the Claimants on 15 June 2020.

SECTION 4 Interim relief (state what interim relief is sought and why in the box below)

A draft order must be attached.

SECTION 5 Service

A copy of this form of application was served on the defendant(s) and interested parties as follows:

Defendant

by fax machine to time sent
Fax no. time

by handing it to or leaving it with
name

by e-mail to
e-mail address

Date served
Date

Interested party

by fax machine to time sent
Fax no. time

by handing it to or leaving it with
name

by e-mail to
e-mail address

Date served
Date

I confirm that all relevant facts have been disclosed in this application

Name of claimant's advocate
name

Claimant (claimant's advocate)
Sig

Judicial Review Claim Form

Notes for guidance are available which explain how to complete the judicial review claim form. Please read them carefully before you complete the form.

In the High Court of Justice
Administrative Court

Help with Fees - Ref no. (if applicable) **H W F** - [] [] [] - [] [] []



<i>For Court use only</i>	
Administrative Court Reference No.	
Date file	

Is your claim in respect of refusal of an application for fee remission? Yes No

SECTION 1 Details of the claimant(s) and defendant(s)

Claimant(s) name and address(es)

name
Rev. Ade Omooba and 24 others (see attached list)

address

Telephone no. Fax no.

E-mail address

Claimant's or claimant's legal representatives' address to which documents should be sent.

name
Andrew Storch Solicitors

address
Citygate
95 Southampton Street
Reading,
RG1 2QU

Telephone no. Fax no.

E-mail address
@andrewstorch.co.uk

Claimant's Counsel's details

name
Michael Phillips

address
Andrew Storch Solicitors
Citygate
95 Southampton Street
Reading, RG1 2QU

Telephone no. Fax no.

E-mail address
@andrewstorch.co.uk

1st Defendant

name
Secretary of State for Health and Social Care

Defendant's or (where known) Defendant's legal representatives' address to which documents should be sent.

name
Government Legal Department

address
102 Petty France
Westminster
SW1H 9GL

Telephone no. Fax no.

E-mail address
newproceedings@governmentlegal.gov.uk

2nd Defendant

name

Defendant's or (where known) Defendant's legal representatives' address to which documents should be sent.

name

address

Telephone no. Fax no.

E-mail address

SECTION 2 Details of other interested parties

Include name and address and, if appropriate, details of DX, telephone or fax numbers and e-mail

name	
address	
Telephone no.	Fax no.
E-mail address	

name	
address	
Telephone no.	Fax no.
E-mail address	

SECTION 3 Details of the decision to be judicially reviewed

Decision: Health Protection (Coronavirus, Restrictions) England Regulations 2020, reg. 5(5), reg. 7. Our plan to rebuild: The UK Government's COVID-19 recovery strategy, dated May 2020. See further the attached Statement of facts and grounds
Date of decision: 24 March 2020

Name and address of the court, tribunal, person or body who made the decision to be reviewed.

name The Rt. Hon. Matt Hancock The Secretary of State for Health and Social Care

address Department of Health and Social Care 39 Victoria Street London SW1H 0EU
--

SECTION 4 Permission to proceed with a claim for judicial review

I am seeking permission to proceed with my claim for Judicial Review.

Is this application being made under the terms of Section 18 Practice Direction 54 (Challenging removal)?

Yes No

Are you making any other applications? If Yes, complete Section 8.

Yes No

Is the claimant in receipt of a Civil Legal Aid Certificate

Yes No

Are you claiming exceptional urgency, or do you need this application determined within a certain time scale? If Yes, complete Form N463 and file this with your application

Yes No

Have you complied with the pre-action protocol? If No, give reasons for non-compliance in the box below.

Yes No

Have you issued this claim in the region with which you have the closest connection? (Give any additional reasons for wanting it to be dealt with in this region in the box below). If No, give reasons in the box below.

Yes No

Does the claim include any issues arising from the Human Rights Act 1998?

If Yes, state the articles which you contend have been breached in the box below.

Yes

No

Article 9

SECTION 5 Detailed statement of grounds

set out below

attached

SECTION 6 Aarhus Convention claim

I contend that this claim is an Aarhus Convention claim

Yes

No

If Yes, indicate in the following box if you do not wish the costs limits under CPR 45.43 to apply.

If you have indicated that the claim is an Aarhus claim set out the grounds below, including (if relevant) reasons why you want to vary the limit on costs recoverable from a party.

SECTION 7 Details of remedy (including any interim remedy) being sought

- (1) In relation to Regulation 5(5), a quashing order; alternatively, a declaration and/or a mandatory order to amend.
- (2) In relation to Regulation 7, a declaration that it does not apply to church services and rites; and/or a mandatory order or an injunction to amend the Regulation.
- (3) In relation to 'the Strategy' and 'the failure to give assurances', a mandatory order and/or a declaration.
- (4) Further and other relief
- (5) Costs

SECTION 8 Other applications

I wish to make an application for:-

To expedite the claim (please see paras 78-81 of the attached Statement of facts and grounds)

SECTION 9 Statement of facts relied on

Please see attached

Statement of Truth

I believe (The claimant believes) that the facts stated in this claim form are true.

Full name Michael Phillips

Name of claimant's solicitor's firm Andrew Storch Solicitors

Signed  _____ Position or office held Consultant
Claimant (s solicitor) (if signing on behalf of firm or company)

SECTION 10 Supporting documents

If you do not have a document that you intend to use to support your claim, identify it, give the date when you expect it to be available and give reasons why it is not currently available in the box below.

Please tick the papers you are filing with this claim form and any you will be filing later.

- | | | |
|---|-----------------------------------|--|
| <input type="checkbox"/> Statement of grounds | <input type="checkbox"/> included | <input checked="" type="checkbox"/> attached |
| <input type="checkbox"/> Statement of the facts relied on | <input type="checkbox"/> included | <input checked="" type="checkbox"/> attached |
| <input type="checkbox"/> Application to extend the time limit for filing the claim for | <input type="checkbox"/> included | <input type="checkbox"/> attached |
| <input type="checkbox"/> Application for directions | <input type="checkbox"/> included | <input checked="" type="checkbox"/> attached |
| <input checked="" type="checkbox"/> Any written evidence in support of the claim or application to extend time | | |
| <input type="checkbox"/> Where the claim for judicial review relates to a decision of a court or tribunal, an approved copy of the reasons for reaching that decision | | |
| <input checked="" type="checkbox"/> Copies of any documents on which the claimant proposes to rely | | |
| <input type="checkbox"/> A copy of the legal aid or Civil Legal Aid Certificate <i>(if legally represented)</i> | | |
| <input checked="" type="checkbox"/> Copies of any relevant statutory material | | |
| <input checked="" type="checkbox"/> A list of essential documents for advance reading by the court <i>(with page references to the passages relied upon)</i> | | |
| <input type="checkbox"/> Where a claim relates to an Aarhus Convention claim, a schedule of the claimant's significant assets, liabilities, income and expenditure. | <input type="checkbox"/> included | <input type="checkbox"/> attached |

If Section 18 Practice Direction 54 applies, please tick the relevant box(es) below to indicate which papers you are filing with this claim form

- | | | |
|--|-----------------------------------|-----------------------------------|
| <input type="checkbox"/> a copy of the removal directions and the decision to which the application relates | <input type="checkbox"/> included | <input type="checkbox"/> attached |
| <input type="checkbox"/> a copy of the documents served with the removal directions including any documents which contains the Immigration and Nationality Directorate's factual summary of the case | <input type="checkbox"/> included | <input type="checkbox"/> attached |
| <input type="checkbox"/> a detailed statement of the grounds | <input type="checkbox"/> included | <input type="checkbox"/> attached |

Reasons why you have not supplied a document and date when you expect it to be available:-

Signed _____ Claimant ('s Solicitor) _____

IN THE HIGH COURT OF JUSTICE

QUEENS BENCH DIVISION

ADMINISTRATIVE COURT

APPLICATION FOR PERMISSION FOR JUDICIAL REVIEW

BETWEEN:

HER MAJESTY THE QUEEN

(ON THE APPLICATION OF REV. ADE OMOOBA ET AL.)

Claimants

-v-

SECRETARY OF STATE FOR HEALTH AND SOCIAL CARE

Defendant

FULL LIST OF CLAIMANTS

Claimant No.	Name	Title	Address	Postcode	Email
1	Rev. Ade Omooba MBE	Co-Chair, National Church Leaders Forum - NCLF, A Black Christian Voice	[REDACTED] [REDACTED]	[REDACTED] [REDACTED]	[REDACTED] [REDACTED]
2	Dr David Muir	Co-Chair, National Church Leaders Forum - NCLF, A Black Christian Voice	[REDACTED] [REDACTED]	[REDACTED] [REDACTED]	[REDACTED] [REDACTED]
3	Rev. Derek Andrews	Pastor, The Presence of God Ministries	[REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED]	[REDACTED]	[REDACTED] [REDACTED] [REDACTED]

4	Pastor Ayo Akinsanya	Deeper Life Bible Church Liverpool	[REDACTED] [REDACTED]	[REDACTED]	[REDACTED]
5	Moni Akinsanya	Deeper Life Bible Church Liverpool	[REDACTED] [REDACTED]	[REDACTED]	[REDACTED]
6	Dr Gavin Ashenden	Former Chaplain to the Queen, Former Anglical Bishop	[REDACTED] [REDACTED] [REDACTED]	[REDACTED]	[REDACTED] [REDACTED]
7	Pastor Matthew Ashimolowo	Senior Pastor, Kingsway International Christian Centre, KICC	[REDACTED] [REDACTED] [REDACTED]	[REDACTED] [REDACTED]	[REDACTED] [REDACTED]
8	Bishop Lovel Bent	Presiding Bishop, Connections Trust	[REDACTED] [REDACTED]	[REDACTED] [REDACTED]	[REDACTED] [REDACTED]
9	Rev. Ian Christiansen	AoG UK, Senior Minister, New Life Christian Centre International	[REDACTED] [REDACTED] [REDACTED]	[REDACTED] [REDACTED]	[REDACTED]
10	Chris Demetriou	Senior Pastor, Cornerstone	[REDACTED] [REDACTED] [REDACTED]	[REDACTED] [REDACTED]	[REDACTED] [REDACTED]
11	Professor John Durodola	National Chairman, Overseas Fellowship of Nigerian Christians (OFNC)	[REDACTED] [REDACTED] [REDACTED]	[REDACTED] [REDACTED]	[REDACTED] [REDACTED]
12	Rev. Asif Gill	Senior Leader, Ecclesia International	[REDACTED] [REDACTED] [REDACTED]	[REDACTED] [REDACTED]	[REDACTED] [REDACTED]
13	Dennis Greenidge	Senior Pastor, Worldwide Mission Fellowship	[REDACTED] [REDACTED] [REDACTED]	[REDACTED] [REDACTED]	[REDACTED] [REDACTED]

14	Rev. Alex Gyasi MBE	Convener & Senior Pastor, Kingdom Culture Alliance & Highway of Holiness	[REDACTED] [REDACTED] [REDACTED]	[REDACTED]	[REDACTED] [REDACTED]
15	Rev. Dr David Hathaway D.D.	President, Eurovision Mission to Europe	[REDACTED] [REDACTED]	[REDACTED] [REDACTED]	[REDACTED] [REDACTED]
16	Pastor Thabo Marais	Senior Pastor, Christian Revival Church London	[REDACTED] [REDACTED] [REDACTED]	[REDACTED]	[REDACTED] [REDACTED]
17	Canon Yaqub Masih MBE	Secretary General, UK Asian Christians; Secretary General & Founder, New Horizons	[REDACTED] [REDACTED] [REDACTED]	[REDACTED] [REDACTED]	[REDACTED] [REDACTED]
18	Bishop Michael Nazir-Ali	President, Oxford Centre for Training, Research, Advocacy and Dialogue – OXTRAD	[REDACTED] [REDACTED]	[REDACTED] [REDACTED]	[REDACTED]
19	Rev. Dr Brad Norman	Salvation For The Nations Intl. Churches	[REDACTED] [REDACTED] [REDACTED] [REDACTED]	[REDACTED]	[REDACTED] [REDACTED]
20	Pastor John Quintanilla	Hebron Christian Faith Church, Coventry	[REDACTED] [REDACTED] [REDACTED] [REDACTED]	[REDACTED] [REDACTED]	[REDACTED]
21	Pastor Sally Quintanilla	Hebron Christian Faith Church, Coventry	[REDACTED] [REDACTED] [REDACTED] [REDACTED]	[REDACTED] [REDACTED]	[REDACTED]
22	Pastor Paul Song	London Shepherd Church	[REDACTED] [REDACTED]	[REDACTED] [REDACTED]	[REDACTED] [REDACTED]

			[REDACTED] [REDACTED]		
23	Pastor Kola Taiwo	Senior Pastor, New Wine Church	[REDACTED] [REDACTED] [REDACTED] [REDACTED]	[REDACTED] [REDACTED]	[REDACTED] [REDACTED]
24	Rev. Melvin Tinker	St John Newland	[REDACTED] [REDACTED] [REDACTED]	[REDACTED] [REDACTED]	[REDACTED] [REDACTED]
25	Rev. Keith Waters	New Connexions Church	[REDACTED] [REDACTED] [REDACTED]	[REDACTED]	[REDACTED] [REDACTED]
26	Bishop Alfred Williams BA (Hons), LLB (Hons), LLM (Inter. Business Law), MCI Arb.	Presiding Bishop, Christ Faith Tabernacle International Churches	[REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED]	[REDACTED] [REDACTED]	[REDACTED]

IN THE HIGH COURT OF JUSTICE
QUEENS BENCH DIVISION
ADMINISTRATIVE COURT
APPLICATION FOR PERMISSION FOR JUDICIAL REVIEW
BETWEEN:

HER MAJESTY THE QUEEN
(ON THE APPLICATION OF REV. ADE OMOOBA ET AL.)

Claimants

-v-

SECRETARY OF STATE FOR HEALTH AND SOCIAL CARE

Defendant

STATEMENT OF FACTS AND
GROUNDS FOR JUDICIAL REVIEW

References in square brackets are to the page numbers in the bundle submitted with the Claim Form.

Essential reading: *Statement of facts and grounds [16]; Defendant’s pre-action letter [96]*

Evidence: *Expert report of Dr Martin Parsons [119]; expert report of Ian Blenkarn [142]; supplemental report of Ian Blenkarn [158].*

Introduction

1. The proposed judicial review is against the blanket ‘lockdown’ imposed on all churches by *The Health Protection (Coronavirus, Restrictions) (England) Regulations 2020 (“the Regulations”)* [37], and the failure to prioritise the re-opening of churches as part

of the Government's 'exit strategy'. Specifically, the Claimants challenge the following 'decisions':

(1) **Regulation 5(5)** of *the Regulations*, which provides: "*A person who is responsible for a place of worship must ensure that, during the emergency period, the place of worship is closed, except for uses permitted in paragraph (6).*"

(2) **Regulation 7**, insofar as it applies to church services and rites. Regulation 7(1) provides:

(1) During the emergency period, unless paragraph (2) applies, no person may participate in a gathering which takes place in a public or private place—

(a) outdoors, and consists of more than six persons, or

(b) indoors, and consists of two or more persons.

Para (2) then provides a list of exceptions, none of which apply to church services or rites.

(3) *Our plan to rebuild: The UK Government's COVID-19 recovery strategy*, dated May 2020, insofar as it applies to places of worship ("**the Strategy**") [42].

(4) Failure to provide assurances that the restrictions on church activities will be relaxed and/or lifted as a matter of priority as part of the Government's 'lockdown exit strategy'. ("**Failure to give assurances**")

2. The Claimants bring this claim with great reluctance, having made extensive efforts to work constructively with the Government to achieve a mutually acceptable compromise, including under the pre-action protocol [96] and via the government-sponsored 'taskforce' and 'roundtable' processes. Regrettably, at the end of the 3-months time limit, this claim still appears necessary. Having preserved their position by filing this claim, the Claimants will continue their efforts to resolve the issues through constructive dialogue with the Government.

3. In summary, the Claimant's case is that the relevant Regulations are:

- (1) disproportionate in the circumstances where the overwhelming majority of churches had closed down voluntarily in response to the Coronavirus pandemic, and the remainder had introduced far-reaching precautions against infection; and
 - (2) *ultra vires* the Health Secretary's powers under *Public Health (Control of disease) Act 1984*.
4. The Claimants do not for a moment suggest that churches should have continued to operate as before notwithstanding the Coronavirus epidemic. Rather, the Claimants' concern is that, as a matter of principle, the imposition of appropriate anti-epidemic measures in the Church is ultimately a matter for Church authorities rather than secular state authorities.

The claimants

5. The Regulations obviously affect thousands of religious ministers and congregations in England. The Claimants are a group of Christian leaders, bishops and ministers, who bring this claim on behalf of themselves and also on behalf of their congregations and religious communities. Collectively, they represent many thousands of Christians.
6. Each of the individual Claimants is briefly introduced below. The first Claimant, Rev. Ade Omooba MBE, has been nominated with general consensus by the Claimants, as the lead Claimant. The other Claimants are listed below in alphabetical order.
7. **Rev. Ade Omooba MBE** is Co-Chair of *National Church Leaders Forum – NCLF, A Black Christian Voice*. He has been in full time social entrepreneurship and Christian ministry in the UK for over 32 years. He is a co-founder of several organisations/groups in addition to NCLF, namely; the Christian Victory Group - ICARE Projects, through which he has helped set up over 100 Social Action/Inclusion projects in the last 28 years; Christian Concern (CC), a UK Lobby/Campaign Group on Public Policy, and the Christian Legal Centre (CLC) addressing Christian liberty cases. He is a member of the leadership team of *HOPE Together* which seeks to resource and equip the Church for doing mission locally; a member of the Apostolic Team of Connection Trust, a global network of churches; an oversight member of the New Life Assembly. He was awarded an MBE in the Queen's New Year's Honours List 2019.
8. NCLF works closely with African and Caribbean churches, representing their voice and concerns to government and policy makers. Its 2015 *Black Church manifesto* was

endorsed by the government and the main political parties; there was a commitment by government to work with NCLF and Afro-Caribbean churches for the common good. NCLF believes this commitment has not been honoured in the present ‘lockdown’ of churches.

9. **Pastor Ayo Akinsanya** (Pastor/Regional Overseer) of Deeper Christian Life Ministry (Merseyside/Wales Region) and pastor of Deeper Life Bible Church, Liverpool, based in Toxteth. The church has about 300 members with a mix of children, youth, adults and seniors.
10. **Moni Akinsanya**, is the Regional Women's Leader of Deeper Christian Life Ministry.
11. **Rev. Derek Andrews** is the senior pastor of *The Presence of God Ministries* (TPOGM) based in Kerseley, Coventry. He has been serving in church ministries and communities for over 30 years. He has been a support worker in the community both in London and Coventry for over 24 years. He was officially ordained by *Apostolic Pastoral Congress*, as a reverend and an overseer for the Midlands Diocese under APC. TPOGM is a member of *Churches in Communities International*.
12. **Dr. Gavin Ashenden** is a former Honorary Chaplain to the Queen (2008-2017), former Anglican Bishop, and now a Roman Catholic theologian.
13. **Pastor Matthew Ashimolowo** is the Senior Pastor of Kingsway International Christian Centre (KICC). KICC is an Independent Charismatic Pentecostal Church with over 25 branches in the United Kingdom. It represents over 6,000 people.
14. **Bishop Lovel Bent** is the Presiding Bishop of the *Connections Trust*. Tens of thousands of people across the world have benefited from their international charitable work supporting churches, schools, orphanages, disaster relief, etc. Around 20 church communities in the UK are associated with the Connections Trust, and about the same number contribute financially to its charitable work. Its continuation depends on those churches. It runs food banks and other charitable projects in UK communities. Bishop Lovel Bent is also the founder and overseer of *New Life Assembly UK* with seven branches in the UK with approximately 1,500 members and NLA branches in Jamaica and the Philippines.
15. **Rev. Ian Christensen** is a Senior Minister of *New Life Christian Centre International* (NLCCI), and a Senior Leader in *Assemblies of God in Great Britain* (AoG UK). He is also an author with an International Travelling Ministry and a TV presenter on Sky TV.

NLCCI includes a multicultural English-speaking Church as well as a Brazilian Church and a Hindi speaking Indian church,. NLCCI serves around 400 people from its building with several links and projects within the local community.

16. **Chris Demetriou** is the Senior Pastor and Founder of Cornerstone Church, Walton-on-Thames, Surrey. Cornerstone Ministries is a registered charity and has been in existence for over 30 years, the church has a membership of 600 people representing 41 nations of many colours and creeds. In addition to their successful Food Bank and other effective community programs aimed at helping those in need, the ministry has a radio station and a television network that communicates daily with over eighty thousand people (most of whom are in the UK).
17. **Professor John Durodola** is the National Chairman of Overseas Fellowship of Nigerian Christians (OFNC). OFNC was set up in the 1960s and now has a membership comprising of over 750 people of all age groups and walks of life in 23 cities in the UK. It is a non-denominational organisation of predominantly but not exclusively Nigerian members, drawn from over 250 churches around the UK. It encourages its members to be active participants in their own churches, while meeting at branch and national level OFNC events.
18. **Rev. Asif Gill** is a founder and a senior leader of *Ecclesia International*, since 2004. He was ordained by *Apostolic Pastoral Congress* (APC) and was appointed as an overseer for Midlands Diocese under APC. *Ecclesia International* is a church ministry that has been effectively engaged with various communities at several levels and has a strong network of pastors and organisations.
19. **Dennis Greenidge**, Senior Pastor, Worldwide Mission Fellowship based in West Norwood, London, a fast growing multicultural, multiracial church with members from over 20 nations.
20. **Rev. Alex Gyasi MBE**, is the Senior Pastor of the *Highway of Holiness Church*, and the CEO of the Highway House shelter in Tottenham which has provided daily shelter for over 1,000 homeless people for the past eleven years. He is also the convener of *The Kingdom Culture Alliance*, which is a forum for about 80 independent and denominational church leaders in the UK.
21. **Rev. Dr David Hathaway D.D.** is the President of *Eurovision Mission to Europe*. The organisation represents over 50,000 Christians across every denomination in the U.K.

and internationally, countless thousands across Europe and the former Soviet Countries. Dr Hathaway has worked personally with the churches in the former Soviet Union for 60 years, 30 under communism (1961 – 1991) then 30 years since. He is gravely concerned about the parallels between the developments in the Soviet Bloc and the recent developments in the UK.

22. **Pastor Thabo Marais** is the Senior Pastor of Christian Revival Church London - a non-denominational Pentecostal, charismatic and multicultural church that is part of an international movement called Christian Revival Church (CRC). CRC International is led by its founder and visionary, Pastor At Boshoff, who pastors the fastest growing multicultural church in South Africa today. Since Pastor Thabo's appointment as senior pastor of CRC London in 2009, the church has grown year upon year from 300 people to over 3,000 people. It currently has 3 church campuses in and around London with over 1,500 people attending Sunday services. It has planted vibrant CRC churches in the north of England in Manchester, Scotland in Edinburgh, Netherlands in Amsterdam, Poland, Pakistan, India & Namibia in the past 8 years. CRC London has a multicultural membership representing the cosmopolitan metropolis of London, including over 50 different nationalities.
23. **Canon Yaqub Masih MBE** is the Secretary General of *UK Asian Christians Fellowship*, and represents several churches in the UK.
24. **Dr David Muir** is a Co-Chair (with the First Claimant, Rev. Ade Omooba) of National Church Leaders Forum – NCLF, A Black Christian Voice. He is a Senior Lecturer in Public Theology at the University of Roehampton (UoR) and director of the Whitelands Centre for Pentecostalism & Community Engagement. Before joining UoR he was executive director of Public Policy & Public Theology at the Evangelical Alliance. He was an independent adviser to the Home Secretary and Police Minister from 2003-2008, as well as a member of the Advisory Board for Naturalisation and Integration. He is a member of the Kirby Laing Institute for Christian Ethics (Cambridge University) and a UK board member of the Transatlantic Roundtable on Religion and Race (TRRR).
25. **Bishop Michael Nazir-Ali** is the President of Oxford Centre for Training, Research, Advocacy and Dialogue (OXTRAD). He was the Bishop of Rochester, in the Church of England, for fifteen years and prior to that Bishop of Raiwind in Pakistan and

General Secretary of the Church Mission Society. As Bishop of Rochester, he had responsibility for 264 churches, around 100 schools and chaplaincies in schools, hospitals, prisons and industry.

26. **Rev. Dr Brad Norman**, Salvation for the Nations Intl. Churches. Herts International Church (HIC) is a multi-national, multi-generational church with over 40 different nations represented, based in North West London. It has approximately 1,200 people on its register. In addition to Sunday services, it runs many community programmes, including a Food Bank which supports over 100 families a week. It has initiated a Schools Programme, called Assemble Angels, which supports over 15,000 children a term, running school assemblies, individual support for students who have been excluded as well as a programme that prepares pupils for their move to secondary school. It also runs two, fully accredited, Theological Seminaries on site.
27. **Pastor John Quintanilla and Pastor Sally Quintanilla** are the pastors of *Hebron Christian Faith Church*, Coventry - a modern Pentecostal multi-cultural church with a congregation of 250 people.
28. **Pastor Paul Song** is the pastor of *London Shepherd Church*, a Pentecostal Christian AoG church in New Malden, South London.
29. **Pastor Adekola Taiwo** is the Senior Pastor of *New Wine Church*, headquartered in Woolwich, London, and with branches in other parts of the UK. It has over two thousand members, and has served many more thousands of people in local communities for over 26 years. It has been given a given a community leadership award by the London Borough of Greenwich in 2017.
30. **Rev. Melvin Tinker** is the vicar of St John's Church in Hull, International Speaker and Author. St John's Church, Church of England, Hull (a city which has the lowest church attendance in the country) has over 500 people in attendance on a normal Sunday with a racially diverse and socially mixed congregations - white working class, factory workers, teachers, doctors, university lecturers, over 50 Congolese, Chinese and a large number of Iranians. A large proportion of the congregation is under 40.
31. **Rev. Keith Waters** is an ordained minister and the pastor of *New Connexions Church*, Ely. It is a relatively small church of about 40 people, with a congregation from a wide variety of backgrounds and aged from very young children to 90+. It is representative of many churches of similar size across the UK.

32. **Bishop Alfred Williams**, is the Presiding Bishop of *Christ Faith Tabernacle International Churches* with over 3000 membership, and the President of *Prophetic Voice Ministers Fellowship* consisting of a number of independent churches across U.K. The churches are multicultural and multinational, with majority BME, comprising 65% under 40s.

Churches' response to the Coronavirus epidemic

33. The fact that the Coronavirus epidemic presents a serious threat to public health is not in dispute.

34. The Regulations were made in the circumstances when the vast majority of churches had already adequately responded to the threat of Coronavirus, ranging from drastic anti-infection precautions to (most typically) a voluntary 'lockdown'. For example, the Catholic Bishops announced a suspension of all public acts of worship on 14 March 2020. The Church of England made a similar announcement on 17 March 2020, which envisaged that the churches would only remain open for private prayer. However, the Church of England removed that exception and announced a complete closure of churches on 23 March, in response to the Prime Minister's advice made in the televised address on the same day, and before the Regulations were made.

Church autonomy

35. The principle of Church autonomy is zealously protected in ECHR jurisprudence under Article 9 (see *Metropolitan Church of Bessarabia v. Moldova*, no. 45701/99, ECHR Reports 2001-XII, 13 December 2001, § 118). A public authority may not interfere with the internal workings of a church or religious organization and may not impose rigid conditions on the practice or functioning of religious beliefs. See further: *Serif v. Greece*, No. 38178/97, Reports 1999-IX, 14 December 1999, §§ 51-53; *Manoussakis v. Greece*, No. 18748/91, Reports 1996-IV, 26 September 2000, § 82. So strong is this principle that it has been upheld three times by the Grand Chamber of the European Court of Human Rights. ECHR, *Hasan and Chaush v. Bulgaria* [GC], No. 30985/96, Reports 2000-XI, 26 October 2000, § 82; ECHR, *Case of Fernandez Martinez v. Spain* [GC], No. 56030/07, Judgment of 12 June 2014; ECHR, *Case of Sindicatul "Pastorul Cel Bun" v. Romania* [GC], No. 2330/09, Judgment of 9 July 2013. Most recently the Court again upheld the same principle regarding respect for the internal workings of

religious organizations in a judgment against Hungary. ECHR, *Case of Karoly Nagy v. Hungary*, No. 56665/09, Judgment of 1 December 2015.

36. In English law, the principle of church autonomy is of a much greater antiquity, and has at least as important a constitutional status as under the Convention. It is enshrined in c. 1 of Magna Carta 1297. The martyrdom of Thomas Beckett for that very principle, is of enormous significance in the Church of England tradition. The Acts of Supremacy were necessary to establish the status of the Monarch as the Supreme Governor of the Church of England precisely because ecclesiastical authority is recognised by the common law as distinct from the temporal authority. Henry VIII could dissolve monasteries only after, and because, he had assumed the supreme ecclesiastical office; the measure would have been *ultra vires* but for the temporal powers of the Crown.
37. The 1559 Church-State Settlement still has legal force and is specifically affirmed by every English sovereign in their coronation oath. This sets out separate spheres for church and state. Broadly speaking, the state may not interfere in either the interpretation of Scripture or the sacraments i.e. in effect worship, while the church must be subject to the law in other matters. The government of the realm and the government of the Church were always distinct in the UK Constitution, despite the same Monarch being ultimately at the head of both.
38. *Articles of Religion 1562* provide in Article 37: “*Where we attribute to the King’s Majesty the chief government... we give not to our Princes the ministering either of God’s Word, or of the Sacraments*”. The Church government is subject to its own constitutional law, currently governed by the *Church of England Assembly (Powers) Act 1919*.
39. The Claimants rely on the *expert report of Martin Parsons [119]* explaining the history of the principle and the interplay between its theological and legal application.
40. Whatever difficulties may sometimes arise in drawing a precise boundary between temporal and ecclesiastical matters, there is no doubt, and has never been any doubt, that closure and opening of churches for services and rites is a matter for ecclesiastical authorities and not for temporal ones. The only historical precedent for a ‘lockdown’ of churches similar to the one introduced in the present Regulations, is the suspension of all the church services and sacraments (except baptism) from 23 March 1208 to 1214 pursuant to the Interdict of Pope Innocent III. The services were suspended by the

English bishops pursuant to an Interdict from Vatican. The suspension was expressly against the wishes of the temporal government and contrary to its interests. However, the lawfulness of that suspension was never questioned; nor has it ever been suggested that the temporal government had legal power simply to order a re-opening of churches.

41. Conversely, in the long history of epidemics and anti-epidemic measures in this country, up to and including the Spanish influenza in early 20th century, there is no precedent for state legislation which in any degree prohibits and criminalises church services and/or sacraments.
42. There is no basis for suggesting that this constitutional principle has become obsolete in modern times. On the contrary, the principle has been reinforced by Article 9 of the ECHR and the jurisprudence on Church autonomy, which developed under it. It was further reinforced by s. 13 of the Human Rights Act 1998. Further, under the modern anti-discrimination law, the principle must apply equally to the Church of England and various other churches and denominations.
43. In the circumstances where the Church has responded adequately to the public health threat, there was no lawful basis for the state to interfere with its rights and liberties in this drastic fashion. If it was necessary to supplement the Church self-regulation with any degree of state regulation, that interference had to be proportionate, and confined to exercising the powers which have a proper basis in law. A blanket ban imposed by the state on all church activities (originally with three prescribed exceptions, and now with five such exceptions) does not meet those requirements.
44. While the short-term practical difference between state regulation and church self-regulation may be limited in present circumstances, the principle of Church autonomy is extremely important in the broader constitutional context, and must be protected for the benefit of present and future generations.

Rationale behind the principle

45. The principle identified above is important for the simple reason that a believer's worldview is radically different from a non-believer's worldview. It may seem natural for a temporal authority, well-meaning and intending no disrespect to religion, to see a church service as simply an example of a 'public event' which attracts a peculiar class of persons interested in participating – roughly similar to entertainment. In that

worldview, church services are important for welfare of those who need them, but obviously less important than things like steady food supplies and protection of health.

46. By contrast, in a believer's worldview, church services are part of their means for achieving eternal salvation of the soul, which is infinitely more important than even the survival of the body. The Bible and centuries of tradition, oblige Christians to gather weekly for worship and witness around the Word of God and sacraments; we need one another to flourish in our service to Christ (Ex. 20: 9-11; 1 Cor. 16: 1-2; Heb. 10:24-25; Acts 2:42, 20:7). Neither confessional Christian faith nor the Church as an institution can *faithfully exist* without a Lord's Day gathering. The Church has adhered to that obligation through long periods of persecution, where fulfilling it meant a risk of death at the hands of temporal authorities. The church does not exist by *permission* of the state, for its establishment and rule is found in Jesus Christ himself.
47. This difference of worldviews inevitably entails a difference in priorities, and most importantly, in the underlying criteria. To illustrate the point, the 1208-1214 Papal Interdict made an exception for the sacrament of baptism, since it is considered necessary for the salvation of a soul. By contrast, the present lockdown makes an exception for funerals, because here, the church contributes to what the state sees as an important public function: disposal of dead bodies. The secular authorities did not, and cannot reasonably be expected to, give a similar or indeed any consideration to the salvation of immortal souls.
48. See further the *expert report of Dr Martin Parsons [119]*.
49. The restrictions imposed on the Church activity principally affect the believers. Hence it is important that the decisions about them are taken by believers – not by people who, in their minds and/or as a matter of professional duty, live in a wholly different world. If churches are to be closed, that must not be done by people who may well have never been to a church in their lives, or at least, have little understanding of the role, functioning, and ministries of the church.

Churches in context of the government's wider 'lockdown' policy

50. The Government has taken an extremely wide range of measures to counter the threat of Coronavirus. Virtually all aspects of the society's life have been categorised according to their importance on the one hand, and epidemiological risks on the other.

Restrictions of different severity were accordingly imposed. Very roughly, four different categories may be identified:

- (1) 'Essential' services which have been allowed to remain open throughout the 'lockdown', such as food retailers, off licence shops, pharmacies, and other businesses listed in Part 3 Schedule to the Regulations.
- (2) Services prioritised to resume operations at 'Step 1' in *Our Plan to Rebuild* (e.g. schools and businesses important for the economy, such as construction).
- (3) Services which resume at 'Step 2' (e.g. non-essential retail, cultural and sporting events behind closed doors).
- (4) Services which will not resume until 'Step 3': that includes beauty salons, pubs, cinemas, and indeed churches.

51. At different stages, different levels of restriction apply to each of the different categories.

52. Another important distinction should be drawn between the two principal tools used to implement the anti-epidemic measures. In relation to some aspects of the national life, the government has limited their interference to giving advice or guidance. For example, as part of the latest modification of the Coronavirus policy, the Government has issued guidance documents for public transport, and for businesses to ensure safety at workplace. On the other hand, the Government has chosen to impose some of the other restrictions by means of binding legislation, with a criminal sanction for non-compliance.

53. Within this system, churches have been given the most unfavourable treatment possible. Churches have been placed in the bottom category of the most dangerous and least important services, subjected to severest restrictions for the longest period of time. Those restrictions are imposed by means of formal legislation with a criminal sanction; unlike many other organisations and individuals, churches are not trusted to follow advice.

54. The latter is the principal complaint of the Claimants: if it was appropriate to limit the state intervention to advice in some cases, that is certainly so in the case of the Church, whose independence of the state is protected by a fundamental constitutional principle,

and who had responded to the epidemic sooner, and more effectively, than the government.

55. Alternatively, if the state is entitled to regulate the church services by criminal legislation, the proper place of churches in the list of priorities is higher than at the very bottom.

Ground 1: The principle of church autonomy in domestic law

56. C. 1 of Magna Carta 1297 provides:

FIRST, We have granted to God, and by this our present Charter have confirmed, for Us and our Heirs for ever, that the Church of England shall be free, and shall have all her whole Rights and Liberties inviolable.

57. The principle has always been understood to mean that the Church is to manage its own affairs just as the State manages its own affairs. Church authorities are at least, in principle, as capable as the state authorities in making decisions for themselves and in the interests of their congregations; and it is a constitutional right of the Church to make those decisions without state interference.

58. It is now well established that Magna Carta 1297 is a prime example of a constitutional statute which is not subject to the doctrine of implied repeal: *Thoburn v Sunderland City Council* [2003] QB 151, paras 58-59, *R (Buckinghamshire County Council) v Secretary of State for Transport* [2014] 1 WLR 324, paras 78-79, 206-207; *R(Miller) v Secretary of State for Exiting the EU* [2017] UKSC 5: para 67. It follows that all later statutes (including, most importantly for present purposes, Public Health (Control of Disease) Act 1984) must be interpreted consistently with Magna Carta unless they expressly repeal its provisions. The 1984 Act does not authorise the Secretary of State to exercise his powers in a way which interferes with any of the “Rights and Liberties” of the Church within the meaning of c. 1 of Magna Carta.

59. The legislative powers of Parliament in relation to the Church of England are governed by the Church of England Assembly (Powers) Act 1919. The legislative authorities and procedure established by that Act leaves no constitutional place for an alternative

procedure where a Secretary of State permits or prohibits Church services by statutory instrument made under a different Act.

60. In today's constitutional framework, the same principles apply to non-conformist and other churches outside the ecclesiastical jurisdiction of the Church of England. This is because:

- (1) The meaning of the expression "Church of England" in 1297 was different from the modern meaning. Magna Carta was passed before the series of schisms which separated the modern Church of England from Roman Catholics and various others. Those schisms were ecclesiastical matters of no concern to the state; accordingly, all Christian churches which originate in the Church of England as it was in 1297 are entitled to the protection of Magna Carta.
- (2) In any event, the modern anti-discrimination law (Article 14 ECHR and the Equality Act 2010) prohibits state discrimination on the grounds of religion or belief. It follows that all denominations are entitled to the same constitutional rights as the Church of England.

61. For these reasons, the enabling provisions of the Public Health (Control of Disease) Act 1984 must be interpreted consistently with the wider statutory framework on Church governance, including in particular the Magna Carta and Church of England Assembly (Powers) Act 1919. It is submitted that the 1984 Act does not enable the Defendant to impose, by regulations, a blanket ban on religious services or rites. Such a ban could only be imposed by an express statutory provision, or alternatively, by a voluntary decision of the Church.

Ground 2: Disproportionate interference with Article 9 rights:

(a) generally; and

(b) the principle of Church autonomy

62. It is indisputable that *the Regulations* are a significant interference with freedom of religion and religious assembly and, in particular, the principle of church autonomy. Any justification of that interference is to be assessed under the usual Article 9 principles. Article 15 ECHR gives member-states a right to derogate from the Convention in the event of a national emergency, by giving notice to the Secretary

General of the Council of Europe. However, unlike several other member-states, the United Kingdom has chosen not to avail itself of that right. Therefore, Article 9 applies to the government's anti-Coronavirus measures in the usual way.

63. The forced closure of churches by the state is an extreme interference with Article 9 rights. That extremity is not mitigated by the exceptions in Reg. 5(6), which provides (as amended):

(6) A place of worship may be used—

(a) for funerals,

(b) to broadcast an act of worship, whether over the internet or as part of a radio or television broadcast, F8...

(c) to provide essential voluntary services or urgent public support services (including the provision of food banks or other support for the homeless or vulnerable people, blood donation sessions or support in an emergency)

(d) for early years childcare provided by a person registered on the Early Years Register under Part 3 of the Childcare Act 2006.

(e) for private prayer by individuals, and for these purposes, "private prayer" means prayer which does not form part of communal worship.

64. Paras (a)-(d) allow the churches to remain open only for social welfare purposes. Far from mitigating the interference with church autonomy, this amounts to an enforced secularization of the purpose of churches. The state has usurped the right to prioritise certain aspects of the church life over others using its own criteria, and identified the spiritual aspects as dispensable. Para (e) is of minimal effect on Article 9 rights of Christian believers, and indeed illustrates the inadequacy of such micro-management of church life by secular authorities. The Christian faith places great significance both on (a) individual prayer and (b) the ability to gather for church services; and very little significance on the ability to attend a particular building for an individual prayer. The addition of para (e) is of negligible significance in terms of mitigating the interference with Article 9 rights. See further *the expert report of Martin Parsons* at [125 - 130].

65. Such a far-reaching and large-scale intervention may only be justified by the most compelling scientific evidence of a resulting benefit to public health. The broader the

impact of the Regulations on the Convention rights, the more compelling must be the justification: *R (on the application of UNISON) v Lord Chancellor*.

66. For interference with freedom of worship to be legitimate, the interference in question must be *necessary in a democratic society*. The term ‘necessary’ does not have the flexibility of such expressions as ‘useful’ or ‘desirable’. *Svyato-Mykhaylivska Parafiya v. Ukraine*, App. No. 77703/01 § 116 (Eur. Ct. H.R. June 14, 2007). Fundamentally, only convincing and compelling reasons can justify restrictions on a fundamental Convention freedom, see *Wingrove v. United Kingdom*, 1996-V Eur. Ct. H.R. 1937, 1956.
67. Proportionality in relation to Article 9, and the supervisory authority over any restrictions imposed on the freedom to manifest all of the rights inherent in freedom of religion, call for “*very strict scrutiny*”: ECHR, *Manoussakis and Others v. Greece*, Reports 1996-IV: AFDI, 1996, p. 1354, § 44.
68. Proportionality under the Convention is an objective test for the Court to apply, not for the decision-maker: *R (British and American Tobacco and Others) v Secretary of State for Health* [2016] EWCA Civ 1182. It is for the Defendant to adduce evidence to justify interference as proportionate and necessary.
69. The wholesale manner in which churches were closed is anything but a narrowly tailored means of achieving the Government’s legitimate public health aims. For example (but without limitation), the following less restrictive alternatives were available (individually or in combination):
 - (1) Precautions recommended in the *expert report of Ian Blenkarn [142]* and the *supplemental report of Ian Blenkarn [158]*.
 - (2) Issuing advice to churches without imposing a blanket prohibition by means of binding legislation backed by a criminal sanction. That would have produced substantively similar epidemiological results but avoid a breach of the principle of Church autonomy.
 - (3) Providing for a mechanism for a case-by-case consideration of restrictions on individual places of worship, either by (i) empowering the appropriate authorities (e.g. local authorities or the police) to prohibit gatherings if, and only if, a tangible risk of infection is identified or (ii) enabling individual churches to apply for exemptions.

70. The proportionality of a similar ‘lockdown’ of places of worship was recently considered by the highest Administrative Court in France, the Council of State, in *MW et al.* The decision of the Court with a certified English translation is at [213]. The Court found that the blanket ban on religious services in France was a “serious and manifestly illegal infringement” of the religious rights under Article 9 and other French and international provisions. It is submitted that the reasoning of the French court in that case is unimpeachable.
71. The same issue was analysed by the Federal Constitutional Court of Germany in *F* (1BBQ 44/20), 29 April 2020 [235], a challenge by a Muslim religious association. The Court granted interim relief permitting Friday prayers in a mosque, on the grounds that a blanket ban with no mechanism to apply for exemptions was a disproportionate interference with constitutional rights.
72. Similarly, the Circuit Court of Oregon in *Elkhorn Baptist Church, et al v. Katherine Brown, Governor of the State of Oregon* [242] granted a temporary injunction suspending the ‘lockdown’ of religious services. The Court observed: “*The Governor’s orders are not required for public safety when Plaintiffs can continue to utilize social distancing and safety protocols at larger gatherings involving spiritual worship, just as grocery stores and businesses deemed essential by the Governor have been authorized to do.*” Again, it is submitted that this reasoning is unimpeachable.
73. A similar claim was brought in Texas by *Steven Horze et al (Case 20-0249)*. In response to the claim, the Governor of Texas issued the Executive Order which included churches in the list of “essential services” which were permitted to remain open. The claim was then withdrawn. [249]
74. A further insight may be gained from the decision of the High Court of South Africa in *De Beer v The Minister of Cooperative Governance and Traditional Affairs* (2 June 2020) [179]. The challenge was against the ‘lockdown’ generally. In analysing the proportionality of the interference with constitutional rights (similar to the Convention analysis in this jurisdiction), the Court found (para 7) that “in an overwhelming number of instances” (para 7.21) the regulations were not even ‘rationally connected’ to the legitimate aims. See in particular the observations in paras 7.5-7.6 in relation to funerals. Religious services were exempted from the South African ‘lockdown’ in the

first place (see para 8.1 of the judgment), but had they not been, similar criticisms would no doubt apply to the prohibition of religious services.

75. There is arguably an emerging international judicial consensus to the effect that a blanket ban on church services is a disproportionate interference with the freedom of religion.
76. It should also be noted that following the death of George Floyd in Minneapolis on 25 May, a number of mass political demonstrations took place in various UK cities in breach of Regulation 7 of the Regulations. It appears that the police took a deliberate decision not to enforce Regulation 7 on those occasions. Further, there has been no evident deterioration of the public health situation as a consequence. This strongly indicates that at least Regulation 7 is disproportionate and/or unnecessary. Church services cannot present a greater danger to public health than mass, and often disorderly, political demonstrations.

Ground 3: Irrationality

77. Even apart from the engagement of Article 9, the Regulations and other decisions under challenge are in any event irrational. This is because:
- (1) Rationality is to be assessed on the basis of the facts as they were at the time the decisions were taken, i.e. after the voluntary ‘lockdown’ of most churches. In those circumstances, the imposition of additional state regulations backed by a criminal sanction would achieve minimal or no benefit in terms of containing the epidemic. This is to be weighed against the grave constitutional and societal significance of state interference in church matters at such a scale.
 - (2) Compared to the alternative approach outlined in the *Expert report of Ian Blenkarn [142]*, the state-enforced ‘lockdown’ of churches does not help to contain the epidemic.
 - (3) The *supplemental report of Ian Blenkarn [158]* highlights the inconsistency and absurdity of the Government’s approach.
 - (4) The general lockdown of churches is similar to the measures which have effectively been found irrational in the High Court of South Africa decision in *De Beer*.

Relief sought

78. For those reasons, the Defendant's decisions imposing a continuing 'lockdown' on the Church are unlawful. It is submitted that the appropriate relief is as follows:

- (1) In relation to Regulation 5(5), a quashing order (to be stayed for a few days to enable an orderly substitution/transition).
- (2) In relation to Regulation 7, a declaration that it does not apply to church services and rites; and/or a mandatory order or an injunction to amend the Regulation.
- (3) In relation to 'the Strategy' and 'the failure to give assurances', a mandatory order and/or a declaration.

79. In the alternative, the Claimants seek further and other relief. In particular, if the Court is unwilling to quash Regulation 5(5), the Claimants seek a declaration and/or a mandamus to amend.

Application to expedite

80. The interference with the Convention rights of believers has been serious and took place at a mass scale. The fact that the restrictions will ultimately be lifted should not distract from the seriousness of the ongoing breach of Article 9.

81. The Government's announcements at present do not even include an indication as to when the ban on church services and rites may be lifted or relaxed.

82. The Claimants only bring this claim at the end of the 3-months time limit because, and only because, of the extensive efforts to resolve the problem in a constructive dialogue with the government. That approach is commendable, and litigants should not be discouraged from taking it by a refusal of expedition due to a delay of this nature. The hopes that a dialogue would lead to a reasonably speedy resolution have proved to be wrong. However, the serious and ongoing breach of Article 9 has to be remedied as a matter of urgency.

83. For those reasons, the Claimants request that this claim be expedited.

The Claimants believe that the facts stated in this Statement of facts and grounds are true

A handwritten signature in black ink that reads "Andrew Storch". The signature is written in a cursive style with a small flourish at the end.

.....
Andrew Storch solicitors

23 June 2020

**IN THE HIGH COURT OF JUSTICE
QUEENS BENCH DIVISION
ADMINISTRATIVE COURT
APPLICATION FOR PERMISSION FOR JUDICIAL REVIEW
BETWEEN:**

**Her Majesty the Queen
(on the application of Rev. Ade Omooba et al)**

Claimants

-v-

Secretary of State for Health and Social Care

Defendant

DRAFT ORDER

UPON the Claimant's application for permission for judicial review and application for exceptional urgency, considered on papers

IT IS ORDERED THAT:

1. Time for the service of the Acknowledgement of Service is abridged. The Defendant must file serve the Acknowledgement of Service within 7 days of this order.
2. The application for permission is to be considered on papers on an urgent basis, and the decision on permission shall be made within 10 days of this order.
3. In the event permission is granted on papers, the Defendant must file and serve the full Response, and any evidence relied upon, within 7 days of the permission being granted.
4. The full hearing (or, if permission not granted on papers, a 'rolled up' hearing, with full hearing to follow immediately if permission is granted) to be listed urgently, with a time estimate 1 day, on 17 July 2020 or the first available date afterwards.
5. Costs in the case.

Coronavirus

See **Coronavirus legislation**
on [legislation.gov.uk](https://www.legislation.gov.uk)

Get Coronavirus guidance from **GOV.UK**
Additional advice for **Scotland** | **Wales** | **Northern Ireland**

Cymraeg

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The Health Protection (Coronavirus, Restrictions) (England) Regulations 2020

UK Statutory Instruments 2020 No. 350 Regulation 5

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Further restrictions and closures during the emergency period

5.—(1) A person responsible for carrying on a business, not listed in Part 3 of Schedule 2, of offering goods for sale or for hire in a shop, or providing library services must, during the emergency period—

- (a) cease to carry on that business or provide that service except by making deliveries or otherwise providing services in response to orders received—
 - (i) through a website, or otherwise by on-line communication,
 - (ii) by telephone, including orders by text message, or
 - (iii) by post;
- (b) close any premises which are not required to carry out its business or provide its services as permitted by sub-paragraph (a);
- (c) cease to admit any person to its premises who is not required to carry on its business or provide its service as permitted by sub-paragraph (a).

(2) Paragraph (1) does not apply to any business which provides hot or cold food for consumption off the premises.

(3) Subject to paragraph (4), a person responsible for carrying on a business consisting of the provision of holiday accommodation, whether in a hotel, hostel, bed and breakfast accommodation, holiday apartment, home, cottage or bungalow, campsite, caravan park or boarding house, must cease to carry on that business during the emergency period.

(4) A person referred to in paragraph (3) may continue to carry on their business and keep any premises used in that business open—

- (a) to provide accommodation for any person, who—
 - (i) is unable to return to their main residence;
 - (ii) uses that accommodation as their main residence;
 - (iii) needs accommodation while moving house;
 - (iv) needs accommodation to attend a funeral;
- (b) to provide accommodation or support services for the homeless,
- (c) to host blood donation sessions, or
- (d) for any purpose requested by the Secretary of State, or a local authority.

(5) A person who is responsible for a place of worship must ensure that, during the emergency period, the place of worship is closed, except for uses permitted in paragraph (6).

(6) A place of worship may be used—

- (a) for funerals,
- (b) to broadcast an act of worship, whether over the internet or as part of a radio or television broadcast, or
- (c) to provide essential voluntary services or urgent public support services (including the provision of food banks or other support for the homeless or vulnerable people, blood donation sessions or support in an emergency).

(7) A person who is responsible for a community centre must ensure that, during the emergency period, the community centre is closed except where it is used to provide

essential voluntary activities or urgent public support services (including the provision of food banks or other support for the homeless or vulnerable people, blood donation sessions or support in an emergency).

(8) A person who is responsible for a crematorium or burial ground must ensure that, during the emergency period, the crematorium is closed to members of the public, except for funerals or burials.

(9) If a business referred to in paragraph (1) or (3) ("business A") forms part of a larger business ("business B"), the person responsible for carrying on business B complies with the requirement in paragraph (1) or (3) to cease to carry on its business if it ceases to carry on business A.

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The Health Protection (Coronavirus, Restrictions) (England) Regulations 2020

UK Statutory Instruments 2020 No. 350 Regulation 6

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Restrictions on movement

6.—(1) During the emergency period, no person may leave the place where they are living without reasonable excuse.

(2) For the purposes of paragraph (1), a reasonable excuse includes the need—

- (a) to obtain basic necessities, including food and medical supplies for those in the same household (including any pets or animals in the household) or for vulnerable persons and supplies for the essential upkeep, maintenance and functioning of the household, or the household of a vulnerable person, or to obtain money, including from any business listed in Part 3 of Schedule 2;
- (b) to take exercise either alone or with other members of their household;
- (c) to seek medical assistance, including to access any of the services referred to in paragraph 37 or 38 of Schedule 2;
- (d) to provide care or assistance, including relevant personal care within the meaning of paragraph 7(3B) of Schedule 4 to the Safeguarding of Vulnerable Groups Act 2006(1), to a vulnerable person, or to provide emergency assistance;
- (e) to donate blood;
- (f) to travel for the purposes of work or to provide voluntary or charitable services, where it is not reasonably possible for that person to work, or to provide those services, from the place where they are living;
- (g) to attend a funeral of—
 - (i) a member of the person's household,
 - (ii) a close family member, or
 - (iii) if no-one within sub-paragraphs (i) or (ii) are attending, a friend;
- (h) to fulfil a legal obligation, including attending court or satisfying bail conditions, or to participate in legal proceedings;
- (i) to access critical public services, including—
 - (i) childcare or educational facilities (where these are still available to a child in relation to whom that person is the parent, or has parental responsibility for, or care of the child);
 - (ii) social services;
 - (iii) services provided by the Department of Work and Pensions;
 - (iv) services provided to victims (such as victims of crime);
- (j) in relation to children who do not live in the same household as their parents, or one of their parents, to continue existing arrangements for access to, and contact between, parents and children, and for the purposes of this paragraph, "parent" includes a person who is not a parent of the child, but who has parental responsibility for, or who has care of, the child;
- (k) in the case of a minister of religion or worship leader, to go to their place of worship;

(l) to move house where reasonably necessary;

(m) to avoid injury or illness or to escape a risk of harm.

(3) For the purposes of paragraph (1), the place where a person is living includes the premises where they live together with any garden, yard, passage, stair, garage, outhouse or other appurtenance of such premises.

(4) Paragraph (1) does not apply to any person who is homeless.

(1) [2006 c. 47](#). Sub-paragraph (3B) was substituted, with sub-paragraphs (1), (3) and (3A) to (3E) for sub-paragraphs (1) to (3) by s. 66(2) of the Protection of Freedoms Act 2012 (c. 9).

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The Health Protection (Coronavirus, Restrictions) (England) Regulations 2020

UK Statutory Instruments 2020 No. 350 Regulation 7

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Restrictions on gatherings

7. During the emergency period, no person may participate in a gathering in a public place of more than two people except—
- (a) where all the persons in the gathering are members of the same household,
 - (b) where the gathering is essential for work purposes,
 - (c) to attend a funeral,
 - (d) where reasonably necessary—
 - (i) to facilitate a house move,
 - (ii) to provide care or assistance to a vulnerable person, including relevant personal care within the meaning of paragraph 7(3B) of Schedule 4 to the Safeguarding of Vulnerable Groups Act 2006,
 - (iii) to provide emergency assistance, or
 - (iv) to participate in legal proceedings or fulfil a legal obligation.

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HM Government

OUR PLAN TO REBUILD: The UK Government's COVID-19 recovery strategy

May 2020

CP 239



HM Government

OUR PLAN TO REBUILD:

The UK Government's COVID-19 recovery strategy

Presented to Parliament
by the Prime Minister
by Command of Her Majesty

May 2020

CP 239



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Foreword from the Prime Minister

We will remember 2020 as the year we were hit, along with all other nations, by a previously unknown and remorseless foe.

Like the rest of the world, we have paid a heavy price. As of 6 May, 30,615 people have lost their lives having tested positive for COVID-19. Every one of those deaths is a tragedy for friends and family: children have lost mothers and fathers; parents have lost sons and daughters, before their time. We should pay tribute to the victims of this virus: those who have died, and their loved ones who remain.

That price could have been higher if not for the extraordinary efforts of our NHS and social care workers and had we not acted quickly to increase the capacity of the NHS. People up and down the UK have made an extraordinary sacrifice, putting their lives on hold and distancing themselves from their loved ones. It would have been higher had we not shielded the most vulnerable - providing help and support to those that need it.

On 3 March we published [our plan](#)¹, and since then millions of hardworking medical, health and care workers, military personnel, shopkeepers, civil servants, delivery and bus drivers, teachers and countless others have diligently and solemnly enacted it.

I said we'd take the right decisions at the right time, based on the science. And I said that the overwhelming priority of that plan was to keep our country safe.

Through the unprecedented action the people of the United Kingdom have taken, we have begun to beat back the virus. Whereas the virus threatened to overwhelm the NHS, our collective sacrifice has meant that at no point since the end of March have we had fewer than one third of our critical care beds free.

We can feel proud of everyone who worked so hard to create Cardiff's Dragon's Heart Hospital, Glasgow's Louisa Jordan Hospital, and the Nightingale Hospitals in London, Belfast, Birmingham, Exeter, Harrogate, Sunderland, Bristol and Manchester. In addition to these new Nightingales, the UK has just over 7,000 critical care beds as of 4 May; an increase from 4,000 at the end of January.

Meanwhile the Government increased daily tests by over 1,000% during April - from 11,041 on 31 March to 122,347 on 30 April. Teachers have worked with Google to create the Oak National Academy - a virtual school - in just two weeks, delivering 2.2 million lessons in its first week of operation. We have supported businesses and workers with a furlough scheme - designed and built from scratch - that has safeguarded 6.3 million jobs. Right across the country we have seen huge ingenuity, drive and selflessness.

¹ <https://www.gov.uk/government/publications/coronavirus-action-plan/coronavirus-action-plan-a-guide-to-what-you-can-expect-across-the-uk>

Now, with every week that passes, we learn more about the virus and understand more about how to defeat it. But the more we learn, the more we realise how little the world yet understands about the true nature of the threat - except that it is a shared one that we must all work together to defeat.

Our success containing the virus so far has been hard fought and hard won. So it is for that reason that we must proceed with the utmost care in the next phase, and avoid undoing what we have achieved.

This document sets out a plan to rebuild the UK for a world with COVID-19. It is not a quick return to 'normality.' Nor does it lay out an easy answer. And, inevitably, parts of this plan will adapt as we learn more about the virus. But it is a plan that should give the people of the United Kingdom hope. Hope that we can rebuild; hope that we can save lives; hope that we can safeguard livelihoods.

It will require much from us all: that we remain alert; that we care for those at most risk; that we pull together as a United Kingdom. We will continue to work with the devolved administrations in Scotland, Wales and Northern Ireland to ensure these outcomes for everybody, wherever they live in the UK.

It is clear that the only feasible long-term solution lies with a vaccine or drug-based treatment. That is why we have helped accelerate this from the start and are proud to be home to two of the world's most promising vaccine development programmes at Oxford University and Imperial College, supported by a globally renowned pharmaceutical sector.

The recent collaboration between Oxford University and AstraZeneca is a vital step that could help rapidly advance the manufacture of a COVID-19 vaccine. It will also ensure that should the vaccine being developed by Oxford's Jenner Institute work, it will be available as early as possible, helping to protect thousands of lives from this disease.

We also recognise that a global problem needs a global solution. This is why the United Kingdom has been at the forefront of the international response to the virus, co-hosting the Coronavirus Global Response Summit on 4 May, pledging £388m in aid funding for research into vaccines, tests and treatment including £250m to the Coalition for Epidemic Preparedness Innovations, the largest contribution of any country.

But while we hope for a breakthrough, hope is not a plan. A mass vaccine or treatment may be more than a year away. Indeed, in a worst-case scenario, we may never find a vaccine. So our plan must countenance a situation where we are in this, together, for the long haul, even while doing all we can to avoid that outcome.

I know the current arrangements do not provide an enduring solution – the price is too heavy, to our national way of life, to our society, to our economy, indeed to our long-term public health. And while it has been vital to arrest the spread of the virus, we know it has taken a heavy toll on society - in particular to the most vulnerable and disadvantaged - and has brought loneliness and fear to many.

We've asked you to protect those you love by separating yourself from them; but we know this has been tough, and that we must avoid this separation from turning into loneliness.

So this plan seeks to return life to as close to normal as possible, for as many people as possible, as fast and fairly as possible, in a way that is safe and continues to protect our NHS.

The overriding priority remains to save lives.

And to do that, we must acknowledge that life will be different, at least for the foreseeable future. I will continue to put your safety first, while trying to bring back the things that are most important in your lives, and seeking to protect your livelihoods.

That means continuing to bolster the NHS and social care system so it can not only cope with the pressures from COVID-19 but also deliver the Government's manifesto commitment to continue improving the quality of non-COVID-19 health and social care.

It means a huge national effort to develop, manufacture and prepare to distribute a vaccine, working with our friends and allies around the world to do so.

It means optimising the social distancing measures we've asked the nation to follow, so that as the threat changes, the measures change as well - doing as much as possible to suppress the epidemic spread, while minimising the economic and social effects.

That will require a widespread system of testing, of tracing and monitoring the spread of the disease, of shielding the most vulnerable, of protecting those in care homes, of securing our borders against its reintroduction, and of re-designing workplaces and public spaces to make them "COVID-19 Secure."

Our NHS is already, rightly, the envy of the world. But we now need to build up the other world-leading systems that will protect us in the months ahead.

I must ask the country to be patient with a continued disruption to our normal way of life, but to be relentless in pursuing our mission to build the systems we need. The worst possible outcome would be a return to the virus being out of control – with the cost to human life, and – through the inevitable re-imposition of severe restrictions – the cost to the economy.

We must stay alert, control the virus, and in doing so, save lives.

If we get this right we will minimise deaths – not just from COVID-19, but also from meeting all our non-COVID-19 health needs, because our (bigger) NHS will not be overwhelmed.

We will maximise our economic and societal bounce-back: allowing more people to get on with more of their normal lives and get our economy working again.

Then, as vaccines and treatment become available, we will move to another new phase, where we will learn to live with COVID-19 for the longer term without it dominating our lives.

This is one of the biggest international challenges faced in a generation. But our great country has faced and overcome huge trials before. Our response to these unprecedented and unpredictable challenges must be similarly ambitious, selfless and creative.

Thank you for your efforts so far, and for the part everyone in the UK will play over the months ahead.



1. The current situation

Phase one

COVID-19 is a new and invisible threat. It has spread to almost every country in the world.

The spread of the virus has been rapid. In the UK at its maximum, the number of patients in intensive care was estimated to be doubling every 3-4 days.

This type of exponential growth would have overwhelmed the NHS were it not contained (as shown in Figure 1).

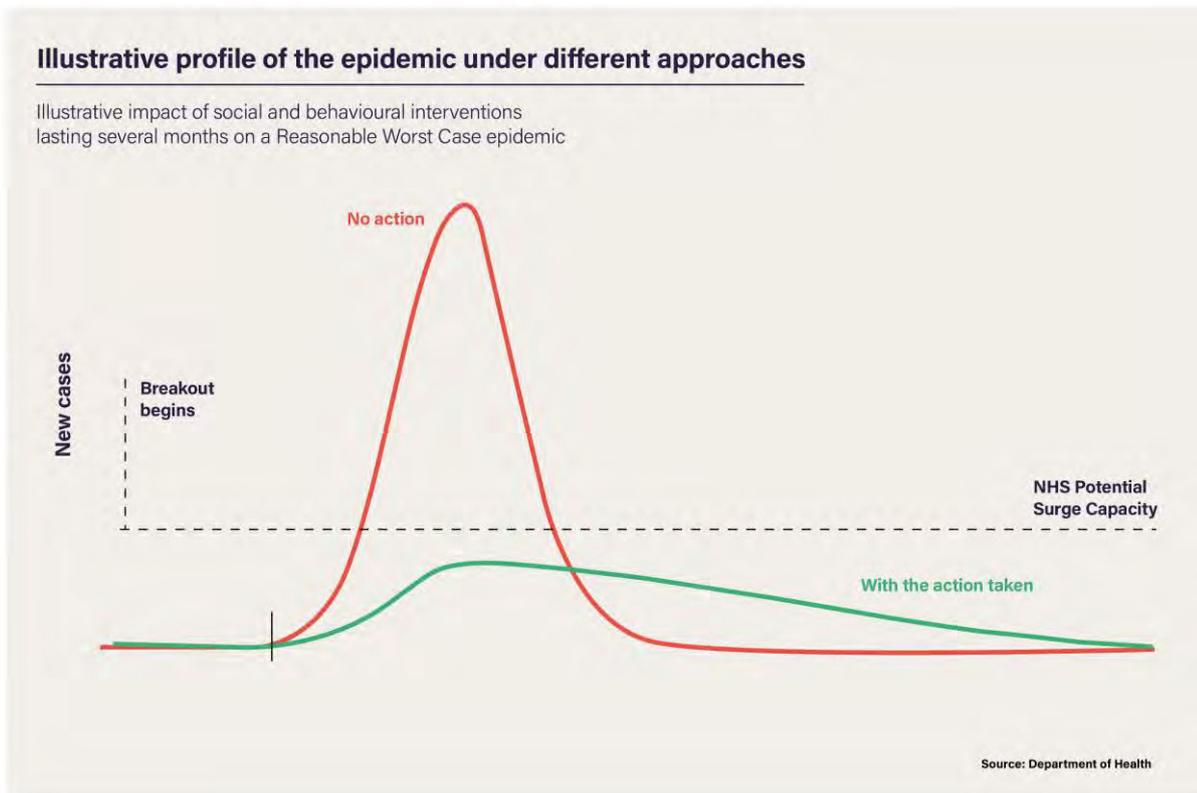


Figure 1: *Illustrative profile of the epidemic under different approaches* Illustrative impact of social and behavioural interventions lasting several months on a Reasonable Worst Case epidemic.

From the start, the Government was guided by science, publishing on 3 March its plan² to contain, delay, and mitigate any outbreak, and use research to inform policy development.

Responding to the advice of Government scientists, on 7 March those with symptoms were asked to self-isolate for 7 days. On 16 March, the Government introduced shielding for the most vulnerable and called on the British public to cease non-essential contact and travel. On 18 March, the Government announced the closure of schools. On 20 March entertainment, hospitality and indoor leisure venues were closed. And on 23 March the Government took decisive steps to introduce the Stay at Home guidance. Working with the devolved administrations, the Government had to take drastic action to protect the NHS and save lives. Delivering this plan was the first phase of the Government’s response, and due to the extraordinary sacrifice of the British people and the efforts of the NHS, this first phase has suppressed the spread of the virus.

In an epidemic, one of the most important numbers is R - the reproduction number. If this is below one, then on average each infected person will infect fewer than one other person; the number of new infections will fall over time. The lower the number, the faster the number of new infections will fall. When R is above one, the number of new infections is accelerating; the higher the number the faster the virus spreads through the population.

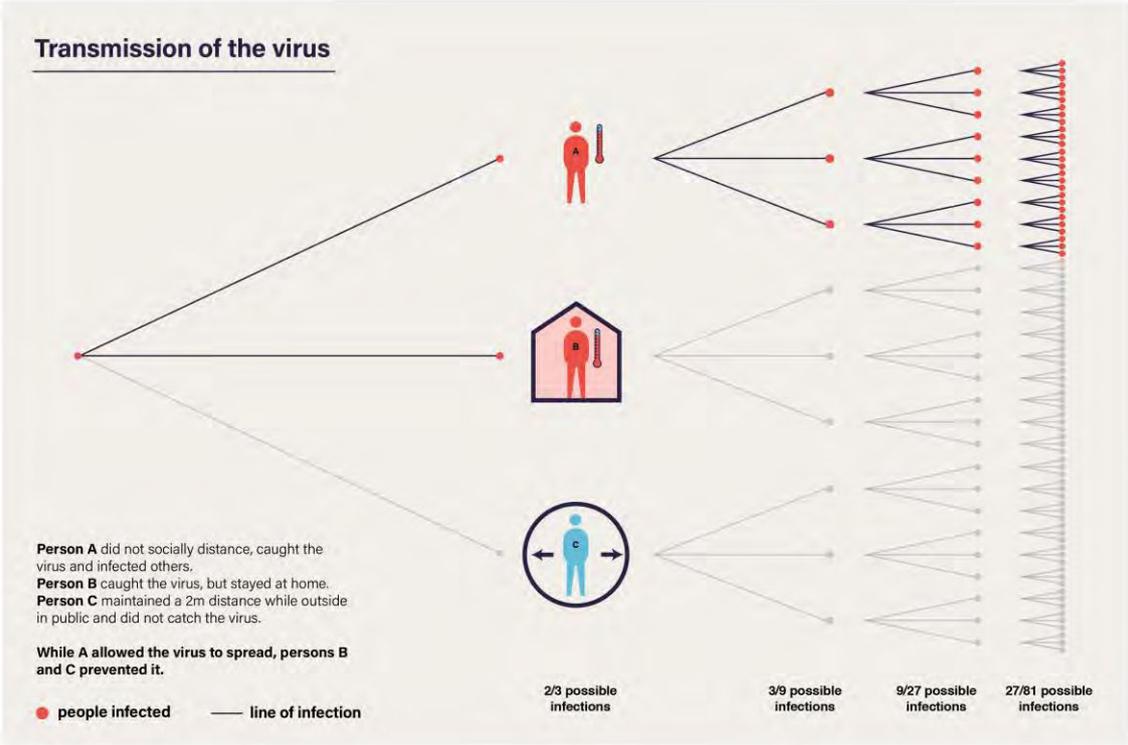


Figure 2: **Transmission of the virus** Schematic diagram of the transmission of the virus with an R value of 3, and the impact of social distancing.

² <https://www.gov.uk/government/publications/coronavirus-action-plan/coronavirus-action-plan-a-guide-to-what-you-can-expect-across-the-uk>

In the UK, the Scientific Advisory Group for Emergencies (SAGE) assessed that R at the beginning of the epidemic was between 2.7 and 3.0; each person with the disease gave it to nearly three other people, on average. But the Government and devolved administration response means SAGE's latest assessment is that, across the UK, R has reduced to between 0.5 and 0.9, meaning that the number of infected people is falling. The impact of social distancing measures on R is demonstrated in Figure 2.

The Government now sees that:

- There are no regions of the country where the epidemic appears to be increasing.
- As of 9 May, it is estimated that 136,000 people in England are currently infected with COVID-19.³
- The number of patients in hospital in the UK with COVID-19 is under 13,500 as of 4 May; 35% below the peak on 12 April.⁴
- 27% of NHS critical care beds in the UK were occupied by a COVID-19 patient on 4 May - compared to 51% on 10 April.⁵

At the same time, the Government has invested heavily in its ability to tackle the disease. NHS capacity has increased significantly, with 3,000 new critical care beds across the UK since January⁶, and daily tests have increased by over 1,000% during April - from 11,041 on 31 March to 122,347 on 30 April.⁷

³ <https://www.ons.gov.uk/peoplepopulationandcommunity/healthandsocialcare/conditionsanddiseases/bulletins/coronaviruscovid19infectionsurvey/england10may2020>

⁴ Source: NHSE (COVID daily sitrep), Scottish Gov, Welsh Gov, NI. Note: For NHS acute trusts with Type 1 A&E only

⁵ Source: NHSE (COVID daily sitrep, A&E daily sitrep), Welsh Gov, Scottish Gov, NI Gov. Different health systems collect this data differently; in Wales critical care beds are taken to be invasive ventilation including surge capacity and both confirmed and suspected COVID-19 cases, in Scotland critical care beds include ICU beds and additional surge capacity. In Northern Ireland, critical care beds includes all adult ICU beds (this is a change to previous reporting). Note: For NHS acute trusts with Type 1 A&E only.

⁶ NHSE (COVID daily sitrep), Scottish Gov, Welsh Gov, NI. Note: For NHS acute trusts with Type 1 A&E only

⁷ <https://www.gov.uk/guidance/coronavirus-covid-19-information-for-the-public>. This data includes tests under Pillars 1 and 2 for March. Our cumulative total of 1,023,824 tests by 30 April compares with 2.5m tests in Germany, 724,000 in France and 640,000 in South Korea (PHE collation of data from national published sources)

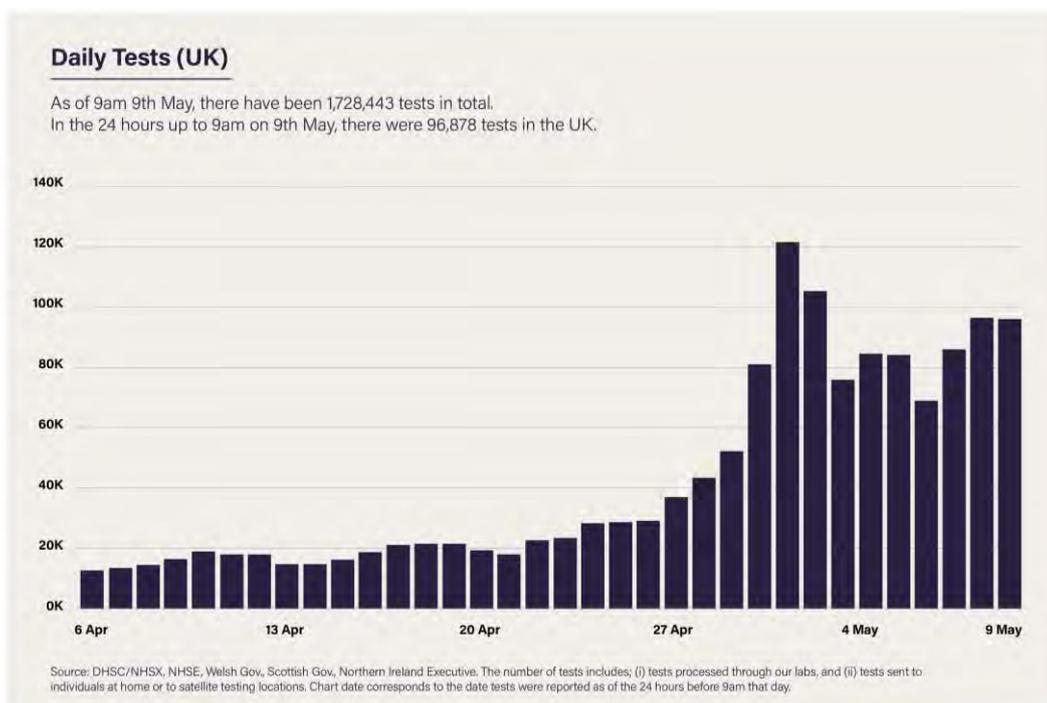


Figure 3: Daily tests (UK) The number of tests carried out in the UK as of 9am on 9 May

Tragically, however, the number of deaths so far this year is 37,151 higher than the average for 2015 to 2019.⁸ The Government is particularly troubled by the impact of COVID-19 in care homes, where the number of COVID-19 deaths registered as taking place up to 24 April is 6,934,⁹ and by the higher proportion of those who have died of COVID-19 who have been from minority ethnic backgrounds. It is critical that the Government understands why this is occurring. It is why on 4 May Public Health England launched a review into the factors affecting health outcomes from COVID-19, to include ethnicity, gender and obesity. This will be published by the end of May.¹⁰

Alongside the social distancing measures the Government has announced in this first phase, it has also taken unprecedented action to support people and businesses through this crisis and minimise deep and long-lasting impacts on the economy. 800,000 employers had applied to the Coronavirus Job Retention Scheme to help pay the wages of 6.3m jobs, as of midnight on 3 May.¹¹

The Office for Budget Responsibility (OBR) and the Bank of England have both been clear that if the Government had not taken the actions they had, the situation would be much worse. But despite this, the impact on people's jobs and livelihoods has been severe: economic activity has been brought to a stop across large swathes of the UK economy. The Government is supporting millions of families and businesses, but cannot protect every job and every business.

⁸ <https://www.ons.gov.uk/peoplepopulationandcommunity/birthsdeathsandmarriages/deaths/datasets/weeklyprovisionalfiguresondeathsregisteredinenglandandwales>;

<https://www.nrscotland.gov.uk/covid19stats>;

<https://www.nisra.gov.uk/publications/weekly-deaths>

⁹ <https://www.ons.gov.uk/peoplepopulationandcommunity/birthsdeathsandmarriages/deaths/datasets/weeklyprovisionalfiguresondeathsregisteredinenglandandwales>

¹⁰ <https://www.gov.uk/government/news/review-into-factors-impacting-health-outcomes-from-covid-19>

¹¹ HMRC, <https://twitter.com/HMRCgovuk/status/1257324798847451136/photo/1>

Unemployment is rising from a 40-year low at the start of the year; around 1.8 million households made claims for Universal Credit between 16 March and 28 April.¹² The OBR has published a 'reference' scenario which suggests that, if the current measures stay in place until June and are then eased over the next three months, unemployment would rise by more than 2 million in the second quarter of 2020.¹³ The OBR's scenario suggests that GDP could fall by 35% in the second quarter of this year – and the annual contraction could be the largest in over 300 years.¹⁴

Workers in those sectors most affected, including hospitality and retail, are more likely to be low paid, younger and female. Younger households are also likely to be disproportionately hit in the longer term, as evidence suggests that, following recessions, lost future earnings potential is greater for young people.¹⁵

The longer the virus affects the economy, the greater the risks of long-term scarring and permanently lower economic activity, with business failures, persistently higher unemployment and lower earnings. This would damage the sustainability of the public finances and the ability to fund public services including the NHS. It would also likely lead to worse long-run physical and mental health outcomes, with a significant increase in the prevalence of chronic illness.

¹² DWP, <https://www.gov.uk/government/publications/universal-credit-declarations-claims-and-advances-management-information>

¹³ OBR, https://obr.uk/docs/dlm_uploads/Coronavirus_reference_scenario_commentary.pdf

¹⁴ OBR, https://obr.uk/docs/dlm_uploads/Coronavirus_reference_scenario_commentary.pdf

¹⁵ IFS, <https://www.ifs.org.uk/publications/14791>

Moving to the next phase

On 16 April the Government presented five tests for easing measures¹⁶. These are:

- 1 Protect the NHS's ability to cope. We must be confident that we are **able to provide sufficient critical care and specialist treatment** right across the UK.
- 2 See a **sustained and consistent fall in the daily death rates** from COVID-19 so we are confident that we have moved beyond the peak.
- 3 Reliable data from SAGE showing that **the rate of infection is decreasing to manageable levels** across the board.
- 4 Be confident that **the range of operational challenges, including testing capacity and PPE, are in hand**, with supply able to meet future demand.
- 5 Be confident that **any adjustments to the current measures will not risk a second peak of infections** that overwhelms the NHS.

The Government's priority is to protect the public and save lives; it will ensure any adjustments made are compatible with these five tests. As set out above, the R is now below 1 – between 0.5 and 0.9 – but potentially only just below 1. The Government has made good progress in satisfying some of these conditions. The ventilated bed capacity of the NHS has increased while the demand placed on it by COVID-19 patients has now reduced (as shown in Figure 4). Deaths in the community are falling. However, real challenges remain on the operational support required for managing the virus. The Government cannot yet be confident that major adjustments now will not risk a second peak of infections that might overwhelm the NHS. Therefore, the Government is only in a position to lift cautiously elements of the existing measures.

¹⁶ FCO, <https://www.gov.uk/government/speeches/foreign-secretarys-statement-on-coronavirus-covid-19-16-april-2020>

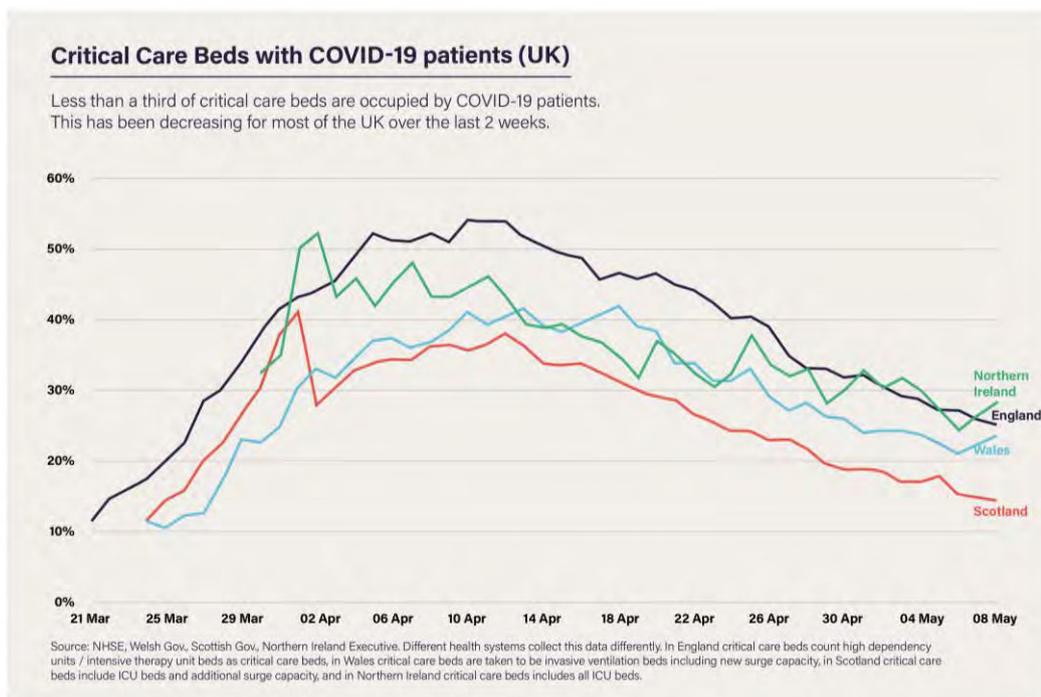


Figure 4: Critical care beds with COVID-19 patients (UK) The percentage of critical care beds with COVID-19 patients up to 8 May.

Different parts of the UK have different R figures. The devolved administrations are making their own assessments about the lifting of measures in Scotland, Wales and Northern Ireland. All governments continue to work together to ensure a coordinated approach across the United Kingdom.

The challenges ahead

As the Government moves into the next phase of its response to the virus, it is important to be clear about the challenges that the UK, in common with other countries around the world, is now facing.

1. **This is not a short-term crisis.** It is likely that COVID-19 will circulate in the human population long-term, possibly causing periodic epidemics. In the near future, large epidemic waves cannot be excluded without continuing some measures.
2. **In the near term, we cannot afford to make drastic changes.** To successfully keep R below 1, we have little room for manoeuvre. SAGE modelling suggests that either fully opening schools or relaxing all social distancing measures now, will lead to a resurgence of the virus and a second wave that could be larger than the first. In a population where most people are lacking immunity, the epidemic would double in size every few days if no control measures were in place.
3. **There is no easy or quick solution.** Only the development of a vaccine or effective drugs can reliably control this epidemic and reduce mortality without some form of social distancing or contact tracing in place. In the medium-term, allowing the virus to spread in an uncontrolled manner until natural population-level immunity is achieved would put the NHS

under enormous pressure. At no point has this been part of the Government's strategy. If vaccines can be developed they have the potential to stop the disease spreading; treatments would be less likely to stop the spread but could make the virus less dangerous.

4. **The country must get the number of new cases down.** Holding R below 1 will reduce the number of new cases down to a level that allows for the effective tracing of new cases; this in turn, will enable the total number of daily transmissions to be held at a low level.
5. **The world's scientific understanding of the virus is still developing rapidly.** We are still learning about who is at greatest personal risk and how the virus is spread. It is not possible to know with precision the relative efficacy of specific shielding and suppression measures; nor how many people in the population are or have been infected asymptotically.
6. **The virus' spread is difficult to detect.** Some people carry the disease asymptotically, which may mean that they can spread the virus without knowing that they are infectious. Those who do develop symptoms often do not show signs of being infected for around five days; a significant proportion of infections take place in this time, particularly in the two days before symptoms start. Even those who are not at risk of significant harm themselves may pose a real risk of inadvertently infecting others. This is why a significant part of the next phase of the Government's response will be to improve its monitoring of and response to new infections.
7. **The Government must prepare for the challenges that the winter flu season will bring.** This will have wide-ranging effects, from impeding any efforts to trace the virus (because so many people without COVID-19 are likely to have symptoms that resemble COVID-19), to increasing the demand for hospital beds.
8. **The plan depends on continued widespread compliance.** So far people have adhered to the measures well, as depicted in Figure 5 below. However, to avoid R tipping above 1 and the epidemic increasing in an uncontrolled manner, very high continued levels of compliance are essential. The risk is an unbalanced one; if the UK tips back into an exponential increase in the spread of the infection, it could quickly get out of control.

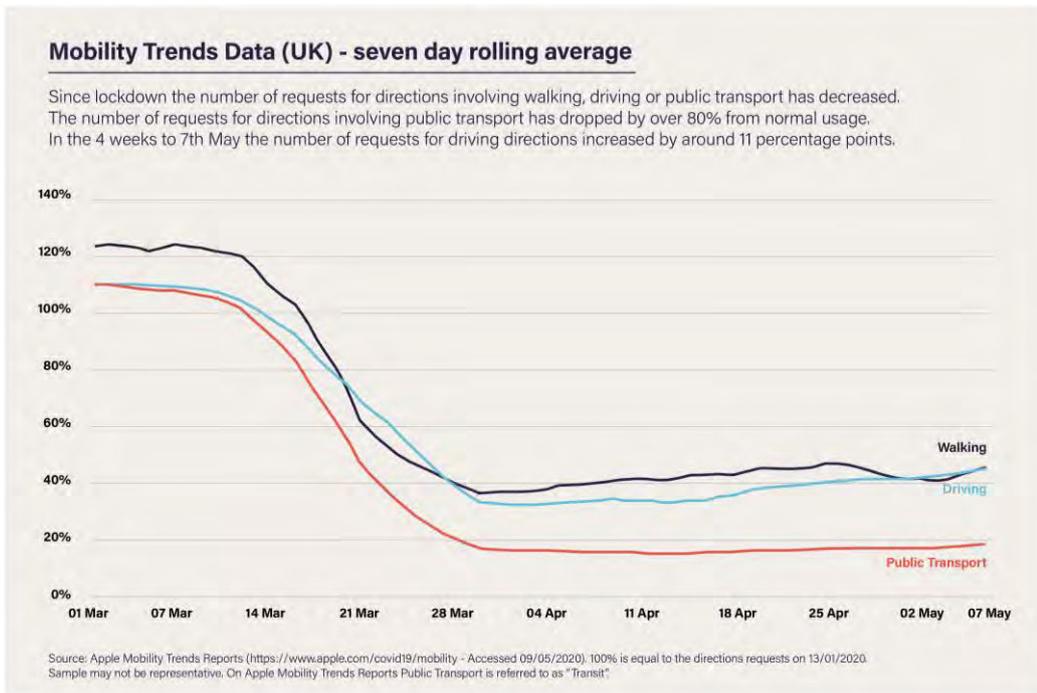


Figure 5: **Mobility trends data for the UK based on a seven-day rolling average up to 7 May**

Reflecting these challenges, the rest of this document sets out a cautious roadmap to ease existing measures in a safe and measured way, subject to successfully controlling the virus and being able to monitor and react to its spread. The roadmap will be kept constantly under review as the epidemic, and the world's understanding of it, develops.

2. Our aims: saving lives; saving livelihoods

The Government's aim has been to save lives. This continues to be the overriding priority at the heart of this plan.

The Government must also seek to minimise the other harms it knows the current restrictive measures are causing - to people's wellbeing, livelihoods, and wider health. But there is a risk that if the Government rushes to reverse these measures, it would trigger a second outbreak that could overwhelm the NHS. So the UK must adapt to a new reality - one where society can return to normal as far as possible; where children can go to school, families can see one another and livelihoods can be protected, while also continuing to protect against the spread of the disease.

Therefore the Government's aim at the centre of this plan is to:

return life to as close to normal as possible, for as many people as possible, as fast and fairly as possible...

... in a way that avoids a new epidemic, minimises lives lost and maximises health, economic and social outcomes.

To do this, the Government will need to steadily redesign the current social distancing measures with new, smarter measures that reflect the level of risk at that point in time, and carefully wind down economic support schemes while people are eased back into work. The Government will do this by considering three main factors.

Health effect

The first consideration is the nation's health.

The Government must consider overall health outcomes, not just those directly caused by COVID-19. As advised by the Chief Medical Officer and NHS England, the Government will take into account:

- **Direct COVID-19 mortality**, those who die from the virus, despite receiving the best medical care.
- **Indirect harms** arising from NHS emergency services being overwhelmed and therefore providing significantly less effective care both for those with COVID-19 and for those with other medical emergencies.

- **Increases in mortality or other ill health as a result of measures we have had to take** including postponement of important but non-urgent medical care and public health programmes while the NHS is diverting resources to manage the epidemic, or from unintended consequences such as people deciding not to seek treatment when they need it, and from increased isolation and effects on mental health;¹⁷ and
- The long-term **health effects of any increase in deprivation** arising from economic impacts, as deprivation is strongly linked to ill health.¹⁸

As with many other respiratory infections, it is impossible to guarantee that nobody will be infected with this virus in the future, or that none of those infections will lead to tragic deaths. However, it is important to be clear that there is no part of this plan that assumes an 'acceptable' level of infection or mortality.

The biggest threat to life remains the risk of a second peak that overwhelms the healthcare system this winter, when it will be under more pressure and the NHS still needs to deliver non-urgent care. A second peak would also trigger a return of the wider health, economic and social harms associated with the first outbreak. This plan aims to minimise this risk.

Economic effect

The second consideration is protecting and restoring people's livelihoods and improving people's living standards.

Ultimately, a strong economy is the best way to **protect people's jobs** and ensure that the Government can fund **the country's vital public services** including the healthcare response. This means the Government will take into account:

- the short-term economic impact, including the number of people who can **return to work where it is safe to do so**, working with businesses and unions to help people go back to workplaces safely;
- the country's **long-term economic future**, which could be harmed by people being out of jobs and by insolvencies, and investing in supporting an economic bounce back;
- the sustainability of **public finances** so the Government can pay for public services and the healthcare response;
- **financial stability** so that the banks and others can continue to provide finance to the economy;
- **the distributional effects**, and so considering carefully the Government's measures on different income and age groups, business sectors and parts of the country.

¹⁷ For example, in England there has been a 53% drop in urgent cancer referrals for the week of 27 April and 20% drop in cancer treatments for the week of 20 April (latest available). (Source: NHS England)

¹⁸ The IFS recently estimated that the fall in employment over the 12 months after the 2008 crisis caused an increase in the prevalence of chronic illnesses in those of working age of around 900,000. The IFS use evidence from Janke et al (2020) which showed that a 1 per cent increase in employment leads to a 2 per cent fall in the prevalence of chronic health conditions among the working age population

The Government also needs to protect the UK's international economic competitiveness. This means, where possible, seeking new economic opportunities, for example for the UK's world-leading pharmaceutical and medical-device manufacturing sectors.

Social effect

The third consideration is the wider effect of the social distancing measures on how the public live their daily lives. The Government recognises that social distancing measures can exacerbate societal challenges, from the negative impacts on people's mental health and feelings of isolation, to the risks of domestic abuse and online fraud. The Government must act to minimise the adverse social costs - both their severity and duration - for the greatest number of people possible. This means the Government will take into account:

- the **number of days of education** children lose;
- the **fairness** of any actions the Government takes, especially the impact on those most affected by social distancing measures; and
- the importance of maintaining the strength of the **public services and civic organisations** on which the UK relies, especially those that protect or support society's most vulnerable.

Feasibility

Underpinning these three factors is a crucial practical constraint: considering the risk and feasibility of any action the Government undertakes. This includes considering the technological risk of any courses the Government pursues, the timelines to implement novel technologies, and the Government's ability to work with global partners. Much of what is desirable is not yet possible. So the Government's plan considers carefully when and where to take risk. A 'zero risk' approach will not work in these unprecedented times. The Government will have to invest in experimental technologies, some of which are likely not to work as intended, or even prove worthless. But waiting for complete certainty is not an option.

Overarching principles

Underpinning the factors above are some guiding principles:

- (1) **Informed by the science.** The Government will continue to be guided by the best scientific and medical advice to ensure that it does the right thing at the right time.
- (2) **Fairness.** The Government will, at all times, endeavour to be fair to all people and groups.
- (3) **Proportionality.** The Government will ensure that all measures taken to control the virus are proportional to the risk posed, in terms of the social and economic implications.
- (4) **Privacy.** The Government will always seek to protect personal privacy and be transparent with people when enacting measures that, barring this once-in-a-century event, would never normally be considered.

(5) **Transparency.** The Government will continue to be open with the public and parliamentarians, including by making available the relevant scientific and technical advice. The Government will be honest about where it is uncertain and acting at risk, and it will be transparent about the judgements it is making and the basis for them.

In meeting these principles, the UK Government will work in close cooperation with the devolved administrations in Scotland, Wales and Northern Ireland to make this a UK-wide response: coherent, coordinated and comprehensive. Part of that UK wide approach will be acknowledging that the virus may be spreading at different speeds in different parts of the UK. Measures may need to change in different ways and at different times. For advice, please see guidance set by the Northern Ireland Executive, the Scottish Government and the Welsh Government.

Balancing the different considerations will involve some difficult choices. For example, the Government will face a choice between the extent and speed of the freedoms enjoyed by some lower-risk people and the risk to others: if all people at lower personal risk were allowed to resume their lives exactly as before the outbreak, this would increase the level of risk to those that are more vulnerable.

3. Our approach: a phased recovery

As the UK exits phase one of the Government's response, where the Government has sought to contain, delay, research and mitigate, it will move through two further phases.

Phase two: Smarter controls

Until the UK can reach phase three, the Government will gradually replace the existing social restrictions with smarter measures that balance its aims as effectively as possible.

The Government will enact measures that have the largest effect on controlling the epidemic but the lowest health, economic and social costs.

These will be developed and announced in periodic 'steps' over the coming weeks and months, seeking to maximise the pace at which restrictions are lifted, but with strict conditions to move from each step to the next. The Government will maintain options to react to a rise in transmissions, including by reimposing restrictions if required.

Over time, the Government will improve the effectiveness of these measures and introduce more reactive or localised measures through widespread, accurate monitoring of the disease. That will enable the lifting of more measures for more people, at a faster pace. Meanwhile, the Government will continue to increase NHS and social care capacity to ensure care for all COVID-19 patients while restoring 'normal' healthcare provision.

Phase three: Reliable treatment

Eradication of the virus from the UK (and globally) is very unlikely. But rolling out effective treatments and/or a vaccine will allow us to move to a phase where the effect of the virus can be reduced to manageable levels.

To bring about this phase as quickly as possible, the Government is investing in research, developing international partnerships and putting in place the infrastructure to manufacture and distribute treatments and/or a vaccine at scale.

Phase two: smarter controls

Throughout this phase, people will need to minimise the spread of the disease through continuing good hygiene practices: hand washing, social distancing and regular disinfecting of surfaces touched by others. These will be in place for some time.

The number of social contacts people make each day must continue to be limited, the exposure of vulnerable groups must continue to be reduced from normal levels, and symptomatic and diagnosed individuals will still need to isolate.

Over time, social contact will be made less infectious by:

- **making such contact safer** (including by redesigning public and work spaces, and those with symptoms self-isolating) to reduce the chance of infection per contact;
- **reducing infected people's social contact** by using testing, tracing and monitoring of the infection to better focus restrictions according to risk; and
- **stopping hotspots developing** by detecting infection outbreaks at a more localised level and rapidly intervening with targeted measures.

In the near term, the degree of social contact within the population continues to serve as a proxy for the transmission of the virus; the fewer contacts, the lower the risk.

Developing smarter social distancing measures will mean the Government needs to balance increasing contacts as it relaxes the most disruptive measures with introducing new measures to manage risk, for example by tightening other measures. The more contacts in one area - for example, if too many people return to physical workplaces - the fewer are possible elsewhere - for example, not as many children can return to school. The lower the level of infection at each point in time, the more social contact will be possible.

Regular steps of adjustments to current measures

Over the coming months, the Government will therefore introduce a range of adjustments to current social distancing controls, timing these carefully according to both the current spread of the virus and the Government’s ability to ensure safety. These will happen in "steps," as set out in the next chapter, with strict conditions to safely move from each step to the next.

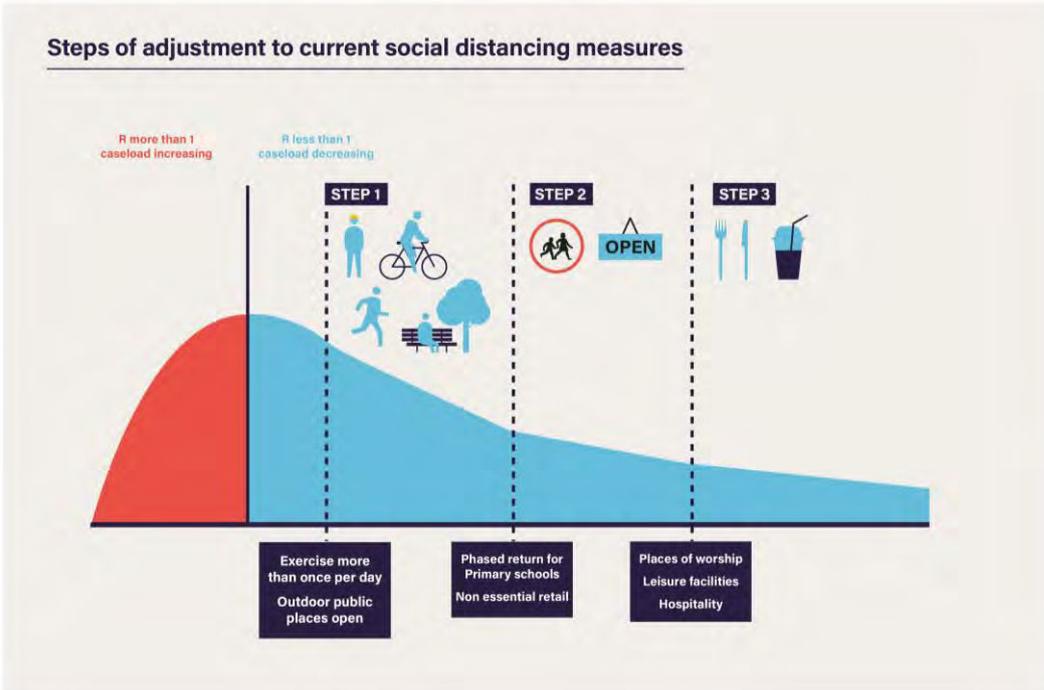


Figure 6: **Steps of adjustment to current social distancing measures** As the caseload falls, different steps can be taken to adjust social distancing measures.

Each step may involve adding new adjustments to the existing restrictions or taking some adjustments further (as shown in Figure 6). For example, while reopening outdoor spaces and activities (subject to continued social distancing) comes earlier in the roadmap because the risk of transmission outdoors is significantly lower, it is likely that reopening indoor public spaces and leisure facilities (such as gyms and cinemas), premises whose core purpose is social interaction (such as nightclubs), venues that attract large crowds (like sports stadia), and personal care establishments where close contact is inherent (like beauty salons) may only be fully possible significantly later depending on the reduction in numbers of infections.

The next chapter sets out an indicative roadmap, but the precise timetable for these adjustments will depend on the infection risk at each point, and the effectiveness of the Government’s mitigation measures like contact tracing.

Over the coming weeks and months, the Government will monitor closely the effect of each adjustment, using the effect on the epidemic to gauge the appropriate next step.

Initially, the gap between steps will need to be several weeks, to allow sufficient time for monitoring. However, as the national monitoring systems become more precise and larger-scale, enabling a quicker assessment of the changes, this response time may reduce.

Restrictions may be adjusted by the devolved administrations at a different pace in Scotland, Wales and Northern Ireland because the level of infection - and therefore the risk - will differ. Similarly in England, the Government may adjust restrictions in some regions before others: a greater risk in Cornwall should not lead to disproportionate restrictions in Newcastle if the risk is lower.

"COVID-19 Secure" guidelines

Many measures require the development of new safety guidelines that set out how each type of physical space can be adapted to operate safely. The Government has been consulting relevant sectors, industry bodies, local authorities, trades unions, the Health and Safety Executive and Public Health England on their development and will release them this week.

They will also include measures that were unlikely to be effective when the virus was so widespread that full stay-at-home measures were required, but that may now have some effect as the public increase the number of social contacts - including, for example, advising the use of face coverings in enclosed public areas such as on public transport and introducing stricter restrictions on international travellers.

Many businesses across the UK have already been highly innovative in developing new, durable ways of doing business, such as moving online or adapting to a delivery model. Many of these changes, like increased home working, have significant benefits, for example, reducing the carbon footprint associated with commuting. The Government will need to continue to ask all employers and operators of communal spaces to be innovative in developing novel approaches; UK Research and Innovation (UKRI) will welcome grant applications for proposals to develop new technologies and approaches that help the UK mitigate the impact of this virus.

Protecting the most clinically vulnerable people

Some people have received a letter from the NHS, their clinician or their GP telling them that as a result of having certain medical conditions, they are considered to be **clinically extremely vulnerable**.¹⁹ Throughout this period, the Government will need to continue an extensive programme of shielding for this group while the virus continues to circulate.²⁰ The Government will also have to adjust its protections for other vulnerable locations like prisons and care homes,²¹ based on an understanding of the risk.

Those in the clinically extremely vulnerable cohort will continue to be advised to shield themselves for some time yet, and the Government recognises the difficulties this brings for those affected. Over the coming weeks, the Government will continue to introduce more support and assistance for these individuals so that they have the help they need as they stay shielded. And the Government will bring in further measures to support those providing the shield - for example, continuing to prioritise care workers for testing and protective equipment.

¹⁹ Advice for those who are extremely clinically vulnerable and who must shield themselves can be found here: <https://www.gov.uk/government/publications/guidance-on-shielding-and-protecting-extremely-vulnerable-persons-from-covid-19/guidance-on-shielding-and-protecting-extremely-vulnerable-persons-from-covid-19>

²⁰ <https://www.gov.uk/government/publications/guidance-on-shielding-and-protecting-extremely-vulnerable-persons-from-covid-19/guidance-on-shielding-and-protecting-extremely-vulnerable-persons-from-covid-19>

²¹ <https://www.gov.uk/government/publications/coronavirus-covid-19-adult-social-care-action-plan>

A more differentiated approach to risk

As the UK moves into phase two, the Government will continue to recognise that not everybody's or every group's risk is the same; the level of threat posed by the virus varies across the population, in ways the Government currently only partly understands.

As the Government learns more about the disease and the risk factors involved, it expects to steadily make the risk-assessment more nuanced, giving confidence to some previously advised to shield that they may be able to take more risk; and identifying those who may wish to be more cautious. The Government will need to consider both risk to self, and risk of transmitting to others.

It is vital that those who are showing symptoms, however mild, must continue to self-isolate at home, as now, and that the household quarantine rules continue to apply. However, as the Government increases the availability and speed of swab testing it will be able to confirm more quickly whether suspected cases showing symptoms have COVID-19 or not. This will reduce the period of self-isolation for those who do not have COVID-19 and their household members.

The Government also anticipates targeting future restrictions more precisely than at present, where possible, for example relaxing measures in parts of the country that are lower risk, but continuing them in higher risk locations when the data suggests this is warranted. For example, it is likely that over the coming months there may be local outbreaks that will require reactive measures to be implemented reactively to maintain control of transmission.

Reactive measures

If the data suggests the virus is spreading again, the Government will have to tighten restrictions, possibly at short notice. The aim is to avoid this by moving gradually and by monitoring carefully the effect of each step the Government takes.

The scientific advice is clear that there is scope to go backwards; as restrictions are relaxed, if people do not stay alert and diligently apply those still in place, transmissions could increase, R would quickly tip above one, and restrictions would need to be re-imposed.

Phase three: reliable treatment

Humanity has proved highly effective at finding medical countermeasures to infectious diseases, and is likely to do so for COVID-19; but this may take time. As quickly as possible, the Government must move to a more sustainable solution, where the continued restrictions described above can be lifted altogether. To enable this, the Government must develop, trial, manufacture and distribute reliable treatments or vaccines as swiftly as possible.

The virus is unlikely to die out spontaneously; nor is it likely to be eradicated. Only one human infectious disease - smallpox - has ever been eradicated. The Government must therefore develop either a treatment that enables us to manage it like other serious diseases or have people acquire immunity by vaccination.

It is possible a safe and effective vaccine will not be developed for a long time (or even ever), so while maximising the chances this will happen quickly where the Government can, it must not rely on this course of action happening. There are currently over 70 credible vaccine development programmes worldwide and the first UK human trial has begun at the University of Oxford.

Even if it is not possible to develop an effective vaccine, it may be possible to develop drug treatments to reduce the impact of contracting COVID-19, as has been done for many other infectious diseases, ranging from other pneumonias and herpes infections, to HIV and malaria.

For example, drugs might treat the virus itself and prevent disease progression, be used to limit the risk of being infected, or be used in severe cases to prevent progression to severe disease, shorten time in intensive care and reduce the chance of dying.

Researchers may find some effective treatments imminently – for example from repurposing existing drugs – or might not do so for a long time. Not all treatments that have an effect will be game-changing; the best scientific advice is that it is likely any drugs that substantially reduce mortality or are protective enough to change the course of the epidemic will have to be designed and developed specifically for COVID-19, and that this will take time, with success not guaranteed.

However, notwithstanding that many of these will fail, the economic and societal benefits of success mean the Government will do all it can to develop and roll-out both treatments and vaccines at the fastest possible rate; the second phase is a means of managing things until the UK reaches this point.

4. Our roadmap to lift restrictions step-by-step

The Government has a carefully planned timetable for lifting restrictions, with dates that should help people to plan. This timetable depends on successfully controlling the spread of the virus; if the evidence shows sufficient progress is not being made in controlling the virus then the lifting of restrictions may have to be delayed.

We cannot predict with absolute certainty what the impact of lifting restrictions will be. If, after lifting restrictions, the Government sees a sudden and concerning rise in the infection rate then it may have to re-impose some restrictions. It 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.

Step One

The changes to policy in this step will apply from Wednesday 13 May in England. As the rate of infection may be different in different parts of the UK, this guidance should be considered alongside local public health and safety requirements for Scotland, Wales and Northern Ireland.

Work

For the foreseeable future, workers should continue to work from home rather than their normal physical workplace, wherever possible. This will help minimise the number of social contacts across the country and therefore keep transmissions as low as possible. All those who work are contributing taxes that help pay for the healthcare provision on which the UK relies. People who are able to work at home make it possible for people who have to attend workplaces in person to do so while minimising the risk of overcrowding on transport and in public places.

All workers who cannot work from home should travel to work if their workplace is open. Sectors of the economy that are allowed to be open should be open, for example this includes food production, construction, manufacturing, logistics, distribution and scientific research in laboratories. The only exceptions to this are those workplaces such as hospitality and non-essential retail which during this first step the Government is requiring to remain closed.²²

As soon as practicable, workplaces should follow the new “COVID-19 Secure” guidelines, as set out in the previous chapter, which will be published this week. These will ensure the risk of infection is as low as possible, while allowing as many people as possible to resume their livelihoods.

²² <https://www.gov.uk/government/publications/further-businesses-and-premises-to-close/further-businesses-and-premises-to-close-guidance>

It remains the case that **anyone who has symptoms, however mild, or is in a household where someone has symptoms, should not leave their house** to go to work. Those people should self-isolate, as should those in their households.

Schools

The rate of infection remains too high to allow the reopening of schools for all pupils yet. However, it is important that vulnerable children (including children in need, those with an Education, Health and Care plan and those assessed as otherwise vulnerable by educational providers or local authorities)²³ and the children of critical workers are able to attend school, as is currently permitted. Approximately 2% of children are attending school in person²⁴, although all schools are working hard to deliver lessons remotely.

But there is a large societal benefit from vulnerable children, or the children of critical workers, attending school: local authorities and schools should therefore **urge more children who would benefit from attending in person to do so**.

The Government is also amending its guidance to clarify that paid childcare, for example nannies and childminders, can take place subject to being able to meet the public health principles at Annex A, because these are roles where working from home is not possible. This should enable more working parents to return to work.

Travel

While most journeys to work involve people travelling either by bike, by car or on foot, public transport takes a significant number of people to work across the country, but particularly in urban centres and at peak times. As more people return to work, the number of journeys on public transport will also increase. This is why the Government is working with public transport providers to bring services back towards pre-COVID-19 levels as quickly as possible. This roadmap takes the impact on public transport into account in the proposed phased easing of measures.

When travelling **everybody (including critical workers) should continue to avoid public transport wherever possible**. If they can, people should instead choose to cycle, walk or drive, to minimise the number of people with whom they come into close contact. It is important many more people can easily travel around by walking and cycling, so the Government will increase funding and provide new statutory guidance to encourage local authorities to widen pavements, create pop-up cycle lanes, and close some roads in cities to traffic (apart from buses) as some councils are already proposing.

Social distancing guidance on public transport must be followed rigorously. As with workplaces, transport operators should follow appropriate guidance to make their services COVID-19 Secure; this will be published this week.

²³ <https://www.gov.uk/government/publications/closure-of-educational-settings-information-for-parents-and-carers/closure-of-educational-settings-information-for-parents-and-carers>

²⁴ [Coronavirus \(COVID-19\): attendance in education and early years settings](#)

Face-coverings

As more people return to work, there will be more movement outside people's immediate household. This increased mobility means the Government is now advising that people should aim to wear a face-covering in enclosed spaces where social distancing is not always possible and they come into contact with others that they do not normally meet, for example on public transport or in some shops. Homemade cloth face-coverings **can help reduce the risk of transmission in some circumstances**. Face-coverings are not intended to help the wearer, but to protect against inadvertent transmission of the disease to others if you have it asymptotically.

A face covering is not the same as a facemask such as the surgical masks or respirators used as part of personal protective equipment by healthcare and other workers. These supplies must continue to be reserved for those who need it. Face-coverings should not be used by children under the age of two, or those who may find it difficult to manage them correctly, for example primary age children unassisted, or those with respiratory conditions. It is important to use face-coverings properly and wash your hands before putting them on and taking them off.²⁵

Public spaces

SAGE advise that the risk of infection outside is significantly lower than inside, so the Government is updating the rules so that, as well as exercise, **people can now also spend time outdoors** subject to: not meeting up with any more than one person from outside your household; continued compliance with social distancing guidelines to remain two metres (6ft) away from people outside your household; good hand hygiene, particularly with respect to shared surfaces; and those responsible for public places being able to put appropriate measures in place to follow the new COVID-19 Secure guidance.

People may **exercise outside as many times each day as they wish**. For example, this would include angling and tennis. You will still not be able to use areas like playgrounds, outdoor gyms or ticketed outdoor leisure venues, where there is a higher risk of close contact and touching surfaces. You can only exercise with up to one person from outside your household – this means you should not play team sports, except with members of your own household.

People may drive to outdoor open spaces irrespective of distance, so long as they respect social distancing guidance while they are there, because this does not involve contact with people outside your household.

When travelling to outdoor spaces, it is important that people respect the rules in Scotland, Wales and Northern Ireland and **do not travel to different parts of the UK** where it would be inconsistent with guidance or regulations issued by the relevant devolved administration.

These measures may come with some risk; it is important that everyone continues to act responsibly, as the large majority have done to date. The infection rate will increase if people begin to break these rules and, for example, mix in groups in parks, which will trigger the need for further restrictions.

²⁵ ANNEX A: Staying Safe Outside Your Home

Protecting the clinically vulnerable

It remains the case that some people are more clinically vulnerable to COVID-19 than others. These include those aged over 70, those with specific chronic pre-existing conditions and pregnant women.²⁶ **These clinically vulnerable people should continue to take particular care to minimise contact with others outside their households, but do not need to be shielded.**

Those in the clinically extremely vulnerable group **are strongly advised to stay at home at all times and avoid any face-to-face contact**; this is called 'shielding'. It means not leaving the house or attending gatherings at all, with very limited exceptions. **Annex B** sets out more detail on the guidance applicable to different vulnerable groups at this time.

The Government knows people are taking shielding advice seriously and is acutely aware of the huge commitment and resolve it requires to keep away from family and friends. Unfortunately, the current level of transmission of the virus is such that the Government needs to continue to ask that the guidance is followed. In recognition of the challenge faced by those shielding, the Government is:

- **Providing essential food to those unable to leave their home.** Over one million food boxes have now been delivered in England by wholesalers to those shielding who asked for help with food, with hundreds of thousands more to follow in the coming weeks.²⁷ The Government has also arranged priority access to supermarket deliveries for those who have said they need it.
- **Facilitating volunteer support.** Up to 200,000 calls a day have been made to the shielded in England to confirm their support needs,²⁸ and councils are helping to support them in other ways - including, in some cases, organising regular calls from volunteers to those isolated. Those who are shielding can also directly request the support of NHS Volunteer Responders.

The Government is also aware that when – in time – other members of society return to aspects of their normal daily lives, the challenge for those being asked to shield may deepen. The Government will continue to review the support needs of those shielding and the Government will continue to provide support to individuals for as long as they need its direct help.

Along with the support the Government is providing to those shielding, it will provide vital support for other vulnerable people, such as those at risk of loneliness. The Government is continuing to work to further support these groups, including by providing vital financial support to frontline charities working in these areas. The [GOV.UK](https://www.gov.uk) website provides information about the huge range of support that is available including from local authorities and the voluntary and community sector. The Government will continue to update [GOV.UK](https://www.gov.uk) as new services and support become available.

As the UK recovers, the Government will ensure people with disabilities can have independent lives and are not marginalised. This will include making sure that they can access public services and will consider their needs as the Government creates safe work environments and reopen the transport system. The Government will ensure their overall health outcomes do not suffer disproportionately.

²⁶ The list of those who are clinically vulnerable can be found here:

<https://www.gov.uk/government/publications/full-guidance-on-staying-at-home-and-away-from-others/full-guidance-on-staying-at-home-and-away-from-others#eel-decline>

²⁷ The Ministry of Housing, Communities and Local Government

²⁸ The Ministry of Housing, Communities and Local Government

Enforcement

The Government is examining more stringent enforcement measures for non-compliance, as it has seen in many other countries. The Government will impose higher fines to reflect the increased risk to others of breaking the rules as people are returning to work and school. The Government will seek to make clearer to the public what is and is not allowed.

Parliament

It is vital that Parliament can continue to scrutinise the Government, consider the Government's ambitious legislative agenda and legislate to support the COVID-19 response. Parliament must set a national example of how business can continue in this new normal; and it must move, in step with public health guidance, to get back to business as part of this next step, including a move towards further physical proceedings in the House of Commons.

International travel

As the level of infection in the UK reduces, and the Government prepares for social contact to increase, it will be important to manage the risk of transmissions being reintroduced from abroad.

Therefore, in order to keep overall levels of infection down and in line with many other countries, the Government will introduce a series of measures and restrictions at the UK border. This will contribute to keeping the overall number of transmissions in the UK as low as possible. First, alongside increased information about the UK's social distancing regime at the border, the Government will require all international arrivals to supply their contact and accommodation information. They will also be strongly advised to download and use the NHS contact tracing app.

Second, the Government will require all international arrivals not on a short list of exemptions to self-isolate in their accommodation for fourteen days on arrival into the UK. Where international travellers are unable to demonstrate where they would self-isolate, they will be required to do so in accommodation arranged by the Government. The Government is working closely with the devolved administrations to coordinate implementation across the UK.

Small exemptions to these measures will be in place to provide for continued security of supply into the UK and so as not to impede work supporting national security or critical infrastructure and to meet the UK's international obligations. All journeys within the Common Travel Area will also be exempt from these measures.

These international travel measures will not come into force on 13 May but will be introduced as soon as possible. Further details, and guidance, will be set out shortly, and the measures and list of exemptions will be kept under regular review.

Step Two

The content and timing of the second stage of adjustments will depend on the most up-to-date assessment of the risk posed by the virus. The five tests set out in the first chapter must justify changes, and they must be warranted by the current alert level.

They will be enabled by the programmes set out in the next chapter and, in particular, by continuing to bolster test and trace capabilities, protect care homes and support the clinically extremely vulnerable. It is possible that the dates set out below will be delayed if these conditions are not met. Changes will be announced at least 48 hours before coming into effect.

To aid planning, the Government's current aim is that the second step will be made no earlier than Monday 1 June, subject to these conditions being satisfied. Until that time the restrictions currently in place around the activities below will continue.

The Government will work with the devolved administrations to ensure that the changes for step two and beyond are coordinated across the UK. However, there may be circumstances where different measures will be lifted at different times depending on the variance in rate of transmission across the UK.

The current planning assumption for England is that the second step may include as many of the following measures as possible, consistent with the five tests. Organisations should prepare accordingly.

- **A phased return for early years settings and schools.** Schools should prepare to begin to open for more children from 1 June. The Government expects children to be able to return to early years settings, and for Reception, Year 1 and Year 6 to be back in school in smaller sizes, from this point. This aims to ensure that the youngest children, and those preparing for the transition to secondary school, have maximum time with their teachers. Secondary schools and further education colleges should also prepare to begin some face to face contact with Year 10 and 12 pupils who have key exams next year, in support of their continued remote, home learning. The Government's ambition is for all primary school children to return to school before the summer for a month if feasible, though this will be kept under review. The Department of Education will engage closely with schools and early years providers to develop further detail and guidance on how schools should facilitate this.
- **Opening non-essential retail** when and where it is safe to do so, and subject to those retailers being able to follow the new COVID-19 Secure guidelines. The intention is for this to happen in phases from 1 June; the Government will issue further guidance shortly on the approach that will be taken to phasing, including which businesses will be covered in each phase and the timeframes involved. All other sectors that are currently closed, including hospitality and personal care, are not able to re-open at this point because the risk of transmission in these environments is higher. The opening of such sectors is likely to take place in phases during step three, as set out below.
- **Permitting cultural and sporting events to take place behind closed-doors** for broadcast, while avoiding the risk of large-scale social contact.
- **Re-opening more local public transport in urban areas, subject to strict measures** to limit as far as possible the risk of infection in these normally crowded spaces.

Social and family contact

Since 23 March the Government has asked people to only leave the house for very limited purposes and this has been extraordinarily disruptive to people's lives.

In particular this has affected the isolated and vulnerable, and those who live alone. As restrictions continue, the Government is considering a range of options to reduce the most harmful social effects to make the measures more sustainable.

For example, the Government has asked SAGE to examine whether, when and how it can safely change the regulations to **allow people to expand their household group to include one other household** in the same exclusive group.²⁹

The intention of this change would be to allow those who are isolated some more social contact, and to reduce the most harmful effects of the current social restrictions, while continuing to limit the risk of chains of transmission. It would also support some families to return to work by, for example, allowing two households to share childcare.³⁰

This could be based on the New Zealand model of household "bubbles" where a single "bubble" is the people you live with.³¹ As in New Zealand, the rationale behind keeping household groups small is to limit the number of social contacts people have and, in particular, to limit the risk of inter-household transmissions.³²

In addition, the Government is also examining how to enable people to gather in slightly larger groups to better facilitate small weddings.

Over the coming weeks, the Government will engage on the nature and timing of the measures in this step, in order to consider the widest possible array of views on how best to balance the health, economic and social effects.

Step Three

The next step will also take place when the assessment of risk warrants further adjustments to the remaining measures. The Government's current planning assumption is that this step will be no earlier than 4 July, subject to the five tests justifying some or all of the measures below, and further detailed scientific advice, provided closer to the time, on how far we can go.

The ambition at this step is to **open at least some of the remaining businesses and premises that have been required to close, including personal care** (such as hairdressers and beauty salons) **hospitality** (such as food service providers, pubs and accommodation), **public places** (such as places of worship) and **leisure facilities** (like cinemas). They should also meet the COVID-19 Secure guidelines. Some venues which are, by design, crowded and where it may prove difficult to enact distancing may still not be able to re-open safely at this point, or may be

²⁹ It is not OK to be in multiple household groups: if Household A merges with B, Household B cannot also elect to be in a group with Household C. This would create a chain that would allow the virus to spread widely

³⁰ The potential effects of this change on the rate of transmission are to be examined.

³¹ <https://covid19.govt.nz/alert-system/alert-level-3/>

³² This concept is explained in this 'building your bubble' explainer from the New Zealand Government: <https://www.health.govt.nz/our-work/diseases-and-conditions/covid-19-novel-coronavirus/covid-19-novel-coronavirus-health-advice-general-public/managing-your-bubble-during-covid-19>

able to open safely only in part. Nevertheless the Government will wish to open as many businesses and public places as the data and information at the time allows.

In order to facilitate the fastest possible re-opening of these types of higher-risk businesses and public places, the Government will carefully phase and pilot re-openings to test their ability to adopt the new COVID-19 Secure guidelines. The Government will also monitor carefully the effects of re-opening other similar establishments elsewhere in the world, as this happens. The Government will establish a series of taskforces to work closely with stakeholders in these sectors to develop ways in which they can make these businesses and public places COVID-19 Secure.

5. Fourteen supporting programmes

To deliver our phased plan, the Government will deliver fourteen programmes of work, all of which are ambitious in their scope, scale and timeframes.

1. NHS and care capacity and operating model

First, to maximise its confidence in managing new cases, the Government needs to continue to secure NHS and care capacity, and put it on a sustainable footing.

This includes ensuring staff are protected by the appropriate personal protective equipment (PPE), in all NHS and care settings.

This has required a new Industrial Strategy for PPE. Since the start of the outbreak, the Government, working with the NHS, industry and the Armed Forces, has delivered over 1.16bn pieces of PPE to the front line. On 6 May, over 17 million PPE items were delivered to 258 trusts and organisations. Through its UK-wide approach, the Government is working closely with the devolved administrations to support and co-ordinate the distribution of PPE across the UK: millions of PPE items have been delivered to Northern Ireland, Scotland and Wales. But there remains much more to do and under the leadership of Lord Deighton, the Government will:

- **Expand supply from overseas.** The Government has already set up a cross-government PPE sourcing unit, now staffed by over 400 people, to secure new supply lines from across the world and has published rigorous standards against which purchases will be made. The Government is working urgently to identify new sources of critical PPE from overseas markets, diversifying the UK's sources of supply and strengthening the UK's supply chains for the long term. DIT and FCO teams in posts around the world are seeking new supplies, lobbying governments to lift export restrictions and helping get crucial deliveries back to the UK.
- **Improve domestic manufacturing capability.** Lord Deighton is leading the Government effort to unleash the potential of British industry to manufacture PPE for the health and social care sectors. This will build on the manufacturing opportunities the Government has already identified and contribute to the national effort to meet the unprecedented demand. The Government is also working to support the scale-up of engineering efforts for small companies capable of contributing to supplies. The Government is currently in contact with over 200 potential UK manufacturers and has already taken delivery of products from new, certified UK manufacturers.
- **Expand and improve the logistics network for delivering to the front line.** The Government has brought together the NHS, industry and the Armed Forces to create a huge PPE distribution network, providing drops of critical equipment to 58,000 healthcare settings including GPs, pharmacies and social care providers. The Government is also releasing

stock to wholesalers for primary and social care and has delivered over 50 million items of PPE to local resilience forums to help them respond to urgent local demand. The Government is continually looking at how it improves distribution and is currently testing a new portal to more effectively deliver to smaller providers.

Second, the Government will seek innovative operating models for the UK's health and care settings, to strengthen them for the long term and make them safer for patients and staff in a world where COVID-19 continues to be a risk. For example, this might include using more tele-medicine and remote monitoring to give patients hospital-level care from the comfort and safety of their own homes. Capacity in community care and step-down services will also be bolstered, to help ensure patients can be discharged from acute hospitals at the right time for them. To this end, the Government will establish a dedicated team to see how the NHS and health infrastructure can be supported for the COVID-19 recovery process and thereafter.

Third, recognising that underlying health conditions and obesity are risk factors not just for COVID-19 but also for other severe illnesses, the Government will invest in preventative and personalised solutions to ill-health, empowering individuals to live healthier and more active lives. This will involve expanding the infrastructure for active travel (cycling and walking) and expanding health screening services, especially through the NHS Health Check programme, which is currently under review.

Fourth, the Government remains committed to delivering its manifesto, including to building 40 new hospitals, reforming social care, recruiting and retaining 50,000 more nurses and creating 50 million new GP surgery appointments.

Finally, the Government will continue to bolster the UK's social care sector, to ensure that those who need it can access the care they need outside of the NHS. The Government has committed to invest £1bn in social care every year of this Parliament to support the growing demand on the sector. By having an effective social care system the NHS can continue to discharge people efficiently from hospitals once they no longer need specialist medical support, helping us to keep NHS capacity available for those who need it most. The Government is also committed to longer term reform of the social care sector so no one is forced to have to sell their home to pay for care. Everyone accessing care must have safety and security.

Together these reforms will ensure that as well as preparing for the UK's recovery from COVID-19, the Government learns the lessons from this outbreak and ensures that the NHS is resilient to any future outbreaks.

2. Protecting care homes

The Government's number one priority for adult social care is infection control during the COVID-19 pandemic. Care homes for the elderly are particularly vulnerable because their residents are typically at greatest risk due to age and comorbidities and because the nature of care homes means they are often closed spaces where the virus can spread quickly. In April, the Government published a comprehensive action plan to support the 25,000 providers of adult social care in England

throughout the COVID-19 outbreak, including ramping up testing, overhauling the way PPE is being delivered to care homes and helping to minimise the spread of the virus to keep people safe.³³

This has been supported by £3.2bn of additional funding for local authorities, which can be used to meet some of the rising costs providers are facing and additional pressures on social care; as well as a further £1.3bn for the NHS and local authorities to work together to fund the additional needs of people leaving hospital during the pandemic.

While still too high, the daily number of deaths of people in care homes in England has been falling for the past fortnight. The majority of care homes still have been protected from having any cases and the Government will continue to strengthen the protections against infection of care home residents. Acting on the most recent scientific advice, the Government is taking further steps to support and work with the care home sector, building on work so far. This includes:

- **Testing:** the Government is providing widespread, swift testing of all symptomatic care home residents, and all patients discharged from hospital before going into care homes. It is offering a COVID-19 test to every staff member and resident in every care home in England, whether symptomatic or not; by 6 June, every care home for the over 65s will have been offered testing for residents and staff.
- **Infection prevention and control:** the Government is stepping in to support supply and distribution of PPE to the care sector, delivering essential supplies to care homes, hospices, residential rehabs and community care organisations. It is supporting care homes with extensive guidance, both online and by phone, on how to prevent and control COVID-19 outbreaks. This includes detailed instructions on how to deep clean effectively after outbreaks and how to enhance regular cleaning practices. The NHS has committed to providing a named contact to help 'train the trainers' for every care home that wants it by 15 May. The Government expects all care homes to restrict all routine and non-essential healthcare visits and reduce staff movement between homes, in order to limit the risk of further infection.
- **Workforce:** the Government is expanding the social care workforce, through a recruitment campaign, centrally paying for rapid induction training, making Disclosure and Barring Services checks free for those working in social care and developing an online training and job matching platform.
- **Clinical support:** the Government is accelerating the introduction of a new service of enhanced health support in care homes from GPs and community health services, including making sure every care home has a named clinician to support the clinical needs of their residents by 15 May. The NHS is supporting care homes to take up video consultation approaches, including options for a virtual ward.
- **Guidance:** the Government is providing a variety of guidance, including on [GOV.UK](https://www.gov.uk) and is signposting, through the Social Care Institute for Excellence, resources for care homes, including tailored advice for managing the COVID-19 pandemic in different social care settings and with groups with specific needs, for example adults with learning disabilities and autism.
- **Local Authority role:** every local authority will ensure that each care home in their area has access to the extra support on offer that they need to minimise the risk of infection and spread of infection within their care home, for example that care homes can access the face

³³ <https://www.gov.uk/government/publications/coronavirus-covid-19-adult-social-care-action-plan/covid-19-our-action-plan-for-adult-social-care>

to face training on infection control offered by the NHS, that they have a named clinical lead, know how to access testing for their staff and residents and are aware of best practice guidance for caring for their residents during the pandemic. Any issues in accessing this support will be escalated to regional and national levels for resolution as necessary.

3. Smarter shielding of the most vulnerable

The Government is taking a cautious approach, but some inherent risk to the most vulnerable remains. Around 2.5 million people across the UK have been identified as being clinically extremely vulnerable and advised to shield.³⁴

These are people who are most at risk of severe illness if they contract COVID-19. This means that they have been advised to stay at home at all times and avoid any face-to-face contact, until the end of June. The Government and local authorities have offered additional support to people who are shielding, including delivery of food and basic supplies, care, and support to access medicines, if they are unable to get help with this from family and friends. Over one million food boxes have been delivered in England since the programme started.³⁵ NHS Volunteer Responders and local volunteers are also helping to support this group.

The guidance on shielding and vulnerability will be kept under review as the UK moves through the phases of the Government's strategy. It is likely that the Government will continue to advise people who are clinically extremely vulnerable to shield beyond June. Whilst shielding is important to protect individuals from the risk of COVID-19 infection, the Government recognises that it is challenging for people's wider wellbeing. The Government will review carefully the effect on shielded individuals, the services they have had, and what next steps are appropriate.

For those who need to shield for a longer period, the Government will review the scale and scope of their needs and how the support programme can best meet these. The Government will also consider guidance for others who may be more vulnerable to COVID-19 and how it can support people to understand their risk.

4. More effective, risk-based targeting of protection measures

One way to limit the effect of the shielding measures and better target the social restrictions is to understand the risk levels in different parts of the population - both risk to self and risk to others.

It is clear the virus disproportionately affects older people, men, people who are overweight and people with some underlying health conditions. This is a complex issue, which is why, as set out in Chapter 1, Public Health England is leading an urgent review into factors affecting health outcomes.

In March, based on data and evidence available about the virus at that time, SAGE advised that older people, and those with certain underlying medical conditions, should take additional precautions to reduce the risk of contracting the virus. Those defined as clinically extremely vulnerable have been advised to shield, staying at home at all times and avoiding all non-essential face to face contact. Those who are clinically vulnerable, including all those aged 70 and over and

³⁴ Source: The Ministry of Housing, Communities and Local Government, Welsh Gov, Scottish Gov, NI Gov

³⁵ The Ministry of Housing, Communities and Local Government

pregnant women, have been advised to take particular care to minimise contact with those outside their household.

As our understanding of the virus increases, the Government is monitoring the emerging evidence and will continue to listen to advice from its medical advisers on the level of clinical risk to different groups of people associated with the virus. As the Government learns more, we expect to be able to offer more precise advice about who is at greatest risk. The current advice from the NHS on who is most at risk of harm from COVID-19 can be found [here](#).³⁶

5. Accurate disease monitoring and reactive measures

The success of any strategy based on releasing the current social restrictions while maintaining the epidemic at a manageable level will depend on the Government's ability to monitor the pandemic accurately, as well as quickly detect and tackle a high proportion of outbreaks. This will be especially challenging during the winter months given that COVID-19 shares many symptoms with common colds and the flu.

As the Government lifts restrictions over the coming months, the public must be confident action will be taken quickly to deal with any new local spikes in infections, and that nationally we have a clear picture of how the level of infections is changing. To achieve this, the Government is establishing a new biosecurity monitoring system, led by a new Joint Biosecurity Centre now being established.

Joint Biosecurity Centre (JBC)

The Government's new approach to biosecurity will bring together the UK's world-leading epidemiological expertise and fuse it with the best analytical capability from across Government in an integrated approach.

The Centre will have an **independent analytical function** that will provide real time analysis and assessment of infection outbreaks at a community level, to enable rapid intervention before outbreaks grow. It will work closely with local partners and businesses to:

- collect a wide range of data to build a picture of COVID-19 infection rates across the country – from testing, environmental and workplace data to local infrastructure testing (e.g. swab tests);
- analyse that data to form a clear picture of changes in infection rates across the country, providing intelligence on both the overall national picture and, critically, potential community level spikes in infection rates; and
- advise the Chief Medical Officers of a change in the COVID-19 Alert level who will then advise Ministers.

The Centre will also have a **response function** that will advise on the overall prevalence of COVID-19 to help inform decisions to ease restrictions in a safe way. It will identify specific actions to address local spikes in infections, in partnership with local agencies – for example, advising

³⁶ <https://www.nhs.uk/conditions/coronavirus-covid-19/people-at-higher-risk-from-coronavirus/whos-at-higher-risk-from-coronavirus/>

Ministers, businesses and local partners to close schools or workplaces where infection rates have spiked, to reduce risk of further infection locally.

Local actions triggered by JBC analysis and assessment will be guided by a clear set of protocols based on the best scientific understanding of COVID-19, and what effective local actions look like.

The JBC will be responsible for setting the new COVID-19 Alert level to communicate the current level of risk clearly to the public. **The alert levels are:**

- Level 1** COVID-19 is not known to be present in the UK
- Level 2** COVID-19 is present in the UK, but the number of cases and transmission is low
- Level 3** A COVID-19 epidemic is in general circulation
- Level 4** A COVID-19 epidemic is in general circulation; transmission is high or rising exponentially
- Level 5** As level 4 and there is a material risk of healthcare services being overwhelmed

The Government will engage with the devolved administrations to explore how the centre can operate most effectively across the UK, as it is established. Over time the Government will consider whether the JBC should form part of an extended infrastructure to address biosecurity threats to the UK, and whether the COVID-19 alert level system should be expanded to other potential infectious diseases.

6. Testing and tracing

Mass testing and contact tracing are not, in themselves, solutions, but may allow us to relax some social restrictions faster by targeting more precisely the suppression of transmission. The UK now has capacity to carry out over 100,000 tests per day, and the Government has committed to increase capacity to 200,000 tests per day by the end of May.

The Government has appointed Baroness Harding to lead the COVID-19 Test and Trace Taskforce. This programme will ensure that, when someone develops COVID-19-like symptoms, they can rapidly have a test to find out if they have the virus – and people who they've had recent close contact with can be alerted and provided with advice. This will:

- identify who is infected more precisely, to reduce the number of people who are self-isolating with symptoms but who are not actually infected, and to ensure those who are infected continue to take stringent self-isolation measures; and
- ensure those who have been in recent close contact with an infected person receive rapid advice and, if necessary, self-isolate, quickly breaking the transmission chain.

This cycle of testing and tracing will need to operate quickly for maximum effect, because relative to other diseases (for example SARS) a proportion of COVID-19 sufferers almost certainly become infectious to others before symptoms are displayed; and almost all sufferers are maximally infectious to others as soon as their symptoms begin even if these are initially mild.

For such a system to work, several systems need to be built and successfully integrated. These include:

- widespread swab testing with rapid turn-around time, digitally-enabled to order the test and securely receive the result certification;
- local authority public health services to bring a valuable local dimension to testing, contact tracing and support to people who need to self-isolate;
- automated, app-based contact-tracing through the new NHS COVID-19 app to (anonymously) alert users when they have been in close contact with someone identified as having been infected; and
- online and phone-based contact tracing, staffed by health professionals and call handlers and working closely with local government, both to get additional information from people reporting symptoms about their recent contacts and places they have visited, and to give appropriate advice to those contacts, working alongside the app and the testing system.

Anyone with symptoms should isolate immediately, alongside their households, and apply for a test. If a negative test is returned, then isolation is no longer required. Once identified, those contacts considered to be at risk will be asked to isolate, either at the point of a positive test or after 48 hours - whichever is sooner.

Outbreaks amongst the socially excluded - whether through poverty or homelessness - are likely to be especially difficult to detect and harmful, since people in these groups may lack the means to isolate themselves when ill.

The Government will increasingly augment swab-based antigen testing, which determines whether a person currently has the virus, with antibody testing, which shows whether a person has previously had it, once it is sufficiently reliable to do so.

Whilst the measures above will involve an unprecedented degree of data-collection, as many Asian countries implemented after the SARS and MERS outbreaks, the Government will enact robust safety measures.

Part of the tracing effort will include a voluntary NHS contact tracing application (the NHS COVID-19 app, Figure 7) for smartphones; this will help increase the speed and effectiveness of the tracing effort.

Information collected through the Test and Trace programme, together with wider data from sources such as 111 online, will form part of a core national COVID-19 dataset. The creators of a number of independent apps and websites which have already launched to collect similar data have agreed to work openly with the NHS and have aligned their products and data as part of this central, national effort.

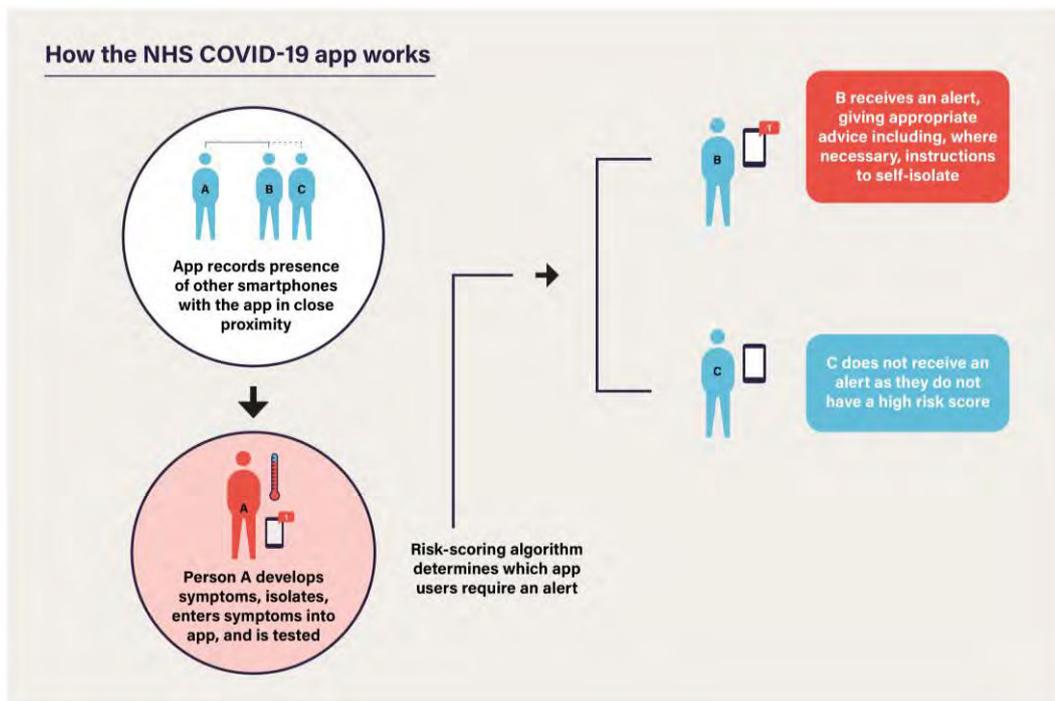


Figure 7: *The NHS COVID-19 app Model for the NHS COVID-19 app at national launch.*

7. Increased scientific understanding

Better scientific understanding of COVID-19 will help us act more precisely and confidently to limit its spread, improve treatments and help us develop vaccines. It will also help us better gauge risk of infection so the Government can adjust social restrictions such that it is neither being overly cautious nor reckless.

The Government is investing across the board in both basic genetic research and clinical studies:

- A joint NIHR-UKRI rapid response call, now closed, awarded £24.6m across 27 projects including for testing a vaccine, developing therapies and improving understanding of how to treat COVID-19. Building on the initial rapid funding round for COVID-19 research, the NIHR and UKRI are holding a rolling call for proposals for research into COVID-19. The call is for UK-led academic, small and medium enterprise (SME) and wider industry research that will address a wide range of COVID-19 knowledge gaps/needs, and which will lead to a benefit in UK, potentially international, public health within 12 months.
- The Government has recruited over 9,000 patients to the world's largest randomised COVID-19 therapeutics control trial (the RECOVERY Trial) to test whether therapeutics for other diseases can be repurposed; this is supported by a rapid response grant from the above call. More detail on this is set out below.
- The UK has launched a £20m COVID-19 Genomics consortium to map the spread of COVID-19 using genomic sequencing.
- Funded by the Department of Health and Social Care and UKRI, the collaborative programme ACCORD (Accelerating COVID-19 Research & Development platform) will

accelerate the development of new drugs for patients hospitalised with COVID-19, reducing the time taken to set up clinical studies for new therapies from months to weeks. The first of the new and existing medicines to be tested through the ACCORD platform is Bemcentinib.

- UKRI has also opened a call for short-term (12-18 month) projects addressing and mitigating the health, social, economic, cultural and environmental impacts of the COVID-19. This was launched on 31 March; eligible organisation from across the UK may apply, and there is no closing date.

8. "COVID-19 Secure" guidelines

Since mid-April an extensive programme of engagement has been underway between Government, the Health and Safety Executive, the public health authorities, business representative groups, unions, employers and local authorities, to agree the best way to make workplaces less infectious.

The guidelines will be based on sound evidence - from what has worked elsewhere in the world, and the best available scientific theory. The most important guidelines people can follow to stay safer outside their homes are attached at Annex A. For example:

- Individuals should **keep their distance from people outside their household**, wherever possible. Transmission is affected by both duration and proximity of contact; individuals should not be too close to other people for more than a short amount of time. Public Health England recommends trying to keep two metres away from people as a precaution.
- It remains essential to **keep hands and face as clean as possible**. People should wash their hands often, using soap and water, and dry them thoroughly. Touching of the face should be avoided. Hand sanitiser should be carried when travelling and applied where available outside the home, especially when entering a building and following contact with surfaces. **Clothes should also be washed regularly**, as there is some evidence that the virus can stay on fabrics.
- It is possible to reduce the risks of transmission in the workplace by **limiting the number of people that any given individual comes into contact with regularly**. Employers can support this where practical by changing shift patterns and rotas to keep smaller, contained teams. Evidence also suggests the virus is **less likely to be transmitted in well-ventilated areas**.

In addition to COVID-19 Secure guidelines for workplaces, the Government will consult on and release similar guidelines for schools, prisons, and other public spaces.

9. Better distancing measures

As set out in the previous chapter, during the second phase, the Government will steadily replace the current social restrictions with better targeted ones that best balance the three aims set out at the beginning of this document. The Government will engage widely ahead of each new stage of adjustments being designed and released.

10. Economic and social support to maintain livelihoods and restore the economy

The Government has announced one of the most generous and comprehensive support packages in the world, providing security and support for those who get sick or can't work and a bridge for businesses to protect people's jobs.

Support has been announced to help millions of workers and businesses, for the most vulnerable in society and those on the lowest income, for homeowners and renters, and for public services and vital sectors. The Government's package has also been complemented by the actions of the independent Bank of England.

The Government has introduced the Coronavirus Job Retention Scheme to prevent employers having to lay off staff and the Self-Employment Income Support Scheme to support eligible sole traders and partnerships, and has increased the standard allowance of Universal Credit and basic element of Working Tax Credits by £20 a week for one year (this will mean claimants are £1,040 per year better off). In the first two weeks since the Job Retention scheme was launched, over 800,000 employers have applied for help to pay the wages of over 6 million furloughed jobs.

The Government has increased the support it is offering through the benefit system for housing costs and for the self-employed, it has introduced a moratorium on private rental sector evictions, has established a new hardship fund and provided support for rough sleepers. Lenders are offering mortgage holidays for borrowers struggling with their finances and unable to make their repayments as a result of COVID-19.

This is in addition to support for businesses, including:

- VAT deferrals until the end of June that provide a direct cash injection of over £30bn, Self-Assessment tax deferrals from July to next January, providing a cashflow benefit of £13bn and more than 64,000 tailored Time to Pay arrangements agreed with businesses and individuals;
- A business rates holiday worth £11bn to businesses;
- Direct cash grants worth £10,000 or £25,000 for small businesses including in the retail, hospitality or leisure sectors, worth over £12bn in total;
- £1.25bn support for innovative firms;
- A rebate scheme to reimburse SMEs for part of their SSP costs worth up to £2bn for up to two million businesses; and
- A package of government-backed and guaranteed loans, which make available approximately £330bn of guarantees.

The Government is also supporting the NHS and other public services in the fight against the virus. So far more than £16bn from the COVID-19 Response Fund has gone towards the effort.

The Government recognises that many charities are working on the frontline to support people including hospices, citizens advice and support for victims of domestic violence and has provided a £750m package to enable those working on the frontline to continue supporting UK communities.

However, these measures are extraordinarily costly and cannot be sustained for a prolonged period of time. Precise costs will depend on a range of factors including the impact of the crisis on the wider economy and the level of take up for each scheme. The Office for Budget Responsibility has estimated that the direct cost to the Government of the response to COVID-19 could rise

above £100bn in 2020-21. In addition to this, support of approximately £330bn (equivalent to 15% of GDP) in the form of guarantees and loans has been made available to business.

So as the UK adjusts the current restrictions, the Government will also need to wind down the economic support measures while people are eased back to work

The Government will also need to ensure the UK's supply chains are resilient, ensuring the UK has sufficient access to the essential medicines, PPE, testing equipment, vaccines and treatments it needs, even during times of global shortage.

The world will not return to 'normal' after COVID-19; much of the global economy is likely to change significantly. The UK will need to be agile in adapting to and shaping this new world if the Government is to improve living standards across the nation as it recovers from COVID-19.

11. Treatments and vaccines

A vaccine or treatment can be used in several ways to help manage down the epidemic. Broadly in public health terms these can be divided into an epidemic modifying vaccine strategy, a disease modifying vaccine strategy and treatments to reduce the risk or severity of illness for those who catch the virus or for certain patient groups.

An epidemic modifying vaccine strategy aims to induce immunity to the infection at the population level and therefore stop the epidemic. To be epidemic modifying the vaccine has to be very safe (because it is used in the entire population) and highly effective.

A disease modifying vaccine strategy aims to protect all or selected vulnerable parts of the population from the worst effects of the disease, even if the vaccine is not capable of complete protection against infection. It might for example ensure that those vaccinated are much less likely to die from the disease. The epidemic may continue but with significantly reduced mortality and long-term health effects.

To move to phase three as quickly as possible, the Government must compress the time taken to develop, test, manufacture and distribute a reliable vaccine or treatments as far as possible. That means four immediate actions.

First, the government has launched the Vaccines and Treatments Taskforce, which will accelerate the development of a vaccine and treatments and ensure that, if one ever becomes available, it can be produced in mass quantities and safely administered to the public.

Second, on therapeutic treatments, the UK currently has three key national phase III drugs trials underway – RECOVERY, PRINCIPLE and REMAP-CAP - testing over 10 different drugs, as well as national programmes to evaluate more experimental drugs that show promise. RECOVERY, one of the key national phase III trials is currently the world's largest randomised control trial on COVID-19 therapeutics, recruiting 5,000 patients in under four weeks and now over 9,500.

Third, the Government is investing in the UK's sovereign manufacturing capability to ensure that at the point a vaccine or drug-based treatment is developed it can be manufactured at scale as quickly as possible. Therefore, the Government is working with the BioIndustry Association Taskforce to review UK manufacturing capabilities, which exist in academic and industrial spaces, alongside the UK's national centres. This will include assessing where the UK can repurpose existing sites for different vaccine types in the short-term, and where capacity can be sustainably

built to provide a longer-term solution. The Government will also review how it can support the acceleration, and expand the capacity, of the Vaccines Manufacturing and Innovation Centre, so it becomes operational earlier than planned and can manufacture population level doses.

Fourth, if a successful vaccine has been developed, it will be critical the Government can deliver it as quickly and as safely as possible, to those who need it most. Whilst there are numerous potential COVID-19 vaccine candidates and timings remain uncertain, the Government is working on the general principle that people should be vaccinated as soon as a safe vaccine becomes available. This will be a major logistical undertaking, and the Government will seek Joint Committee on Vaccination and Immunisation (JCVI) advice on deployment.

12. International action and awareness

COVID-19 does not recognise international borders and the UK will only truly be free of it when it has been eliminated from all four corners of the globe. Our health and economic systems will not fully recover while others are still suffering from its effects. As an outward-looking nation it is in our best interests, and our nature, to be at the forefront of a coordinated global response.

Consequently, we have spearheaded global action to counter the pandemic, including through the G7 and G20. On 4 May the UK co-led the Coronavirus Global Response International Pledging event, bringing together 42 nations to mobilise £6.5bn. The UK also co-led, with India, the development of the G20's Action Plan that, among other things, calls for the rapid implementation of the \$200bn (USD) package of global support from the World Bank Group and Regional Development Banks. This has also seen a landmark suspension of debt service repayments to official creditors, worth \$12bn (USD), for the world's least developed countries until 2021.

UK contributions also have played a critical role in ensuring that the global response is funded and fit for purpose. The Government has pledged over £388m towards the global \$8bn (USD) funding call for vaccines, therapeutics and diagnostics. This includes the largest contribution of any country to the Coalition Epidemic Preparedness Innovations appeal, which is leading efforts to develop a COVID-19 vaccine. The UK will also provide £330m a year for the next five years to the Global Vaccine Alliance (Gavi), making the UK the world's largest donor and readying Gavi to distribute a COVID-19 vaccine in developing countries. Looking ahead, the UK is also hosting the Global Vaccine Summit on 4 June, which will replenish Gavi's funds for the next 5 years.

Until a vaccine is ready, the Government will use the UK's position as a world leader in international development to help safeguard the wellbeing of the world's most vulnerable populations. The Government has made an additional contribution of up to £150m of UK aid funding to the International Monetary Fund's Catastrophe Containment and Relief Trust to help developing countries meet their debt repayments, and has doubled its £2.2bn loan to the Poverty Reduction and Growth Trust, both of which will free up space for low income countries to respond to the immediate crisis. The Government has provided £276m to address the impact of the pandemic and save lives among the world's most vulnerable communities, including £220m provided to international organisations (including the UN and ICRC) and UK charities to save lives amongst those beyond the reach of traditional health services. The UK is also deploying technical assistance and expertise as part of the response to assist the UN and developing countries.

The UK is focussing on the primary and secondary impacts of COVID-19 on health and nutrition, society and economy. We know that COVID-19 will exacerbate gender inequality as we saw with the Ebola outbreak in West Africa. The UK is pushing for greater explicit consideration of and support to women and girls across the COVID-19 response. We are providing £10 million to UNFPA to provide lifesaving Sexual and Reproductive Health care and gender-based violence prevention and response services as part of our wider support to the UN Humanitarian Response Plan.

The crisis has highlighted that free trade is vital to the UK's national wellbeing. The Government is working to ensure that all countries have access to critical goods, including medical supplies and food, despite the restrictions on movement required to counter the pandemic. As the UK starts to recover, the Government will lead work to develop more resilient supply chains so that we can continue to benefit from free and open global trading systems, while reducing risks in critical sectors. The Government will also continue to lead work on the international economic recovery, striving to deliver a UK and world economy which is stronger, cleaner, more sustainable and more resilient after this crisis.

13. Public communication, understanding and enforcement

The social restrictions with which the Government has had to ask everyone to comply represent an extraordinary intrusion into the public's normal way of living.

As the Government begins to adjust the restrictions, it faces a difficult choice: the more precisely the Government targets the measures, the faster it will be possible to move. However, the more complex the request becomes, the harder it is for people to comply with the measures.

"Stay at home" has been a simple, clear message. But as more social contact resumes, the Government will need to ask people to operate in new ways. This will require a high level of understanding, if adherence is to remain at the high levels the Government needs to avoid a second peak in infections.

The Government will therefore invest in enhancing population-wide public health education to ensure everyone has the information and education needed to take responsible risk judgements, and operate in a way that is safe for themselves and for others. Crucially, even those who are at low personal risk will need to continue following the rules and guidance so that they do not pass on the infection to others.

Whilst much of the Government's strategy centres on reducing the costs of complying with the measures wherever possible, as the UK moves into the next phase, where the Government will need to trust people to comply with more subtle social restrictions, the Government will also need to ensure robust enforcement measures to deter and reduce the threat from the small minority who elect not to act responsibly.

14. Sustainable government structures

COVID-19 has been perhaps the biggest test of governments worldwide since the 1940s. As the Government navigates towards recovery, it must ensure it learns the right lessons from this crisis and acts now to ensure that governmental structures are fit to cope with a future epidemic,

including the prospect of an outbreak of a second epidemic - for example, a pandemic flu - while the Government is still responding to COVID-19.

This will require a rapid re-engineering of government's structures and institutions to deal with this historic emergency and also build new long-term foundations for the UK, and to help the rest of the world.

The crisis has shown many parts of Government at its best; for example the NHS has demonstrated great creativity and energy in rapidly transforming its data, analytics and procurement processes. There is now an opportunity to spread these innovations across government.

Before the virus struck, the Government's Budget set out plans to invest in infrastructure, including significant investments in science, technology and skills. Previous generations built infrastructure on which the public now depend. Now it is the Government's responsibility to build the public health and governmental infrastructure - across the entirety of the United Kingdom - that will protect the country for decades to come.

COVID-19 will not be the last major disease that endangers us. The Government must prepare and build now for diseases that could threaten us in the future.

6. How you can help

To date, the people of the United Kingdom have adapted with creativity and compassion to the demands COVID-19 has placed on us all. The UK now needs to prepare for an extended period of living with and managing the threat from the virus; this will continue to require everyone's support and adherence.

A collective effort

The threat is a collective one; the responsibility to keep everyone safe is one everyone shares.

If the Government is to begin to adjust the social restrictions, it will require everyone to act thoughtfully and responsibly to keep R down, and the Government has little room for error.

If, as restrictions are lifted, everyone chooses to act cautiously and in line with the revised guidance, R will remain low, the rate of transmission will decline further, and the Government can lift more restrictions.

This effort must, however, be a shared and collective one; only a small number of new outbreaks would cause R to tip back above one and require the re-imposition of some restrictions.

In judging when to adjust each restriction, the Government will be guided by the best possible evidence and will be, as in this document, transparent about the basis for the decision.

Lending a hand

The response of individuals, communities, charities and businesses across the United Kingdom - to step in and lend a hand to support the national effort - has been tremendous. There are still opportunities to support the COVID-19 effort even more directly.

To find opportunities to volunteer with charities or the NHS, please see:

<https://www.gov.uk/volunteering/coronavirus-volunteering>

To offer business support, such as equipment, services or expertise, please see:

<https://www.gov.uk/coronavirus-support-from-business>

To apply for grant funding for short-term projects addressing the impact of COVID-19, please see:

<https://www.ukri.org/funding/funding-opportunities/ukri-open-call-for-research-and-innovation-ideas-to-address-covid-19/>

If you are clinician considering a return to the NHS in England, Scotland and Wales or the HSC in Northern Ireland, please see:

<https://www.england.nhs.uk/coronavirus/returning-clinicians/> (In England)

<https://www.gov.scot/publications/coronavirus-covid-19-guide-for-health-professions-considering-a-return-to-the-nhs-scotland/> (In Scotland)

<https://gov.wales/health-professionals-coronavirus> (In Wales)

<https://www.health-ni.gov.uk/Covid-19-returning-professionals> (In Northern Ireland)

Annex A: Staying safe outside your home

This guidance sets out the principles you should follow to ensure that time spent with others outside your homes is as safe as possible (unless you are clinically vulnerable or extremely vulnerable in which case you should follow separate advice on [GOV.UK](https://www.gov.uk)). It is your responsibility to adopt these principles wherever possible. The Government is also using these principles as the basis of discussions with businesses, unions, local government and many other stakeholders to agree how they should apply in different settings to make them safer. All of us, as customers, visitors, employees or employers, need to make changes to lower the risk of transmission of the virus. The Government has consulted with its scientific advisers to establish the principles that will determine these changes.

Keep your distance from people outside your household, recognising this will not always be possible. The risk of infection increases the closer you are to another person with the virus **and** the amount of time you spend in close contact: you are very unlikely to be infected if you walk past another person in the street. Public Health England recommends trying to keep 2m away from people as a precaution. However, this is not a rule and the science is complex. The key thing is to not be too close to people for more than a short amount of time, as much as you can.

Keep your hands and face as clean as possible. Wash your hands often using soap and water, and dry them thoroughly. Use sanitiser where available outside your home, especially as you enter a building and after you have had contact with surfaces. Avoid touching your face.

Work from home if you can. Many people can do most or all of their work from home, with the proper equipment and adjustments. Your employer should support you to find reasonable adjustments to do this. However, not all jobs can be done from home. If your workplace is open and you cannot work from home, you can travel to work.

Avoid being face to face with people if they are outside your household. You are at higher risk of being directly exposed to respiratory droplets released by someone talking or coughing when you are within 2m of someone and have face-to-face contact with them. You can lower the risk of infection if you stay side-to-side rather than facing people.

Reduce the number of people you spend time with in a work setting where you can. You can lower the risks of transmission in the workplace by reducing the number of people you come into contact with regularly, which your employer can support where practical by changing shift patterns and rotas to match you with the same team each time and splitting people into smaller, contained teams.

Avoid crowds. You can lower the risks of transmission by reducing the number of people you come into close contact with, so avoid peak travel times on public transport where possible, for example. Businesses should take reasonable steps to avoid people being gathered together, for example by allowing the use of more entrances and exits and staggering entry and exit where possible.

If you have to travel (to work or school, for example) think about how and when you travel.

To reduce demand on the public transport network, you should walk or cycle wherever possible. If you have to use public transport, you should try and avoid peak times. Employers should consider staggering working hours and expanding bicycle storage facilities, changing facilities and car parking to help.

Wash your clothes regularly. There is some evidence that the virus can stay on fabrics for a few days, although usually it is shorter, so if you are working with people outside your household wash your clothes regularly. Changing clothes in workplaces should only normally be considered where there is a high risk of infection or there are highly vulnerable people, such as in a care home. If you need to change your clothes avoid crowding into a changing room.

Keep indoor places well ventilated. Evidence suggests that the virus is less likely to be passed on in well-ventilated buildings and outdoors. In good weather, try to leave windows and doors open in places where people from different households come into contact – or move activity outdoors if you can. Use external extractor fans to keep spaces well ventilated and make sure that ventilation systems are set to maximise the fresh air flow rate. Heating and cooling systems can be used at their normal temperature settings.

If you can, wear a face covering in an enclosed space where social distancing isn't possible and where you will come into contact with people you do not normally meet. This is most relevant for short periods indoors in crowded areas, for example on public transport or in some shops. The evidence suggests that wearing a face covering does not protect you, but it may protect others if you are infected but have not developed symptoms. If you have symptoms of COVID-19 (cough and/or high temperature) you and your household should isolate at home: wearing a face covering does not change this. A face covering is not the same as the surgical masks or respirators used as part of personal protective equipment by healthcare and other workers; these supplies should continue to be reserved for those who need them to protect against risks in their workplace, such as health and care workers and those in industrial settings like those exposed to dust hazards. Face coverings should not be used by children under the age of 2 or those who may find it difficult to manage them correctly, for example primary school age children unassisted, or those with respiratory conditions. It is important to use face coverings properly and wash your hands before putting them on and taking them off.

You can make face coverings at home; the key thing is it should cover your mouth and nose. You can find guidance on how to do this on [GOV.UK](https://www.gov.uk).

You should follow the advice given to you by your employer when at work. Employers have a duty to assess and manage risks to your safety in the workplace. The Government has issued guidance to help them do this. This includes how to make adjustments to your workplace to help you maintain social distance. It also includes guidance on hygiene as evidence suggests that the virus can exist for up to 72 hours on surfaces. Frequent cleaning is therefore particularly important for communal surfaces like door handles or lift buttons and communal areas like bathrooms, kitchens and tea points. You can see the guidance on [GOV.UK](https://www.gov.uk) and can ask your employer if you have questions.

Annex B: Summary table: COVID-19 vulnerable groups

Group	Explanation	Current & Continuing Guidance	Government Support
<p>Clinically Extremely Vulnerable People (All in this cohort will have received communication from the NHS)</p>	<p>People defined on medical grounds as clinically extremely vulnerable, meaning they are at the greatest risk of severe illness. This group includes solid organ transplant recipients; people receiving chemotherapy; renal dialysis patients; and others.</p>	<p>Follow shielding guidance by staying at home at all times and avoiding all non essential face-to-face contact. This guidance is in place until end June.</p>	<p>Support available from the National Shielding Programme, which includes food supplies (through food boxes and priority supermarket deliveries), pharmacy deliveries and care. Support is available via the NHS Volunteer Responders app.</p>
<p>Clinically Vulnerable People</p>	<p>People considered to be at higher risk of severe illness from COVID-19.</p> <p>Clinically vulnerable people include the following: people aged 70 or older, people with liver disease; people with diabetes; pregnant women; and others.</p>	<p>Stay at <u>home</u> as much as possible. If you do go out, take particular care to minimise contact with others outside your household.</p>	<p>Range of support available while measures in place, including by local authorities and through voluntary and community groups. Support is available via the NHS Volunteer Responders app.</p>
<p>Vulnerable People (Non-clinical)</p>	<p>There are a range of people who can be classified as “vulnerable” due to non-clinical factors, such as children at risk of violence or with special educational needs; victims of domestic abuse; rough sleepers; and others.</p>	<p>People in this group will need to follow general guidance except where they are also clinically vulnerable or clinically extremely vulnerable where they should follow guidance as set out above.</p>	<p>For those who need it, a range of support and guidance across public services and the benefits system, including by central and local Government and the voluntary and community sector.</p>

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Date: 28 May 2020

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By email only to newproceedings@governmentlegal.gov.uk

Dear Sirs,

Our clients: 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

1. Revd Ade Omooba MBE, Co-Chair, National Church Leaders Forum – NCLF, A Black Christian Voice.

[REDACTED]

2. Dr David Muir, Co-Chair, National Church Leaders Forum – NCLF, A Black Christian Voice.

[REDACTED]

3. Rev. Derek Andrews, Pastor, The Presence Of God Ministries

[REDACTED]

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[Redacted]

4. **Dr. Gavin Ashenden**, Former Chaplain to the Queen, Former Anglican Bishop

[Redacted]

5. **Pastor Matthew Ashimolowo**, Senior Pastor, Kingsway International Christian Centre – KICC.

[Redacted]

6. **Bishop Level Bent**, Presiding Bishop, Connections Trust.

[Redacted]

7. **Rev. Ian Christensen**, AoG UK, Senior Minister, *New Life Christian Centre International*.

[Redacted]

8. **Chris Demetriou**, Senior Pastor, Cornerstone

[Redacted]

9. **Professor John Durodola**, National Chairman, Overseas Fellowship of Nigerian Christians (OFNC).

[Redacted]

10. **Rev. Asif Gill**, Senior Leader, Ecclesia International

[Redacted]

11. **Dennis Greenidge**, Senior Pastor, Worldwide Mission Fellowship.

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[REDACTED]

12. **Revd Alex Gyasi MBE**, Convener & Senior Pastor, Kingdom Culture Alliance & Highway of Holiness.

[REDACTED]

13. **Revd. Dr David Hathaway D.D.**, President, Eurovision Mission to Europe.

[REDACTED]

14. **Pastor Thabo Marais**, Senior Pastor, Christian Revival Church London

[REDACTED]

15. **Canon Yaqub Masih MBE**, Secretary General, UK Asian Christians; Secretary General & Founder, New Horizons

[REDACTED]

16. **Bishop Michael Nazir-Ali**, President, Oxford Centre for Training, Research, Advocacy and Dialogue – OXTRAD.

[REDACTED]

17. **Revd Dr Brad Norman**, Salvation For The Nations Intl. Churches.

[REDACTED]

18. **Pastor Sunday Okenwa**, Regional Overseer, Deeper Christian Life Ministry

[REDACTED]

19. **Pastor John Quintanilla**, Hebron Christian Faith Church, Coventry

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[Redacted]

20. Pastor Sally Quintanilla, Hebron Christian Faith Church, Coventry

[Redacted]

21. Pastor Paul Song

[Redacted]

22. Pastor Kola Taiwo, Senior Pastor, New Wine Church.

[Redacted]

23. Rev. Melvin Tinker

[Redacted]

24. Rev. Keith Waters

[Redacted]

25. Bishop Alfred Williams BA(Hons), LLB(Hons), LLM (Inter. Business Law), MCI Arb. Presiding Bishop, Christ Faith Tabernacle International Churches

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

Defendant's ref.: The Health Protection (Coronavirus, Restrictions) England Regulations 2020 (SI 350/2020)

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

Details of the matters being challenged:

(1) Regulation 5(5) of *The Health Protection (Coronavirus, Restrictions) England Regulations 2020*, dated 26 March 2020

(2) Regulation 7, insofar as it applies to church services and rites

(3) *Our plan to rebuild: The UK Government's COVID-19 recovery strategy*, dated May 2020, insofar as it applies to places of worship.

(4) Failure to provide assurances that the restrictions on church activities will be relaxed and/or lifted as a matter of priority as part of the Government's 'lockdown exit strategy'.

The Issues

Introduction

The proposed judicial review is against the blanket 'lockdown' imposed on all churches by the Regulations, and the failure to prioritise the re-opening of churches as part of the Government's 'exit strategy'. In summary, our clients contend that the relevant Regulations are:

- a) disproportionate in the circumstances where the overwhelming majority of churches had closed down voluntarily in response to the Coronavirus pandemic, and the remainder had introduced far-reaching precautions against infection; and
- b) *ultra vires* the Health Secretary's powers under *Public Health (Control of disease) Act 1984*.

Our clients do not for a moment suggest that churches should be allowed to operate as before notwithstanding the Coronavirus epidemic. Rather, our clients' concern is that, as a matter of principle, the imposition of appropriate anti-epidemic measures in the Church is ultimately a matter for Church authorities rather than secular state authorities.

Our clients readily acknowledge that the *Regulations* were enacted by your client as a matter of urgency in very extreme circumstances. This being so, our clients are genuinely open to a constructive dialogue with your client to work out a pragmatic compromise which would be mutually acceptable both in principle and in practice.



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Churches' response to the epidemic

It should be stressed that the Regulations were made in the circumstances when the vast majority of churches had already adequately responded to the threat of Coronavirus, ranging from drastic anti-infection precautions to (most typically) a voluntary 'lockdown'. For example, the Catholic Bishops announced a suspension of all public acts of worship on 14 March 2020. The Church of England made a similar announcement on 17 March 2020, which envisaged that the churches would only remain open for private prayer. However, the Church of England removed that exception and announced a complete closure of churches on 23 March, in response to the Prime Minister's advice made in the televised address on the same day, and before the Regulations were made.

Church autonomy

The principle of Church autonomy is zealously protected both in ECHR jurisprudence under Article 9 (see *Metropolitan Church of Bessarabia v. Moldova*, no. 45701/99, ECHR Reports 2001-XII, 13 December 2001, § 118) and in the domestic constitutional tradition, starting at least from c. 1 of Magna Carta. The martyrdom of Thomas Beckett for that very principle is of enormous significance in the Church of England Tradition. The Acts of Supremacy were necessary to establish the status of the Monarch as the Supreme Governor of the Church of England precisely because ecclesiastical authority is recognised by the common law as distinct from the temporal authority. Henry VIII could dissolve monasteries only after, and because, he had assumed the supreme ecclesiastical office; the measure would have been *ultra vires* the temporal powers of the Crown. Since then, the government of the realm and the government of the Church were always distinct in our Constitution, despite the same Monarch being ultimately at the head of both. *Articles of Religion 1562* provide in Article 37: "*Where we attribute to the King's Majesty the chief government... we give not to our Princes the ministering either of God's Word, or of the Sacraments*". The Church government is subject to its own constitutional law, currently governed by the *Church of England Assembly (Powers) Act 1919*.

Whatever difficulties may sometimes arise in drawing a precise boundary between temporal and ecclesiastical matters, there is no doubt, and has never been any doubt, that closure and opening of churches for services and rites is a matter for ecclesiastical authorities and not for temporal ones. The only historical precedent for a 'lockdown' of churches similar to the one introduced in the present Regulations is the suspension of all the church services and sacraments (except baptism) from 23 March 1208 to 1214 pursuant to the Interdict of Pope Innocent III. The services were suspended by the English bishops pursuant to an Interdict from Vatican. The suspension was expressly against the wishes of the temporal government and contrary to its interests. However the lawfulness of that suspension was never questioned; nor has it ever been suggested that the temporal government had legal power simply to order a re-opening of churches.

Conversely, in the long history of epidemics and anti-epidemic measures in this country, up to and including the Spanish influenza in early 20th century, there is no precedent for state legislation which in any degree prohibits and criminalises church services or sacraments.

There is no basis for suggesting that this constitutional principle has become obsolete in modern times. On the contrary, the principle has been reinforced by Article 9 of the ECHR and the jurisprudence on Church autonomy which developed under it. It was further reinforced by s. 13 of the Human Rights Act 1998. Further, under the modern anti-discrimination law, the principle must apply equally to the Church of England and various other non-conformist churches and denominations.

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In the circumstances where the Church has responded adequately to the public health threat, there was no lawful basis for the state to interfere with its rights and liberties in this drastic fashion. If it was necessary to supplement the Church self-regulation with any degree of state regulation, that interference had to be proportionate, and confined to exercising the powers which have a proper basis in law. A blanket ban imposed by the state on all church activities (with three prescribed exceptions) does not meet those requirements.

While the short-term practical difference between state regulation and church self-regulation may be limited in present circumstances, the principle of Church autonomy is extremely important in the broader constitutional context, and must be protected for the benefit of present and future generations.

Rationale behind the principle

The principle identified above is important for the simple reason that a believer's worldview is radically different from a non-believer's worldview. It may seem natural for a temporal authority, well-meaning and intending no disrespect to religion, to see a church service as simply an example of a 'public event' which attracts a peculiar kind of people interested in it – roughly similar to entertainment. In that worldview, church services are important for welfare of those who need them, but obviously less important than things like steady food supplies and protection of health.

By contrast, in a believer's worldview, church services are part of our means for achieving eternal salvation of the soul, which is infinitely more important than even a survival of the body. The Bible and centuries of tradition oblige Christians to gather weekly for worship and witness around the Word of God and sacraments; we need one another to flourish in our service to Christ (Ex. 20: 9-11; 1 Cor. 16: 1-2; Heb. 10:24-25; Acts 2:42, 20:7). Neither confessional Christian faith nor the Church as an institution can *faithfully exist* without a Lord's Day gathering. The Church has adhered to that obligation through long periods of persecution, where fulfilling it meant a risk of death at the hands of temporal authorities. The church does not exist by *permission* of the state, for its establishment and rule is found in Jesus Christ himself.

This difference of worldviews inevitably entails a difference in priorities, and most importantly, in the underlying criteria. To illustrate the point, the 1208-1214 Papal Interdict made an exception for the sacrament of baptism, since it is considered necessary for the salvation of a soul. By contrast, the present lockdown makes an exception for funerals, because here, the church contributes to what the state sees as an important public function: disposal of dead bodies. The secular authorities did not, and cannot reasonably be expected to, give a similar or indeed any consideration to the disposal of living souls.

The restrictions imposed on the Church activity principally affect the believers. Hence it is important that the decisions about them are taken by believers – not by people who, in their minds and/or as a matter of professional duty, live in a wholly different world. If churches are to be closed, that must not be done by people who may well have never been to a church in their lives.

Churches in context of the government's wider 'lockdown' policy

The Government has taken an extremely wide range of measures to counter the threat of Coronavirus. Virtually all aspects of the society's life have been categorised according to their importance on the one hand, and epidemiological risks on the other. Restrictions of different severity were accordingly imposed. Very roughly, four different categories may be identified:



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- 1) 'Essential' services which have been allowed to remain open throughout the 'lockdown', such as food retailers, off licence shops, pharmacies, and other businesses listed in Part 3 Schedule to the Regulations.
- 2) Services prioritised to resume operations at 'Step 1' in *Our Plan to Rebuild* (e.g. schools and businesses important for the economy, such as construction).
- 3) Services which resume at 'Step 2' (e.g. non-essential retail, cultural and sporting events behind closed doors)
- 4) Services which will not resume until 'Step 3': that includes beauty salons, pubs, cinemas, and indeed churches.

At different stages, different levels of restriction apply to each of the different categories.

Another important distinction should be drawn between the two principal tools used to implement the anti-epidemic measures. In relation to some aspects of the national life, the government has limited its interference to giving advice or guidance. For example, as part of the latest modification of the Coronavirus policy, the Government has issued guidance documents for public transport, and for businesses to ensure safety at workplace. On the other hand, the Government has chosen to impose some of the other restrictions by means of binding legislation, with a criminal sanction for non-compliance.

Within this system, churches have been given the most unfavourable treatment possible. Churches have been placed in the bottom category of the most dangerous and least important services, subjected to severest restrictions for the longest period of time. Those restrictions are imposed by means of formal legislation with a criminal sanction; unlike many other organisations and individuals, churches are not trusted to follow advice.

The latter is the principal complaint of the Claimants: if it was appropriate to limit the state intervention to advice in some cases, that is certainly so in the case of the Church, whose independence of the state is protected by a fundamental constitutional principle, and who had responded to the epidemic sooner, and more effectively, than the government.

Alternatively, if the state is entitled to regulate the church services by criminal legislation, the proper place of churches in the list of priorities is higher than at the very bottom.

Disproportionate interference with Article 9 rights

It is undisputed that the Regulations are a significant interference with freedom of religion and religious assembly and, in particular, the principle of church autonomy. Any justification of that interference is to be assessed under the usual Article 9 principles. Article 15 ECHR gives member-states a right to derogate from the Convention in the event of a national emergency, by giving notice to the Secretary General of the Council of Europe. However, unlike several other member-states, the United Kingdom has chosen not to avail itself of that right. Therefore, Article 9 applies to the government's anti-Coronavirus measures in the usual way.

One of the most unwavering and established principles found in the jurisprudence of the European Court of Human Rights is the doctrine of church autonomy. A public authority may not interfere with the internal workings of a church or religious organization and may not impose rigid conditions on the practice or functioning of religious beliefs. See further: *Serif v. Greece*, No. 38178/97, Reports 1999-IX, 14 December 1999, §§ 51-53; *Manoussakis v. Greece*, No. 18748/91, Reports 1996-IV, 26 September 2000, § 82. So strong is this principle that it has been upheld three times by the Grand Chamber of the European Court of Human Rights. ECHR, *Hasan and Chaush v. Bulgaria* [GC],

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No. 30985/96, Reports 2000-XI, 26 October 2000, § 82; ECHR, *Case of Fernandez Martinez v. Spain* [GC], No. 56030/07, Judgment of 12 June 2014; ECHR, *Case of Sindicatul "Pastorul Cel Bun" v. Romania* [GC], No. 2330/09, Judgment of 9 July 2013. Most recently the Court again upheld the same principle regarding respect for the internal workings of religious organizations in a judgment against Hungary. ECHR, *Case of Karoly Nagy v. Hungary*, No. 56665/09, Judgment of 1 December 2015.

The forced closure of churches by the state is an extreme interference with Article 9 rights. That extremity is not mitigated by the exception in Reg. 5(6), which allows the churches to remain open only for social welfare purposes. On the contrary, this amounts to an enforced secularization of the purpose of churches. The state has usurped the right to prioritise certain aspects of the church life over others using its own criteria, and identified the spiritual aspects as dispensable.

Such a far-reaching and large-scale intervention may only be justified by the most compelling scientific evidence of a resulting benefit to public health. The broader the impact of the Regulations on the Convention rights, the more compelling must be the justification: *R (on the application of UNISON) v Lord Chancellor*.

For interference with freedom of worship to be legitimate, the interference in question must be *necessary in a democratic society*. The term 'necessary' does not have the flexibility of such expressions as 'useful' or 'desirable'. *Svyato-Mykhaylivska Parafiya v. Ukraine*, App. No. 77703/01 § 116 (Eur. Ct. H.R. June 14, 2007). Fundamentally, only convincing and compelling reasons can justify restrictions on a fundamental Convention freedom, see *Wingrove v. United Kingdom*, 1996-V Eur. Ct. H.R. 1937, 1956.

Proportionality in relation to Article 9, and the supervisory authority over any restrictions imposed on the freedom to manifest all of the rights inherent in freedom of religion, call for "very strict scrutiny": ECHR, *Manoussakis and Others v. Greece*, Reports 1996-IV: AFDI, 1996, p. 1354, § 44.

It is clear that the wholesale manner in which churches were closed is anything but a narrowly tailored means of achieving public health. Indeed, it appears that the Secretary of State has given hardly any consideration to balancing competing rights and interests, or to achieving his public health objectives by lesser interference with Article 9 rights.

Chapter 1 of Magna Carta 1297

In the domestic English law, the principle of church autonomy is of a much greater antiquity than, and at least as important constitutional status as under the Convention. C. 1 of Magna Carta 1297 provides:

FIRST, We have granted to God, and by this our present Charter have confirmed, for Us and our Heirs for ever, that the Church of England shall be free, and shall have all her whole Rights and Liberties inviolable.

The principle has always been understood to mean that the Church is to manage its own affairs just as the State manages its own affairs. Church authorities are at least, in principle, as capable as the state authorities in making



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decisions for themselves and in the interests of their congregations; and it is a constitutional right of the church to make those decisions without state interference.

It is now well established that Magna Carta 1297 is a prime example of a constitutional statute which is not subject to the doctrine of implied repeal: *Thoburn v Sunderland City Council* [2003] QB 151, paras 58-59, *R (Buckinghamshire County Council) v Secretary of State for Transport* [2014] 1 WLR 324, paras 78-79, 206-207; *R(Miller) v Secretary of State for Exiting the EU* [2017] UKSC 5: para 67. It follows that all later statutes (including, most importantly for present purposes, Public Health (Control of Disease) Act 1984) must be interpreted consistently with Magna Carta unless they expressly repeal its provisions. The 1984 does not authorise the Secretary of State to exercise his powers in a way which interferes with any of the “Rights and Liberties” of the Church within the meaning of c. 1 of Magna Carta.

The legislative powers of Parliament in relation to the Church of England are governed by the Church of England Assembly (Powers) Act 1919. The legislative authorities and procedure established by that Act leaves no constitutional place for an alternative procedure where a Secretary of State permits or prohibits church services by statutory instrument made under a different Act.

In today’s constitutional framework, the same principles apply to non-conformist and other churches outside the ecclesiastical jurisdiction of the Church of England. This is because:

- (a) The meaning of the expression “Church of England” in 1297 was different from the modern meaning. Magna Carta was passed before the series of schisms which separated the modern Church of England from Roman Catholics and non-conformist Protestants. Those schisms were ecclesiastical matters of no concern to the state; accordingly, all Christian churches which originate in the Church of England as it was in 1297 are entitled to the protection of Magna Carta.
- (b) In any event, the modern anti-discrimination law (Article 14 ECHR and the Equality Act 2010) prohibits state discrimination on the grounds of religion or belief. It follows that all denominations are entitled to the same constitutional rights as the Church of England.

Action(s) that the defendant is expected to take

Despite the importance of the principles which the proposed claim seeks to protect, our clients acknowledge the unprecedented difficulties faced by the Department at present and would like to avoid putting any excessive pressure on your clients.

The Secretary of State is in any event under an obligation to review the Regulations at least every 21 days. We understand the next review must take place on or before **18 June**. In the light of the points made above, we suggest it will be appropriate, by that date, to:

- (a) revoke Regulation 5(5),
- (b) amend Regulation 7 to provide for an exception for a reasonably necessary participation in a religious ceremony,
- (c) replace Regulation 5(5) with a Guidance for the appropriate precautions to be taken by churches at the next stage of the epidemic.

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The constructive approach set out above is without prejudice to our client's position that the Regulations in their present form are unlawful and liable to be quashed on judicial review. Alternatively, our clients will seek a mandatory order for the Regulations to be revoked within a specified timeframe, and/or a declaration.

ADR proposals

As indicated above, our clients are in sympathy with the pressures put on the Government by the epidemic, and are prepared to work constructively with your client for the legal errors identified above to be rectified in an orderly fashion.

We invite the Secretary of State to arrange an online conference with our clients (if necessary also attended by lawyers on both sides) to work out a mutually acceptable timetable for relaxation of the existing restrictions on church activities, and/or replacing the Regulations by an appropriate Guidance document which properly respects the principle of church autonomy.

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. Further, our clients sincerely hope that if the Secretary of State is willing to engage in a constructive dialogue, it shall be possible to work out a mutually acceptable solution by the time of the next review of the Regulations on 18 June. For those reasons, we request a substantive response to this pre-action letter within 7 days, by **4 June 2020**.

We look forward to hearing from you.

Yours faithfully



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11 June 2020

Your ref: MP:MP3515
Our ref: Z2006192/HHS/HOI7

Dear Sirs

Pre-Action Response: Rev. Ade Omooba et al.

We act for the Secretary of State for Health and Social Care who is named as the proposed defendant in your letter and whom we agree is the correct defendant.

The Proposed Claimant

The 25 Claimants referred to in your pre-action letter, which are not repeated here.

The Proposed Defendant

The Secretary of State for Health and Social Care.

The Defendant may be contacted via the Government Legal Department (GLD) Due to COVID-19 and the current circumstances, any correspondence or service of documents should be addressed to Hannah Sladen and sent via email to hannah.sladen@governmentlegal.gov.uk to limit the handling of materials by post

Reference details

Our reference: Z2006192/HHS/HOI7

Please cite the above reference number on all future pre-action correspondence. Hannah Sladen is the GLD pre-action contact on behalf of the Defendant.

The Issues

1. Your proposed challenge is to the lawfulness of (a) regulation 5(5) and regulation 7 of the Health Protection (Coronavirus, Restrictions) England Regulations 2020 ("**the Regulations**"), (b) *Our Plan to Rebuild: The UK Government's COVID-19 Recovery Strategy*, published on 11 May 2020 (CP 239) ("**the**

Strategy”) and (c) an alleged “*failure to provide assurances that the restrictions on church activities will be relaxed and/or lifted as a matter of priority as part of the Government’s lockdown exit strategy.*”

2. Your letter raises two legal bases for this challenge:
 - a. firstly, that the Regulations are a disproportionate interference with Article 9 ECHR in circumstances where the vast majority of churches had already closed down voluntarily in response to the Coronavirus pandemic or adopted far-reaching precautions against infection; and
 - b. secondly, that the Regulations are *ultra vires* the Public Health (Control of Diseases) Act 1984 because the Secretary of State has no power to regulate churches pursuant to his powers under that Act. To do so is said to undermine the principle of church autonomy as enshrined in c.1 Magna Carta 1215.
3. You ask that the Secretary of State at the next review of the Regulations revokes regulation 5(5) and makes amendments to regulation 7 to allow a gathering for reasonably necessary participation in a religious ceremony. Your letter acknowledges the unprecedented difficulties faced by our client’s department at the present time. You have made an ADR proposal with a view to working constructively with our clients to resolve the issues raised.

Response

4. Before turning to the legal issues raised by your claim, we trust that you are aware that, since your letter was written, an announcement has been made to reopen places of worship shortly for individual prayer, in line with supporting guidance, to be published, on which we have consulted the Places of Worship Taskforce. We trust that this development will serve to demonstrate that the rights of your clients, and those of faith across England, are being carefully considered by the Secretary of State and across Government and that the restrictions placed on places of worship are being eased gradually, where possible and where supported by the scientific advice.

Proportionality in Article 9 ECHR terms

5. In terms of the proportionality of the Regulations in Article 9 ECHR terms, there are seven key points to make. **Firstly**, the population of England is presently affected by the public health pandemic caused by the virus known as COVID-19, as you recognise. The extremely serious risk to life and health posed by the virus has obliged the Government to take unprecedented, vital steps, including via the Regulations, to limit the ability of the virus to spread, and to reduce the burden on the National Health Service. Both of these aims seek to protect and reduce the risk to the lives of the population, in circumstances in which tens of thousands of people in England have died having tested positive for the virus.
6. **Secondly**, accordingly, there are fundamental Article 2 rights of the population at stake which the measures in the Regulations seek to protect. The UK has a positive obligation “*to take appropriate steps to safeguard the lives of those within its jurisdiction*” and to do “*all that could have been required of it to prevent...life from being avoidably put at risk*”: *LCB v United Kingdom* (1997) 27 EHRR 212 at §36. This obligation extends to the public health context: *Stoyanovi v Bulgaria* (App. No. 42980/04) at §60. This duty, in respect of the most fundamental right of all, weighs heavily in any balancing exercise, and in any assessment of the measures adopted in the Regulations.
7. **Thirdly**, the Secretary of State is acutely aware that the restrictions currently placed on places of worship interfere with the right to manifest one’s religious belief enshrined in Article 9 ECHR by limiting attendance in person by individuals at places of worship for those of all faiths. We acknowledge and respect the importance of your clients and their congregations place on communal worship and the central place of the church in the life of a believer. However, this is not a restriction on churches only, but applies equally to all places of worship and people of all faiths and beliefs. Moreover, they are not absolute: regulation 5(5) which requires places of worship to close is subject to the exception at reg 5(6) – and thus it has always been possible for faith leaders to provide services remotely from their churches; and no restrictions are or have been in place on people engaging in celebrations of religious rites and festivals

with members of their household. It is clear that the restrictions were at the time introduced, and still remain, proportionate in the interests of protecting life at a time of unprecedented public health emergency. Those measures are under careful review on a regular basis, and the Government has already published – as your letter acknowledges – a plan for the reopening of places of worship as part of Stage 3 of its strategy, currently planned to commence from 4 July 2020, subject to the scientific evidence supporting those steps at that time, and has announced changes for individual prayer. Thus, the ongoing interference is time-limited and under continual review.

8. **Fourthly**, this is based on the scientific advice to the Secretary of State that the virus is highly contagious and particularly easily spread in gatherings of people and indoors. In the Strategy, it explains: “*SAGE [the Scientific Advisory Group for Emergencies] advise that the risk of infection outside is significantly lower than inside*”. The basic principle underlying the restrictions in the Regulations is to reduce the degree to which people gather and mix with those outside of their household, particularly in indoor spaces. The opening of places of worship generally is inconsistent with this basic principle and not judged to be appropriate. This is not because churches (or other places of worship) have been placed in “the most dangerous and least important” category; but rather that there is “*a qualitative difference in terms of the risk of transmission of the virus between a situation such as a religious service where a number of people meet in an enclosed space for a period of an hour or more, and the transitory briefer contact likely in a setting such as that of shopping in a garden centre*” (as recognised by Swift J in his recent decision to refuse interim relief to a mosque from Bradford seeking an exemption from regulation 5(5) and regulation 7: *Hussain v SoS for Health* [2020] EWHC 1392 (Admin) (**copy attached**) (to which we return below).
9. **Fifthly**, a specific taskforce was established on 15 May – the Places of Worship Taskforce – which includes leaders and representatives from all the major faiths, including the Archbishop of Canterbury, to assist the Government in developing this phased plan. The Taskforce is currently working on guidance to enable changes to be made as soon as reasonably possible.
10. **Sixthly**, we note the point you make that it was not necessary to close places of worship when many churches were voluntarily closing down, and/or others had adopted various social distancing measures. The Regulations take a general approach to all places of worship as justified by the very important public health objective of protecting life – and thus the issue was wider than just the compliance that could be expected from Church of England churches. As you recognise, some churches may have been voluntarily complying but some were not, and the need for clarity and consistent rules across all places of worship was plainly justifiable in the interests of protecting public health given the grave risks at stake. As to the point about *vires*, this is addressed below. We note that you do not disagree that the measures in place are or were proportionate at the time imposed, but that churches should have been able to adopt them themselves. This goes to demonstrate their proportionality (however imposed or adopted).
11. **Finally**, for all these reasons, we consider that it is clear that any challenge by your clients on the basis the current restrictions breach Article 9 ECHR will fail. The Court will give a wide margin of appreciation to the Secretary of State in a case such as this, as it did in *Hussain*:

“21. In this way, the Claimant questions the Secretary of State’s priorities. Why are matters such as those mentioned above permitted when attendance at a place of worship in fulfilment of a religious obligation is not? While the Secretary of State’s order of priorities is a legitimate matter for public debate, in terms of whether the decision on it contained within the 2020 Regulations is lawful, he must be allowed a suitable margin of appreciation to decide the order in which steps are to be taken to reduce the reach and impact of the restrictions in the 2020 Regulations. What 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.”

12. In rejecting the application for interim relief, the Court i) emphasised that the interference with Article 9 ECHR rights is finite, ii) placed weight on the work of the Taskforce to develop guidance to allow, if possible, communal prayer to be commenced at Stage 3, and iii) noted that the Secretary of State was plainly entitled to take a precautionary stance; and that this was not a case where there was a “*single*

right answer". Thus, Swift J did not think that there was "any realistic likelihood that the Claimant's case on Article 9 will succeed at trial" (see §24).¹

Vires and Church autonomy

13. We note the points you make about Church autonomy, the effects of the Church of England Assembly (Powers) Act 1919 and so on. However:
 - a. the concept of what the 'Church' is has clearly evolved since Magna Carta, not least with the Reformation and recognition of the Church of England as the established church in England. The relationship between (a) the Church of England and (b) Parliament, HM Government and the Crown is complex and beyond the scope of this letter for present purposes.
 - b. The critical point is that it is clear that Parliament can legislate for Church of England matters, most recently having done so in section 84 of the Coronavirus Act 2020. As a matter of constitutional law, Parliament remains sovereign.
 - c. There is thus no constitutional bar on what has been done under the Public Health Act (Control of Diseases) Act 1984 and the Regulations in public health terms in relation to Church of England premises. Indeed, there would be obvious and stark difficulties both in Article 9 (and Article 14) ECHR terms (in respect of which all religious beliefs are to be treated as equally valid and given equal respect), and similarly in constitutional terms, associated with the points you make i.e. that the Church of England should be deemed to be exempt from state public health control, whereas other faiths and religious groups are subject to the relevant restrictions and thus at risk of criminal penalties if they fail to comply.
 - d. Thus the relevant question (on which you agree we should focus) is whether the restrictions breaches the Human Rights Act, which we have addressed above, and in response to which the answer is no.

Conclusions

14. Accordingly, the Secretary of State does not intend to take the action proposed, namely to commit to revoking the relevant restrictions at the next review. There is active work underway to ensure that the restrictions on places of worship are lifted as soon as reasonably possible bearing in mind the risk to life which remains, and based on the scientific evidence as the appropriate approach. That carefully phased plan is taking account of the expertise of and engagement with informed representatives, such as yourselves, and has already produced the plan regarding individual prayer.
15. In light of this, and the ongoing work of the Taskforce, we consider that the legal action you propose is not justified.

ADR proposals

16. Accordingly, we do not consider that it is necessarily pragmatic to proceed with ADR at this juncture. However, that is not to say that officials within the Department of Health and Ministry of Housing, Communities and Local Government are not willing to meet your clients, if you still have concerns. At this stage, we consider it is likely to be more productive for your clients to contribute to the work already underway by the Places of Worship Taskforce. We understand that some signatories to your letter have also contributed already to multi-faith and Christian Roundtable meetings. Therefore, we would encourage you to make contact with the Faith team in MHCLG in order to ensure that your work feeds into this ongoing discussion. However, if you still consider that an ADR meeting remains essential, our clients are willing to consider that also.

Response to requests for information and documents.

¹ Despite this finding, he did grant permission to the Claimants in the particular circumstances of that case. However the position has moved on since, as above. The fact remains that there is no realistic prospect of success in that claim, or in your clients' proposed claim.

17. Advice from SAGE is referred to in the Strategy cited above (see paragraph 8). All SAGE minutes up to 7 May 2020 are available on the gov.uk website. We do not consider that it is necessary or proportionate to provide any further disclosure of scientific or other evidence at this time.

Please acknowledge receipt of this letter.

Yours faithfully

Hannah Sladen

**Hannah Sladen
For the Treasury Solicitor**

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My Ref: MP:MP3515

Date: 15 June 2020

Dear Sir/Madam

Our client - Rev Ade Omooba et al

Your Reference: Z2006192/HHS/H017

We acknowledge receipt of your letter of 11 June 2020. We write this letter in response to your position and to request a meeting at your earliest opportunity, at a time no later than 19 June 2020. Given the urgency of the matter, we ask for acknowledgment of service by return and a substantive response within 2 working days following receipt of this letter.

We would like to further address the following matters in relation to your letter:

The Issues

- (1) We contest the manner in which the issues have been framed in your response and in particular:
 - (a) In relation to paragraph 2(a), the fact that the vast majority of churches have voluntarily shut down has no bearing on either the churches that have not voluntarily shut, or more importantly, on the importance and application of Article 9 to the interference suffered by these churches and their membership by the ongoing restrictions.
 - (b) To clarify our position in relation to church autonomy, which you seek to define in paragraph 2(b) of your response, we wish to make clear that church autonomy is not only protected by the *Magna Carta 1215*, but much more recently by the European Court of Human Rights, including several judgments of the Grand Chamber. To list just a few of those judgments: ECHR, *Hasan and Chaush v. Bulgaria* [GC], No. 30985/96, Reports 2000-XI, 26 October 2000, § 82; ECHR, *Case of Fernandez Martinez v. Spain* [GC], No. 56030/07, Judgment of 12 June 2014; ECHR, *Case of Sindicatul "Pastorul Cel Bun" v. Romania* [GC], No. 2330/09, Judgment of 9 July 2013.



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Response

Using the numbering in your letter.

- (2) **Firstly**, we do not doubt the challenge posed by the Covid-19 pandemic nor its seriousness. Like most everyone in the United Kingdom, our clients grieve for the lives lost and the families affected. Nor do we minimise the need to have in place measures to help prevent the spread of the disease, which we acknowledge is a legitimate aim within the meaning of Article 9(2) of the Convention. Our clients do not challenge the government's aim to protect the health and safety of the population, our client's challenge centres on the Government's interpretation of proportionality, in that your client is of the view that church attendance is not deemed an essential service, and the principle of church autonomy.
- (3) We would ask you to consider the recent South African High Court judgment challenging their coronavirus restrictions, in *Reyno Dawid de Beer et al. v. The Minister of Cooperative Governance and Traditional Affairs*, Case no. 21542/2020. We accept this case is not binding in the UK, nonetheless we suggest that the High Court provided an important interpretive framework when considering proportionality in the context of Covid19. It is clear that the proper standard of review is whether a restriction is constitutionally justifiable, the High Court disapproved of the South African Government's paternalistic approach. We suggest, without proper justification, the UK government's approach is similar to that of the South African governments.
- (4) The *de minimus* disclosure you have provided, is indicative of the paternalistic manner in which these restrictions have been imposed. The public have not been provided with any insight to whether genuine debate and study was undertaken to determine whether shopping at Sainsbury's etc is an inherently safe activity than attending church.
- (5) **Secondly**, while we accept that the right to life is of fundamental importance, it is not the only consideration for the Government. Nor is the margin of appreciation as wide as you suggest. Section 13 of the Human Rights Act provides a higher standard of review for any case which may affect the ability of a church to exercise their Article 9 rights. The European Court of Human Rights has said that the standard of review for Article 9 cases requires a level of "very strict scrutiny". ECHR, *Manoussakis and Others v. Greece*, Reports 1996-IV: AFDI, 1996, p. 1354, § 44. Proportionality is judged on rational basis. If a church can be open as a food bank, why cannot it not be opened for prayer for more than one person at a time?
- (6) **Thirdly**, the fact that the restrictions are finite is largely irrelevant to the application of Article 9. A public authority either disproportionately, and therefore unlawfully, interferes with Article 9, or it does not. The length of time the interference takes place has no bearing on whether the Convention rights of churches and their members is violated. Our clients clearly understand the current restrictions apply to all religions and places of worship, the scope of this complaint is limited to the standing which they have, which is as leaders of Christian churches. However, that is irrelevant. Our clients have never claimed that your client's acts were limited to churches. It maybe that your actions unlawful actions extend much further than just the churches.

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- (7) **Fourthly**, given that your client has placed great weight on the scientific advice received from SAGE, this therefore falls to be disclosed. In any event, with the appropriate social distancing measures in place, and a limitation on the total number of people to be admitted to a church building, there is no reason why churches cannot open forthwith. Social distancing is perfectly possible in the vast majority of church buildings in the country.
- (8) **Fifthly**, we note your comments in relation to the taskforce. Our clients do not believe that the taskforce adequately represents the interests of much of Christianity in the church, in particular the growing churches and the BAME churches. Our clients would ask you to invite suitable representatives onto this taskforce that represent such interests.
- (9) **Sixth and Seventhly**, your response has failed to take into account the importance of freedom of religion to the life of a believer. *Cf. Hasan and Chaush v. Bulgaria* [GC], application no. 30985/96, judgment of 26 October 2000, §62. Article 9 is the only right which recognises the transcendent, making participation in the life of a church community wholly different than secular activities such as going to a gardening centre. Given this fact, as well as the emotional and psychological benefits of being part of a church community, church attendance should be viewed as essential.
- (10) We note that Swift J, in *Hussain*¹, decided only to reject the claimant's application for interim relief, but otherwise granted permission for judicial review. There is no indication in the judgment that the court had any scientific evidence before it when determining that church attendance was qualitatively more dangerous than going to a garden centre. The quote from the judgment you provide also omits the important qualifying phrase: "*it is possible to recognise...*", which clearly shows that this is obiter dicta and not a finding of fact.
- (11) As stated at the outset of this response, we believe that you have mischaracterised our position concerning the *Magna Carta 1215*. There has not been Government interference of the present nature for c.800 years. In any event, whether the relationship between the church and the government has evolved over time not germane given that the European Court have repeatedly held that the right to manifest one's belief in community is sacrosanct. In *Metropolitan Church of Bessarabia v Moldova*, the Court held that: "*the right of believers to freedom of religion, which includes the right to manifest one's religion in community with others, encompasses the expectation that believers will be allowed to associate freely, without arbitrary state intervention.*" ECHR, *Metropolitan Church of Bessarabia v. Moldova*, no. 45701/99, ECHR Reports 2001-XII, 13 December 2001, § 118.
- (12) Therefore, any constitutional justification on restrictions of freedom of religion must also take into account the importance of this principle, together with the heightened level of scrutiny enjoyed under Article 9. The term 'necessary', in relation to proportionality, does not have the flexibility of such expressions as 'useful' or 'desirable'. *Svyato-Mykhaylivska Parafiya v. Ukraine*, App. No. 77703/01 § 116 (Eur. Ct. H.R. June 14,

¹ [2020] EWHC 1392 (Admin)



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2007)². If there are less restrictive means of promoting health while at the same time respecting freedom or religion, they should be utilised. The possibility of some churches might not respect social distancing measures, against whom appropriate law enforcement measures could be taken, should not affect the rights of churches willing to follow the appropriate health measures. Similarly, the government is not proposing that shops will be preventing from reopening next week for fear that a few may breach the rules.

ADR Proposals

- (13) Given the above, we make the following requests:
- (a) For the sake of transparency and to support your position that you are acting constitutionally justifiably, that our request for information and documents be reconsidered.
 - (b) That an ADR meeting be convened at the earliest opportunity with the attendance of all our clients (should they wish to attend) and their legal representatives, to prevent the effluxion of time making the point of the meeting moot and at the very latest by 19 June 2020 4pm.

Yours faithfully



Andrew Storch solicitors

² <http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-81067>



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Andrew Storch Solicitors
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By email- [REDACTED]@andrewstorch.co.uk

19 June 2020

Dear Sirs

Pre-Action Protocol Correspondence- Rev. Ade Omooba et al

We write to invite all of the claimants to a roundtable meeting at 2pm on Wednesday 24 June 2020. This will be hosted by Miriam Hodgson, Deputy Director for Faith, Integration and Communities at MHCLG. This meeting is part of a series of roundtable meetings allowing our clients an opportunity to discuss the reopening of places of worship and associated guidance and to listen to views on future easements as part of phase 3 of Government's Strategy Our Plan to Rebuild: The UK Government's COVID-19 Recovery Strategy'. Please advise the best way for our clients to contact the claimants to arrange the logistics of the meeting- the meeting will take place on Zoom. For the avoidance of doubt, there will be no lawyer participation at this meeting.

We will endeavour to respond to the substantive points raised in your letter dated 15 June 2020 by the end of next week.

Finally, we note that we have also received two reports under cover of email dated 18 June 2020, please confirm if you are also intending for us to comment on the reports.

Yours faithfully

Hannah Sladen

**Hannah Sladen
For the Treasury Solicitor**

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**Litigation Group
102 Petty France
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London
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DX 123243, Westminster 12 www.gov.uk/gld

**Your ref: MP:MP3515
Our ref: Z2006192/HHS/HOI7**



Michael

Mon 6/22/2020 1:01 PM

To: hannah.sladen@governmentlegal.gov.uk

Bcc: Staff - Legal Team <[REDACTED]>



Dear Hannah

Our clients are prepared to meet with the government adviser that you mentioned this Wednesday at 2pm.

We would ask that you consider the attached report of Dr Martin Parsons in advance of the meeting.

Regards

Michael Phillips

[REDACTED]
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Your ref: MP:MP3515
Our ref: Z2006192/HHS/HOI7

23 June 2020

Dear Sirs

Pre-Action Protocol Correspondence- Rev. Ade Omooba et al

Further to our correspondence last week, officials have arranged to hold an online roundtable meeting with your clients this week to discuss the reopening of places of worship and associated guidance. That meeting had been scheduled for 2pm on Wednesday 24 June 2020.

As you know, our clients are anxious to ensure that the discussions with your clients are as constructive as possible. They have now advised me that due to ongoing discussions within Government a short delay in the timing of meeting would be very helpful in order to ensure that the dialogue is as productive as possible. I am therefore writing to ask if your clients would be willing to agree to reschedule the roundtable until 12 on 26 June.

If this is acceptable, please let me know as soon as possible. And as requested in my earlier letter I would also be grateful for the contact addresses of clients attending so that details of the zoom meeting can be forwarded.

Yours faithfully

Hannah Sladen

**Hannah Sladen
For the Treasury Solicitor**

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IN THE HIGH COURT OF JUSTICE

QUEENS BENCH DIVISION

ADMINISTRATIVE COURT

APPLICATION FOR PERMISSION FOR JUDICIAL REVIEW

BETWEEN:

HER MAJESTY THE QUEEN

(on the application of Rev. Ade Omooba et al.)

Claimants

-v-

SECRETARY OF STATE FOR HEALTH AND SOCIAL CARE

Defendant

EXPERT WITNESS STATEMENT

1. I, Dr Martin David Parsons have been instructed by Andrew Storch Solicitors representing the claimant, to prepare an expert independent witness statement.
2. My principal qualifications to act as an expert witness in this case include the following: A first class honours degree in Theology and a PhD in Biblical and Islamic Theology and Christian Mission (Brunel University, 2005). I am the author of two major academic books one on Christian and Islamic Theology and one on Christian Public Theology, as well as a number of published articles in these fields. I have been elected as a member of the following learned societies: Tyndale Fellowship for Biblical Research and I am a Fellow of the Higher Education Academy (FHEA). I have been faculty member of the Oxford Centre for Religion and Public Life where I was involved in supervising postgraduate research in association with the University of Stellenbosch, South Africa. I have also previously been Head of Research and Director of Studies at the international headquarters of a Christian organisation specialising in freedom of religion or

belief. I have previously been an expert witness for a number of cases in the UK court system. I have attached my CV as appendix 1.

3. I have been provided with the following material:
 - a) Letter of instruction.
 - b) Copy of 11 June 2020 response from Government Legal Department to pre action letter and the claimant's response dated 15 June 2020.
 - c) Expert statement (including addendum) by Ian Blenkarn healthcare, occupational and environmental microbiologist.
 - d) A copy of the judgement in Hussain v SSHSC 2020 [EWHC] 1392 (Admin).

4. My instructions were to advise on
 - A) The biblical importance of the church meeting together in corporate worship and the effect of the lockdown regulations.
 - B) Public Theology and the importance of corporate worship and weddings for the range of Christians in the UK.I was also asked to additionally comment on
 - i) The significance or insignificance of opening churches for individual prayer and whether this goes some way to remedying the situation or not.
 - ii) The importance of baptism
 - iii) The inability of the church to minister spiritually to more widely to the community due to the lockdown.These sections been added into the main report.

A) The biblical importance of the church meeting together in corporate worship

The church as a local geographical entity

4. In the New Testament (NT) the word ἐκκλησία (ekklēsia) normally translated as 'church' in English versions has two meanings.¹ a) it's primary meaning, which in the local congregation in a particular geographical location. In the majority of NT books where it occurs (Acts, Romans, 1 and 2 Corinthians, 1 and 2 Thessalonians, 1 Timothy, Philemon, James, Revelation) this is its sole meaning²; b) There are a more limited number of specific NT passages, particularly in Ephesians, Colossians and Hebrews where it refers to the church in general, often in relation to Heaven.

¹ With the probable exceptions of Matt.16:16; 18:17 which are prior to Jesus' death and resurrection and therefore may refer to the synagogue, for which the term was commonly used.

² Acts 5:11; 8:1,3; 9:31; 11:22,26; 12:1,5; 13:1; 14:23,27; 15:3,4,22,30,41; 16:5;18:22; 20:17,28; Romans 16:1,4,5,16,23; 1 Corinthians 1:2; 4:17; 5:12; 6:4; 7:17; 10:32; 11:16,18,22; 12:28; 14:4,5,12,19,23,26,28,34,35; 15:1; 16:1,19 (x2); 2 Corinthians 1:1; 8:1,18,19,23,24,28; 12:13; I Thessalonians 1:1; 2:14 (x2); 2 Thessalonians 1:4; I Timothy 3:5,15,16,17; Philemon 2; James 5:14; Revelation 1:4,11,20 (x2); 2:1,7,8,11,12,17,18,23,29; 3:1,6,7,13,14; 22:16.

5. In other words, the normal meaning of 'church' in the New Testament is a geographically local congregation of Christians.
6. Christians in the earliest days generally met in large private homes. However, the New Testament clearly distinguished churches from individual Christian families. For example, Paul's First Pastoral Epistle to Timothy states one of the criteria for the church leadership was that someone had to lead their own family well, as

"If anyone does not know how to manage his own family, how can he take care of God's church?"³

As such the fact that Christians in the NT generally met in private homes is not of relevance, as the churches consisted of multiple households.

The physical gathering of the church

7. The New Testament emphasises the importance of the church physically gathering together on a regular basis. At no point does the Bible ever suggest that Christianity is an activity to be carried out by an individual in isolation from others.
8. This is evident in the teaching of Jesus recorded in the Gospels. Jesus had told his disciples that *"I will build my church, and the gates of Hades⁴ will not overcome it"*⁴ and where even *"two or three gather in my name, there am I with them."*⁵
9. In the New Testament the early church placed great emphasis on physically meeting together. The Gospels and Acts of the Apostles describe the church both immediately after Jesus' crucifixion and later physically meeting together despite fear of persecution.⁶ The Acts of the Apostles describes some at least, as physically meeting together on a daily basis,⁷ which Hebrews also implies.⁸ 1 Corinthians, the NT book which provides the most detailed window on the practice of the early church, repeatedly describes the church as *"coming together"*;⁹ while Hebrews, which is written in the context of persecution gives a

³ 1 Timothy 3:1-7.

⁴ Matthew 16:18.

⁵ Matthew 18:20.

⁶ John 20:19; Acts 4:23-31; 5:42; 12:12-17.

⁷ Acts 1:14; 2:1; 2:44-46; 5:12.

⁸ Hebrews 3:13.

⁹ 1 | Corinthians 3:17; 11:18, 20, 33-34; 14:23, 26

specific exhortation to Christians, that notwithstanding the persecution they are facing to continue physically meeting together:

10. *“And let us consider how we may spur one another on toward love and good deeds, not giving up meeting together, as some are in the habit of doing, but encouraging one another—and all the more as you see the Day approaching.”*¹⁰
11. It is also noteworthy that the NT does NOT give any equivalent specific instruction as to which day of the week the church was to meet on. For example, the communion service at Troas described in Acts 20 appears to have taken place on a Saturday evening.¹¹ While in Romans 14:5 Paul states that
*“One man considers one day more sacred than another, another man considers every day alike. Each one should be fully convinced in his own mind.”*¹²
12. The exhortation not to neglect meeting together therefore stands in marked contrast to this and emphasises the importance attached to physically meeting together even in times of persecution.

Can a church function solely over the internet?

13. It is important to be clear what the Biblical understanding of the church is, which is at variance with some aspects of the popular usage of the term in English. The Church is not the building, nor is it simply the group of Christians in that location. As Archbishop Donald Robinson expressed it:
*“Church is not a synonym for the ‘people of God’; it is rather an **activity** of the ‘people of God’.”*(emphasis original)¹³
14. This is potentially of some importance to this case, as it means that ‘church’ is not something that one can be simply listen to, for example, on the television or over the internet.
15. The New Testament uses a number of metaphors to describe the church, including the bride of Christ and the body of Christ. The image of the body is important because it is developed in both 1 Corinthians and Ephesians to

¹⁰ Hebrews 10:24-25.

¹¹ Acts 20;7ff.

¹² Romans 14:5.

¹³ D.W.B Robinson ‘Church’ :205-207 in J.D. Douglas, N. Hillyer, F.F. Bruce, A.R. Millard, J.I. Packer and D.J. Wiseman (eds) *New Bible Dictionary* (Leicester:IVP,1962,1982). Donald Robinson was a lecturer at Moore Theological College, Sydney, Australia and later Archbishop of Sydney.

emphasise that church cannot be one person ministering and others passively listening.

16. In 1 Corinthians 12 the Apostle Paul emphasises this, writing:

“Just as a body, though one, has many parts, but all its many parts form one body, so it is with Christ...Even so the body is not made up of one part but of many. Now if the foot should say, “Because I am not a hand, I do not belong to the body,” it would not for that reason stop being part of the body. And if the ear should say, “Because I am not an eye, I do not belong to the body,” it would not for that reason stop being part of the body. If the whole body were an eye, where would the sense of hearing be? If the whole body were an ear, where would the sense of smell be? But in fact God has placed the parts in the body, every one of them, just as he wanted them to be. If they were all one part, where would the body be? As it is, there are many parts, but one body. The eye cannot say to the hand, “I don’t need you!” And the head cannot say to the feet, “I don’t need you!” On the contrary, those parts of the body that seem to be weaker are indispensable,”¹⁴

17. Before going on to spell out the different ways individual members contributed.

“Now you are the body of Christ, and each one of you is a part of it. And God has placed in the church first of all apostles, second prophets, third teachers, then miracles, then gifts of healing, of helping, of guidance, and of different kinds of tongues. Are all apostles? Are all prophets? Are all teachers? Do all work miracles? Do all have gifts of healing? Do all speak in tongues? Do all interpret? Now eagerly desire the greater gifts.”¹⁵

18. What is clear from this list, is that the biblical pattern for the church is that of an organic whole where a wide range of members are actively involved in ministering to the rest of the congregation.¹⁶

19. The New Testament describes the practice of the church as including the following:

- i) Gathering together to listen to the public reading of scripture, preaching and teaching.¹⁷

¹⁴ 1 Corinthians 12:12-22.

¹⁵ 1 Corinthians 12:27-31.

¹⁶ Gordon D Fee *The First Epistle to the Corinthians* New International Commentary on the New Testament (Grand Rapids: Eerdmans, 1987): 616-25 on 1 Cor. 12:27-31 argues that the text implies that the first three (apostles, prophets and teachers) “are not to be thought of as ‘offices’ held by certain persons in the local church, but rather as ministries that find expression in various persons.” The author is Emeritus Professor of New Testament Studies at Regent College, Vancouver.

¹⁷ 1 Timothy 4:13; 5:17.

- ii) Corporate prayer.¹⁸
- iii) Gathering together for Christian fellowship.¹⁹
- iv) Worship – which includes both a) *“singing to one another” with Psalms, Hymns and spiritual songs,*²⁰ and b) songs of worship addressed specifically to God.²¹ Paul’s letter to the Colossians specifically exhorts them to *“Let the message of Christ dwell among you richly as you teach and admonish one another with all wisdom through psalms, hymns, and songs from the Spirit, singing to God with gratitude in your hearts.”*²²
- v) The Lord’s Supper i.e. communion/eucharist.²³
- vi) Baptism.²⁴
- vii) Ministering to the church by means of spiritual gifts.²⁵ Paul summarises this in his first letter to the Corinthians, writing: *“What then shall we say, brothers and sisters? When you come together, each of you has a hymn, or a word of instruction, a revelation, a tongue or an interpretation. Everything must be done so that the church may be built up.”*²⁶
- viii) Evangelism i.e. preaching to outsiders.²⁷
- ix) It is also implied, though not specifically stated that weddings may have been conducted.²⁸
- x) Similarly, there is evidence of something approximating to funerals having been conducted by the church.²⁹

20. Of these ten practices:

- a) Those permitted to continue by the current Coronavirus regulations are solely funerals, but even these only with very significant restrictions on attendance.
 - b) Those church activities which can take place over the internet are Christian teaching or preaching. Two or three others church activities could potentially do so, though only to a limited extent: corporate prayer, fellowship, evangelism.
- NB although individual worship in the sense of singing hymns etc to God is possible in private homes, *corporate* worship as described above – whether hymns addressed to God or to each other is not.

¹⁸ Acts 2:42.

¹⁹ Acts 2:42.

²⁰ Ephesians 5:19.

²¹ Acts 16:25.

²² Colossians 3:16.

²³ Acts 2:42; 1 Corinthians 11:17-34.

²⁴ Acts 2:38,41; 8:12, 36-38.

²⁵ Romans 12:3-8; 1 Corinthians 12:7-31; 14:1-28.

²⁶ 1 Corinthians 14:26.

²⁷ Acts 2:14ff.

²⁸ 1 Corinthians 7:8-9; 1 Timothy 5:11-14.

²⁹ Acts 5:6,9-10; 8:2.

c) Those which cannot reasonably be undertaken via the internet: corporate worship, communion, baptism, congregational ministering through spiritual gifts, weddings.

21. Thus the majority of church practices either cannot or cannot be fully practised without physically meeting together.

Baptism, the Lord's supper, and weddings

Baptism

22. The Lord's supper, baptism and weddings merit particular attention here.

23. Immediately prior to his ascension, in words now commonly known as 'The Great Commission', Jesus commanded his disciples:

*"All authority in heaven and on earth has been given to me. Therefore go and make disciples of all nations, baptizing them in the name of the Father and of the Son and of the Holy Spirit, and teaching them to obey everything I have commanded you.."*³⁰

24. In the New Testament the importance of baptism is emphasised by the fact that Jesus himself was baptised. Matthew's Gospel records that Jesus insisted that this was necessary:

"Then Jesus came from Galilee to the Jordan to be baptized by John. ¹⁴ But John tried to deter him, saying, 'I need to be baptized by you, and do you come to me?' Jesus replied, 'Let it be so now; it is proper for us to do this to fulfil all righteousness.' Then John consented."

25. Baptism for Christians is therefore not an optional extra, but obedience to a direct command of Christ.

26. In the NT it is regarded as part and parcel of someone becoming a Christian. For example, the Acts of the Apostles records the preaching of Peter on the Day of Pentecost in which he urges those listening to

*"Repent and be baptized, every one of you, in the name of Jesus Christ for the forgiveness of your sins. And you will receive the gift of the Holy Spirit."*³¹

³⁰ Matthew 28:18-20.

³¹ Acts 2:38.

27. The New Testament examples of baptism appear to be public events, at least to the extent that they appear to have taken place outside, with even Jesus being baptised in the River Jordan.

28. Baptism also appears to have taken place immediately after someone professed faith in Christ. For example, the Acts of the Apostles records the Ethiopian official in charge of Queen Candace's treasure being baptised immediately after he became convinced by Philip's explanation of the Gospel:

*"As they travelled along the road, they came to some water and the eunuch said, "Look, here is water. What can stand in the way of my being baptized?" And he gave orders to stop the chariot. Then both Philip and the eunuch went down into the water and Philip baptized him."*³²

Baptism straight after conversion is practised by a number of churches in the UK. However, this is clearly prevented by the coronavirus regulations.

29. The Catholic Church and a number of Christians within the Anglican Church, particularly Anglo Catholics teach that at baptism the Holy Spirit is imparted to the person being baptised. It is therefore essential for infants to be baptised as baptism is necessary for salvation. As Ludwig Ott in one of the main textbooks on Catholic dogma puts it:

*"baptism by water...is, since the promulgation of the Gospel, necessary for all men without exception for salvation."*³³

30. Therefore, preventing a child being baptised, as the current Coronavirus regulations do, is, if that child dies, understood by many Catholics to be denying that child entry to Heaven.

31. Protestants are divided between those such as Anglican, Methodist and Presbyterian churches, who believe that infants should be baptised (i.e. infant baptism) and those, such as Baptist, most Independent Evangelical and Pentecostal churches who believe that only those who have themselves made a personal Christian commitment should be baptised (i.e. believer's baptism). The former understand infant baptism to be incorporation into the covenant community of God's people. The latter view it as a public declaration of the

³² Acts 8:36-38.

³³ Ludwig Ott *Fundamentals of Catholic Dogma* ET from German by Patrick Lynch (St Louis:Herder,1955):356 cited in Wayne Grudem *Systematic Theology: An Introduction to Biblical Doctrine* (Grand Rapids: Zondervan/Leicester:IVP,1994):971-72. The former is a standard textbook on Catholic dogma.

believer's new faith in Christ which is symbolised by them dying to their old way of life as they are immersed under the water and then rising up to their new life in Christ.

32. However, what is important to emphasise is that for both groups of churches baptism is understood as part of the process of entry into the church. As such it cannot be done in isolation from the rest of the church. Therefore, while some churches insist that only ordained clergy can conduct baptisms, even in Baptist or Pentecostal churches which allow a wider range of church members to be involved, baptism is nonetheless a public act in which the whole church is involved. It cannot therefore be conducted by someone themselves in their own home.
33. As such the effect of the Coronavirus regulations is to prevent baptisms taking place in the whole range of churches in the UK.³⁴

The Lord's Supper (Communion, Eucharist)

34. The essence of the Lord's supper is physically coming together, hence its common designation as 'communion'. In 1 Corinthians 11 Paul emphasises the importance of this being conducted appropriately, stating that some of the way this had been done in the Church at Corinth had become so individualistic that it was doing "more harm than good."³⁵ He then adds that:

*"So then, when you come together, it is not the Lord's Supper you eat, for when you are eating, some of you go ahead with your own private suppers."*³⁶

35. Explanations offered by biblical scholars as to why the Corinthian practice is judged by Paul to be "*not the Lord's supper*" fall into three basic options: i) intense individualism; ii) some go ahead without waiting for others; iii) it is done in private.³⁷ Whilst, Paul is concerned with malpractice here, the passage does make clear the importance of physically being together as "*one body*" in the Lord's supper.
36. Paul goes on to describe the Lord's supper citing Jesus' words concerning the bread and wine:

³⁴ The sole exception, being by hospital chaplains.

³⁵ 1 Corinthians 11:17.

³⁶ 1 Corinthians 11:20-21.

³⁷ Gordon D Fee *The First Epistle to the Corinthians* New International Commentary on the New Testament (Grand Rapids: Eerdmans,1987):540-43 on 11:21.

“This is my body, which is for you; do this in remembrance of me.”²⁵ In the same way, after supper he took the cup, saying, “This cup is the new covenant in my blood; do this, whenever you drink it, in remembrance of me.”

37. The actual meaning of these words has been the subject of intense debate since the Reformation, between Catholic, Lutheran and other Protestant understandings of how the presence of Christ in the communion service, also termed ‘eucharist’, is to be understood.³⁸
38. The Catholic understanding of the Lord’s supper, known as ‘transubstantiation’, has historically been that the bread and wine, despite their outward appearance, actually become the body and blood of Christ, which then becomes ‘a true and proper sacrifice’ as the mass is celebrated.³⁹ In other words, it becomes Christ’s sacrifice for the forgiveness of sins. Physical attendance at mass is therefore regarded by many Catholics as the most important aspect of Catholic practice.
39. The point at which the bread and wine are understood to actually become the body and blood and Christ is at the moment in the celebration of the mass where the priest elevates the bread and says Jesus’ words *“This is my body”*. This can only be done by a priest – NOT by a layperson.⁴⁰ It is therefore not possible for the mass to be conducted remotely via the internet.
40. The Lutheran understanding of the Lord’s supper, known as ‘consubstantiation’, is that whilst the bread and wine do not actually become the physical body of Christ, Christ’s words *“this is my body”* mean that in some sense Christ’s body is actually present *“in, with and under”* the bread. As the (1530) Augsburg Confession, which is the primary confession of the Lutheran Church, puts it:
- “...the body and blood of Christ are truly present and are distributed to those who eat in the supper of the Lord”*.⁴¹

As such, this too cannot be conducted over the internet.

³⁸ R.T. Beckwith ‘Eucharist’ in Sinclair B Ferguson, David F Wright and J.I. Packer (eds) *New Dictionary of Theology* (Leicester: IVP, 1988):236-38. The author was warden of Latimer House, Oxford.

³⁹ Ludwig Ott *Fundamentals of Catholic Dogma* ET from German by Patrick Lynch (St Louis: Herder, 1955):402 cited in Wayne Grudem *Systematic Theology: An Introduction to Biblical Doctrine* (Grand Rapids: Zondervan/Leicester: IVP, 1994):991-96. The former is a standard textbook on Catholic dogma.

⁴⁰ Wayne Grudem *Systematic Theology: An Introduction to Biblical Doctrine* (Grand Rapids: Zondervan/Leicester: IVP, 1994):991-96. The author is Professor of Biblical and Theological Studies at Phoenix Seminary, Arizona, author of 22 books and was general Editor of the ESV Study Bible.

⁴¹ Augsburg Confession (1530) Article 10.

41. Protestant understanding generally understand Jesus' words 'this is my body' to be symbolic, but that Christ is present in the communion service by the Holy Spirit. As Professor Wayne Grudem observes:

*"Today most Protestants would say, in addition to the fact that the bread and wine symbolize the body and blood of Christ, that Christ is also **spiritually present** in a special way as we partake of the bread of the wine. Indeed, Jesus promised to be present wherever believers worship: 'Where two or three are gathered in my name, there am I in the midst of them' (Matt.18:20). And if he is especially present when Christians gather to worship, then we would expect that he will be present in a special way in the Lord's supper."*(emphasis original)⁴²

Therefore, again this points to the importance of Christians being physically present together for the Lord's supper to be celebrated in a biblical fashion.

42. It is therefore particularly significant that the current Coronavirus regulations do not enable either baptism or the Lord's supper to take place.
43. The current prohibition on churches conducting either baptisms or the Lord's supper has a particular significance as both of these form part of Christian Public Theology which has been embedded in English law in the form of the 39 Articles of the Church of England (see section B below).

Weddings

44. The conducting of Christian weddings is also of particular importance. Both the OT and the NT stress the importance of maintaining sexual purity before marriage.⁴³ For example, the Epistle to the Hebrews states:

*"Marriage should be honoured by all, and the marriage bed kept pure, for God will judge the adulterer and all the sexually immoral."*⁴⁴

The latter term which is rendered as 'fornication' in some English translations covers all forms of sexual activity outside of marriage.⁴⁵

⁴² Wayne Grudem *Systematic Theology: An Introduction to Biblical Doctrine* (Grand Rapids: Zondervan/Leicester:IVP,1994):991-96.

⁴³ 1 Corinthians 5:9-11; 6:12-20.

⁴⁴ Hebrews 13:4.

⁴⁵ F.F. Bruce *The Epistle to the Hebrews* New International Commentary on the New Testament (Grand Rapids, Eerdmans,1990):372-73 on 13:4. The author was Rylands Professor of Biblical Criticism and Exegesis at Manchester University and internationally regarded as one of the preeminent biblical scholars.

45. This does not in any sense mean that the Bible has anything other than a positive view of sexuality or fails to recognise sexual desire. It is that it emphasises that the proper place for the expression of sexual desire is marriage.

“Now to the unmarried⁴⁶ and the widows I say: It is good for them to stay unmarried, as I do. But if they cannot control themselves, they should marry, for it is better to marry than to burn with passion.”⁴⁶

46. The current prohibition on churches conducting weddings therefore indirectly discriminates against committed Christians by allowing unmarried couples to move in together, while prohibiting Christian weddings from taking place.

47. Both Catholics and Protestants agree that the baptism and the Lord’s supper are sacraments.⁴⁷ A sacrament is, in a saying attributed to St. Augustine of Hippo, “*an outward and visible sign of an inward and spiritual grace*”. Since the time of Thomas Aquinas, the Catholic Church has recognised seven sacraments: baptism, confirmation, communion, matrimony, penance and (extreme) unction administered to the sick. While Protestants only accept those which are actually instituted by Christ i.e. baptism and the Lord’s supper.⁴⁸

48. However, notwithstanding disagreement over the number of sacraments, what is clear is that for both Catholics and Protestants sacraments are a very important part of their faith. However, the current Coronavirus regulations prevent ALL of the sacraments in either the Protestant or Catholic list from being carried out by church leaders among their own congregations.

The wider ministry of the church

49. The Church of England and the Church of Scotland as established churches exist for the entire community, not simply those who regularly attend them. As the Church of Scotland’s website puts it:

“The Church of Scotland seeks to inspire the people of Scotland and beyond with the Good News of Jesus Christ through enthusiastic worshipping, witnessing, nurturing and serving communities.”⁴⁹

50. This reflects a Christian theology, which is also held more widely by other Christian churches, that the church’s calling is to minister *spiritually* to the

⁴⁶ 1 Corinthians 7:8-9.

⁴⁷ Wayne Grudem *Systematic Theology: An Introduction to Biblical Doctrine* (Grand Rapids:

Zondervan/Leicester:IVP,1994):966 notes that some Evangelical Protestants prefer the term ‘ordinance’.

⁴⁸ C.O. Buchanan ‘Sacrament’ in David F Wright and J.I. Packer (eds) *New Dictionary of Theology* (Leicester: IVP,1988):606-08. The author was principal of St John’s Theological College, Nottingham.

⁴⁹ The Church of Scotland ‘About the Church of Scotland’ <<https://churchofscotland.org.uk/about-us>> [accessed 20 June 2020].

whole of society. This has been particularly true in the past at the times of national crises, such as plague/pandemic and war.

51. The importance of this spiritual ministry to wider society has at times been openly recognised by previous governments. For example, Brigadier Allan Mallinson in his *The Making of the British Army* observes that there were three major lessons which the British Army drew from the First World War:

*“...Second was the recognition of the ‘moral’ (non-material) element of combat, and therefore the need for the spiritual sustenance of the soldier – from which the Chaplains’ Department emerged as a significant element of the ‘moral component’ of fighting power.”*⁵⁰

The latter consists not merely of clergy from the established churches, but also from other churches as well.

52. However, what the current Coronavirus regulations do is to permit church buildings to be used solely to minister *materially* to the wider community, such as through food banks. The relegation of church opening for worship to the third stage of release from lockdown, which stands in contrast to the reopening of shops in the second phase, has effectively prevented the churches being able to effectively fulfil their calling is to minister spiritually to the whole of society.

The significance of Christians being allowed to enter a church to pray

53. The government has relaxed the Coronavirus regulations by allowing Christians to enter a church building to pray alone. Whilst church leaders have welcomed this, and some Christians may gain comfort from being able to pray in church, the theological significance of this is very limited. In contrast, the theological significance of the church practices which are still prohibited such as baptism, communion, weddings, corporate worship is very great.
54. There were some church buildings prior to the conversion of Constantine (312CE) and the Edict of Milan (313CE) granting religious toleration in both the eastern and western Roman empires, although even afterwards many churches still met in homes.⁵¹ However, in the New Testament the church only met either in homes or occasionally, as at Ephesus in public halls.⁵² Thus while church buildings may be specifically consecrated for Christian use, it is not the building, but what happens when the church gathers in it, which is most important.

Conclusions

55. In the New Testament the church is primarily understood as a local congregation which physically meets together.

⁵⁰ Allan Mallinson *The Making of the British Army: From the English Civil War to the War on Terror* (London:Bantam, 2009, 2011):434.

⁵¹ M.A. Smith *The Church Under Siege* (Leicester:IVP,1976):18.

⁵² Acts 19:9.

56. This meeting together was of such importance that the early church continued to meet together – and the NT actually exhorts them to meet together even during times of persecution.
57. The current prohibitions on churches set out in the Coronavirus regulations which prevent people attending churches, while allowing them to attend other public buildings such as shops, has effectively prevented churches operating in the biblical sense as churches. Of the ten features of Church life in the New Testament described above, only one is permitted by the government (funerals) and only one other (listening to preaching/teaching) can properly and fully be practised via the internet.
58. There is a particular issue with the prohibition on weddings, which creates a form of indirect discrimination against Christians who adhere to biblical teaching on marriage.

B) Public Theology and the importance of corporate worship and weddings for the range of Christians in the UK

The intertwining of Christian Public Theology and law

59. S.13 of Government Legal Department's 11 June response to the claimant's pre action letter states that because

“the concept of what the ‘Church’ is has clearly evolved since Magna Carta, not least with the Reformation and recognition of the Church of England as the established church in England. The relationship between (a) the Church of England and (b) Parliament, HM Government and the Crown is complex and beyond the scope of this letter for present purposes.

...that Parliament can legislate for Church of England matters, most recently having done so in section 84 of the Coronavirus Act 2020...There is thus no constitutional bar on what has been done under the Public Health Act (Control of Diseases) Act 1984 and the Regulations in public health terms in relation to Church of England premises”
60. In fact, the relationship between government, parliament and the church, particularly, though by no means exclusively the Church of England Church, is extremely relevant to this issue. In particular, because this is one of the rare areas where aspects of Christian Public Theology have been embedded within the law. The purpose of the following is to address that issue from the perspective of Christian Public Theology, rather than law.
61. Whilst the relationship between the church and state has evolved over the centuries, that evolution has been underpinned by a Christian Public Theology, which has at times been stated in law, that the government is appointed by God

and therefore accountable to God. This led to a series of royal charters setting out the freedom of the church from the sphere of the state.

62. The 1215 Magna Carta⁵³ reflects this in its preamble which begins

“John, by the grace of God, king of England... Know that, having regard to God and for the salvation of our soul...”

before setting out in the first article a confirmation of the pre-existing rights of the church:

“In the first place have granted to God and by this present charter confirmed for us and our heirs for ever that the English church shall be free (quod Anglicana ecclesie libera sit), and shall have its rights undiminished and its liberties unimpaired (et habeat jura sua integra, et libertates suas illesas).”

63. However, it was the 1559 church-state settlement which formally defined separate spheres for church and state.⁵⁴ Broadly speaking, the state may not interfere in either the interpretation of scripture or the sacraments i.e. in effect worship and teaching, while the church must be subject to the law in other matters.

64. The English (1559) settlement is also set out in the 39 Articles of the Church of England. Article 37 states

“...Where we attribute to the Queen’s majesty the chief government, by which titles we understand the minds of some slanderous folk to be offended; we give not to our princes the ministering either of God’s Word, or of the Sacraments, the which thing the injunctions also lately set forth by Elizabeth our Queen do most plainly testify: but that only prerogative which we see to have been given always to all godly princes in Holy Scriptures by God himself; that, that they should rule all estates and degrees committed to their charge by God, whether they be ecclesiastical or temporal, and restrain with the civil sword the stubborn and evildoers...”

65. Similar, separate spheres are set out in the 1592 General Assembly Act (old Scottish parliament) – sometimes referred to as the Great Charter of the Church of Scotland. which states that each kirk (i.e. church)

“haif power and iurisdiction in thair awin congregatioun in matteris ecclesiasticall.”⁵⁵

⁵³ For parallel texts of the 1215, 1216 and 1225 versions of Magna Carta cf *David Starkey Magna Carta: the True Story Behind the Charter* (London: Hodder and Stoughton, 2015): 159-255.

⁵⁴ Act of Supremacy 1558 c.1 (1 Elizabeth 1) and Act of Uniformity 1559 (Public Act, 1 Elizabeth I, c. 2).

⁵⁵ General Assembly Act 1592 (Old Scottish Parliament) c.8.

66. These separate spheres are reiterated with more detail in the 1921 Church of Scotland Act:

*“This Church has the inherent right, free from interference by civil authority, but under the safeguards for deliberate action and legislation provided by the Church itself, to frame or adopt its subordinate standards, to declare the sense in which it understands its Confession of Faith, to modify the forms of expression therein, or to formulate other doctrinal statements, and to define the relation thereto of its office-bearers and members, but always in agreement with the Word of God and the fundamental doctrines of the Christian Faith contained in the said Confession, of which agreement the Church shall be sole judge, and with due regard to liberty of opinion in points which do not enter into the substance of the Faith.”*⁵⁶

67. It should be noted that one of the differences in terms of Public Theology between the English and Scottish settlements is that the former is mildly Erastian i.e. it is based on a theology permits the state to interfere and dictate in minor matters of church life such as which clothes clergy should wear – these are termed *adiaphora* (literally ‘things indifferent’). However, whether Christians can meet to worship is clearly not *adiaphora*, as the whole area of the sacraments and Christian teaching is specifically excluded from the sphere of the church.
68. The prohibition on churches conducting baptisms and meeting together for communion are particularly significant as these are specifically listed in the 39 Articles as sacraments⁵⁷ and the sacraments are specifically stated to be outside the sphere of the state to interfere with.⁵⁸
69. Whilst the above refers specifically to the Church of England, it is of wider relevance as the public theology of the Church of England has come to interpret its role here as defending not merely freedom of religion for the Church of England, but for members of all faiths.
70. This was expressed by HM Queen Elizabeth II in a speech to an ecumenical gathering of faith leaders at Lambeth Palace during her golden jubilee year (2012):

*“Here at Lambeth Palace we should remind ourselves of the significant position of the Church of England in our nation’s life. The concept of our established Church is occasionally misunderstood and, I believe, commonly under-appreciated. Its role is not to defend Anglicanism to the exclusion of other religions. Instead, the Church has a duty to protect the free practice of all faiths in this country.”*⁵⁹

⁵⁶ Church of Scotland Act 1921 c.29 (Regnal.11 and 12 Geo. 5) Schedule 5.

⁵⁷ Article 25 *Of the Sacraments*.

⁵⁸ Article 37 *Of the Civil Magistrates*.

⁵⁹ *Speech by the Queen at Lambeth Palace 2012* <<https://www.royal.uk/queens-speech-lambeth-palace-15-february-2012>> [accessed 19 June 2020].

The coronation and accession oaths

71. S.13 of the 11 June 2020 letter from the Government Legal Department appears to be unaware of the way that significant aspects of the Public Theology set out above have been intertwined with English and Scottish law. The role of Lord Chancellor has historically been seen as guarding the balance between the three arms of the executive, parliament and the judiciary because they sat within all three spheres. In a similar manner, the monarch, as both head of the civil government and supreme governor of the Church of England is effectively guardian of the constitutional balance between the latter. This is spelt out in two of the three oaths sworn by each new monarch on their accession and coronation.

72. The Coronation Oath,⁶⁰ which HM Queen Elizabeth 11 swore in 1953 specifically asked the new monarch to maintain the church-state settlement, including all the rights and privileges of the church:

“Will you to the utmost of your power maintain the Laws of God and the true profession of the Gospel? Will you to the utmost of your power maintain in the United Kingdom the Protestant Reformed Religion established by law? Will you maintain and preserve inviolably the settlement of the Church of England, and the doctrine, worship, discipline, and government thereof, as by law established in England? And will you preserve unto the Bishops and Clergy of England, and to the Churches there committed to their charge, all such rights and privileges, as by law do or shall appertain to them or any of them? HM All this I promise to do.”⁶¹

73. In the Oath under the Acts of Union 1706/07 (the ‘Scottish Oath’) the new monarch similarly promised to protect the government, worship, discipline, rights and privileges of the Church of Scotland:

“I, Elizabeth the Second by the Grace of God of Great Britain, Ireland and the British dominions beyond the seas, Queen, Defender of the Faith, do faithfully promise and swear that I shall inviolably maintain and preserve the Settlement of the True Protestant Religion as established by the laws of Scotland in prosecution of the Claim of Right and particularly an Act entitled an Act for the Securing the Protestant Religion and Presbyterian Church Government and by the Acts passed in both Kingdoms for the Union of the two Kingdoms, together with the Government, Worship, Discipline, Rights and Privileges of the Church of Scotland.”

Lack of precedent for closure of churches

74. I am not aware of any previous government in Britain which has sought to close churches. Although it has sometimes been claimed that this happened in 1208, in fact then the Pope, rather than the king closed churches by placing the whole of England under an interdict. This resulted from a dispute between King John and the English church over who should be the next Archbishop of Canterbury.

⁶⁰ Prescribed by the Coronation Oath Act 1688.

⁶¹ Robert Hazell and Bob Morris *Swearing in the New King: The Accession Declarations and Coronation Oath* The Constitution Unit, University College London (May 2018). The authors are Professor of Government and the Constitution and former Public Affairs Secretary to the Archbishop of Canterbury respectively.

In the course of this King John had the Pope's choice, Stephen Langton, banished from England. John finally relented, Langton became Archbishop of Canterbury and played a major role in drafting Magna Carta, including specifically the first article on freedom of religion.⁶² Therefore while this forms an important part of the context in which the first article of Magna Carta needs to be understood, it did not involve the government closing churches. The actions of the UK government in doing so in the coronavirus regulations are therefore entirely unprecedented.

75. The nearest to any sort of precedent for such actions are: a) In England the Elizabethan laws which forbade the opening of separatist churches i.e. churches, other than those of the established church and led to the execution of a number of separatists and imprisonment of thousands more, particularly Quakers and Baptists such as John Bunyan as well as the flight overseas of others, including those later termed 'The Pilgrim Fathers'.⁶³ b) in Scotland when James VII (James II in England) attempted to impose episcopacy and made it an act of treason punishable by death to meet for worship or to listen to preaching other than in the established church. This led to the 'Covenanter Struggle' in which more people were killed for their faith than at any other period in British history, with the final decade of that period still being known as "the killing time" in Scotland today.
76. Both of those episodes were ended by the accessions to the English and Scottish thrones of William and Mary in 1689. In England this was immediately followed by what is commonly referred to as the Toleration Act (1689).⁶⁴ This allowed Protestant dissenters both to meet for worship and to open public places of worship for the first time. This led to literally hundreds of dissenting chapels in the following couple of years. This right was extended to Catholics in 1778 and then those holding non trinitarian beliefs in 1813, thereby establishing full freedom of worship in the UK.
77. There is a certain irony in that the government has legally prevented churches from meeting in the year in which we celebrate the 400 year anniversary of the sailing of the Pilgrim Fathers in the Mayflower, who fled first to the Netherlands then North America to escape the restrictions on Freedom of worship described above.⁶⁵

Conclusions

78. There is therefore a public theology, aspects of which have been embedded in both English and Scottish law. This sets out distinct spheres for church and government, with the government being specifically excluded from interference

⁶² David Starkey *Magna Carta: The True Story Behind the Charter* (London: Hodder, 2015): 56.

⁶³ John Coffey *Persecution and Toleration in Protestant England, 1558-1689* (Harlow: Pearson, 2000): 169-79 gives figures of more than 15,000 Quakers sentenced to imprisonment, 450 of which died in prison and a further 200 sentenced to banishment. The author is Professor of early Modern History at Leicester University.

⁶⁴ William and Mary, 1688: An Act for Exempting their Majesties Protestant Subjects dissenting from the Church of England from the Penalties of certaine Lawes. [Chapter XVIII. Rot. Parl. pt. 5. nu. 15.] British History Online <<https://www.british-history.ac.uk/statutes-realm/vol6/pp74-76>> [accessed 19 June 2020].

⁶⁵ <<https://www.mayflower400uk.org/>> [accessed 19 June 2020].

in matters of worship beyond minor details (adiaphora) in England and excluded from interference in all aspects of worship in Scotland.

79. The decision of the government and parliament to legislate to close churches and prevent them carrying on worship, including the sacraments of baptism, and communion as well as weddings is therefore unprecedented.
80. For this reason and because it touches on the coronation and accession oaths it is also a major constitutional issue. The latter is particularly significant, as this is an area where Christian Public Theology is embedded in English and Scottish law.
81. It is therefore of great significance, not only that this has been done, but that it has been done without the level of public consultation or parliamentary scrutiny which is normally associated with far less contentious legislation.

Appendix 1

Dr Martin Parsons CV

My principal qualifications to act as an expert witness in this case include the following: A first class honours degree in Theology and a PhD in Biblical and Islamic Theology and Christian Mission (Brunel University, 2005). I am the author of two major academic books one on Christian and Islamic Theology and one on Christian Public Theology, as well as a number of published articles in these fields. I have been elected as a member of the following learned societies: Tyndale Fellowship for Biblical Research and I am a Fellow of the Higher Education Academy (FHEA). I have been faculty member of the Oxford Centre for Religion and Public Life where I was involved in supervising postgraduate research in association with the University of Stellenbosch, South Africa. I have also previously been Head of Research and Director of Studies at the international headquarters of a Christian organisation specialising in freedom of religion or belief. I have previously been an expert witness for a number of cases in the UK court system.

Education

- B.Sc. Geography (upper second class honours), University of Hull (1982-85).
- Post-Graduate Certificate in Education, University of Hull (1986-87).
- B.A. Theology (first class honours) and Diploma in Pastoral Studies, London Bible College (now London School of Theology) in association with University of Brunel (1991-94).
- Ph.D. Biblical and Islamic Theology and Christian Mission, London School of Theology in association with University of Brunel (part time 1998-2004).
- Summer Institute of Linguistics (SIL) in association with University of Reading, General Linguistics 1 and 2 (1994) and Applied Linguistics with Literacy (1996).

Membership of learned societies

- Tyndale Fellowship for Biblical Research (elected to membership 1999).
- Royal Geographical Society with Institute of British Geographers (elected Fellow – FRGS 2009).
- Higher Education Academy (elected Fellow – FHEA 2015).

Professional experience

Independent consultant – Christian Belief, Freedom of Religion or Belief, Islam and Christian-Muslim Relations.

Faculty member of Oxford Centre for Religion and Public Life (OCRPL), delivering PhD programme in association with University of Stellenbosch, South Africa (October 2017- 2019).

Head of Research and Director of Studies Barnabas Fund International Headquarters (international aid agency supporting persecuted Christians (October 2015- May 2019).

Research Ethics Project Leader Anglia Ruskin University, wrote and taught new online course in Research Ethics for undergraduates and taught postgraduates.(January - June 2015).

Publications

Books

Unveiling God: Contextualising Christology for Islamic Culture (Pasadena,CA:William Carey Library,2006) 356pp (Biblical Theology, Islamic Theology and Christian Mission).

Good for Society: Christian Values and Conservative Politics (Bloomington,In, Westbow,2020) 680pp (Biblical Theology, History and Public Theology).

Academic articles

'Review of Warren Dockter "Churchill and the Islamic World" (New York:IB Taurus,2015)' *Bulletin of the Centre for the Study of Islam and Other Faiths* (Australia) (2015/16):115-17.

'The Future of Afghanistan' *Bulletin of the Centre for the Study of Islam and Other Faiths* (Australia) (2012):43-52.

'William St Clair Tisdall (1859-1928) and the Use of Historical Criticism' *Centre for Islamic Studies Newsletter* 10 (2001) 9-10.

'Karl Pfander (1803-1866) and the Direct Approach' *Centre for Islamic Studies Newsletter* 9 (2000/2001).

'Alexander Duff (1806-1878) and the Educational Approach' *Centre for Islamic Studies Newsletter* 8 (2000) 6-7.

'Claudius Buchanan (1766-1815) and the Great Experiment' *Centre for Islamic Studies Newsletter* 7 (1999) 8-9.

'Christian Influence on Ibn Arabi' *Centre for Islamic Studies Newsletter* 7 (1999) 6-7.

Booklets and reports written for Barnabas Fund:

- *How Britain led the World in Developing Freedom of Religion: 300 Years since the First of the Test Acts was repealed in Britain* 33pp (launched in House of Commons January 2019).
- *Turn the Tide: Reclaiming Religious Freedom in the UK* 52pp (Jan 2018)
Turn the Tide: Reclaiming Religious Freedom in Australia 54pp (Jan 2018)
- *Turn the Tide: Reclaiming Religious Freedom in New Zealand* 50pp - jointly written with Peter McKenzie QC (Jan 2018)
- *Barnabas Fund Summary report on freedom of speech in universities* (April 2018).
- *Regulation and inspection by the backdoor: The latest attempt to bring in state regulation and OFSTED inspection of all out of school education settings including Christian Sunday schools* (April 2018).
- *Barnabas Fund analysis of UK Government's Integrated Communities Strategy Green Paper* (March 2018).
- *The deliberate persecution of Christians in Eritrea by the Eritrean government* (March 2017).
- *Replacing one form of intolerance with another: Barnabas Fund's analysis of how the Casey review into opportunity and integration in Britain significantly undermines the UK's heritage of religious liberty* (November 2016).
- *Response to proposal by the UK Government to require registration and inspection of all Islamic supplementary schools and Christian Sunday schools with power to close those deemed to be promoting 'Extremism'* – sent to Education Secretary within 24 hours of this proposal being announced) (November 2015).
- *Response to the UK Government's new counter-extremism strategy* (October 2015).

Government and select committee submissions (UK and Australia)

- *Islamist control of refugee camps in the Islamic world: implications for the vulnerability of Christian refugees fleeing the Syrian conflict* Barnabas Fund subsequently submitted as evidence to DfID Select Committee inquiry on Syrian refugees at request of Committee member Fiona Bruce MP (Nov.2015) accessible at <http://data.parliament.uk/writtenevidence/committeeevidence.svc/evidencedocument/international-development-committee/syrian-refugee-crisis/written/22780.pdf>.
- Barnabas Fund submission to UK House of Commons Home Affairs Select Committee inquiry on hate crime and its violent consequences (Dec 2016) accessible at: <http://data.parliament.uk/writtenevidence/committeeevidence.svc/evidencedocument/home-affairs-committee/hate-crime-and-its-violent-consequences/written/43940.pdf>.

- Barnabas Fund Australia submission to Australian Parliament Joint Standing Committee on Foreign Affairs, Defence and Trade Human Rights Sub-Committee Inquiry on Protecting Freedom of Religion or Belief 12,700 words (February 2017).
- *Australia: the land of the Free? Barnabas Fund Australia's submission to the Commonwealth government religious freedom review* 18,000 words (September 2017) accessible at: <<https://www.pmc.gov.au/sites/default/files/religious-freedom-submissions/11473.pdf>>.
- *Barnabas Fund submission to Joint Committee on Human Rights Inquiry into factors which may impede individuals from using the UK's human rights framework effectively* (May 2018) accessible at: <<http://data.parliament.uk/writtenevidence/committeeevidence.svc/evidencedocument/human-rights-committee/enforcing-human-rights/written/81885.pdf>>.
- Briefing note *Attempts at forced re-conversion to Islam in the UK* (for meeting with Lord Bourne, Minister for Faith, June 2018).
- Drafted operational guidance for national Police Chiefs Council on violence against Christian converts from Islam (August 2018).

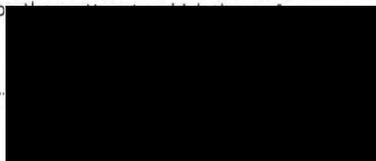
Expert declaration

I Dr Martin Parsons DECLARE THAT:

1. I understand that my duty in providing written reports and giving evidence is to help the Court, and that this duty overrides any obligation to the party by whom I am engaged or the person who has paid or is liable to pay me. I confirm that I have complied and will continue to comply with my duty.
2. I confirm that I have not entered into any arrangement where the amount or payment of my fees is in any way dependent on the outcome of the case.
3. I know of no conflict of interest of any kind, other than any which I have disclosed in my report.
4. I do not consider that any interest which I have disclosed affects my suitability as an expert witness on any issues on which I have given evidence.
5. I will advise the party by whom I am instructed if, between the date of my report and the trial, there is any change in circumstances which affect my answers to points 3 and 4 above.
6. I have shown the sources of all information I have used.
7. I have exercised reasonable care and skill in order to be accurate and complete in preparing this report.
8. I have endeavoured to include in my report those matters, of which I have knowledge or of which I have been made aware, that might adversely affect the validity of my opinion. I have clearly stated any qualifications to my opinion.
9. I have not, without forming an independent view, included or excluded anything which has been suggested to me by others, including my instructing lawyers.
10. I will notify those instructing me immediately and confirm in writing if, for any reason, my existing report requires any correction or qualification.
11. I understand that;
 - 11.1 my report will form the evidence to be given under oath or affirmation;
 - 11.2 questions may be put to me in writing for the purposes of clarifying my report and that my answers shall be treated as part of my report and covered by my statement of truth;
 - 11.3 the court may at any stage direct a discussion to take place between experts for the purpose of identifying and discussing the expert issues in the proceedings, where possible reaching an agreed opinion on those issues and identifying what action, if any, may be taken to resolve any of the outstanding issues between the parties;
 - 11.4 the court may direct that following a discussion between the experts that a statement should be prepared showing those issues which are agreed, and those issues which are not agreed, together with a summary of the reasons for disagreeing;
 - 11.5 I may be required to attend court to be cross-examined on my report by a cross-examiner assisted by an expert;
 - 11.6 I am likely to be the subject of public adverse criticism by the judge if the Court concludes that I have not taken reasonable care in trying to meet the standards set out above.
12. I have read Part 35 of the Civil Procedure Rules, the accompanying practice direction and the Guidance for the instruction of experts in civil claims and I have complied with their requirements.
13. I am aware of the practice direction on pre-action conduct. I have acted in accordance with the Code of Practice for Experts.

STATEMENT OF TRUTH I confirm that I have made clear which facts and matters referred to in this report are within my own knowledge and which are not. Those that are within my own knowledge I confirm to be true. The opinions I have expressed represent my true and complete professional opinions on the matters referred to in the report.

Signature..



te..... *20th June 2020*

Christian Concern
**Potential litigation concerning the reversal of church closure as
part of COVID-19 precautions**

Report prepared under
the instruction of:

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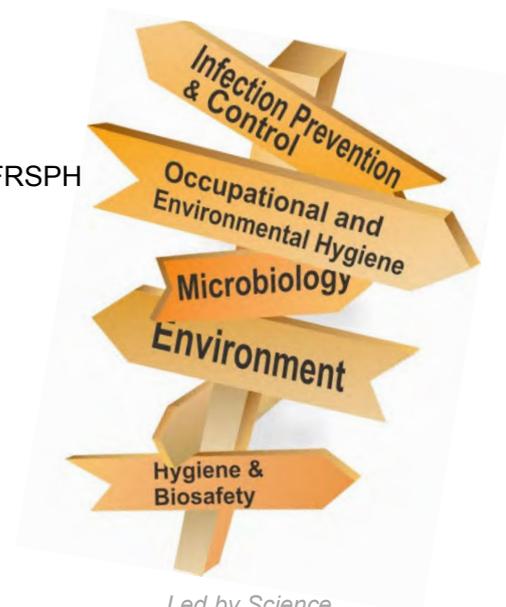
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5 May 2020



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1 Documents received

1 Following a brief telephone enquiry, a Letter of Instruction sent by email and dated 1 May 2020.

2 Instruction

2 To provide an independent expert report that considers:

3 Whether the following alternatives to the complete closure of churches remains appropriate in light of the evolving COVID-19 crisis:

- Reopening of churches for prayer. Observing social distancing, providing handwashing facilities at the door, admitting limited numbers of persons.
- Reopening of churches for Sunday services, again observing social distancing etc.
- Reopening of churches for urgent counselling and spiritual comfort, again observing social distancing etc.
- Reopening of churches for weddings, again observing social distancing etc.

3 Conflicts of interest

4 I have no conflicts of interest in any aspect of this case.

4 Current COVID-19 precautions (community)

5 Many individuals have chosen to wear a face mask and/or gloves when at work, travelling, or more generally while outside for exercise, recreation, shopping etc.

6 This is acceptable though perhaps limited in value. Most face masks have little filtering capacity for particles as small as a virus particle. Thus, wearing a cheap face mask, a homemade face mask, an impromptu face covering such as a scarf, or even a high quality commercial face mask of proven filtration efficiency if worn incorrectly, will each offer little protection to the wearer.

7 A full face visor almost certainly performs as well as a cheap face mask, and may be considered a more practical alternative when delivering a church service.

8 There are some advantages. Even a simple face mask will capture many respiratory droplets emitted by the wearer that may serve to protect others. Thus, 'my face mask protects you, and your face mask protects me'. It is widely assumed also that face masks/face coverings remind the wearer to keep their fingers away from their mouth, nose and eyes that are common routes for transmission of the COVID-19 coronavirus.



9 There is no value in wearing eye protection.

5 The role of the church

10 The church is central to the social and mental health of many people. In these particularly difficult times, the church performs a valuable role that is complimentary to the welfare and physical health of many.

11 Having reviewed the current knowledge base concerning COVID-19 infection, routes for transfer from person-to-person and evidence for the susceptibility of different individuals I am satisfied that with modification, as detailed below, church services can be continued and expanded with safety.

12 A particular concern is the provision of support to members of the community who do not have access to appropriate computer equipment to join an online service etc, and whose only alternative would be to physically attend the church. This might include attending a service or simply visiting the church for a period of private reflection.

13 In the following sections, I provide details of several approaches to the fulfilment of the role of the church that could run concurrently. Though presently it is important and wholly appropriate to adhere to government guidance, in my opinion there are workable, safe, and wholly effective alternatives to be used in support of those vulnerable individuals who cannot access an online service.

6 Online church services

14 Online church services are the preferred option. With the large number of online conferencing platforms, many of which are free to use, this will be a safe, reliable, and wholly effective means of delivery. There are no associated infection control risks. I recommend that these be continued for the foreseeable future.

7 Recommended precautionary measures to be observed

7.1 Church services

15 Traditional church services should be restricted to those who are unable to attend via online delivery, or contact a representative of the church by telephone.

16 Churches might remain open and accessible for a limited number of people who cannot join an online service. On these occasions, church buildings can be open but must be staffed to ensure that all who may attend comply with the appropriate precautionary measures detailed



below. In this way, I expect the church can fulfil its role in society and provide comfort and support to those who need it without creating any new or greater risk of infection transmission.

7.2 *Individual face-to-face services in the individual's home*

17 Where infirmity makes it impossible for individuals to attend the church, and where
engagement with an online service is not possible an individual home-based face-to-face
service or support visit should be possible without risk.

18 In Sections 8 and 9 of this report, I outline a range of precautionary and preventative
measures that will, in most circumstances, enable the church to fulfil its role in society and
support to the community.

7.3 *Care homes etc*

19 I understand that church services are regularly held in care homes, with additional visits by
pastors and other religious representatives as requested.

20 That is commendable. However, presently the incidence of COVID-19 coronavirus infection in
care home residents is reported to be particularly high though the numbers announced are
somewhat vague. Special precautions are therefore necessary.

8 Recommended precautionary measures

8.1 *Social distancing*

21 As per current government recommendations, maintaining social distancing with a minimum
two metre¹ separation is appropriate at all times.

22 Across the entire church estate including buildings and their grounds, and while undertaking
any remote activities for parishioners and others, this two metre social distancing must
rigorously be observed. This "rule" must apply at least until corresponding government
recommendations are relaxed.

23 At the time of writing, it seems likely that the government may soon implement changes to the
COVID-19 precautions and in particular reduce the required social distancing from two metres

¹ Note that two metres is a notional separation distance. It must not be overlooked that two metre separation relates to separation in all directions, in front and behind, to the left and to the right etc. Greater separation distances are obviously better, but sometimes may be impractical if not impossible to achieve.



to 1 metre. If and when this is to happen, then the minimum separation distance can be reduced accordingly. However, note that the required separation distance is a minimum.

24 If government advice regarding the minimum required separation distance is indeed reduced to one metre, then this can be adopted. Note however that the greater the separation distance the greater the degree of protection. It may therefore be appropriate to maintain two metre separation, or even more, in order to reduce transmission of infection.

25 An added benefit is that an imminent change in government policy may have to be reversed if infection rates climb again. That could cause some disruption and confusion in the delivery of church services and marking of seating locations/minimum separation distances in church buildings. I would therefore recommend maintaining the current separation distance of 2 metres for at least 2 – 3 weeks after any government relaxation of restrictions.

8.2 **Health awareness and social isolation**

26 Health awareness is an essential part of prevention. Thus, no pastor, church employee, assistant, helper or visitor, and no parishioner, should attend any church gathering if they believe that they are currently suffering from, or have recently suffered from, symptoms suggestive of COVID-19 infection:

- A raised temperature
- A new and persistent dry cough
- Any other symptoms that have been identified by a healthcare practitioner and who had advised the individual to isolate themselves because of the possibility of COVID-19 infection.

27 Those who develop a dry and persistent cough or a raised temperature while at church should withdraw immediately.

28 Those who have recently been in close contact with any individual who was suffering COVID-19 infection, who was suspected to be suffering from COVID-19 infection, or who had one or more individuals within their household suffering from COVID-19 infection should not go to church.

29 A degree of polite observation would be advisable to identify those few who may choose, at least initially, to 'carry on regardless'.



8.3 **Shielding**

30 No individual who has been advised by a healthcare practitioner to shield themselves from
infection because of some serious underlying risk factor(s) should attend the church.

31 No individual who has within their household an individual who is shielding should attend the
church.

32 For these individuals, online services maybe the appropriate option. As I note elsewhere for
online service delivery to care home residents, the temporary and short term loan of an iPad
or similar device may be feasible.

33 Delivery of the device and its subsequent collection must ensure no direct contact between
the person undertaking the delivery and the recipient. A minimum two metre separation must
be maintained at all times and it will be therefore appropriate to knock or ring a doorbell, leave
the device on the doorstep, and then stand back by at least two metres until the door is
opened and the device collected by the individual, a family member, or by a carer.

34 A named individual must be nominated to deliver, collect and disinfect these devices between
each use.

9 **Specific hygiene precautions**

35 Remember that COVID-19 infection can be transmitted before symptoms develop.

9.1 **Care homes**

36 Care home visits should be restricted as much as possible as presently the risks are particular
great. Random visits should not take place.

37 Every pastoral visit should be arranged by telephone and approved in advance by a senior
care home manager, at which time inquiries can be made about the general health of all
residents of that home. The possibility for online-only visits can also be discussed. Indeed, the
church might investigate the use of a number of iPad or similar devices to facilitate some
limited number of online services. As these would be loaned to individual care homes and/or
care home residents, a named individual must be nominated to deliver, collect and disinfect
these devices between each use. For this, I recommend vigorous rubbing with one or more
Clinell Universal Medicated wipes². These are active against a wide range of bacterial, fungal
and viral pathogens including COVID-19 coronavirus and have become the de facto NHS
standard.

² <https://gamahealthcare.com/products/universal-range>



38 It is appropriate that the decision of the care home manager or senior healthcare professional
regarding if and when to visit, and during a visit which care home residents to see, will be
observed at all times.

39 If personal visits are permitted, these should be undertaken by an individual not taking church
services. Clearly, this may be restrictive but is I believe an entirely appropriate additional
precaution.

40 The visitor should have with them disposable gloves and a face mask. Depending on
circumstances these may not be necessary, but it would be appropriate that they are available
if required. An ample supply of alcohol hand gel is essential. It should be used at least at the
time of entry to the property and again at the end of the visit, and when moving from room to
room to visit individual residents who cannot congregate centrally.

41 Good quality face masks are likely to remain in short supply at least for the foreseeable future.
To ensure that these are prioritised for used by healthcare professionals, visits might be
postponed if their use is mandated and yet supplies are short. Care homes should have their
own priority supplies and may support a pastoral visit by offering to supply a mask in order to
meet their current infection prevention standards.

42 Report to the senior care home manager on arrival and comply with all hygiene, infection
prevention and safety measures.

43 No refreshments should be taken, or given, during the visit.

44 If food or wine are normally used as part of a religious service then, if at all possible, this
should be withheld. If that is not possible, this should be managed in such a way that
continues to permit the minimum two metre separation. Shared drinking vessels or contact
with various church plate etc should not happen unless, at the very least, this is thoroughly
washed and sanitised before and between every contact. Use single-use disposables.

9.2 **Home visits**

45 Individual home visits should be restricted as much as possible. Random visits should not take
place.

46 An individual pastoral visit might best be arranged by telephone at which time inquiries can be
made about the general health of all members of that household. Inquiry should also invite the
resident(s) to consider an online-only visit If that would be a feasible alternative.

47 If an individual home visit is to take place, the church should carefully appraise the need for
and value of that visit. Few such visits are likely to be appropriate.



48 If at all possible, the visit should be carried out by an individual not needing to take church services or to visit any care home. Clearly, this may be restrictive but is I believe an entirely appropriate additional precaution.

49 The visitor should have with them disposable gloves and a face mask. Depending on circumstances these may not be necessary, but it would be appropriate that they are available if required. An ample supply of alcohol hand gel is essential. It should be used at least at the time of entry to the property and again at the end of the visit.

50 In this context, alcohol hand gel is preferable to the use of hand washing facilities at the home being visited. Though vigorous washing of hands with soap and running water is effective there can be no certainty as to the hygiene of any hand towel that is offered which should therefore be avoided.

51 No refreshment should be taken during the visit.

52 If food or wine are normally used as part of a religious service then, if at all possible, this should be withheld. If that is not possible, this should be managed in such a way that continues to permit the minimum two metre separation. Shared drinking vessels or contact with various church plate etc should not happen unless, at the very least, this is thoroughly washed and sanitised before and between every contact. Use single-use disposables.

9.3 **Church services**

53 It is my considered opinion that churches can now and should remain open for regular church services and that this can be achieved without risk. However, certain precautions must be observed.

- A clear and unambiguous notice should be displayed prominently at the church door, to explain all that is required of visitors. This might also explain, the options for online services and any booking system that might be applied in the event that multiple services are provided to reduce the total number of persons present at any one time, thus facilitating social distancing.
- Social distancing must be observed and maintained at all times, remembering that this requires a minimum two metre separation in front and behind, to the left and to the right.
- The need to maintain social distancing applies to all of those who are present.
- It may be appropriate to nominate one or more Individuals to act as concierge, directing visitors to a particular seat in order that they comply with the separation rules.
- Members living together in a single household can sit together.



- Friends, neighbours, and relatives etc who do not live together in a single household must not sit together and must observe the two metre separation rule.
- To avoid all ambiguity, it may be advisable to mark individual seating areas to ensure separation in a way similar to that applied by many supermarkets to ensure customer separation.
- The number of people attending each service may be limited due to space constraints. A satellite location that can be equipped with a suitable video link may assist. However, this location must also be actively managed to ensure, as above, that social distancing is maintained at all times.
- Depending upon resource it may be preferable to hold several successive services, each separated in time to allow for breaks etc, and to avoid those leaving a service to come close to those waiting for the next service. A booking system may be advisable to avoid disappointment.
- Hand washing for each person entering the church might be considered appropriate but is, I suspect, hugely impractical. In the alternative, I would recommend provision of an ample supply of alcohol hand gel containing a minimum 60% alcohol. Pump action dispensers should be placed close to the entry door and used by every person on entry and again on exit. A simple pictorial instruction poster on the use of alcohol hand gel should be displayed nearby³.
- A member of the church team should be positioned at the door to ensure compliance with hand hygiene requirements and to prevent overcrowding.
- Food and drink should not be offered. If refreshments are to be provided for pastors and church officials between successive services, this should be provided using disposable cups and disposable plates; hands should be sanitised with alcohol hand rub before eating and after clearing away used cups and plates.
- If food or wine are normally used as part of a religious service then, if at all possible, this should be withheld. If that is not possible, this should be managed in such a way that continues to permit the minimum two metre separation. Shared drinking vessels or contact with various church plate etc should not happen unless, at the very least, this is thoroughly washed and sanitised before and between every contact. Use single-use disposables.
- Door handles and push plates, and other touch surfaces including for example hymnbooks should be sanitised after each use. This would best be achieved at the end of every

³ <https://www.hey.nhs.uk/wp/wp-content/uploads/2017/01/Hand-washing-2.png>



service using Clinell Universal Medicated wipes. These pre-wetted wipes are most unlikely to cause damage to books etc.

9.4 *Miscellaneous visits not being part of an organised church service*

54 There may be considerable value to some individuals to have access to the church on an individual basis outside regular service hours, for urgent counselling and spiritual comfort. If this is to be considered, the church must be open and unlocked, or a doorbell provided to gain access. At all times when a visitor is in attendance a member of the church also should be in attendance to supervise, making sure that if a second or third visitor should arrive the required social distancing rule is observed.

55 On entering the church, alcohol hand gel should be used and on leaving the church, used again.

9.5 *General precautions*

56 During services it will be helpful to ensure good ventilation of the church and any room used for overflow services. taking care not to jeopardise security of the church, some windows and doors should be opened when the premises are in use and remain open until the areas have been cleaned and vacated.

57 After every period of use or service, the church should be cleaned at least to remove any spilled debris. As noted above, door handles and door push plates should be wiped down with a Clinell wipe.

10 **Conclusions**

58 I restrict my comments to matters of microbiology, infection, infection prevention, and hygiene.

59 With rigid adherence to the guidelines noted above, I see no reason for continuing the suspension of church services at the present time. Indeed, we might hope that the sum of all precautionary measures continues to be successful and that the risk of infection will fall.

60 However, it must be recognised that the church has a valuable role in society, particularly to those in need of support spiritual, psychological and more general support, companionship etc. As such, the support that can be given to more vulnerable members of society supports their welfare and well-being, and supports also the work of local authorities and the National Health Service.

61 I fully support the continuation of online church services and online support for individuals. Visits to see individuals in their own home, and visits to care homes, present particular



difficulties. These should be undertaken only by specific individuals who dedicate their time to these tasks in particular, and do not participate in regular church services.

62 Presently, visits to care homes may be severely restricted if not wholly inappropriate in order to protect the residents. In every case the decision of the care home managers and senior healthcare professionals must be accepted without question. In the alternative, the church may find the resources to make available one or more iPads or similar devices on temporary loan such that a one-to-one service for the housebound or care home resident can be achieved.

63 The circumstances of the proposals outlined here will not, in my opinion, increase the risk of transmission of COVID-19 infection. However, the success of the proposal is dependent upon the rigour with which these guidelines are adopted and maintained. To ensure that that is maximised, I would strongly recommend that each church nominates a lead person for training of others, and ensures compliance. A national or regional training guide based upon the recommendations presented here, on paper or to be delivered online, will ensure success and further minimise risk while delivering support to those in need.

64 I strongly commend relaxation of restrictions on church services. In line with the suggested policies outlined here a strong emphasis can be placed upon online church services, but with provision for the support of those unable to engage in this way.

65 If relaxation of restrictions in accord with the suggestions given here is to be permitted, then the church must remain aware of and monitor government announcements regarding changes to both current and future restrictions. If the rate of COVID-19 infection worsens at some time in the future, on a local, regional or national basis then relaxation of current restrictions may be reversed. If that happens, then of course the church must immediately comply with those restrictions pending subsequent government review.

66 My Letter of Instruction raises the following specific questions:

- Reopening of churches for prayer. Observing social distancing, providing handwashing facilities at the door, admitting limited numbers of persons.
- Reopening of churches for Sunday services, again observing social distancing etc.
- Reopening of churches for urgent counselling and spiritual comfort, again observing social distancing etc.
- Reopening of churches for weddings, again observing social distancing etc.

67 In light of the current and the still incomplete knowledge of COVID-19 coronavirus infection, and the general principles of infection prevention and control, I can identify no barriers to



reopening of churches as outlined above. The model rules I propose here should make this as risk free as possible. Indeed, this might be safer than many current commercial activities in the manufacturing and supply industries, including many small and mid-range supermarkets that are permitted to operate.

11 Declaration

I, James Ian Blenkharn, declare that:

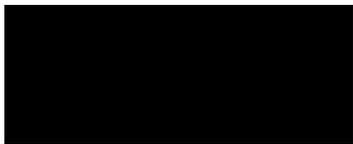
- 1 I understand that my duty in providing written reports and giving evidence is to help the Court, and that this duty overrides any obligation to the party by whom I am engaged or the person who has paid or is liable to pay me. I confirm that I have complied and will continue to comply with my duty.
- 2 I confirm that I have not entered into any arrangement where the amount or payment of my fees is in any way dependent on the outcome of the case.
- 3 I know of no conflict of interest of any kind, other than any which I have disclosed in my report.
- 4 I do not consider that any interest which I have disclosed affects my suitability as an expert witness on any issues on which I have given evidence.
- 5 I will advise the party by whom I am instructed if, between the date of my report and the trial, there is any change in circumstances which affect my answers to points 3 and 4 above.
- 6 I have shown the sources of all information I have used.
- 7 I have exercised reasonable care and skill in order to be accurate and complete in preparing this report.
- 8 I have endeavoured to include in my report those matters, of which I have knowledge or of which I have been made aware, that might adversely affect the validity of my opinion. I have clearly stated any qualifications to my opinion.
- 9 I have not, without forming an independent view, included or excluded anything which has been suggested to me by others, including my instructing lawyers.
- 10 I will notify those instructing me immediately and confirm in writing if, for any reason, my existing report requires any correction or qualification.
- 11 I understand that:
 - 11.1 my report will form the evidence to be given under oath or affirmation;
 - 11.2 questions may be put to me in writing for the purposes of clarifying my report and that my answers shall be treated as part of my report and covered by my statement of truth;



- 11.3 the court may at any stage direct a discussion to take place between experts for the purpose of identifying and discussing the expert issues in the proceedings, where possible reaching an agreed opinion on those issues and identifying what action, if any, may be taken to resolve any of the outstanding issues between the parties;
 - 11.4 the court may direct that following a discussion between the experts that a statement should be prepared showing those issues which are agreed, and those issues which are not agreed, together with a summary of the reasons for disagreeing;
 - 11.5 I may be required to attend court to be cross-examined on my report by a cross-examiner assisted by an expert;
 - 11.6 I am likely to be the subject of public adverse criticism by the judge if the Court concludes that I have not taken reasonable care in trying to meet the standards set out above.
- 12 I have read Part 35 of the Civil Procedure Rules, the accompanying practice direction and the Guidance for the instruction of experts in civil claims and I have complied with their requirements.
- 13 I am aware of the practice direction on pre-action conduct. I have acted in accordance with the Code of Practice for Experts.

12 Statement of Truth

I confirm that I have made clear which facts and matters referred to in this report are within my own knowledge and which are not. Those that are within my own knowledge I confirm to be true. The opinions I have expressed represent my true and complete professional opinions on the matters to which they refer.



James Ian Blenkharn - Microbiologist
5 May 2020



13 Ian Blenkharn

- 1 I, James Ian Blenkharn CSci CBiol CWM FRSB FRSPH FIBMS MCIWM of Blenkharn Environmental, London, make this report. I am a healthcare, occupational and environmental microbiologist with 45 years' experience in the NHS and University Medical Schools, and in the private sector. I obtained qualification in Medical Microbiology in 1976, with an additional University of London Master's degree in Microbiology (1980). I have extensive research and teaching experience in the UK and elsewhere.
- 2 The greater part of my career was with the NHS, with the Royal Postgraduate Medical School, and with Imperial College London. I left Imperial in 2004 to continue with my long-established private practice. In addition to that extensive private practice, I am a Lecturer at the University of West London where I teach microbiology and infection prevention & control to healthcare professionals at both undergraduate and postgraduate level.
- 3 In the commercial sector I have held, in addition to many ad hoc consultancy engagements, additional appointments as consultant microbiologist, science adviser, technical and safety adviser etc. I have also held consultant appointments to clinical (healthcare) wastes companies and to water testing companies, acting as science adviser, trainer, auditor and assessor etc, and representative at licencing and permitting applications and appeals.
- 4 My research-driven international practice focuses on aspects of general and environmental microbiology, occupational biohazards and bio-safety, healthcare and environmental infection control & hygiene, and audit and training in the healthcare, water, waste, occupational and environment sectors. I have particular expertise in post-surgical and device-related infections, and in bio-safety with emphasis on environmental and worker hygiene.
- 5 I have published extensively with more than 110 papers on these and related subjects in the medical and scientific literature, and by invitation have contributed to several textbooks and monographs, and to Croner.
- 6 I am a Fellow of the Royal Society of Biology, a Fellow of The Royal Society for Public Health, and a Fellow of the Institute of Biomedical Science. I am a member of the Healthcare Infection Society, the Infection Prevention Society, the British Infection Association, the Microbiology Society, the Association of Professionals in Infection Control and Epidemiology (APIC), the European Society of Clinical Microbiology and Infectious Diseases (ESCMID), and the Royal Society of Medicine. I am a Chartered Biologist, Chartered Scientist, and Chartered Resources and Waste Manager.
- 7 I sat on the Fitness to Practice panel of the Health and Care Professions Council, the independent statutory regulator. I also sat an extended term as Vice Chair of the Royal



Society of Biology Professional Registers Panel. Until its dissolution in March 2009, I was specialist adviser in microbiology to The Healthcare Commission and was subsequently appointed specialist adviser to its successor organisation, the Care Quality Commission, the independent regulator of health and adult social care in England. I currently sit as an Independent Specialist member of the clinical safety committee of the Association of Anaesthetists of Great Britain and Ireland.

- 8 I have more than 30 years' experience as an Expert Witness. I received Expert Witness training first at The Royal Postgraduate Medical School and later at Imperial College London. I hold the certificate of completion of the Bond Solon Civil Procedure Rules for Expert Witnesses course, and the Cardiff University Law School/Bond Solon Civil Expert Witness certificate. In 2019, I completed the Bond Solon Expert Witness 2019 update training course.
- 9 I have appeared in Crown, County and High Courts, in the Coronial Court, at Public Inquiry, Planning and Licencing applications and appeals, in Arbitrations and in Tribunals.
- 10 I am registered with the UK Register of Expert Witnesses, APIL, and with similar organisations in the UK. In the US, I am a member of the Gerson Lehrman Group (GLG) and of ORC International (now Expert Engine) consultancy groups, international organisations providing industry- and discipline-focused networks of consultants, physicians, scientists, and engineers to both public and private sector clients.
- 11 I have acted in Planning and related environmental permitting applications, hearings and appeals, in medicines regulatory hearings, in Public Inquiry, and as an Expert Witness in Courts in Gibraltar, The Netherlands, Germany, Ireland, US, Japan, and most recently in notable discrimination cases in Sweden each having their foundation in matters of hygiene and microbiology.
- 12 I continue to engage in Continuous Professional Development programs registered with the Royal Society of Biology, the Institute of Biomedical Sciences, and CIWM.
- 13 I was founding Editor-in-Chief of the International Journal of Hospital Environment & Hygiene Management. Currently, I am a member of the editorial board of The Journal of Hospital Infection and The Open Waste Management Journal. I have additionally served terms on the editorial boards of The Biologist, The Journal of Infection Prevention, The Journal of Electronic Health. and The International Journal of Engineering, Science and Technology. For more than 3 decades, I have been a regular reviewer for many medical and scientific journals.

A full Curriculum vitae with complete publication list is available on request



Christian Concern
**Potential litigation concerning the reversal of church closure as
part of COVID-19 precautions**

Addendum report & Clarifications

Report prepared under
the instruction of:

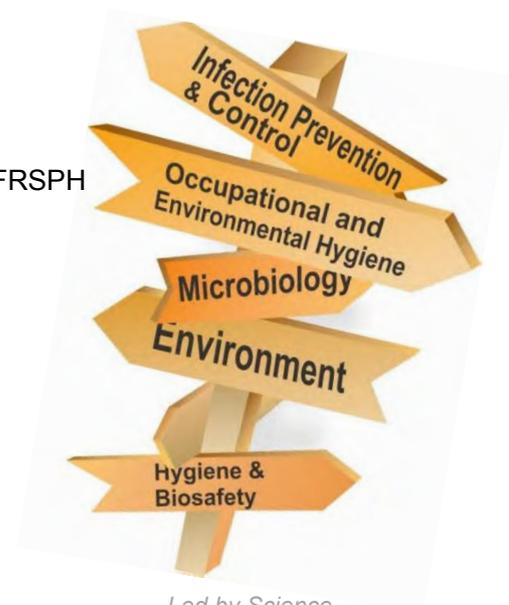
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*Led by Science
Driven by Research*

14 June 2020

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1 Conflicts of interest

1 I have no conflicts of interest in any aspect of this case.

2 Engaging with church services – online or in person?

2 In my substantive report of May 2020, I discuss engaging with the church in three different ways:

- Physical attendance at church services
- Attendance or engagement via an online live stream church service
- Miscellaneous church visits not being part of an organised church service, for quiet reflection or individual worship etc

3 Additionally, I discussed the limited options for individuals to engage with the church by attendance of a pastor or other church member in their own home, and for care home residents subject to overarching infection prevention and control precautions and the prior approval of a senior healthcare professional. For these, I propose no change to the arrangements that I had proposed which are, I believe, entirely clear and wholly in accord with relevant Government guidelines.

3 Physical attendance at church services, or attendance via an online church service

4 I am advised that paragraphs 15, 16, 81 and 85 of my substantive report might be construed to recommend that churches should not routinely be opened. This might be interpreted to recommend replacing in situ church services almost exclusively by online services, with churches open only for those who cannot access services online. This latter group would include only those who are potentially the most vulnerable in the congregation, the non-tech savvy, the elderly, or those adversely affected by financial limitations.

5 For the avoidance of all doubt, it was my intention to propose that church services for a congregation in attendance, supplemented by concomitant live streaming for those unable to attend in person, could take place simultaneously.

6 Recognising the need for hand hygiene interventions on arrival and on departure from the church and in particular the need for rigorous social distancing with a minimum 2 metre separation it will be clear that the capacity of an existing church may be limited. An immediate resolution might be achieved using an overflow location where the service could be live-streamed though this too must comply with the hygiene precautions specified.

7 If such arrangements are not possible and the service is or is likely to be oversubscribed, a
booking system would be advantageous, as I proposed in Section 9.3 of my substantive report
from May 2020. The church will be responsible for taking all necessary steps to ensure
compliance with social distancing requirements.

8 Within the now much reduced physical capacity of the church there will inevitably be
restrictions on the numbers able to attend a chosen church service. If this arises, it is the
responsibility of the church to manage this robustly and refuse or defer entry for any excess
numbers. In that situation, I would be tempted on compassionate grounds to give priority to
those who by age or infirmity would find it difficult to return at some later time, or who do not
have access to the facilities required to receive an online video-streamed service.

4 Miscellaneous church visits not being part of an organised church service

9 On 7 June 2020, the Communities Secretary Robert Jenrick confirmed on behalf of the
Government¹ that:

- i *“places of worship would be permitted to re-open for individual prayer from Monday 15 June, in line with social distancing guidelines”.* It was said that *“this move recognises the spiritual and mental health benefits for people being able to pray in their place of worship, and that for some people this cannot be replicated by praying at home.”*
- ii It is stated that individual prayer will be permitted from 15 June, *“but communally led prayer, worship or devotion such as services, evensong, informal prayer meetings, Mass, Jumma or Kirtan will not be possible at this stage.”*
- iii *“Places of worship still have discretion over when they consider it safe to open and may decide to remain closed or re-open at a slower pace if they wish.”*
- iv *“Under the existing regulations, funerals are allowed in places of worship where it is possible to do so safely. Other gatherings and services such as baptisms, weddings, supplementary schools, meetings and classes are not permitted.”*
- v *“Also places of worship may open for ministers of religion to film or record a service for broadcast, for the hosting of essential voluntary activities such as homeless services, for registered early years and childcare providers and for blood donation sessions. Buildings should also remain closed to tourists.”*
- vi Under the heading ‘further information’, it is stated that *“guidance will be available shortly. Faith leaders should carry out a risk assessment of the place of worship and tailor this guidance as*

¹ <https://www.gov.uk/government/news/places-of-worship-to-re-open-for-individual-prayer>
(last accessed 13 June 2020)

appropriate for the venue and practices being carried out. This will be in addition to any risk assessment already in place.”

- vii *“Individual prayer within a place of worship is defined as a person or household entering the venue to pray on their own and not as part of a group, led prayer or communal act. They should be socially distanced from other individuals or households.”*

10 This jumbled and contradictory Government guidance does not reflect well on its authors or on the Government. It is repeatedly contradictory and, in several ways, irrational in its construct. I will give examples below.

4.1 ***Open for individual prayer***

11 In i) it is stated that “places of worship would be permitted to re-open for individual prayer from Monday 15 June, in line with social distancing guidelines”. It does not state that only one person may attend for individual prayer at any one time. Indeed, referencing that attendance should be in line with social distancing guidelines clearly implies an expectation that more than one individual could be present at any one time.

12 Though referring to a family group, the announcement makes no allowance for two unrelated persons attending coincidentally for individual prayer, or three people, or four and so on. If that were to happen then by the Government’s own guidance that would be permitted providing social distancing was maintained at all times. I do not disagree.

13 The guidance becomes perverse and unreasonable, and clearly unscientific, when the same two, three, four, or even more individuals attended an organised church service, even when all appropriate hygiene and infection prevention measures are in place. For no sound reason, that would not be permitted.

14 The lack of qualification in i) contrasts starkly with and contradicts the restriction proposed in ii) above.

4.2 ***Discretion to open***

15 In iii) the Government guidance states that “places of worship still have discretion over when they consider it safe to open and may decide to remain closed or re-open at a slower pace if they wish”.

16 Once more, the guidance is contradictory, perverse, and unreasonable. It is clearly unscientific since that “discretion” is condoned by i) yet restricted and perhaps prohibited by ii) above.

4.3 *Funerals, weddings etc*

17 In iv), it is stated that “funerals are allowed in places of worship where it is possible to do so safely.” In this guidance, the entirely reasonable limitation is that this will only be allowed in places of worship where it is possible to do so safely. Those responsible for the operation of the place of worship must take responsibility for managing the number of attendees, ensuring that social distancing at a minimum distance of two metres is maintained at all times, that general environmental hygiene measures are adopted, and with arrangements for hand hygiene on entry and on exit. I fully agree and refer to my substantive report of May 2020 where those measures are discussed in the form of model rules.

18 As discussed in Section 4.1 of this report, it is clear that those who on behalf of the Government compiled this particular guidance have failed in matters of logic. There are no specific constraints on attending a place of worship for a funeral providing the overarching social distancing requirements are maintained. The guidance omits any mention of the permitted numbers of attendees, relying instead on the constraints of social distancing. It is thus in accord with the advice given under i) but contradicts the advice given under ii) above. In iii), the internal contradictions of the Government’s own advice are further conflated in a quite meaningless fashion.

19 Going further, it is stated under iv) that weddings and baptisms etc are not presently permitted. This too is illogical as there is no reason to believe that this could not be managed effectively with appropriate hygiene and social distancing precautions that place a limit on number of attendees as would be expected also for individual worship. Regular church services, or funerals. The risks are the same, and the constraints and limitations are also the same and it just seems particularly perverse and lacking in scientific rigour to permit one while restricting another.

4.4 *Other uses*

20 In v), it is stated that places of worship may open for ministers of religion to film or record a service for broadcast, for the hosting of essential voluntary activities such as homeless services, for registered early years and childcare providers, and for blood donation sessions.

21 Once again, no constraints or limitations are proposed for places of worship when hosting essential voluntary activities, early years and childcare provision, or blood donation sessions. It must rightly be assumed that the same hygiene and infection prevention precautions will apply, to include rigorous social distancing, hand and environmental hygiene, and restriction for those who are or may be exhibiting signs suggestive of COVID-19 infection or who have recently been in contact with someone who has COVID-19 infection.

22 This seems largely appropriate. It is clearly the Government's expectation that those responsible for places of worship could manage this safely, as they should manage their premises open for individual prayer, open for funerals, and more generally to manage effectively and with the discretion to make decisions about when they consider it safe to open.

23 The last part of the wording in v) is particularly difficult to reconcile with the rigid prohibition of in situ church services. As reviewed here, the Government's advice invests in the church the discretion to make decisions about when they consider it safe to open. It is therefore illogical to give the church discretion on so many matters including but not limited to individual prayer, the delivery of online services, blood donation sessions, social care and voluntary activities such as homeless services, for registered early years and childcare providers, and for funerals, but not more conventional church services.

24 Hygiene and related infection prevention precautions will be the same for all activities. The risks would be no greater or no lesser when comparing any one of these activities with any other. As the Government itself notes, the church will be responsible for managing all necessary precautions through a process of risk assessment and that responsibility would be no greater or lesser when comparing any one of these activities with any other.

4.5 ***Risk assessment***

25 In vi) under the heading 'Further information', it is stated that "guidance will be available shortly. Faith leaders should carry out a risk assessment of the place of worship and tailor this guidance as appropriate for the venue and practices being carried out. This will be in addition to any risk assessment already in place."

26 I fully agree with this requirement for risk assessment, which in my opinion should include also an expectation for dynamic risk assessment in the event that it appears that social distancing requirements are likely to be compromised by an unexpectedly high number of attendees. However, this scenario might largely be avoided using a booking system, as proposed in Section 9.3 of my substantive May 2020 report.

5 The role of the church

27 The church is central to the social and mental wellbeing of many people. In these particularly difficult times, the church performs an ever more valuable role complimentary to the welfare of many.

28 I am satisfied that with the introduction of appropriate hygiene and infection prevention precautions, as detailed in my substantive May 2020 report, church services can continue and be expanded with a generous margin of safety. Those model rules are applicable to all uses of

the church premises, from individual prayer, the delivery of online services, blood donation sessions, social care and voluntary activities such as homeless services, for registered early years and childcare providers, and for funerals. Each of these activities is permitted by the Government and specified in its latest guidance document and the precautions would not change and nor risks increased if applied also to regular in situ services.

29 On the basis of uniformity in approach and rational interpretation of the available scientific evidence, and indeed by analogy to other permitted activities such as the permitted operation of food stores and supermarkets, and imminently of all other non-food stores, it is in my opinion entirely wrong to prohibit regular church services, weddings and baptisms etc. I find no valid reason to limit or to prohibit these latter activities. Indeed, the information provided by this 7 June 2020 Government announcement, leaving aside flaws in scientific and logical reasoning, effectively permit these additional activities.

30 At its most basic, there can be no difference with regard to the safety of individuals or of the community between reopening places of worship for individual prayer in circumstances when more than one family groups and several individuals, perhaps totalling 10 or 15 individuals, coincidentally attend at one time for individual prayer, or when the same number of individuals attend as a group for a single church service. Providing that appropriate precautions are maintained at all times, the risk to individuals and to the community will not be increased and will probably be lowered by the implementation of the model rules I had outlined in Section 7 et seq of my substantive May 2020 report.

6 Conclusions

31 With rigid adherence to the proposed guidelines, I see no reason for continuing the suspension of church services at the present time.

32 It must be recognised that the church has a valuable role in society, particularly to those in need of spiritual, psychological, and more general support, companionship etc. As such, the support available through the fellowship of the church that is available to all, including in particular vulnerable members of society, can support their welfare and wellbeing through engagement in the wide diversity of church activities, and in addition indirectly supports the work of local authorities and the National Health Service.

33 The latest announcement from the Government is internally contradictory. The weight of its own argument strongly favours online or remote church services, funerals, and the opening of churches for individual prayer in addition to a diversity of other social and community activities. The announcement makes clear that these activities must be in line with social distancing guidelines. I agree and hope that the further guidance, when available, will be rigorous as the model hygiene guidelines of my substantive report.

34 At the present time, it continues to be my professional opinion that opening of churches for conventional church services and for other activities should be permitted. As noted above, by far the majority of those church activities have already been identified as permissible in the Government's 7 June 2020 guidelines. The model hygiene and infection prevention rules that I propose will be more than adequate.

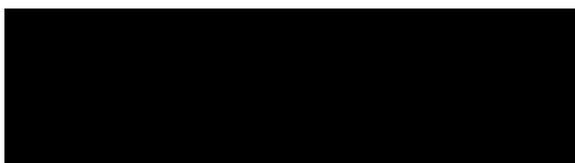
35 Regrettably, the Government announcement includes some significant contradictions that I have discussed above. Eliminating those contradictions to permit regular church services, with the strict proviso that all church activities are properly risk managed and undertaken in strict accordance with the hygiene and infection prevention rules outlined earlier is entirely appropriate.

36 In light of the current knowledge of COVID-19 coronavirus infection, and the general principles of infection prevention and control, I can identify no scientifically valid barriers to reopening of churches for services as outlined here. The model rules I propose should make this as risk free as possible. Indeed, it will in all likelihood be considerably safer than many current commercial activities in the manufacturing and supply industries, including many shops and supermarkets that are currently permitted to operate, and all other shops being permitted to open in the next few days.

37 The latest Government announcement restricting organised in situ church services is bizarre and irrational. The 7 June 2020 announcement by Communities Secretary Robert Jenrick on behalf of the Government (Section 4) is perhaps best described as slightly lopsided. It permits a considerable range of essentially comparable activities to take place on church premises, but with the singular exception of an organised church service. That one exclusion makes no sense whatsoever and must be corrected to eliminate that anomaly.

7 Statement of Truth

I confirm that I have made clear which facts and matters referred to in this report are within my own knowledge and which are not. Those that are within my own knowledge I confirm to be true. The opinions I have expressed represent my true and complete professional opinions on the matters to which they refer.



James Ian Blenkarn - Microbiologist

14 June 2020

8 Ian Blenkharn

- 1 I, James Ian Blenkharn CSci CBiol CWM FRSB FRSPH FIBMS MCIWM of Blenkharn Environmental, London, make this report. I am a healthcare, occupational and environmental microbiologist with 45 years' experience in the NHS and University Medical Schools, and in the private sector. I obtained qualification in Medical Microbiology in 1976, with an additional University of London Master's degree in Microbiology (1980). I have extensive research and teaching experience in the UK and elsewhere.
- 2 The greater part of my career was with the NHS, with the Royal Postgraduate Medical School, and with Imperial College London. I left Imperial in 2004 to continue with my long-established private practice. In addition to that extensive private practice, I am a Lecturer at the University of West London where I teach microbiology and infection prevention & control to healthcare professionals at both undergraduate and postgraduate level.
- 3 In the commercial sector I have held, in addition to many ad hoc consultancy engagements, additional appointments as consultant microbiologist, science adviser, technical and safety adviser etc. I have also held consultant appointments to clinical (healthcare) wastes companies and to water testing companies, acting as science adviser, trainer, auditor, and assessor etc, and representative at licencing and permitting applications and appeals.
- 4 My research-driven international practice focuses on aspects of general and environmental microbiology, occupational biohazards and biosafety, healthcare and environmental infection control & hygiene, and audit and training in the healthcare, water, waste, occupational and environment sectors. I have particular expertise in post-surgical and device-related infections, and in biosafety with emphasis on environmental and worker hygiene.
- 5 I have published extensively with more than 110 papers on these and related subjects in the medical and scientific literature, and by invitation have contributed to several textbooks and monographs, and to Croner.
- 6 I am a Fellow of the Royal Society of Biology, a Fellow of The Royal Society for Public Health, and a Fellow of the Institute of Biomedical Science. I am a member of the Healthcare Infection Society, the Infection Prevention Society, the British Infection Association, the Microbiology Society, the Association of Professionals in Infection Control and Epidemiology (APIC), the European Society of Clinical Microbiology and Infectious Diseases (ESCMID), and the Royal Society of Medicine. I am a Chartered Biologist, Chartered Scientist, and Chartered Resources and Waste Manager.
- 7 I sat on the Fitness to Practice panel of the Health and Care Professions Council, the independent statutory regulator. I also sat an extended term as Vice Chair of the Royal Society of Biology Professional Registers Panel. Until its dissolution in March 2009, I was

specialist adviser in microbiology to The Healthcare Commission and was subsequently appointed specialist adviser to its successor organisation, the Care Quality Commission, the independent regulator of health and adult social care in England. I currently sit as an Independent Specialist member of the clinical safety committee of the Association of Anaesthetists of Great Britain and Ireland.

- 8 I have more than 30 years' experience as an Expert Witness. I received Expert Witness training first at The Royal Postgraduate Medical School and later at Imperial College London. I hold the certificate of completion of the Bond Solon Civil Procedure Rules for Expert Witnesses course, and the Cardiff University Law School/Bond Solon Civil Expert Witness certificate. In 2019, I completed the Bond Solon Expert Witness 2019 update training course.
- 9 I have appeared in Crown, County and High Courts, in the Coronial Court, at Public Inquiry, Planning and Licencing applications and appeals, in Arbitrations and in Tribunals.
- 10 I am registered with the UK Register of Expert Witnesses, APIL, and with similar organisations in the UK. In the US, I am a member of the Gerson Lehrman Group (GLG) and of ORC International (now Expert Engine) consultancy groups, international organisations providing industry- and discipline-focused networks of consultants, physicians, scientists, and engineers to both public and private sector clients.
- 11 I have acted in Planning and related environmental permitting applications, hearings and appeals, in medicines regulatory hearings, in Public Inquiry, and as an Expert Witness in Courts in Gibraltar, The Netherlands, Germany, Ireland, US, Japan, and most recently in notable discrimination cases in Sweden each having their foundation in matters of hygiene and microbiology.
- 12 I continue to engage in Continuous Professional Development programs registered with the Royal Society of Biology, the Institute of Biomedical Sciences, and CIWM.
- 13 I was founding Editor-in-Chief of the International Journal of Hospital Environment & Hygiene Management. Currently, I am a member of the editorial board of The Journal of Hospital Infection and The Open Waste Management Journal. I have additionally served terms on the editorial boards of The Biologist, The Journal of Infection Prevention, The Journal of Electronic Health. and The International Journal of Engineering, Science and Technology. For more than 3 decades, I have been a regular reviewer for many medical and scientific journals.

A full Curriculum vitae with complete publication list is available on request



Neutral Citation Number: [2020] EWHC 1392 (Admin)

Case No: CO/1846/2020

IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION
ADMINISTRATIVE COURT

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 21/05/2020

Before:

MR JUSTICE SWIFT

B E T W E E N:

**THE QUEEN
ON THE APPLICATION OF
TABASSUM HUSSAIN**

Claimant

- and -

SECRETARY OF STATE FOR HEALTH & SOCIAL CARE

Defendant

MS KIRSTY BRIMELOW QC, and MR JUDE BUNTING
(instructed by **Blacks Solicitors LLP**) appeared on behalf of the **Claimant**.

SIR JAMES EADIE QC, MS ZOE LEVENTHAL, MR CHRISTOPHER KNIGHT
(instructed by the **Government Legal Department**) appeared on behalf of the **Defendant**.

Hearing Date: 21 May 2020

TRANSCRIPT OF JUDGMENT

MR JUSTICE SWIFT:

- 1 I have decided to refuse the application for interim relief. I will now give my reasons for that decision.
- 2 This is a challenge to the Health Protection (Coronavirus Restrictions) (England) Regulations SI202/350. The Claimant is the Chairman of the Executive Committee of the Jamiyat Tablighi-Ul Islam Mosque in Barkerend Road, Bradford ("the Barkerend Road Mosque"). The challenge is directed to the effect of regulations 5(5) and 5(6) of the 2020 Regulations, regulation 6 of those regulations and also regulation 7 of the Regulations.
- 3 Regulation 5(5) requires that any person who is responsible for a place of worship to ensure that "during the emergency period" the place of worship is closed save for permitted uses listed at regulation 5(6). The "emergency period" is defined at regulation 3 to have started on 26 March 2020 and continue until such time as the relevant restriction or requirement imposed by the 2020 Regulations is terminated by direction of the Secretary of State. The purposes for which places of worship may be used are set out in regulation 5(6) as follows: funerals, the broadcast of acts of worship and the provision of essentially voluntary support services or urgent public support services.
- 4 Regulation 6 sets out restrictions on movement. Regulation 6(1) sets out a general prohibition: no person during the emergency period is to leave or be outside the place where they live "without reasonable excuse". Regulation 6(2) provides a non-exhaustive definition of what comprises reasonable excuse. By regulation 6(2)(k) ministers of religion and worship leaders may go to their place of worship, but there is no corresponding provision permitting others to go to their place of worship.
- 5 Lastly, regulation 7 prevents gatherings of more than two people in any public place, save for any of seven specified purposes. Attendance at an act of worship is not one of the permitted purposes. There was some issue before me as to whether a place of worship was a public place; that is to say whether regulation 7 was relevant at all to the present application. The Claimant, as a matter of caution, proceeded on the basis that places of worship are public places and that for that reason regulation 7 needed to be challenged. My view, without the benefit of full argument, is that a public place would naturally include a place of worship.
- 6 In these proceedings the Claimant contends, and it is accepted by the Defendant Secretary of State that the effect of the restrictions I have mentioned is to prevent collective Friday prayer at the Barkerend Road Mosque and, specifically, the prayer known as the Jumu'ah, the Friday afternoon prayer. This state of affairs is not unique to the Barkerend Road Mosque. The provisions of the 2020 Regulations that I have described apply to all places of worship of all religious denominations. No person who wishes or, as a matter of their religion is required, to attend a collective act of worship at their mosque, church, synagogue, temple or chapel is permitted to do so.
- 7 The Claimant has been in correspondence with the Secretary of State on this matter since 22 April 2020. Ramadan commenced on Thursday 23 April 2020. The Claimant was particularly keen that members of the Barkerend Road Mosque be able to attend Friday prayers at the mosque in person during Ramadan. Tomorrow, Friday 22 May, is the last

Friday in Ramadan. This application for interim relief, issued on Tuesday 19 May 2020 in proceedings issued that same day, is the Claimant's attempt to secure that at least some of those who wish to attend Friday prayers this week may do so. It would be some rather than all because the Claimant accepts that were the mosque to be open, social distancing measures, as required not in the 2020 Regulations but in guidance published by the Government, would need to be put in place. The Claimant's letter dated 22 April 2020 suggested that with such measures in place up to 40 worshippers would be able to attend. In a further letter dated 14 May 2020 it was suggested that the number able to attend would be 50. The Statement of Facts and Grounds states that although the mosque has capacity for some 4,000 people, there are some 50 persons who regularly attend Friday prayers. This would appear to explain the number stated by the Claimant in the letter of 14 May 2020.

- 8 By this application, the Claimant seeks interim relief in the form of an order prohibiting enforcement of regulations 5, 6 and 7 of the 2020 Regulations so far as they prohibit attendance at Friday prayers at Barkerend Road Mosque. The Claimant offers various undertakings with a view to following the Government guidance on social distancing, but the substance of the matter is a form of suspension of the mechanisms of enforcement, including criminal enforcement, contained in the 2020 Regulations.
- 9 There is no dispute as to the principles to apply when deciding this application for interim relief. In this case, the Claimant must first show a real prospect that at trial he will succeed in obtaining a permanent injunction, taking account of the fact that any decision to grant such relief would include consideration of the public interest. If the required real prospect exists, the next issue is whether or not the balance of convenience favours the grant of relief. As is ordinarily the case, the balance of convenience requires me to assess the prejudice that would arise if interim relief were wrongly granted, and weigh that against the prejudice that would arise were interim relief wrongly to be refused. At this stage too, the public interest is a relevant consideration: see generally *Smith v Inner London Education Authority* [1978] 1 All ER 411 and *R (Medical Justice) v Secretary of State for the Home Department* [2010] EWHC 1425 (Admin.) In this case the relevant public interest is that of the Secretary of State continuing to operate effective measures to safeguard public health in response to the risk presented by the COVID-19 pandemic. I also accept the submission made by the Secretary of State that since the relief sought would prevent operation of part of the 2020 Regulations, no question of granting interim relief would arise unless I am satisfied, to adopt the words of Goff LJ in *R v Secretary of State for Transport, ex parte Factortame No. 2* [1991] 1 AC 603, that the "challenge is so firmly based as to justify" such a cause of action (see the speech of Goff LJ at page 674D). Thus, this application for interim relief will not succeed on the first *American Cyanamid* requirement unless the prospect that the substantive case will succeed is particularly strong.
- 10 The claim is that the Secretary of State's failure to make provision for the Claimant to open the Barkerend Road Mosque for communal Friday prayer is contrary to his right, under Article 9 of the ECHR, to be permitted to manifest his religious belief in worship, teaching, practice and observance. For the reasons I have referred to above, concerning the general application of the restrictions in the 2020 Regulations, there is no Article 14 claim of unlawful discrimination. There is (and could be) no suggestion that Islam has been afforded some form of specific treatment (whether directly or indirectly); all

religions which include an obligation to undertake communal prayer or worship are equally affected by the effect of the 2020 Regulations.

- 11 So far as concerns whether there is a strong prospect that at trial the Claimant will succeed in obtaining an order in the form now sought, my conclusions are as follows. There is no dispute that the cumulative effect of the restrictions contained in the 2020 Regulations is an infringement of the Claimant's right to manifest his religious belief by worship, practice or observance. The Claimant's case is that attendance at Friday prayers is a matter of religious obligation, and the Secretary of State does not seek to contend otherwise. Nevertheless, various points bear upon the extent and nature of the interference caused by the 2020 Regulations which have some relevance to the question of justification which I will consider later.
- 12 The first is that the interference relied on in these proceedings concerns only one aspect of religious observance - attendance at communal Friday prayers. This is not to diminish the significance of that requirement, yet it is relevant to the scope of the interference that is to be justified. In submissions it was suggested that the inability to attend Friday prayers in a mosque rendered the Claimant's Article 9 rights to manifest his religious belief illusory. The Claimant's evidence does not make that case good, albeit it is clear that the Claimant considers, and I accept, that the interference that does exist is an important matter.
- 13 Next, the duration of the interference will be finite. Although the Claimant's evidence emphasises the particular importance, he attaches to communal Friday prayers during Ramadan, the orders sought, and also if granted at trial, would permit communal Friday prayers to take place indefinitely. The 2020 Regulations are time-limited. They will expire in September 2020. Further, the content of the 2020 Regulations must be reviewed every three weeks: see regulation 3(1). Further still, it is clear from a strategy document published by the Government dated May 2020 that even within the period that the Regulations are in force, the reach and scope of the prohibitions in the 2020 Regulations remain under review. The strategy document includes a so-called "route map". Step 3 of that route map envisages lifting restrictions on attendance at public places, including places of worship. The route map states that step 3 will not be reached until early July. Of course, since the progress of the steps in place to combat the Covid-19 pandemic is uncertain, it is entirely possible that when and how certain steps will be taken will be subject to delay or will otherwise not take place as indicated in the route map. However, the point remains, the restriction in issue in this case is temporary, not permanent. In this respect I also make mention of the Places of Worship Task Force established by the Secretary of State on 15 May 2020. The Task Force comprises religious leaders of all major faiths practised in the United Kingdom. It includes a member of the British Board of Scholars and Imams. Its task is to formulate a plan for the safe opening of places of worship. The work the Task Force is to do is indicative of the direction of travel and also of the temporary nature of the prohibition on use of places of worship.
- 14 The third matter concerns the evidence of the position adopted by the British Board of Scholars and Imams in a briefing document published on 16 March 2020. Part 2 of this document is headed "Principles underlying this guidance". Principles 3 to 6 are as follows:

“3. We take seriously our responsibility to minister to the welfare of the Community, both worldly and next-worldly. This involves a recognition of the serious importance that our religion places on life, health, community, and spiritual well-being. To trivialise any aspect of this would be an error. As our scholarly tradition demands, our approach in the Guidance is directed by consideration of what is essential, recommended, and desirable. This includes a keen understanding of when (and which) religious rulings may be suspended due to temporary harms or hardship.

4. The concern within this guidance does not merely relate to the risk of becoming infected with Coronavirus, but more so to the risk of transmitting it to others, especially the old and infirm. To choose to put oneself in harm's way may be acceptable, unwise, or even prohibited; to put others in harm's way is always more severely censured. The guidance uses a risk matrix approach that considers both likelihood of infection/transmission and consequence of infection, from mild to severe.

5. In the event that government directives are issued over-riding any part of the guidance relating to gathering in public or private spaces, then the government directives would take priority.

6. This document is [not] intended to provide specific guidance to individuals, but a general framework of decision making for institutions and mosques. Given that each mosque and institution is different ... we call for local imams, scholars and mosques to decide on what is in the best interests of their communities. However, our advice is that this should be done when all parties are properly informed and have considered all the principles outlined in this document.”

15 Principle 5 is of note because this document was published before the 2020 Regulations were made and came into force. It seems to me, on a fair reading of Principle 5, the reference there to “government directives” includes instruments such as the 2020 Regulations.

16 Part 5 of the document is headed “The Jumu’ah prayer”. The opening paragraphs read as follows:

“It is understood that this is the most contentious question within this guidance, and it has been the subject of significant and vigorous debate among religious scholarship and among the members of the BBSI in particular. Jumu'ah is both an obligation on healthy adult males and a clarion sign of Islam; lifting or suspending that obligation from the community at large is not a step that can or should be taken lightly. Nonetheless, we reiterate that the prime directive for animating this briefing paper is people's health and welfare, particularly protecting the elderly and infirm. Given these factors, the question of Jumu'ah will be explored in some detail. Equally it should be noted that this section primarily refers to the norm of performing Jumu'ah in the mosques.

Two points of consensus emerged from the discussions: (1) If the government issues a directive banning public gatherings this needs to be adhered to, and (2) high risk individuals (as previously identified in the congregational prayers section) SHOULD NOT attend: not only is the obligation of Jumu'ah lifted from them but their attendance, if any congregation does occur, should be severely and proactively precluded. If they are at high risk of transmitting the virus to vulnerable people, it should be unambiguously clarified that their attendance would be immoral and sinful.

With this being understood, two broad opinions are articulated by BBSI members: that of the continuing obligation of Jumu'ah and the position as individuals in the UK are generally exempt from the obligation of Jumu'ah prayers.

Strenuous efforts were made given the extremely short timescales and the difficulty of engaging in detailed legal argumentation remotely, to survey the opinions of over 100 members of the BBSI on their basic stance regarding these two positions. A clear majority of those consulted opined that at this time and until further notice the obligation of Jumu'ah should be lifted from the generality of UK Muslims. These guidelines will be regularly reviewed for continuing relevance and proportionality."

- 17 The Claimant makes clear that his own religious belief differs from the majority view stated by the British Board of Scholars and Imams. I do not make this point to suggest that there is any hierarchy of doctrinal opinion. It is no part of the court's role to entertain any such submissions. ECHR Article 9 has little, if any, concern for such matters. The British Board itself makes the point that it is not a body that gives directives or prescribes permitted forms of religious practice. The Board recognises that some believe that the obligation to attend communal Friday prayers remains binding. However, this legitimate difference of opinion has something to add to consideration of the question of justification - the fair balance between the general and societal interest and the Convention rights of those such as the Claimant. The Claimant's beliefs do not cease to be important. Real weight continues to attach to them. But the overall fair balance can recognise the indisputable point that the Claimant's beliefs as to communal Friday prayer in current circumstances are not beliefs shared by all Muslims.
- 18 I turn now to the question of justification. My conclusion is that were this matter to go to trial, it is very likely that the Secretary of State would succeed on his submission that interference with the Claimant's article 9 rights as a result of the 2020 Regulations is justified. Put in the way that is relevant for the purposes of this application for interim relief, the strong prima facie case the Claimant requires to get over the first *American Cyanamid* hurdle does not exist.
- 19 The Covid-19 pandemic presents truly exceptional circumstances, the like of which has not been experienced in the United Kingdom for more than half a century. Over 30,000 people have died in the United Kingdom. Many, many more are likely to have been infected with the Covid-19 virus. That virus is a genuine and present danger to the health and well-being of the general population. I fully accept that the maintenance of public

health is a very important objective pursued in the public interest. The restrictions contained in regulations 5 to 7, the regulations in issue in this case, are directed to the threat from the Covid-19 virus. The Secretary of State describes the “basic principle” underlying the restrictions as being to reduce the degree to which people gather and mix with others not of the same household and, in particular, reducing and preventing such mixing in indoor spaces. I accept that this is the premise of the restrictions in the 2020 Regulations, and I accept that this premise is rationally connected to the objective of protecting public health. It rests on scientific advice acted on by the Secretary of State to the effect that the Covid-19 virus is highly contagious and particularly easily spread in gatherings of people indoors, including, for present purposes, gatherings in mosques, churches, synagogues, temples and so on for communal prayer.

- 20 For the purpose of his disproportionality submission, the Claimant points to various other activities which are permitted by the 2020 Regulations as most recently amended on 13 May 2020. These include taking exercise, including with one member of another household; visiting parks and open spaces for recreation; visiting houses in connection with the purchase, sale, rental of a residential property; going to local tips and recycling centres. Businesses that are now permitted to open include outdoor sports centres and garden centres. The Claimant submits that none of these is necessarily any more essential than being able to attend communal Friday prayers at his mosque. Put in terms of the proportionality test set out by the Supreme Court in *Bank Mellat v HM Treasury*, the Claimant’s submission is that the means used, so far as they prevent the use of places of worship, are more than is necessary to achieve the legitimate aim – i.e. that a less intrusive approach could have been taken without compromising the achievement by the Secretary of State of his legitimate objective.
- 21 In this way, the Claimant questions the Secretary of State’s priorities. Why are matters such as those mentioned above permitted when attendance at a place of worship in fulfilment of a religious obligation is not? While the Secretary of State’s order of priorities is a legitimate matter for public debate, in terms of whether the decision on it contained within the 2020 Regulations is lawful, he must be allowed a suitable margin of appreciation to decide the order in which steps are to be taken to reduce the reach and impact of the restrictions in the 2020 Regulations. What 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.
- 22 In the circumstances of the present case, the issue is not whether it is more important, for example, to go to a garden centre than to go to communal prayer; the issue is not whether activities that are now permitted and those that are prohibited are moral equivalents. Rather, the question is as to the activities that can be permitted consistent with effective measures to reduce the spread and transmission of the Covid-19 virus; that so far as they interfere with Convention rights, strike a fair balance between that interference and the general interest. That will be a delicate assessment. There will be no single right answer. The Secretary of State is entitled, in my view, to adopt a precautionary stance.
- 23 Yet, even putting those points to one side, and even accounting for the use of social distancing measures such as those that the Claimant proposes, it is possible to recognise a qualitative difference in terms of the risk of transmission of the virus between a situation such as a religious service where a number of people meet in an enclosed space

for a period of an hour or more, and the transitory briefer contact likely in a setting such as that of shopping in a garden centre.

- 24 In this case I do not think there is any realistic likelihood that the Claimant's case on Article 9 will succeed at trial. The infringement of his Article 9 rights is not disproportionate. In reaching this conclusion I have taken account of the requirement under section 13 of the Human Rights Act to pay particular regard to Article 9 rights.
- 25 I have also considered carefully the judgment of the German Constitutional Court dated 29 April 2020 in *F* (1BBQ 44/20). In that case, the German Constitutional Court granted relief so as to permit Friday prayers to take place. It concluded that a general prohibition in German law brought in to address the Covid-19 pandemic was in breach of Article 4 of the German Constitution since the law did not allow for exceptional approval to be granted for religious services on a case-by-case basis. I do not regard that judgment as providing any template, let alone precedent, for me to follow. I am unaware of the particular factual circumstances prevailing in Germany at the particular time at which this decision was taken - how the threat to public health was assessed, what was its extent and so on. However, even if circumstances were exactly the same in Germany and the United Kingdom. That does not require the conclusion that what the court has required in Germany must happen here too. *First*, the question for me at this stage concerns the margin of appreciation and the overall fair balance. This is a situation, as I have said, with no right answer. I must assess the Secretary of State's response to it as set out in the 2020 Regulations on its own terms. *Second*, the prohibition in regulation 5(5) of the 2020 Regulations is subject to the exceptions set out in regulation 5(6). *Third*, even though the exceptions so prescribed in the Regulations are of general application rather than permitting the possibility of case-to-case exceptions, that approach, the use of a bright line or bright lines, if you will, is not an impermissible form of response to circumstances such as those presented by the Covid-19 pandemic.
- 26 Taking account of the points I have already made as to the nature and extent of the interference, the justification submissions made by the Secretary of State are likely to be sufficient. It is not to the point that the Claimant only brings his case on behalf of himself and on behalf of his own mosque. The submissions made for him are essentially generic, hence the Secretary of State's response pitched at a generic level is a valid response. Thus, while I can readily appreciate and sympathise with the Claimant's frustration at the impact of the 2020 Regulations on his religious convictions, I do not consider that any of the evidence relied on or submissions made on his behalf are likely to satisfy a court that the Secretary of State has failed to strike a balance that is fair.
- 27 Had it been necessary to consider the balance of convenience, I would have reached the same conclusion – that grant of the interim relief sought is not an appropriate course of action. The matters I have already referred to when considering the question of justification weigh heavily in the balance against the grant of relief. Further, the logic of this application is not just that it would apply to the Barkerend Road Mosque, but that it would apply to all collective worship pursuant to religious obligations at all places of worship. Permitting that poses too great a risk to the balance between restricted activities and permitted activities concerning social contact that is struck by the 2020 Regulations to permit of the possibility of a grant of interim relief as a matter of the balance of convenience.

28 For all these reasons the Claimant's application is refused.

L A T E R

- 29 I have two applications before me. One is in relation to the costs of the application for interim relief. The Secretary of State asks for an order that his costs be paid by the Claimant to be assessed on the standard basis if not agreed. The Claimant opposes that and says there should be no order for costs, drawing attention to his personal financial circumstances and to the fact that it is said that his preference, rather than a hearing for interim relief, was a rolled-up final hearing.
- 30 The usual order should apply in relation to costs. Costs should follow the event and the event here is that the application for interim relief has failed. In those circumstances, the order will be that the Claimant shall pay the Defendant's costs of and occasioned by the application for interim relief to be assessed on the standard basis if not agreed. I do not see the force in the argument that the Claimant was not seeking a hearing for interim relief. Regardless of the particular label attached to the hearing, the Claimant was seeking an urgent hearing to determine by today whether or not he should be permitted to open the mosque for prayers tomorrow afternoon. In those circumstances, some form of hearing was inevitable on the Claimant's own request. Since the Claimant's attempt to permit Friday prayers to go ahead has failed, a costs order against him is the appropriate order.
- 31 Both parties invite me to deal with the application for permission to apply for judicial review based on the information that I have received for the purposes of the hearing and in the course of this hearing. I am content to do that.
- 32 I have expressed the view very clearly, that by reference to the standard required under the *American Cyanamid* principles to provide a basis for a grant of interim relief, this case does not meet that standard. That is not to say that the standard applicable under *American Cyanamid* is the same as the question of arguability for the purposes of permission to apply for judicial review. It is fair to say I have held the Claimant to a higher standard in the context of the interim relief application because of the particular circumstances I described in the judgment, and the submissions made by counsel as to the applicable standard.
- 33 Even though I have refused the application for interim relief, I am satisfied that there is a sufficiently arguable case to grant permission to apply for judicial review. I do not, however, order that the claim be expedited. It seems to me that the question which was a question of genuine urgency has been addressed by the application for interim relief today. I must take account, when considering requests for expedition, the proportionate use of court time for a particular case, and also the position of all other litigants before the court at this stage. As the parties will understand, this is by no means the only urgent application or only important case that comes before this court at this time. I also take into account the fact that the challenge now has reinvented itself to the extent that it is no longer simply a challenge to a prohibition on communal Friday prayer during the period of Ramadan, but a more general challenge directed to the effect of the 2020 Regulations on the ability to conduct communal or Friday prayers. That is a claim that could and ought to have been brought much earlier, were it to be eligible for serious consideration as an expedited claim.

- 34 In those circumstances, the only direction I will make at this stage is that the Secretary of State may serve detailed grounds and evidence in response to the claim by 4 pm on 18 June 2020, which is some four weeks from today. If either party at that stage wishes to make any application in relation to the timing of the hearing, they are free to do so, and that application will be considered on the basis of written representations.



**HIGH COURT OF SOUTH AFRICA
(GAUTENG DIVISION, PRETORIA)**

CASE NO: 21542/2020

DELETE WHICHEVER IS NOT APPLICABLE
(1) REPORTABLE: NO.
(2) OF INTEREST TO OTHER JUDGES: YES
(3) REVISED.
DATE 02 June 2020
SIGNATURE 

In the matter between:

REYNO DAWID DE BEER

First Applicant

LIBERTY FIGHTERS NETWORK

Second Applicant

HOLA BON RENAISSAINCE FOUNDATION

Amicus Curiae

and

THE MINSTER OF COOPERATIVE

GOVERNANCE AND TRADITIONAL AFFAIRS

Respondent

JUDGMENT

DAVIS, J

[1] Nature of the application

This is the judgment in an urgent application which came before me last week Thursday, 28 May 2020. In the application, the validity of the declaration of a National State of Disaster by the respondent, being the Minister of Cooperative Governance and Traditional Affairs (“the Minister”), and the regulations promulgated by her pursuant to the declaration are being attacked. The attack is by a Mr De Beer in person and by a voluntary community association known as the Liberty Fighters Network (“the LFN”). Another non-profit organization, the Hola Bon Renaissance Foundation (“HBR”), which also styles itself as “the African Empowerment”, has been allowed to address the court as an *amicus curiae* (a friend of the court).

[2] Introduction:

As will appear hereinlater, the constitutionality of the regulations currently imposed on South Africa and its citizens and inhabitants in terms of Section 27 of the Disaster Management Act, 57 of 2002 (the “DMA”), referred to as the “lockdown-regulations” or the “COVID-19 regulations” (hereinlater simply referred to as “the regulations”) is central to this application. I therefore deem it apposite to commence this judgment with the following quotations:

2.1 *“The exercise of public power must ... comply with the Constitution, which is the supreme law and the doctrine of legality, which is part of that law. The doctrine of legality, which is an incident of the rule of law, is one of the constitutional controls through which the exercise of public power is regulated by the Constitution. It entails that both the legislature and the executive are constrained by the principle that they may exercise no power and perform no function beyond that conferred upon them by law. In this*

sense the Constitution entrenches the principle of legality and provides the foundation for the control of public power¹”.

2.2 “*When deciding a constitutional matter within its power, a court –*

(a) Must declare that any law or conduct that is inconsistent with the Constitution is invalid to the extent of its inconsistency and

(b) May make any order that is just and equitable, including –

(i) an order limiting the retrospective effect of the declaration of invalidity and

(ii) an order suspending the declaration of invalidity for any period and on my conditions to allow the competent authority to correct the defect²”.

2.3 “*The essential humanity of man can be protected and preserved only where the government must answer – not just to the wealthy; not just to those of a particular religion, not just to those of a particular race, but to all of the people. And even a government by the consent of the governed, as in our Constitution, must be limited in its power to act against its people: so that there may be no interference with the right to worship, but also no interference with the security of the home; no arbitrary imposition of pains or penalties on an ordinary citizen by officials high or low; no restriction on the freedom of men to seek education or to seek work opportunity of any kind, so that each man may become all that he is capable of becoming³”.*

¹ Affordable Medicines Trust v Minister of Health 2006 (3) SA 247 (CC) per Ngcobo, J (as he then was).

² Section 172(1) of the Constitution.

³ “Day of Affirmation Address” by US Attorney-General Robert F Kennedy on 6 June 1966 at the University of Cape Town and which include the “*we live in interesting times*” quotation included in the judgment in Mahomed

[3] The relief claimed in this application and matters ancillary thereto:

3.1 The applicants claim the following relief (paraphrased in part and summarised from the Notice of Motion):

3.1.1 That the national state of disaster be declared unconstitutional, unlawful and invalid;

3.1.2 That all the regulations promulgated by the Minister be declared unconstitutional, unlawful and invalid;

3.1.3 That all gatherings be declared lawful alternatively be allowed subject to certain conditions;

3.1.4 That all businesses, services and shops be allowed to operate subject to reasonable precautionary measures of utilizing masks, gloves and hand sanitizers. This relief was, however, only sought as an alternative and made subject to consultation with the Essential Services Committee contemplated in Section 70 of the Labour Relations Act, 66 of 1995.

3.2 It must immediately be apparent that some of the relief claimed has, to a larger or lesser extent, either been overtaken or, at least been impacted on, by subsequent events. These are the promulgation of the latest set of regulations signed by the Minister and promulgated during the course of the hearing of this application, being the regulations published in government Notice 608 of 28 May 2020, the “Alert Level 3 Regulations” which added Chapter 4 to the existing regulations.

and Others v The President and Others (referred to in paragraph 3.5 of this judgment) which came some time after his speech at the Joint Defense Appeal on 21 June 1961 in Chicago.

- 3.3 The applicants urged me to, in considering the application, have regard to the facts in existence prior to the date of hearing, but were constrained to concede that the changing of the factual landscape on the day of hearing would be relevant when any appropriate relief is to be formulated, should the applicants be successful. I might add that the matter was initially set down by the applicants for hearing on 19 May 2020. The Minister was given an admittedly short time by them to deliver answering affidavits, which she failed to do. An extension was negotiated by the State Attorney until 22 May 2020 which deadline was also missed. After I had ruled that the answering affidavit need to be delivered by close of business on 26 May 2020, it was eventually deposited to by the Director-General in the Minister's department ("COGTA"), authorized by the Minister to speak on her behalf.
- 3.4 A further issue of concern for me, namely the possibility of conflicting judgments due to a multiplicity of applications in different courts and at different times, dealing with matters related to the same subject matter of this application, was confirmed in another affidavit filed on behalf of the Minister in her application for condonation for the late delivery of the answering affidavit. I interpose to state that the condonation application was not opposed and, in order to reach finality in the application, it was consequently granted. Four different such applications were identified in the said affidavit, being applications by inter alia the Democratic Alliance, Afriforum and the Fair Trade Independent Association, in all of which some of the regulations or parts thereof were challenged. Neither the counsel for the Minister nor the State Attorney could enlighten me of the exact nature or status of these other applications, save to indicate that most of them are pending and due to be heard some time in June 2020. This lack of cohesion and coordination is unsatisfactory but the multitude of

regulatory instruments issued by different role-players over a short space of time is the most probable cause thereof.

- 3.5 Another aspect that needs to be dealt with is that of an as yet unreported recent judgment by my colleague, Neukircher, J in the matter of Mohamed and two others v The President of the Republic of South Africa and others Case no 21402/20 in this Division on 30 April 2020. In that matter an application to have Regulation 11 B(i) and (ii) of the regulations which predated the Alert Level 3 regulations declared to be overbroad, excessive and unconstitutional, was dismissed. Neukircher, J found that the restrictions then in force, constituting a blanket ban on religious gatherings to be “(n)either unreasonable (n)or unjustifiable” (paragraph 77). She further found that every citizen was called upon “in the name of the greater good” and in the spirit of Ubuntu to make sacrifices to their fundamental rights (paragraph 75). Her judgment was however based on an application whereby the applicants therein asked for “an exception” to be made for them whilst they accepted that the regulations were rational and a constitutionally permissible response to the COVID-19 pandemic (paragraph 65).
- 3.6 The relief claimed in that application and in the current urgent application differ materially from each other. In addition, the facts on which the applicants rely in the present application are also different from those relied on before Neukircher, J. The current applicants also do not accept either the rationality or constitutionality of the regulations. In fact, that is the very basis of their attacks. I find that the two applications are sufficiently distinguishable that the issues in the present application are neither *res iudicata* nor that I am bound to follow that judgment. I shall now deal with the current application hereunder.

- [4] The Disaster Management Act, 57 of 2002 (“the DMA”) and the Minister’s conduct thereunder:
- 4.1 The preamble to this Act states that the Act is to provide for an integrated and co-ordinated disaster management policy that focuses on preventing or reducing the risk of disasters, mitigating the severity of disasters, emergency preparedness, rapid and effective response to disasters and post-disaster recovery. The Act established national, provincial and municipal disaster management centers.
- 4.2 In terms of section 23(1) of the DMA, when a “*disastrous event occurs or threatens to occur*” the National Disaster Management Centre must assess the magnitude and severity of the disaster and classify it as a local, provincial or national disaster.
- 4.3 The nature and spread of the novel Coronavirus causing the COVID 19 epidemics in numerous countries, having originated, to all accounts in Wuhan, China, has received unprecedented media coverage since the beginning of 2020. The nature of the virus and COVID 19 need not be restated here and has been covered in other judgments in this division, notably the Mahomed-case mentioned in paragraph 3.5 above and the widely publicized but as yet unreported judgment of my colleague Fabricius, J in Khosa and Others v Minister of Defence and Military Veterans and of Police and Others, Case No 21512/2020 in this Division dated 15 May 2020. The rapid proliferation of COVID 19 epidemics to 114 countries caused the World Health Organisation (the “WHO”) to characterize COVID 19 as a global pandemic. In announcing the declaration, the President of the WHO inter alia stated the following with reference to measures taken to reduce the impact of the pandemic:

“We know that these measures are taking a heavy toll on societies and economies, just as they did in China. All countries must strike a fine balance between protecting health, minimizing economic and social disruption and respecting human rights Let me summarise it in four key areas:

- *First, prepare and be ready,*
- *Second, detect, protect and treat,*
- *Third, reduce transmission,*
- *Fourth, innovate and learn ...”.*

4.4 Pursuant to the above, Dr Tau, in his capacity of the National Disaster Management Centre on 15 March 2020 after assessing the potential magnitude and severity of the COVID-19 pandemic, classified the pandemic as a national disaster in South Africa as envisaged in aforesaid section 23 (1) of the DMA.

4.5 Dr Tau, in the notice published by him regarding the abovementioned classification, also referred to section 23 (8) of the DMA which, when read with section 26(1) thereof, provides that *“the national executive is primarily responsible for the co-ordination and management of national disasters irrespective of whether a national state of disaster has been declared in terms of section 27”*. The applicants have not attacked Dr Tau’s assessment or classification. Dr Tau went further in his notice and called upon all organs of state *“to further strengthen and support the existing structures to implement contingency arrangements and ensure that measures are put in place to enable the national executive to effectively deal with the effects of this disaster”*.

- 4.6 The DMA further prescribes the national executive's obligations in dealing with a national disaster in section 26(2) thereof. In terms of this section, the national executive "must" follow one of two courses: in terms of section 26(2)(a), in the event of no declaration of a national state of disaster, it must deal with the disaster in terms of existing legislation and contingency arrangements. The second course of conduct occurs when a national state of disaster has been declared. In that instance, in terms of section 26(2)(b) the national executive must deal with the disaster, again in terms of existing legislation and contingency arrangements, but in this instance "*... as augmented by regulations or directives made or issued in terms of section 27 (2)*".
- 4.7 When and how is a national state of disaster declared? This occurs when the Minister, by notice in the Gazette makes such a declaration. She may do so in terms of section 27(1) of the DMA in the following circumstances, namely if –
- (a) "*existing legislation and contingency arrangements do not adequately provide for the national executive to deal efficiently with the disaster; or*
 - (b) "*other special circumstances warrant the declaration of a national state of disaster*".
- 4.8 The Director-General of COGTA, described the national executive's reaction to the looming pandemic as follows:

"The government sought medical advice from medical and scientific experts (national Corona Task Team) to prepare in order to manage and minimize the risk of infection and slow the rate of infection to prevent the overwhelming of the public healthcare facilities. There

is no existing legislation and contingency arrangement to adequately manage COVID-19.

The WHO also issued guidelines as to how countries can slow the rate of infection and prevent many deaths. The government also learnt from other countries which were already grappling with the measures to contain the disease. An effective means to slow the rate of infection and “flatten the curve” was to employ measures to manage the COVID-19 by ensuring a coordinated response and putting the South African national resources of the national government together to deal with this pandemic. There were no effective measures to manage the risk of infection or prevent infection and to ensure that the government was prepared to deal with Covid-19 pandemic. The government had to consider placing measures to deal with the outbreak, considering the consequences of those measures on the South African population and economy.

The purpose of curbing the spread of the COVID-19 disease was to save lives. After consultation with the Minister of Health and Cabinet, it was agreed that the most effective measures to manage COVID-19 and the consequences of this disease on the society and the economy, was to declare a national state of disaster in terms of section 27(1) of the DMA. Thus, on the 15th March 2020, the Minister declared a national state of disaster”.

- 4.9 The mere say-so that there exists no existing legislation by which the national executive could deal with the disaster is disputed by the applicants and they contend that any such determination by the Minister was both misplaced and “irrational”. Their contention is made with reference to the

International Health Regulations Act, 28 of 1974. In terms of this Act the President may, by mere proclamation, invoke the International Health Regulations for dealing with the disaster. These regulations appear, however not to have been updated and neither do they specifically provide for COVID-19, presumably due to the novelty thereof. It is therefore difficult to assess whether this Act can “adequately provide for the national executive to deal effectively with the disaster”.

4.10 The Minister, however, did not in her declaration seek to rely on section 27(1)(a) of the DMA and the issue of insufficiency of existing legislation. She relied on the following factors for the declaration of a national state of disaster:

- The magnitude and severity of the COVID 19 “outbreak”
- The declaration of the outbreak as a pandemic by the WHO
- The classification thereof as a national disaster by Dr Tau as referred to in paragraph 4.4 above
- The “*need to augment the existing measures undertaken by organs of state to deal with the pandemic*” and
- The recognition of the existence of special circumstances warranting such a declaration.

4.11 It is unfortunate that the Minister chose not to enlighten the court what the abovementioned “special circumstances” are, but left it to the Director General to make generalized statements. Neither the Minister nor the Director-General elaborated on the shortcomings in “existing measures undertaken by the organs of state”. A somewhat disturbing fact is that there

was no time delay since the declaration by Dr Tau and that of the Minister during which such shortcomings could have manifested themselves as the Minister's declaration followed that of Dr Tau on the same day. In fact, they were published in the same Government Gazette, No 43096 of 15 March 2020.

- 4.12 The applicants however did not attack the declaration on any of the abovementioned grounds or shortcomings but based their attack on the alleged irrational reaction to the coronavirus itself and the number of deaths caused thereby. Numerous publications were referred to, proclaiming the reaction to COVID 19 as a gross over-reaction. The applicants referred to various comparisons to other diseases plaguing the country and the continent, such as TB, influenza and SARS COV-2. Various statistics, infections rates, mortality rates and the like were also referred to. This attack was, however, not launched by way of a review application, which limited the scope of affidavits and facts placed before the court, particularly in an urgent application. Taking into account, however, the extent of the worldwide spread of the virus, the pronouncements by the WHO and its urging of member states to take the pandemic very seriously in order to protect their citizens and inhabitants as well as the absence of prophylaxes, vaccines, cures or, to this date, effective treatment, I cannot find that the decision was irrational on what was placed before me. I am also prepared to accept that measures were urgently needed to convert an ailing and deteriorated public health care system into a state of readiness, able to cope with a previously unprecedented demand for high-care and intensive care facilities should there not be a "flattening" but an uncontrolled "spike" in the rate or number of seriously affected patients, constitute "special circumstances".

4.13 Having stated that, though, the declaration of a national state of disaster by the Minister, had important consequences. It allowed her to make regulations and issue extensive directions regarding a wide range of aspects. Section 27 (2) of the DMA is the enabling provision in this regard and reads as follows:

“ (2) *If a national state of disaster has been declared in terms of subsection (1), the Minister may, subject to subsection (3), and after consulting the responsible cabinet member, make regulations or issue directions or authorize the issue of directions concerning –*

- (a) the release of any available resources of the national government, including stores, equipment, vehicles and facilities;*
- (b) the release of personnel of a national organ of state for the rendering of emergency services;*
- (c) the implementation of all or any of the provisions of a national disaster management plan that are applicable in the circumstances;*
- (d) the evacuation to temporary shelters of all or part of the population from the disaster-stricken or threatened area if such action is necessary for the preservation of life;*
- (e) the regulation of traffic to, from or within the disaster-stricken or threatened area;*
- (f) the regulation of the movement of person and goods to, from or within the disaster-stricken or threatened area;*
- (g) the control and occupancy of premises in the disaster-stricken or threatened area;*

- (h) *the provision, control or use of temporary emergency accommodation;*
- (i) *the suspension or limiting of the sale, dispensing or transportation of alcoholic beverages in the disaster-stricken or threatened area;*
- (j) *the maintenance or installation of temporary lines of communication to, from or within the disaster area;*
- (k) *the dissemination of information required for dealing with the disaster;*
- (l) *emergency procurement procedures;*
- (m) *the facilitation of response and post-disaster recovery and rehabilitation;*
- (n) *other steps that may be necessary to prevent an escalation of the disaster, or to alleviate, contain and minimize the effects of the disaster; or*
- (o) *steps to facilitate international assistance”.*

4.14 It is clear from a reading of the enabling provisions, that disasters other than the one currently facing us as a result of the COVID-19 pandemic, were contemplated by the DMA. The occurrence of a flood, for example, would fit neatly into the provisions – evacuation would be needed, traffic would need to be regulated, shelters would be needed, lines of communications would need to be installed or re-installed and post-disaster recovery and rehabilitation would be needed. These occurrences have happened in our recent past where measures of this nature had been necessary. The floods in various parts of our country in 2016 and 2019 are but examples of recent memory. In those instances members of the

SANDF deployed rescue teams and rendered assistance in the various of the aspects covered by Section 27 (2)(a) – (n) quoted above, rather than patrol the streets armed with machine guns. I shall return to this aspect later.

[5] The nature of the “lockdown regulations”:

5.1 When the President of South Africa eleven weeks ago announced a “hard lockdown” in South Africa when the COVID 19 pandemic hit our shores, the country and indeed, the world generally lauded him for the fast and decisive action taken to guard us against the anticipated debilitating (and deadly) consequences of the disaster. The rationality of this policy direction taken by the national executive then appeared readily apparent to virtually all South Africans.

5.2 In the President’s speech whereby he announced the move to “Alert Level 3”, he introduced the issue of the regulations promulgated and implemented as a result of the Minister’s declaration under consideration as follows: *“It is exactly 10 weeks since we declared a national state of disaster in response to the coronavirus pandemic. Since then, we have implemented severe and unprecedented measures – including a nationwide lockdown – to contain the spread of the virus. I am sorry that these measures imposed a great hardships on you – restricting your right to move freely, to work and eke out a livelihood. As a result of the measures we imposed – and the sacrifices you have made – we have managed to slow the rate of infection and prevent our health facilities from being overwhelmed. We have used the time during the lockdown to build up an extensive public health response and prepare our health system for the anticipated surge of infections”*. This accords with the stated objective identified in the Directive General’s answering affidavit as quoted in

paragraph 4.8 above. (I interpose to state that the parties and the amicus have, both in their affidavits and heads of argument (as well as in court) repeatedly referred to various websites and other sources of public media. Evidentiary value apart, I had been enjoined to take judicial cognisance of these references, hence the source for this quotation).

- 5.3 Despite having attained the abovementioned laudable objectives with the assistance of the initial “lockdown regulations”, the applicants contend they were unlawful for want of prior approval by the National Council of Provinces. Many of the functional areas referred to in Section 27 (2) of the DMA fall, in terms of Schedule 5 of the Constitution, within the areas of provincial legislative competence, such as liquor licenses, provincial sport, provincial roads and traffic, beaches and amusement facilities, cemeteries, funeral parlours and crematoria, markets, public places and the like (subject to certain monitoring and control aspects by local spheres of government which are not relevant to the current issues). In order to avoid conflict between national and provincial legislation, section 146 (6) of the Constitution requires laws made by an Act of Parliament to prevail only after approval by the National Council of Provinces (“NCOP”). Section 59 (4) of the DMA provides that regulations made by the Minister should also be referred to the NCOP for approval first. This proviso, however, only refers to regulations promulgated in the ordinary course of business in terms of section 59(1) of the DMA. It does not apply to all regulations under the Act. Upon a reading of sections 27 (2) and 27 (5) of the DMA it is also clear that the regulations (and directions) provided for therein, are of an urgent or emergency nature and clearly intended to be for a temporary period only. They are distinguishable from those mentioned in sections 59(1) and 59(4) of the DMA and to equate the two types of regulation with each other and require consideration, debate and approval by the NCOP for

Section 27(2) regulations might frustrate or negate the whole purpose of urgent action and augmentation of otherwise insufficient disaster management provisions.

5.4 I therefore find that this ground of attack cannot succeed. What it does highlight however, is the consequences of invoking a national state of disaster and reliance on section 27 (2): it places the power to promulgate and direct substantial (if not virtual all) aspects of everyday life of the people of South Africa in the hands of a single minister with little or none of the customary parliamentary, provincial or other oversight functions provided for in the Constitution in place. The exercise of the functions should therefore be closely scrutinized to ensure the legality and Constitutional compliance thereof.

[6] The legality of the “lockdown regulations”.

6.1 The making of regulations and the issuing of directives by the Minister in terms of the DMA are subject to the following limitations:

- They may only be made after consultation with “the responsible Cabinet member”, responsible for each specific functional area of jurisdiction (Section 27(2))
- The power to make regulations and directions “*may be exercised only to the extent that this is necessary for the purpose of—*

(a) assisting and protecting the public;

(b) providing relief to the public;

(c) protecting property;

(d) preventing or combating disruption; or

(e) *dealing with the destructive and other effects of the disaster*” (Section 27(3))

- as an exercise of public power or performance of a public function, the regulations and directions may not go beyond that expressly provided for in the enabling section of the DMA mentioned in paragraph 4 above⁴.
- In every instance where the power to make a specific regulation is exercised, the result of that exercise, namely the regulations themselves must be rationally related to the purpose for which the power was conferred⁵. This is the so-called “rationality test”. It answers the question: Is there a rational connection between the intervention and the purpose for which it was taken? I shall elaborate on this hereunder.
- In the last instance, where the exercise of a public power infringes on or limits a constitutionally entrenched right, the test is whether such limitation is, in terms of Section 36 of the Constitution, justifiable in an open and democratic society based on human dignity, equality and freedom (the “limitation test”).

6.2 In para 2.1 of the introductory part of this judgment, I also referred to the supremacy of the Constitution and the principle of legality that requires the steps taken to achieve a permissible objective to be both rational and

⁴ Fedsure Life Assurance Ltd v Greater Johannesburg Transitional Metropolitan Council 1999 (1)SA 374 (CC) at para [58]; Minister of Public Works v Kayalami Ridge Environmental Association 2001 (3) SA 1151 (CC) at para [34]; Affordable Medicine (Supra) at para [49] and Masetlha v President of the Republic of South Africa 2008 (1) SA 566 (CC) at para [80]

⁵ DA v President of the RSA 2013 (1) SA 248 (CC) at para [27] and Pharmaceutical Manufacturers Association of SA: In re: ex parte President of the RSA and Others 2000 (2) SA 674 (CC) at para [85].

rationally connected to that objective. This entails the rationality test referred to above⁶.

- 6.3 The rationality test is concerned with the evaluation of the relationship between means and ends “... *it is not to determine whether some means will achieve the purpose better than others but only whether the means employed are rationally related to the purpose for which the power was conferred*”⁷.
- 6.4 Where a decision is challenged on the grounds of rationality or, as in this case, the regulations are attacked on the basis of irrationality, “... *courts are obliged to examine the means selected to determine whether they are rationally related to the objective sought to be achieved. What must be stressed is that the purpose of the enquiry is not whether there are other means that could have been used, but whether the means selected are rationally related to the objective sought to be achieved. And if, objectively speaking, they are not, they fall short of the standard demanded by the Constitution*”⁸.
- 6.5 The Chief Justice labelled such a failure a “disconnect” between the means and the purpose⁹.
- 6.6 It must also follow that, if a measure is not rationally connected to a permissible objective, then that lack of rationality would result in such a measure not constituting a permissible limitation of a Constitutional right in the context of Section 36 of the Constitution.

⁶ *Law Society v President of the RSA* 2019 (3) SA 30 (CC) at [61] – [63].

⁷ *DA v President of RSA* (supra) at para [32].

⁸ *Allbert v Centre for the Study of Violence and Reconciliation and others* 2010 (3) SA 293 (CC) at para [51].

⁹ *Electronic Media Network v e.tv (Pty) Ltd* 2017 (9) BCLR (CC) 8 June 2017.

6.7 In the answering affidavit by the Director General of COGTA on behalf of the Minister, clearly being aware of the abovementioned limitations on the exercise of public power, she said the following:

“I am advised that in determining whether the decision of the functionary is rational, the test is objective and is whether the means justify the ends. Thus, I submit, with respect, that under the circumstances, the means justify the ends”.

6.8 Apart from the fact that this statement says factually very little, if anything, I questioned whether the Director-General had not intended to argue that the “end justifies the means¹⁰”. Counsel for the Minister assured me that the Director General meant exactly what she said.

6.9 The Director General correctly contended that the COVID 19 pandemic implicates the constitutionally entrenched rights to life¹¹, to access to health care¹² and an environment that is not harmful¹³. As a result of this, she submitted that *“the South African population has to make a sacrifice between the crippling of the economy and loss of lives”*. Her submission further was that the regulations *“... cannot, therefore, be set aside on the basis that they are causing economic hardship, as saving lives should take precedence over freedom of movement and to earn a living”*.

6.10 Of course the saving of lives is a supreme Constitutional imperative and one of the most fundamental rights entrenched in the Bill of Rights in the Constitution. An equally anguishing conundrum is the resultant choice

¹⁰ Being a reference to the Machiavellian principle of justifying any, even unlawful, means as long as the end is good or beneficial or, put differently: a good outcome excuses any wrongs committed to attain it.

¹¹ Section 11 of the Constitution.

¹² Section 27 of the Constitution.

¹³ Section 24 of the Constitution.

between “plague and famine” as a leading journalist has recently described the situation.

- 6.11 All the instructions to deal with the pandemic referred to earlier, being the WHO declaration, the declaration of Dr Tau and the DMA self, however go beyond the mere issue of saving lives, some of which, with the greatest degree of sensitivity, international experience has shown, may inevitably be lost. The object is, if one is not able to completely prevent the spread the infection, to least attempt to limit the spread or the rate of infection whilst at the same time maintain social cohesion and economic viability. All these instruments, and in particular the enabling legislation, confirm this. Sections 27(2) and 27 (3) of the DMA states the aim thereof to be “*assisting the public, providing relief to the public ... and ... dealing with the destructive effect of the disaster*”.

[7] Applying the rationality test:

It is now necessary to test the rationality of some of the regulations and their “connectivity” to the stated objectives of preventing the spread of infection:

- 7.1 When a person, young or old, is in the grip of a terminal disease (other than COVID 19) and is slowly leaving this life, to ease that suffering and the passing, it is part of the nature of humanity for family and loved ones to support the sufferer. Moreover there are moral, religious and Ubuntu imperatives demanding this. One might understand the reluctance to have an influx of visitors should the person at death’s door be inside the doors of a medical facility for fear of the spread of COVID 19, but what if the person is in his or her own home or at the home of a family member or friend? Loved ones are by the lockdown regulations prohibited from leaving their home to visit if they are not the care-givers of the patient,

being prepared to limit their numbers and take any prescribed precautions, But once the person has passed away, up to 50 people armed with certified copies of death certificates may even cross provincial borders to attend the funeral of one who has departed and is no longer in need of support. The disparity of the situations are not only distressing but irrational (Regulation 35).

- 7.2 There are numerous, thousands, no, millions of South African who operate in the informal sector. There are traders, fisheries, shore-foragers, construction workers, street-vendors, waste-pickers, hairdressers and the like who have lost their livelihood and the right to “eke out a livelihood” as the President referred to it as a result of the regulations. Their contact with other people are less on a daily basis than for example the attendance of a single funeral. The blanket ban imposed on them as opposed to the imposition of limitations and precautions appear to be irrational.
- 7.3 To illustrate this irrationality further in the case of hairdressers: a single mother and sole provider for her family may have been prepared to comply with all the preventative measures proposed in the draft Alert Level 3 regulations but must now watch her children go hungry while witnessing minicab taxis pass with passengers in closer proximity to each other than they would have been in her salon. She is stripped of her rights of dignity, equality, to earn a living and to provide for the best interests of her children. (Table 2 item 7).
- 7.4 There were also numerous complaints referred to in papers about Regulation 34 placing irrational obstacles in the way of those responsible for children or in the position of care-givers of children to see that their best interests are catered for.

- 7.5 Random other regulations regarding funerals and the passing of persons also lack rationality. If one wants to prevent the spreading of the virus through close proximity, why ban night vigils totally? Why not impose time, distance and closed casket prohibitions? Why not allow a vigil without the body of the deceased? Such a limitations on a cultural practice would be a lesser limitation than an absolute prohibition. If long-distance travel is allowed, albeit under strict limitations, a vigil by a limited number of grieving family members under similar limitations can hardly pose a larger threat. And should grieving family members breach this prohibition, their grief is even criminalized (Regulations 35(3) and 48(2)).
- 7.6 There is also no rational connection to the stated objectives for the limitation on the degree of the familial relationship to a deceased in order to permissibly attend his or her funeral. What if the deceased is a clan elder or the leader of a community or the traditional head of a small village? Rather than limit the number of funeral attendees with preference to family members, exclusions are now regulated, arbitrarily ignoring the facts of each case (Regulation 35(1)).
- 7.7 The limitations on exercise are equally perplexing: If the laudable objective is not to have large groups of people exercising in close proximity to each other, the regulations should say so rather than prohibit the organizing of exercise in an arbitrary fashion (Regulation 33(a)(e)).
- 7.8 Restricting the right to freedom of movement in order to limit contact with others in order to curtail the risks of spreading the virus is rational, but to restrict the hours of exercise to arbitrarily determined time periods is completely irrational (also Regulation 33(1)(e)).

- 7.9 Similarly, to put it bluntly, it can hardly be argued that it is rational to allow scores of people to run on the promenade but were one to step a foot on the beach, it will lead to rampant infection (Regulation 39(2)(m)).
- 7.10 And what about the poor gogo who had to look after four youngsters in a single room shack during the whole lockdown period? She may still not take them to the park, even if they all wear masks and avoid other people altogether (also Regulation 39(2)(e)).
- 7.11 During debate of the application, the argument was tentatively raised that all the limitations on Constitutional rights were recompensed by the government. Counsel for the Minister had been constrained to concede that, even if the government's attempts at providing economic relief functioned at its conceivable optional best, monetary recompense cannot remedy the loss of rights such as dignity, freedom of movement, assembly, association and the like.
- 7.12 The practicalities (or rather impracticalities) of distributing aid relief in the form of food parcels highlights yet another absurdity: a whole community might have had limited contact with one another and then only in passing on the way to school or places of employment on any given day prior to the regulations, but are now forced to congregate in huge numbers, sometimes for days, in order to obtain food which they would otherwise have prepared or acquired for themselves.
- 7.13 I am certain, from what I have seen in the papers filed in this matter and from a mere reading of the regulations, even including the Alert Level 3 regulations, that there are many more instances of sheer irrationality included therein. If one has regard to some of the public platforms to which I have been referred to, the examples are too numerous to mention. One

need only to think of the irrationality in being allowed to buy a jersey but not undergarments or open-toed shoes and the criminalization of many of the regulatory measures.

- 7.14 Despite these failures of the rationality test in so many instances, there are regulations which pass muster. The cautionary regulations relating to education, prohibitions against evictions, initiation practices and the closures of night clubs and fitness centres, for example as well as the closure of borders. (Regulations 36, 38, 39(2)(d)and(e) and 41) all appear to be rationally connected to the stated objectives.
- 7.15 So too, are there ameliorations to the rationality deficiencies in the declarations by other cabinet members in respect of the functional areas of their departments promulgated since Alert Level 3 having been declared, but these have neither been placed before me nor have the parties addressed me on them. This does not detract from the Constitutional crisis occasioned by the various instances of irrationality, being the impact on the limitation issue foreshadowed in section 36 of the Constitution referred to in paragraph 6.1 above.
- 7.16 I debated with counsel for the Minister the fact that I failed to find any evidence on the papers that the Minister has at any time considered the limitations occasioned by each the regulations as they were promulgated, on the Constitutional rights of people. The Director General's affidavit contains mere platitudes in a generalized fashion in this regard, but nothing of substance.
- 7.17 The clear inference I draw from the evidence is that once the Minister had declared a national state of disaster and once the goal was to "flatten the curve" by way of retarding or limiting the spread of the virus (all very

commendable and necessary objectives), little or in fact no regard was given to the extent of the impact of individual regulations on the constitutional rights of people and whether the extent of the limitation of their rights was justifiable or not. The starting point was not “how can we as government limit Constitutional rights in the least possible fashion whilst still protecting the inhabitants of South Africa?” but rather “we will seek to achieve our goal by whatever means, irrespective of the costs and we will determine, albeit incrementally, which Constitutional rights you as the people of south Africa, may exercise”. The affidavit put up on behalf of the Minister confirms that the factual position was the latter. One should also remind oneself that the enabling section of the DMA sought to augment existing measures, not replace them entirely.

7.18 This paternalistic approach, rather than a Constitutionally justifiable approach is illustrated further by the following statement by the Director General: “*The powers exercised under lockdown regulations are for public good. Therefore the standard is not breached*”.

7.19 The dangers of not following a Constitutional approach in dealing with the COVID 19 pandemic have been highlighted in the judgment of Fabricius, J referred to in paragraph 4.3 above. In his judgment, the learned judge, amongst other things, raised the following question:

“The virus may well be contained - but not defeated until a vaccine is found - but what is the point if the result of harsh enforcement measures is a famine, an economic wasteland and the total loss of freedom, the right to dignity and the security of the person and, overall, the maintenance of the rule of law”?

7.20 In a recent article by Calitz in De Rebus 2020 (June) DR 9 entitled “Government’s response to COVID 19: has the Bill of Rights been given effect to?” the following apposite views are expressed:

“COVID-19 is a fierce pandemic with numerous deaths across the world and unfortunately there is no date on our calendar, which we can circle, to indicate when the storm will finally pass. Yes, there are unprecedented hardships on social, political, health, and economic sectors, but even more so on basic human rights. These distresses are felt more harshly by the least protected in society who do not have access to adequate housing, clean running water, health care, food, or social security, which are all guaranteed basis human rights.

The protection of inherent human dignity is another constitutional right guaranteed in s 10 of the Constitution. While it goes without saying that the loss of employment or livelihood impact on one’s dignity; the rapidly increased rate of gender-based violence during lockdown raises concern and alarm. Women and men are beaten and abused by their partners while being compelled by law to stay inside their homes. They cannot run or escape and are eft helpless.

During a pandemic, government should never lose sight of basic human rights. In fact, it should prioritise their realization and protection of human rights in such a time even more so. In my view, the Bill of Rights has not been given effect to. A pro-human rights lockdown would have perhaps looked much different –

- Military officials would have acted more humanely;

- *Lockdown regulations would have not been equally strict over different parts of the country and would have taken into account personal living conditions of the poor; and*
- *The fulfilment of human rights would have been the most important priority to attain”.*

I agree with these sentiments.

7.21 I find that, in an overwhelming number of instances the Minister have not demonstrated that the limitation of the Constitutional rights already mentioned, have been justified in the context of section 36 of the Constitution.

[8] Further aspects

There are two further aspects which I need to deal with:

8.1 The first is the applicants’ contention that the regulations breach the right to hold gatherings as contemplated in the Regulation of Gatherings Act, No 205 of 1993 (the “Gatherings Act”). In particular, section 14 (1) of that Act is relied on. It reads: “*In the case of a conflict between the provisions of this Act and any other law applicable in the area of jurisdiction of any local authority, the provisions of this Act shall prevail*”. The reliance on the Gatherings Act is misplaced: the Act does not create the right to hold gatherings, it merely regulates the exercise of those rights. The actual rights are founded in sections 17 and 18 of the Constitution itself¹⁴. While “gatherings” in the form of religious congregation has been allowed under the Alert Level 3 regulations under strict conditions (in giving effect to the

¹⁴ Section 17: Everyone has the right, peacefully and unarmed, to assemble, to demonstrate, to picket and to present petitions.

Section 18: Everyone has the right to freedom of association.

rights to freedom of religion, belief and opinion as guaranteed under section 15 of the Constitution), no recognition has been given to any section 17 rights nor has any consideration been given to the infringement thereof or whether a blanket ban could be justifiable as opposed to a limited and regulated “allowance” of the exercise of those rights. The reversion to a blanket ban harks back to a pre-Constitutional era and restrictive State of emergency regulations. In the context of this judgment, I need not further dwell on this aspect apart from the lack of justification already referred to earlier.

- 8.2 The last aspect is that of the blanket ban on the sale of tobacco products. Apart from the fact that this prohibition contained in the regulations form part of the overall attack by the applicants on the regulations as a whole, none of the parties have expressly and separately attacked this aspect or dealt with it, either in their affidavits or in their arguments. The issues relating to this ban are varied and multitudinous. It involves not only those using tobacco products but also those selling it. The fiscus also has an interest in the matter. The impact of this ban on Constitutional rights are also more oblique than the in respect of other rights contained in the Bill of Rights. I have been advised that an application wherein many more of the affected role players than those featuring in this application, is pending in this Division. That application, by direction of the Judge President, it to be heard by a full court later this month. It appears to me to be in the interest of justice that the issues relating to the ban on the sale of tobacco products be dealt with in that forum. For this reason I shall excise this aspect form the order which I intend making, for the time being.

[9] Conclusions:

- 9.1 The Minister's declaration of a national state of disaster in terms of Section 27(1) of the Disaster Management Act in response to the COVID 19 pandemic is found to be rational.
- 9.2 The regulations promulgated in respect of Alert Levels 4 and 3 in terms of Section 27(2) of the Disaster Management Act by the Minister in a substantial number of instances are not rationally connected to the objectives of slowing the rate of infection or limiting the spread thereof.
- 9.3 In every instance where "means" are implemented by executive authority in order to obtain a specific outcome an evaluative exercise must be taken insofar as those "means" may encroach on a Constitutional right, to determine whether such encroachment is justifiable. Without conducting such an enquiry, the enforcement of such means, even in a bona fide attempt to attain a legitimate end, would be arbitrary and unlawful.
- 9.4 Insofar as the "lockdown regulations" do not satisfy the "rationality test", their encroachment on and limitation of rights guaranteed in the Bill of Rights contained in the Constitution are not justifiable in an open and democratic society based on human dignity, equality and freedom as contemplated in Section 36 of the Constitution.
- 9.5 The deficiencies in the regulations need to be addressed by the Minister by the review and amendment thereof so as to not infringe on Constitutional rights more than may be rationally justifiable.
- 9.6 One must also be mindful of the fact that the COVID 19 danger is still with us and to create a regulatory void might lead to unmitigated disaster and chaos. Despite its shortcomings, some structure therefore needs to remain

in place whilst the Minister and the national executive review the regulations and their constitutional approach thereto.

- 9.7 The role and existence of the “National Coronavirus Command Council” did not feature in this application.
- 9.8 The legality of the ban on the sale of tobacco and related products shall, as set out in paragraph 8.2 above, stand over for determination by a full court of this Division, already constituted for that purpose.

[10] Relief

- 10.1 At the inception of this judgment I referred to the fact that section 172(1) of the Constitution obligates this court to declare any law or conduct inconsistent with the Constitution invalid.
- 10.2 The same section authorises the court to make any order that is just and equitable. In doing so, a court must still remind itself, as I hereby do, that “ours is a constitutional democracy, not a judiciocracy¹⁵”. Courts must always remain alert to the principles of separation of powers. The Chief Justice has explained the principle as follows:

“The Judiciary is but one of the three branches of government. It does not have unlimited powers and must always be sensitive to the need to refrain from undue interference with the functional independence of other branches of government. Court ought not to blink at the thought of asserting their authority, whenever it is constitutionally permissible to do so, irrespective of the issues or who is involved. At the same time, and mindful of the vital strictures

¹⁵ Electronic Media Network – above at para [1].

of their powers, they must be on high alert against impermissible encroachment on the powers of the others arms of government¹⁶”.

- 10.3 Any remedial action, amendment or review of the regulations, should therefore be undertaken by the Minister.
- 10.4 Having regard to the nature of the application, I am of the view that it is appropriate that costs follow the event. The applicant’s case went beyond a mere Constitutional attack and the Biowatch-principle should not apply¹⁷. I am further of the view that the amicus curiae, represented by one of the members should, in view of the lateness of its attempted joinder to the applications and the fact that it ultimately sought to enroll its own application way out of time, bear its own costs.

[11] Order:

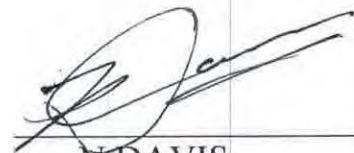
1. The regulations promulgated by the Minister of Cooperation and Traditional Affairs (“the Minister”) in terms of section 27(2) of the Disaster Management Act 57 of 2002 are declared unconstitutional and invalid.
2. The declaration of invalidity is suspended until such time as the Minister, after consultation with the relevant cabinet minister/s, review, amend and re-publish the regulations mentioned above (save for regulations 36, 38, 39(2)(d) and (e) and 41 of the regulations promulgated in respect of Alert Level 3) with due consideration to the limitation each regulation has on the rights guaranteed in the Bill of Rights contained in the Constitution.
3. The Minister is Directed to comply with the process ordered in paragraph 2 above within 14 (Fourteen) business days from date of this order, or such

¹⁶ Economic Freedom Fighters v Speaker of the National Assembly 2016 (3) SA 580 (CC) at paras [92] and [93].

¹⁷ Biowatch Trust v Registrar Genetic Resources 2009 96) SA 232 (CC)

longer time as this court may, on good grounds shown, allow and to report such compliance to this court.

4. During the period of suspension, the regulations published in Government Gazette No 43364 of 28 May 2020 as Chapter 4 of the regulations designated as: “Alert Level 3”, shall apply.
5. The regulations pertaining to the prohibition on the sale of tobacco and related products is excluded from this order and is postponed sine die, pending the finalization of case no 21688/2020 in this court.
6. The Minister is ordered to pay the costs of the first and second applicants. The amicus curiae shall pay its own costs.



N DAVIS
Judge of the High Court
Gauteng Division, Pretoria

Date of Hearing: 28 May 2020

Judgment delivered: 2 June 2020

APPEARANCES:

For the first Applicant:

In person

For the Second Applicant:

Mr Z Omar

Attorney for Second Applicant:

Zehir Omar Attorneys, Springs
c/o Friedland Hart Solomon & Nicholson
Attorneys, Pretoria

For the Respondent:

Adv M S Phaswane

Attorney for Respondent:

State Attorney, Pretoria

THE COUNCIL OF STATE

Ruling on litigation

Nos. 440366, 440380, 440410, 440531,
440550, 440562, 440563, 440590

THE FRENCH REPUBLIC

Mr. W... and others

ON BEHALF OF THE FRENCH PEOPLE

Ordinance of 18 May 2020

THE INTERIM RELIEF JUDGE

Having regard to the following procedure:

1° Under No. 440366, by application and memorandum registered on 3 and 12 May 2020 at the Litigation Secretariat of the Council of State, Mr G... W..., M. A..., M. A... R..., Mr. AD..., AF..., Ms I... AP..., Mr. AG... AM..., Ms AN... AV..., Mr. AA... N..., Mr. BA... P... ,and Ms U...AII ... in the last version of their submissions, request the interim relief judge of the Council of State, ruling on the basis of Article L. 521-2 of the Code of Administrative Justice:

1°) to order without delay any holder of the competent regulatory power to take all appropriate measures to allow, at least partially, an immediate exercise of freedom of worship and religious freedom in religious establishments throughout the national territory, or within the departments of Bas-Rhin, Haut-Rhin and Moselle, or within the territorial jurisdiction of the Parish of Saint-Bernard in Metz Plantières, in particular by temporarily suspending the provisions of article 8, paragraph III, of Decree No. 2020-545 of 11 May 2020 and article 10 of Decree No. 2020-548 of 11 May 2020 that duplicated the same, for the period that it shall determine and at least until the absolute nature of the infringement of freedom of worship and

NE VARIEZ-LEZ PAS
Madejda BIDAULT
Traductrice assermentée, langue anglaise
Expert près la Cour d'Appel de Rouen
N° 2020/6-221
Le 22.02.2020 **283**

religious freedom within religious buildings is adjusted by regulations in compliance with the principle of necessity, the principle of proportionality and the principle of reality;

(2) to order notification of the order to be made to Mr. AZ . AK..., bishop of the diocese of Metz, domiciled at 15 place Sainte-Glossinde, 57000 Metz;

(3) to enjoin any holder of the competent regulatory power to take within eight days all necessary measures aimed, during the state of emergency, at providing for derogations from the absolute prohibition on the exercise of freedom of worship and religious freedom in places of worship, and in particular by laying down the terms and conditions in compliance with the principle of necessity, and the principle of proportionality, and the principle of reality, throughout the national territory, or within the departments of Bas-Rhin, Haut-Rhin and Moselle, or within the territorial jurisdiction of the Parish of Saint-Bernard in Metz Plantières;

4°) To order the State to pay the amount of € 5000 on the basis of article L. 761-1 of the Code of Administrative Justice;

They contend that:

- they have standing to bring this claim;
- the condition of urgency is met having regard, first, to the total prohibition on the free, public and community-based exercise of worship and the prohibition on receiving the sacraments, second, to the interest which the celebration of worship represents for society as a whole, third, to the date of 21 May 2020 set for the Sacrament of Confirmation in their parish and, fourth, to the importance of the celebration of worship and the sacraments for Catholics;
- there is a serious and manifestly unlawful infringement of the freedom of worship, religious freedom, the freedom of the Catholic Church to organise worship in the departments of Bas-Rhin, Haut-Rhin and Moselle, the publicity of worship and the freedom to practice religion ;
- the disputed provisions infringe Article 1 of the Convention of 26 Messidor year IX since they restrain the practice of worship for a reason not provided for in it;
- they disregard Article 9 of the organic articles of the Convention of 26 Messidor, An IX, since they interfere in the organization of the worship reserved to the exclusive competence of the ministers of religion;
- the arrangements in the exercise of worship are possible to guarantee both the free exercise of worship, the free religious practice, and the compliance with sanitary measures;
- the contested provisions infringe Articles 9 and 14 of the European Convention for the Protection of Human Rights and Fundamental Freedoms by making distinctions based on religion and belief.

In the intervention registered on 5 May 2020, Mr. L... AR... asks the interim relief judge at the Council of State to grant the conclusions presented by the applicants and to enjoin the Prime Minister to take the measures necessary for the free exercise of religions as from 11 May 2020. He maintains that his intervention is admissible as he has an interest to intervene, as the condition of urgency is met since an unjustified infringement of freedom of worship is imminent and that the prohibition of public worship in religious establishments as from 11 May 2020, which does not take into account the possibility of compliance with barrier

gestures and measures of social distancing, is a serious and manifestly unlawful infringement of freedom of worship and of the principle of equality between men and women, and that the prohibition of public worship in religious establishments as from 11 May 2020, which does not take into account the possibility of compliance with barrier gestures and measures of social distancing, is a serious and manifestly unlawful infringement of freedom of worship and the principle of equality.

By a statement of defense and a memorandum registered on 7 and 12 May 2020, the Minister of Home Affairs concludes that the application shall be rejected. He submits, primarily, that the claims are inadmissible with regard to the jurisdiction of the interim relief judge and, in the alternative, that the condition of urgency is not satisfied with regard to the provisions of Decree No 2020-293 of 23 March 2020, and that no serious and manifestly unlawful infringement of freedom of worship has been committed.

In three interventions registered on 7 May 2020, Mr. B... X ... and Ms. V ... AI ..., Mr. O ... AB ... and Ms AS ... AF..., as well as Mr. AW... J... and Mr. Q... Z... ask the judge for interim procedures of the Council of State to grant the conclusions presented by the applicants and to enjoin the Prime Minister to take the necessary measures for the free exercise of religious worship as from 11 May 2020. They contend that they have interest to intervene, that the condition of urgency is met as starting from 11 May 2020, the freedom of worship will be impeded without legitimate reason while other places and activities will be allowed, and that the prohibition of public worship in places of worship as from 11 May 2020, which does not take into account the possibility of compliance with barrier gestures and social distancing measures, is a serious and manifestly unlawful infringement of freedom of worship and the principle of equality.

In an intervention registered on 14 May 2020, Mr. O... AB ..., Ms AS ... AJ..., Mr. AW... J..., MR Q... Z..., Mrs AS... AE... and Mr B... X ... ask the judge for interim measures at the Council of State to grant the applications filed by the applicants. In addition, they request the interim relief judge of the Council of State, ruling on the basis of Article L. 521-2 of the Code of Administrative Justice, to suspend the execution of Article 10 (III) of Decree No.2020-548 of 11 May 2020, to enjoin the Prime Minister to adopt, within 24 hours, any provisional and proportionate provisions and measures that may be necessary to enable worship to be carried out without waiting until the end of May, in compliance with the sanitary recommendations and standards required for public health and implemented under the sole responsibility of the owners and assignees of the religious buildings, and to order the State to pay the amount of € 2,500 on the basis of Article L. 761-1 of the Code of Administrative Justice. They contend that the condition of urgency is met in view of the forthcoming important religious holidays, and that Article 10 (III) of Decree No. 2020-548 of 11 May 2020 seriously and manifestly unlawfully infringes the free exercise of religion.

2° Under No. 440380, by application and memorandum registered on 4, 5, 7, 11, 12 and 13 May 2020 at the Litigation Secretariat of the Council of State, the association Civitas asks the interim relief judge of the Council of State, ruling on the basis of article L. 521-2 of the code of administrative justice :

1^o) to enjoin the Prime Minister or any competent authority to authorise any religious ceremony as from 11 May 2020, subject to restrictions strictly limited to public order, subject to a penalty of € 300 per day of delay as from the notification of the order to be rendered ;

2^o) to order the State to pay the amount of € 5,000 on the basis of Article L. 761-I of the Code of Administrative Justice.

It contends that:

- the Prime Minister's verbal decision of 28 April 2020 can be challenged in summary proceedings;
- the Council of State has jurisdiction to rule on this application in the first and last instance;
- it has an interest in taking legal action;
- the requirement of urgency is met since the contested decision shall apply from 11 May until at least 2 June 2020, that the extension of public health emergency is not a relevant criterion for justifying it, that the containment measures and the saturation of hospital structures are no longer relevant and, in any event, that the infringement of several fundamental freedoms constitutes an emergency *per se*;
- the contested decision is a serious and manifestly unlawful infringement of the freedom of conscience and religion, personal freedom, freedom of movement and freedom of assembly;
- the ban on holding religious ceremonies at least until 2 June 2020 constitutes a general and absolute ban which is neither appropriate, nor necessary, nor proportionate, since measures less restrictive of freedoms may allow religious ceremonies to be held in safety ;
- the contested decision is vitiated by lack of jurisdiction;
- it is insufficiently motivated.

In a statement of defense registered on 7 May 2020, the Minister of Home Affairs claims that the application should be refused. He contends that the contested statement by the Prime Minister of the 28 April 2020 is just a preparatory act for the regulatory provisions to be introduced and should not, *per se*, be regarded as having a legal impact or, *a fortiori*, be likely to infringe, in a serious and immediate manner, a fundamental freedom.

3^o Under No. 440410, by an application, a memorandum in reply and a new memorandum registered on 5, 8 and 13 May 2020 at the Litigation Secretariat of the Council of State, the Christian Democratic Party and Mr. AY... AC... request the interim relief judge of the Council of State, ruling on the basis of Article L. 521-2 of the Code of Administrative Justice:

1^o) to suspend the execution of Article 8 (IV) and (VII) of Decree No. 2020-293 of 23 March 2020 insofar as they prohibit any gathering or meeting within religious establishments, with the exception of funeral ceremonies within the limit of twenty persons, throughout the territory of the Republic ;

2^o) to suspend the execution of the Prime Minister's statement of 28 April 2020 insofar as it provides that it is legitimate to request not to organize any ceremonies before 2 June 2020;

3^o) to enjoin the State to lift the ban on gatherings or meetings in religious buildings, if necessary by adjusting the conditions under which religious ceremonies can take place, and to do this within two days from the order to be made, subject to a penalty of € 10,000 per day of delay as from the expiry of this period;

4^o) to suspend the execution of Article 10 (III) of Decree No. 2020-548 of the 11 May 2020 insofar as it provides for Type V religious establishments that "Any gathering or meeting within them is prohibited";

5^o) to order the State to pay the amount of € 5,000 on the basis of Article L. 761-1 of the Code of Administrative Justice.

They contend that:

- the President of the Christian democratic Party is regularly authorized to represent this political party by virtue of its Statute;
- the Christian Democratic Party and its President, in his personal capacity, justify an interest granting them the quality to take legal action;
- the condition of urgency is met in view, first, of the improvement in the sanitary situation, second, of the seriousness of the infringement on freedom of worship, and third, of the forthcoming holding of important religious holidays;
- the contested provisions and declaration constitute a serious and manifestly unlawful infringement of freedom of religion;
- the prohibition of religious celebrations throughout the national territory, with the exception of funeral ceremonies within the limit of 20 people, is clearly no longer proportionate in view of the intended objective of sanitary security, in particular in the departments least affected by the so-called covid-19 illness, and even though the so-called "un-lock-down" plan is progressive in nature;
- this prohibition is discriminatory in comparison with the regimes applicable from 11 May 2020 to other activities, whereas the circumstances specific to each place of worship only imply compliance with safety rules;
- the combined provisions of Articles 10 and 27 of Decree No. 2020-548, which respectively provide for the prohibition of all gatherings or meetings in places of worship and the possibility for the departmental prefect to pronounce such a prohibition, are vitiated by a lack of clarity that justifies the suspension of Article 10.

In a memorandum of defense registered on 7 May 2020, the Minister of Home Affairs concludes that the application should be refused. He maintains that the condition of urgency is not met with regard to the provisions of Decree No. 2020-293 of 23 March 2020 and the Prime Minister's declaration of 28 April 2020, that this declaration is merely a preparatory act for the regulatory provisions to be introduced and that, in any event, the "decisions" at issue do not constitute any serious and manifestly unlawful infringement of freedom of worship and the principle of non-discrimination.

4^o Under No. 440531, by an application and a memorandum in reply registered on 12 and 14 May 2020 at the Litigation Secretariat of the Council of State, the religious association Fraternité Sacerdotale Saint-Pierre, Mr. BC...-N..., Mr. AO.... AL..., the association Friends

of the Province of France of the Institute of Christ the King Sovereign Priest, Mr. K... Y..., Mr. D... AQ..., the congregation of La Fraternité Saint Vincent Ferrier and Mr. AA... BB... ask the interim relief judge of the Council of State, ruling on the basis of article L. 521-2 of the code of administrative justice:

1^o) to suspend the execution of the provisions of article 10 (III) of Decree no. 2020-548 of 11 May 2020 prescribing the general measures necessary to deal with the covid-19 epidemic in the context of the state of public health emergency, in that they prohibit any gathering or meeting in places of worship and limit the cereals to those that are not permitted in the place of worship.

2^o) to order any measures necessary to safeguard freedom of worship and, in particular, measures enabling freedom of worship to be exercised in compliance with the requirements of Article 1 and Annex 1 of Decree No. 2020-548 of 11 May 2020 and, in the alternative, to enjoin the Government to adopt, within 24 hours, any provisional and proportionate provisions and measures aimed to allow, without waiting until the end of the month of May, the exercise of worship in compliance with sanitary recommendations and standards, under the sole responsibility of the owners and assignees of the religious buildings;

3^o) to order the State to pay the amount of € 2,000 to each of the claimants on the basis of Article L. 761-1 of the Code of Administrative Justice.

They submit that:

- they justify an interest in taking legal action;
- the condition of urgency is met as public worship has ceased since two months, as the Catholic faithful have ceased to receive the sacraments, in particular that of communion, as there are no longer any Sunday quests which enable ministers of religion to live, to provide for the needs of worship and the running of the houses they are in charge of, as the feast of the Ascension shall take place on 21 May 2020, and as the general and absolute ban on worship is not sufficiently justified by sanitary considerations;
- the contested provisions are a serious and manifestly illegal infringement of freedom of worship;
- the maintenance of the general and absolute prohibition of all gatherings or meetings in places of worship for an indefinite period is not strictly necessary, proportionate and appropriate to the circumstances of time and place since relatively simple organisational measures would make it possible to comply with sanitary safety rules, that if meetings of fewer than ten persons are possible in public and private spaces, there is no justification for prohibiting them in places of worship, that if funeral ceremonies are permitted with fewer than twenty persons, there is no justification for refusing to allow services to be held with fewer than twenty persons, and that churches are not confined spaces but large buildings ;
- it is a serious and manifestly unlawful infringement of the principle of equality and non-discrimination, to the detriment of believers, since, in addition, activities which are less essential for many citizens are permitted;
- it seriously and manifestly infringes the principle of secularism since, in order to justify it, the government has assessed the necessity of worship.

In a memorandum of defense registered on 12 May 2020, the Minister of Home Affairs concludes that the application should be rejected. He contends that no serious and manifestly unlawful infringement of freedom of religion has been committed.

5° Under No. 440550 by application registered on 12 May 2020 at the Litigation Secretariat of the Council of State, the association General Alliance against Racism and for the Respect of French Identity and for the Respect of Christian Identity (AGRIF), Mr. S. F..., Mrs M... E... and Mr. AU... AX... are asking the interim relief judge of the Council of State, ruling on the basis of article L. 521-2 of the Code of Administrative Justice:

1°) to order the stay of the execution of the provisions of Article 10 (III) of Decree No. 2020-548 of 11 May 2020 prescribing the general measures necessary to deal with the covid-19 epidemic in the context of a public health emergency ;

2°) To order the State to authorize again, within establishments of worship, gatherings and meetings organised in the conditions that allow the compliance with the provisions of Article 1 of Decree No. 2020-548 of 11 May 2020;

3°) to order the State to pay the amount of € 4,000 on the basis of Article L. 761-1 of the Code of Administrative Justice.

They contend that:

- the condition of urgency is met as the prohibition on worship since 17 March is extended by the contested provisions for an indefinite period and as they have the spiritual need to attend mass and receive the sacraments of the Church;
- the contested provisions are a serious and manifestly unlawful infringement of freedom of worship;
- the maintenance of the ban on all gatherings or meetings in places of worship for an indefinite period of time, which is not accompanied by any capacity of derogation in favour of the State representative in the department, depending on local circumstances, is not proportionate since relatively simple organizational measures would make it possible to comply with public health safety rules.

In a memorandum of defense registered on 12 May 2020, the Minister of the Interior concludes that the application should be rejected. He maintains that no serious and manifestly unlawful infringement of freedom of religion has been committed.

6° Under No. 440562, by an application and a memorandum of defense, registered on 12 and 15 May 2020 at the Litigation Secretariat of the Council of State, Mr. C.. AT... asks to the interim relief judge of the Council of State ruling on the basis of Article L. 521-2 of the Code of Administrative Justice:

1^o) to suspend the execution of the provisions of III of Article 10 of Decree No. 2020-548 of 11 May 2020 prescribing the general measures necessary to deal with the covid-19 epidemic in the context of sanitary emergency ;

2^o) to enjoin the Prime Minister and the Minister of the Interior to adopt regulations restoring freedom of worship and the celebration of funerals, subject solely to the prescriptions known as "barriers" or "social distancing" comparable to those imposed in the framework of the restoration of various economic, cultural or other activities;

3^o) to order the State to pay the amount of € 135 euros under the terms of Article L. 761-1 of the Code of Administrative Justice.

He contends that:

- he has an interest to take legal action;
- the condition of urgency is met;
- the contested provisions constitute a serious and manifestly unlawful interference with freedom of worship;
 - the maintenance of the prohibition of all gatherings or assemblies in places of worship is not proportionate to the aim pursued, as there is no indication that it would be impossible to organize religious ceremonies in compliance with sanitary rules;
 - it disregards the principle of equality, on the one hand, to the detriment of believers, since, activities that are less essential for many citizens are permitted, and, on the other hand, between religions, since the Minister of the Interior has authorised festive neighbourhood gatherings for the break of a fast practiced in the Muslim religion is broken, and not the gathering of followers of other religions.

In a memorandum of defense registered on 13 May 2020, the Minister of the Interior concludes that the application should be rejected. He maintains that there is no serious and manifestly unlawful infringement of freedom of religion and the principle of non-discrimination.

7^o Under No. 440563, by an application and a memorandum in response registered on 12 and 14 May 2020 at the Litigation Secretariat of the Council of State, the association La Fraternité sacerdotale Saint-Pie X asked the interim relief judge of the Council of State ruling on the basis of Article L. 521-2 of the Code of Administrative Justice:

1^o) to stay the execution of the provisions of article 10 (III) of decree n^o 2020-548 of 11 May 2020 prescribing the general measures necessary to deal with the covid-19 epidemic in the context of the sanitary emergency ;

2^o) to order the Prime Minister to take, within forty-eight hours, all appropriate measures to allow the organisation of religious events, under proportionate sanitary safety

conditions, within religious buildings, on the one hand, and in public and private open-air spaces, on the other hand;

(3) to order the State to pay the amount of € 3,000 on the basis of article L. 761-1 of the Code of Administrative Justice.

It contends that:

- the condition of urgency is met since the general and absolute ban on gatherings and meetings in religious establishments has been in force for two months, the saturation of hospital structures is no longer relevant, and important religious holidays are due to be held in the near future;

- the disputed provisions constitute a serious and manifestly unlawful infringement of the freedom of expression or freedom of opinion;

- the ban on religious celebrations within buildings of worship, for an indefinite period, is disproportionate since it is possible to organise gatherings of the faithful in compliance with the rules of social distancing, since ministers of religion are able to impose compliance with these rules, since the limit of ten people is not justified, since funeral ceremonies can bring together twenty people, and since shops and schools can once again receive the public;

- the prohibition of open-air religious services in public and private spaces for an indefinite period of time is disproportionate since gatherings of 50, 100 or 300 persons practicing a sporting activity are admitted.

In a memorandum of defense, registered on 13 May 2020, the Minister of the Interior concludes that the application should be rejected. He maintains that there is no serious and manifestly unlawful infringement of freedom of religion and the principle of non-discrimination.

8° Under No. 440590, by application registered on 13 May 2020 at the Litigation Secretariat of the Council of State, Ms T. IL... applied to the interim relief judge of the Council of State ruling on the basis of Article L. 521-2 of the Code of Administrative Justice:

1°) to enjoin the Prime Minister to abrogate Article 10 (III) of Decree No. 2020-548 of 11 May 2020 prescribing the general measures necessary to deal with the covid-19 epidemic in the context of the sanitary emergency as it prohibits any gathering or meeting within religious establishments and limits funeral ceremonies to twenty persons ;

2°) to enjoin the Prime Minister to abrogate the C. of II of Article 27 of Decree No. 2020-548 of 11 May 2020 as it allows the Prefect of the Department to prohibit any gathering or meeting within religious establishments, with the exception of funeral ceremonies within the limit of twenty persons;

3°) to enjoin the Prime Minister to extend to religious establishments the application of Article 7, paragraph 2, of Decree No. 2020-548 of 11 May 2020 allowing religious establishments to receive more than ten persons, in compliance with the provisions applicable to them and under conditions allowing to comply with the provisions of Article 1 of the Decree of 11 May 2020 to be complied with.

She maintains that :

- she has an interest in taking legal action;
- the condition of urgency is met since there is a serious and manifestly unlawful infringement of her freedom of thought, conscience, religion and worship and since she is prohibited from practicing her religion individually or collectively, in private or in public ;
- the contested provisions constitute a serious and manifestly unlawful infringement of the freedom of thought, conscience, religion and worship;
- the absolute prohibition of any gathering or meeting in places of worship is neither prescribed by law nor necessary or proportionate;
- it is discriminatory.

In a memorandum of defense registered on 14 May 2020, the Minister of the Interior concludes that the application should be rejected. He contends, principally, that the applications are inadmissible having regard to the office of the interim relief judge and, in the alternative, that there is no serious and manifestly unlawful infringement of freedom of worship and the principle of non-discrimination.

The applications have been disclosed to the Prime Minister, who did not submit any observations.

Having regard to the other documents in the files;

- Having regard to
- the Constitution;
 - the European Convention for the Protection of Human Rights and Fundamental Freedom
 - the Convention of 26 Messidor Year IX and its organic articles ;
 - the Public Health Code;
 - Law of 18 germinal year X relating to the organization of the cults;
 - Law of December 9, 1905 concerning the separation of the Churches and the State;
 - Law of 17 October 1919 relating to the transitional regime of Alsace and the Lorraine;
 - Law of 1 June 1924 implementing French civil legislation in the departments of Bas-Rhin, Haut-Rhin and Moselle ;
 - the ordinance of 15 September 1944 on the restoration of republican legality in the departments of Bas-Rhin, Haut-Rhin and Moselle;
 - Law n° 2020-290 of 23 March 2020;

A handwritten signature in blue ink is written over a blue circular stamp. The stamp contains the text 'Madefra BIGALIT' and 'Boutman'.

- Law n° 2020-546 of 11 May 2020;
- Decree n° 2020-293 of 23 March 2020;
- Decree n° 2020-545 of 11 May 2020;
- Decree n° 2020-548 of 11 May 2020;
- the Code of administrative justice and Ordinance n° 2020-305 of 25 March 2020;

Having summoned to a public hearing, on the one hand, Mr. W... and others, Mr. AR..., Mrs AL..., Mr. AB... and others, the Civitas association, the Christian Democratic Party and others, the AGRIF and others, the religious association Fraternité sacerdotale Saint-Pierre and others, Mr. AT..., the association The Priestly Fraternity of St. Pius X, Mrs. H... and, on the other hand, the Prime Minister and the Minister of the Interior ;

Were heard at a public hearing on 15 May 2020, at 2:30 p.m:

- Mr. Le Bret, attorney at the Council of State and the Court of Cassation, attorney of M. W... and others and of the religious association Fraternity of St. Peter and others ;
- Mr. Le Griel, Attorney at the Council of State and the Court of Cassation, attorney for the Christian Democratic Party and others, for the AGRIF and others, and for Mr. AT... ;
- Me Gaschignard, attorney at the Council of State and the Court of Cassation, attorney for the association La Fraternité sacerdotale Saint-Pie X ;
- Mr. Perier, attorney at the Council of State and the Court of Cassation, attorney for Mr. AB... and others and Mrs. H... ;
- ...the representative of Mr. W... and others;
- the representative of the religious association of the Priestly Fraternity of St. Peter and
- the representative of the association The Priestly Fraternity of St. Pius X ;
- the representative of the association Civitas;
- Mr. AY... AC ;

- Mrs. T... H... ;

- the representatives of the Minister of the Interior;

at the end of which the interim relief judge closed the investigation.

Considering the following:

1. Article L. 511-1 of the Code of Administrative Justice provides that: *“The interim relief judge shall rule by measures which are of a provisional nature. The main proceedings shall not be referred to him and he shall give his decision as soon as possible”*. According to Article L. 521-2 of the same code: *“On receipt of an application to this effect justified by urgency, the interim relief judge may order any measures necessary to safeguard a fundamental freedom which a public legal entity or a private entity in charge of managing a public service has, in the exercise of one of its powers, seriously and manifestly unlawfully infringed. The interim relief judge shall give a ruling within 48 hours”*.

2. The above mentioned applications are submitted, pursuant to article L. 521-2 of the Code of Administrative Justice, by individuals, some of whom are Catholics residing in Moselle, a political party and associations. They relate to the arrangements under which religious ceremonies may be organised, particularly in religious establishments, during the current period of sanitary emergency. They set out the same issues to be ruled on, and they should be joined together to rule on by a single ordinance.

3. Mr. AR..., Mr. AB..., Ms AJ..., Mr. J..., Mr. Z..., Ms AL..., Ms AI... and Mr. X... show sufficient interest to intervene in support of the application registered under n° 440366. Thus, their interventions are admissible.

On the circumstances:

4. The emergence of a new coronavirus (covid-19), pathogenic and particularly contagious, and its spread on French territory led the Minister of Solidarity and Health to take, by several ordinances as of 4 March 2020, measures on the basis of the provisions of Article L. 3131-1 of the Public Health Code. In particular, by an order of 14 March 2020, a large

number of establishments receiving the public were closed to the public, gatherings of more than 100 people were banned and the reception of children, pupils and students in establishments receiving them and in schools and universities was suspended. Then, by a decree of 16 March 2020 motivated by the exceptional circumstances arising from the covid-19 epidemic, amended by a decree of 19 March, the Prime Minister prohibited any person from moving out his or her home, subject to a limited number of exceptions which must be duly justified, as of 17 March at noon, without prejudice to stricter measures which may be ordered by the State representative in the department. The Minister of Solidarity and Health has taken additional measures by several successive decrees.

5. The legislator, by Article 4 of the Emergency Law of 23 March 2020 to deal with the covid-19 epidemic, declared a state of public health emergency for a period of two months from 24 March 2020 and then, by Article 1 of the Act of 11 May 2020 extending the state of public health emergency and supplementing its provisions, extended this state of public health emergency until 10 July 2020 inclusive. By a decree of 23 March 2020 issued on the basis of Article L. 3131-15 of the Public Health Code resulting from the Law of 23 March 2020, which has been amended and supplemented several times since then, the Prime Minister reiterated the measures previously ordered, while providing additional clarifications or restrictions. By a first decree of 11 May 2020, applicable as from 11 and 12 May 2020, the Prime Minister abrogated most of the measures previously ordered by the decree of 23 March 2020 and took new ones. Finally, by a second decree of 11 May 2020, issued on the basis of the Law of 11 May 2020 and abrogating the previous decree, the Prime Minister prescribed new general measures necessary to deal with the covid-19 epidemic within the framework of the state of public health emergency.

On the office of the interim relief judge and the fundamental freedom at stake :

6. In the current period of a state of public health emergency, various competent authorities shall take, in order to safeguard the health of the population, all the measures likely to prevent or to limit the effects of the epidemic. Such measures, which may restrict the exercise of fundamental rights and freedoms, must, to that extent, be necessary, appropriate and proportionate to the objective of safeguarding public health which they pursue.

7. It follows from the combination of the provisions of Articles L. 511-1 and L. 521-2 of the Code of Administrative Justice that the interim relief judge, when a case is referred to him on the basis of Article L. 521-2 of the Code of Administrative Justice and when he finds that a legal entity governed by public has committed a serious and manifestly unlawful infringement of a fundamental freedom resulting from the action or failure to act of that public entity, shall prescribe measures which are likely to eliminate the effects of that infringement where there exists a situation of characterized emergency justifying the pronouncement of protective measures at very short notice and where it is possible to usefully take such measures. Such measures must, in principle, be of a provisional nature, unless when no such measure is likely to safeguard the effective exercise of the fundamental freedom infringed.

8. According to article 10 of the Declaration of the Rights of Man and of the Citizen of 1789: "No one shall be disturbed on account of his opinions, including religious ones, as long as the manifestation of such opinions does not interfere with the public order established by law". According to article 9 of the European Convention for the Protection of Human Rights and Fundamental Freedoms:

"1 - Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief, and freedom, either alone or in community with others and in public or private, to manifest his religion or belief, in worship, teaching, practice and observance. / 2 - Freedom to manifest one's religion or belief shall be subject only to such limitations as are prescribed by law and are necessary in a democratic society in the interests of public safety, for the protection of public order, health or morals, or for the protection of the rights and freedoms of others".

9. According to article 1 of the Law of 9 December 1905 on the Separation of Church and State: *"The Republic guarantees freedom of conscience. It guarantees the free exercise of worship subject only to the restrictions set out below in the interest of public order"*. According to article 25 of the same Law: *"Meetings for the celebration of worship held in premises belonging to or placed at the disposal of a religious association shall be public. They are exempt from the formalities of article 8 of the Law of 30 June 1881, but remain under the supervision of the authorities in the interest of public order"*.

10. According to the provisions of Article 1 of the Convention concluded in Paris on 26 Messidor, Year IX, between the Pope and the French Government, which is applicable to the Catholics of Alsace and Moselle as the Convention was promulgated and made enforceable, with its organic articles, as laws of the Republic by the law of 18 Germinal X, year X, relating to the organisation of religions, and then, remained applicable in the departments concerned, following, in particular, the law of 17 October 1919 relating to the transitional regime of Alsace and Lorraine and the law of 1st June 1924 bringing into force French civil legislation in the departments of Bas-Rhin, Haut-Rhin and Moselle: *"The Catholic, apostolic and Roman religion shall be freely exercised in France. Its worship shall be public, and compliant to such police regulations as the Government deems necessary for public tranquility"*. According to the terms of organic article IX of this convention: *"Catholic worship shall be exercised under the direction of the archbishops and bishops in their dioceses, and under that of the parish priests in their parishes"*.

11. The freedom of worship has the character of a fundamental freedom. As it is regulated by law, this freedom is not limited to the right of every individual to express the religious convictions of his choice in accordance with public order. It also includes, among its essential components, the right to participate collectively, under the same conditions, in ceremonies, particularly in places of worship. Freedom of worship must, however, be reconciled with the objective of protecting health which is of constitutional value.

On the submissions against Decree No. 2020-293 of 23 March 2020:

12. Under the terms of IV of article 8 of the decree of 23 March 2020 prescribing the general measures necessary to deal with the covid-19 epidemic in the context of the state of health emergency: *“Cult establishments falling under category V are authorized to remain open. Any gathering or meeting within them is prohibited, except for funeral ceremonies up to a limit of 20 persons”*.

13. Since these provisions were abrogated by the first decree of 11 May 2020 referred to in paragraph 5, the conclusions presented against them under n° 440410 by the Christian Democratic Party and Mr. AC... ..are deprived of purpose. There is, therefore, no need to rule on these submissions.

On the submissions against the statement of the Prime Minister of 20 April 2020

14. Under the terms of article 50-1 of the Constitution: *“Before either of the Assemblies, the Government may, on its own initiative or at the request of a parliamentary group within the meaning of article 51-1, make a statement on a given subject, which shall give rise to debate and may, if it so decides, be voted on without incurring its liability”*.

15. It follows from the investigation that in submitting to the National Assembly, on the 28 April 2020, the national strategy of the “un-lock-down” plan as part of the fight against the covid-19 epidemic, which then gave rise to a debate and a vote pursuant to Article 50-1 of the Constitution, the Prime Minister said :

“As for places of worship, I know how impatient religious communities are. Places of worship can continue remaining open. But I believe it is legitimate to ask that no ceremonies be held before June 2nd”. These remarks, that referred to the modalities of application in time of future measures, and that were, moreover, qualified during the declaration made before the Senate on 4 May 2020 where the Prime Minister indicated that *“if the public health situation does not deteriorate during the first weeks of the lifting of the lock-down, the Government is ready to study the possibility that religious services can resume from 29 May”*, cannot be challenged before the administrative judge, independently of the measures in question.

On the submissions against Decree No. 2020-545 of 11 May 2020 :

16. Under the terms of III of article 8 of the decree of 11 May 2020 prescribing the general measures necessary to deal with the covid-19 epidemic in the context of the state of public health emergency: *“Religious establishments falling under type V are authorized to remain open. Any gathering or meeting within them is prohibited. / Funeral ceremonies are permitted within the limit of twenty persons, including in the places mentioned in the previous paragraph”*.

17. Since these provisions were abrogated by the second decree of the 11 May 2020 referred to in paragraph 5, the conclusions presented against them, under n° 440366 by Mr.

W... and others, are deprived of purpose. There is, therefore, no need to rule on these submissions.

On the submissions against Decree No. 2020-548 of 11 May 2020:

As to the applicable provisions:

18. According to the terms of Article L. 3131-15 of the Public Health Code, as amended by Law n° 2020-546 of 11 May 2020: *“I - In territorial circumscriptions where a state of public health emergency is declared, the Prime Minister may, by regulatory decree issued on the report of the Minister in charge of health, for the sole purpose of guaranteeing public health: / (...) / 5° Order the temporary closure and regulate the opening, including the conditions of access and presence, of one or more categories of establishments receiving the public as well as meeting places, guaranteeing the access of persons to essential goods and services; / (...) / III. - The measures prescribed pursuant to this Article shall be strictly proportionate to the public health risks involved and appropriate to the circumstances of time and place. They shall be terminated without delay when they are no longer necessary”.*

19. Having noted that the meeting places referred to in 5° of I of article L. 3131-15 of the Public Health Code do not extend to premises used for residential purposes, the Constitutional Council, in its decision n° 2020-80 DC of 11 May 2020, declared these provisions to be compliant to the Constitution, holding that the legislator had achieved a balanced reconciliation between the objective of public health protection that is of constitutional value and the respect for the rights and freedoms recognized for all those residing within the territory of the Republic.

20. Under the terms of Article 1 of the Decree of 11 May 2020 prescribing the general measures necessary to deal with the covid-19 epidemic in the context of the state of public health emergency: *“In order to slow down the spread of the virus, the hygiene measures defined in Annex 1 to this Decree and social distancing measures, including physical distancing of at least one meter between two people, known as “barriers”, defined at national level, must be observed in all places and under all circumstances. / The gatherings, meetings, activities, receptions and travels as well as the use of means of transport which are not prohibited by virtue of the present decree shall be organised in strict compliance with these measures”.*

21. According to the terms of article 7 of the decree referred to in point 20: *“Any gathering, meeting or activity other than professional ones on the public road or in a public place involving more than 10 persons simultaneously shall be prohibited throughout the territory of the Republic. Where it is not prohibited by these provisions, it shall be organized in such a way as to ensure compliance with the provisions of article 1. / The provisions of the first paragraph shall not prevent establishments receiving the public that fall within the*

meaning of Chapter III of Title II of Book I of the Building and Housing Code, in which the reception of the public is not prohibited pursuant to Article 10, from receiving a number of persons greater than that determined therein, in compliance with the provisions applicable to them and under conditions that enable the provisions of Article 1 to be complied with. The provisions of the first paragraph shall not apply in passenger transport services. (...)”.

22. According to the terms of Article 10 of the Decree referred to in point 20: “I - I^o Establishments receiving the public falling within the types of establishments defined by the regulations adopted pursuant to Article R. 123-12 of the Building and Housing Code and listed below may not receive the public: / - Type L establishments: hearing, conference, meeting, show or multiple-use rooms, except for courtrooms, auction rooms and daytime reception of persons in precarious situations and social centers; / - Type N establishments: Restaurants and pubs, except for their delivery and take-away activities, room service in hotel restaurants and bars and collective catering; / - Type P establishments: Dance halls and game rooms; / - Type T establishments: Commercial establishments intended for exhibitions, trade fairs or temporary exhibitions; / (...) / Type PA establishments: Outdoor establishments, except those in the heart of the city; / (...) / Type C establishments: Commercial establishments intended for the use of the public; / - Type D establishments: Commercial establishments intended for the use of the public; / - Type E establishments: Commercial establishments intended for the use of the public; / (...) / Type I' establishments: Commercial establishments intended for the use of the public; / (...) / Type F establishments: Commercial establishments intended for the use of the public; / (...) / Type F establishments: Commercial establishments intended for the use of the public in which the physical and sporting activities mentioned in IV of this Article are practiced and under the conditions laid down therein, as well as freshwater fishing; for such establishments, the provisions of the first paragraph of Article 7 shall not prevent from receiving a greater number of persons, in compliance with the provisions applicable to them and under conditions such as to permit compliance with the provisions of Article 1 and to prevent any grouping of more than ten persons; / III. - The establishments of worship, type V, are allowed to remain open. Any gathering or meeting within them is prohibited. / Funeral ceremonies are authorised within the limit of twenty persons, including in the places mentioned in the previous paragraph. ».

23. According to the terms of Article 27 of the Decree mentioned in point 20: “By way of derogation from the provisions of Articles 3 and 7 to 15, the Prefect of the Department may, where justified by developments in the public health situation and for the sole purpose of combating the spread of the virus, take the measures set out in the following provisions./ (...) / C. - Prohibit all gatherings or meetings within religious establishments, with the exception of funeral ceremonies up to the limit of twenty people”. It does not result from these provisions, which concern the case where it would appear necessary to carry out partial “relock-downs”, that they may be regarded as having the effect of holding gatherings and meetings in places of worship as being authorised.

With regard to urgency:

24. It results from the investigation that, since the entry into force of Decree of the 23 March 2020 mentioned in point 12, the establishments of worship remained open and the faithful can go there individually. However, they may not gather or meet together there, except for funeral ceremonies with a limit of 20 people. The faithful may thus only take part in non-funeral ceremonies held there behind closed doors by means of retransmissions, including for the important celebrations that took place in spring in the three religions that have the largest number of faithful in France. As a result, and in view of the improvement in the public health situation which justified the un-lock-down, the condition of a genuine emergency, which is provided for in the above-mentioned provisions, must be regarded as having been met, and the Minister of the Interior does not challenge this.

With regard to the existence of a serious and manifestly unlawful infringement of a fundamental freedom in religious establishments :

25. The applicants submit, in particular, that, although the circumstances specific to each place of worship require compliance with security rules, the prohibition of religious celebrations throughout the national territory, except for funeral ceremonies limited to a maximum of 20 persons, is, despite the progressive nature of the so-called “un-lock-down plan” is disproportionate to the objective of public health security, particularly if one compares this prohibition with the regimes applicable to other activities, especially in the departments least affected by the so-called covid-19 disease.

26. It appears that since the coronavirus, which causes the so-called covid-19 disease, is transmitted via inhalation, the risk of contamination is higher in closed spaces than in open spaces, if people have close and prolonged contact and when they emit more droplets. While it is also possible to become contaminated through surfaces on which the virus has deposited, gatherings and meetings are the main cause of its spread. The effects of the above-mentioned risk factors can, however, be mitigated by the safety rules that are applied during gatherings and meetings.

27. Therefore, ceremonies of worship which constitute gatherings or meetings within the meaning of the contested provisions expose participants to a risk of contamination, which is all the greater where they take place in closed premises that are of limited size, for a long period of time, with a large number of people, are accompanied by prayers recited aloud or by singing, by ritual gestures involving contact, by moving or by exchanges between participants, including around the ceremonies themselves and, lastly, where the safety rules applied are insufficient.

28. The circumstance, put forward by the Minister of the Interior to justify the contested provisions, that a religious gathering of more than 1,000 participants from all over France between 17 and 24 February 2020 near Mulhouse, that is to say, approximately one month before the beginning of the so-called “lock-down” period, caused a large number of contaminations which themselves contributed to the massive spread of the virus in the Great-

East region and beyond, illustrates the importance of the above-mentioned risk, not only for the faithful but also for the population as a whole.

29. Therefore, the need to regulate, pursuant to article L. 3131-15 of the Public Health Code, for public health purposes, the conditions of access to and presence in religious establishments, which cannot be regarded as ensuring access to essential goods and services within the meaning of these provisions, is established, in particular at the beginning of the so-called "un-lock-down" period.

30. However, it is not disputed, first of all, that the gathering referred to in point 28 is not representative of all the ceremonies of worship, that it combined a large number of the risk factors referred to above and that it was held on a date on which no specific safety rules were applied or even recommended as regards contamination by the coronavirus and when, as regards subsequent chains of contamination, the arrangements, in particular as regards screening, were out of all proportion to what they have become.

31. Secondly, the Decree of 11 May 2020, the provisions of which are disputed, provides, for many activities which do not necessarily present a risk equivalent to that of religious ceremonies but for which that risk is also based on the factors set out in paragraph 25, for less restrictive regimes for public access, in particular:

- passenger transport services which are not subject, having regard to the economic constraints of their operation, to a limit of ten persons for any gathering and meeting on the public road or in a public place, while such gatherings and meetings may not be held in places of worship, even within that limit, except for funeral ceremonies ;

- and selling shops and shopping centers, educational establishments and libraries which may, for economic, educational and cultural reasons, receive the public in accordance with the provisions applicable to them and under conditions such as to enable the compliance with to the provisions of Article 1, which, in the light of the opinion of the High Council for Public Health of 24 April 2020, imply a contactless space of about 4 m² per person.

32. Thirdly, if, during the first phase of "un-lock-down", gatherings and meetings are not permitted in establishments receiving the public other than places of worship, pursuant to 1° of I of article 10 of the contested decree, the activities carried out there are not of the same nature and the fundamental freedoms at stake are not the same.

33. Fourthly and lastly, it results from the investigation, and in particular from the statements made at the hearing by the administration, that the prohibition of all gatherings or meetings in places of worship, with the sole exception of funeral ceremonies involving fewer than 20 persons, was essentially motivated by the desire to limit, during an initial phase of "un-lock-down", the activities which in themselves present a higher risk of contamination, and on the other hand, it was neither because of any difficulty in drawing up safety rules adapted to the activities in question - some religious institutions having submitted proposals on the subject several weeks ago - nor because of the risk that those in charge of religious establishments might not be able to ensure that they are complied with or that the State

authorities might not be able to exercise effective control in this area, nor, again, because of the inadequate availability, during this initial phase, of the system for dealing with chains of contamination.

34. In these circumstances, the applicants are well grounded to contend, without any need to rule on their other arguments, that the general and absolute ban imposed by Article 10(III) of the contested decree on any gathering or assembly in places of worship, with the sole exception of funeral ceremonies for which the presence of twenty persons is permitted, is, as the investigation stands, while less strict control measures are possible, in particular with regard to the tolerance of gatherings of fewer than 10 persons in public places, disproportionate to the objective of preserving public health and thus constitutes, having regard to the essential nature of this component of freedom of worship, a serious and manifestly unlawful infringement of the latter.

35. It results from the investigation, and in particular from the statements made at the hearing by the representative of the Minister of the Interior, that additional measures might become necessary if the contested provisions were to be suspended, in order to adapt the general rules laid down in the Decree, in particular in article 1 and annex I, to the specific features of religious activities.

36. Therefore, the applicants are admissible, in the absence of any alternative to safeguard freedom of worship, and are well grounded to request that the Prime Minister be enjoined to amend, pursuant to Article L. 3131-15 of the Public Health Code, the provisions of III of Article 10 of Decree No 2020-548 of 11 May 2020, by taking measures that are strictly proportionate to the public health risks incurred and appropriate to the circumstances of the time and place applicable at the beginning of the “un-lock-down”, to regulate gatherings and meetings in places of worship. In view of the consultation required with the representatives of the main religious denominations, a period of eight days should be set, in the circumstances of the case, from the notification of this order.

With regard to other places :

37. The Association of the Priestly Fraternity of Saint Pius X further claims that the Prime Minister should be enjoined to take measures to allow the organization of religious events in public and private open-air spaces.

38. With regard to open-air public spaces not falling within the scope of places of worship, the association does not provide any evidence to show that the prohibition of any gathering, meeting or activity in a non-business capacity on the public highway or in a public place attended by more than 10 people at the same time, which is imposed by article 7 of the Decree referred to in paragraph 21, would, in general or with regard to religious activities in particular, constitute a serious and manifestly unlawful infringement of a fundamental freedom.

39. With regard to private open-air spaces, it results from the investigation, and in particular from the discussions held at the hearing, that, unlike residential premises, which are expressly excluded from the abovementioned ban on assembly, the regime applicable to such spaces when they are used for religious purposes, in particular where they constitute establishments open to the public or are likely to be reclassified as such, is, as the provisions referred to in paragraph 22 stand, uncertain. Having regard, however, to the effects of this Ordinance on gatherings and meetings in places of worship, it has not been established, at the stage of the investigation, that this uncertainty, that the Prime Minister shall remedy, constitutes a serious and manifestly unlawful infringement of freedom of worship.

40. Accordingly, the submissions referred to in paragraph 37 must be rejected.

41. In the circumstances of the present case, the State should be ordered to pay for each of the applications under numbers 440366, 440380, 440410, 440531 and 440550, 440563 and 440590 the amount of € 500, to be shared as appropriate between the applicants, on the basis of the provisions of Article L. 761-1 of the Code of Administrative Justice. These provisions, on the other hand, preclude a sum from being paid, first, to Mr. AB..., Ms AJ..., Mr. J..., Mr. Z..., Ms AL... and Mr. X... who intervened voluntarily in support of Application No 440366, and, second, to Mr. AT... who does not show that he has incurred expenses not included in the costs.

ORDERS :

Article 1: The interventions of Mr. AR..., Mr. AB..., Mrs. AJ..., Mr. J..., Mr. Z..., Mrs. AL..., Mrs. AL... and Mr. X..., under n° 440366, are admitted.

Article 2: There should be no ruling on the submissions of the applications submitted under n° 440410 by the Christian Democratic Party and others and under n° 440366 by Mr W... and others for suspension of the execution of, respectively, Article 8 of Decree No. 2020-293 of 23 March 2020 and Article 8 of Decree No. 2020-545 of 11 May 2020.

Article 3: The Prime Minister is enjoined to amend, within eight days of notification of this Order, pursuant to Article L. 3131-15 of the Public Health Code, the provisions of III of Article 10 of Decree No. 2020-548 of 11 May 2020, by taking measures strictly proportionate to the public health risks incurred and appropriate to the circumstances of time and place applicable at this beginning of "un-lock-down", to regulate gatherings and meetings in places of worship.


Nadège HIDALGO
Présidente du
Conseil d'Etat

Article 4: The State shall pay for each of the applications filed under numbers 440366, 440380, 440410, 440531, 440550, 440563 and 440590, the amount of € 500, to be divided, if necessary, between the claimants, based on the provisions of Article L. 761-1 of the Code of Administrative Justice.

Article 5: The remainder of the applications is rejected.

Article 6: This order shall be notified to Mr. G. W..., the first named applicant, to Mr. L... AR..., to Ms. V... AL..., to Mr. O... AB..., the first named intervener, the association Civitas, the Christian Democratic Party, the first named applicant, the association Alliance Générale contre le racisme et pour le respect de l'identité française et pour le respect de l'identité chrétienne, the first named applicant, the religious association Fraternité sacerdotale Saint-Pierre, the first named applicant, Mr. C... AT..., to the association La Fraternité sacerdotale Saint-Pie X, to Mrs. T... IL... and to the Minister of the Interior.

A copy shall be sent to the Prime Minister.


YVELINE BIGAULT
Ministre de l'Intérieur

IN THE NAME OF THE PEOPLE

In the proceedings on the petition

to allow the petitioner – **by way of a preliminary injunction** – to perform Friday prayers in its mosque ..., in the period from 1 May to 23 May 2020, subject to compliance with the provisions of Sections 2,8 and 9 of the Lower Saxony Regulation on Protection against New Coronavirus Infections of 17 April 2020 as amended by the Amendment Regulation of 24 April 2020.

Petitioner: F... e.V.,

- authorised representatives: ... -

1. ... -

the 2nd Chamber of the First Senate of the Federal Constitutional Court with the participation of

the Justices Masing,

Paulus,

Christ

pursuant to Section 32(1) in conjunction with Section 93d(2) of the Act on the Federal Constitutional Court (BVerfGG) as published on 11 August 1993 (Federal Law Gazette p. 1473)

unanimously decided on 29 April 2020:

1. Enforcement of the prohibition of gatherings in churches, mosques and synagogues and the prohibition of gatherings of other faith communities for joint religious worship under no. 3 of sentence 1 of Section 1(5) of the Lower Saxony Regulation on Protection against New Coronavirus Infections of 17 April 2020 as amended by the Amendment Regulation of 24 April 2020, is provisionally suspended insofar as it excludes the possibility for allowing exceptions to the prohibition in individual cases.
2. The federal state of Lower Saxony shall reimburse the petitioner its necessary expenses.

Reasoning:

I.

1

The petitioner requests the issue of a preliminary injunction allowing it to perform Friday prayers in the mosque that it uses, in the period from 1 May to 23 May 2020, subject to compliance with the provisions under Sections 2, 8 and 9 of the Lower Saxony Regulation on Protection Against New Coronavirus Infections of 17 April 2020 as amended by the Amendment Regulation of 24 April 2020.

2

1. The petitioner is a registered association with roughly 1,300 members. It provides religious gatherings and services and intends, in particular, to perform Friday prayers in the remaining weeks of the Ramadan month of fasting in the mosque that it uses. The Lower Saxony Regulation on Protection Against New Coronavirus Infections of 17 April 2020 as amended by the Amendment Regulation of 24 April 2020 (hereinafter: Regulation) includes the following provisions:

Section 1

(1) Each individual shall reduce physical contact with other individuals not belonging to their own household to the absolute minimum.

(3) ¹The following shall be closed to the public and to visitors:

1. bars, clubs, cultural centres, nightclubs and similar establishments,

2. theatres, opera houses, concert halls, museums and similar establishments, irrespective of the respective responsible body or ownership,

3. trade fairs, exhibitions, cinemas, zoos, leisure parks and animal parks, cable cars and provision of leisure activities, special markets, amusement arcades, casinos, betting offices and similar establishments, both inside and outside of buildings,

4. prostitution facilities, brothels and similar establishments,

5. public and private sports facilities, swimming baths and water parks, fitness studios, saunas and similar establishments,

6. all playgrounds, including indoor playgrounds,

7. all retail sales outlets, including outlet centres and retail outlets in shopping centres, unless they are permitted under nos. 6 and 7 of Section 3.

²Sales outlets with a mixed product range that regularly includes goods that corresponds to that of the sales outlets listed in a) to t) of no. 7 of Section 3 are also permitted under no. 7 of sentence 1 if the goods are the main focus of the product range; if the goods concerned are not the main focus of the product range, then only the sale of said goods is permitted.

(5) ¹The following are prohibited:

1. gatherings at club facilities and other sport and leisure facilities, and participation in activities at adult education centres, music schools and other public and private educational establishments in the non-formal education sector,

2. short-term stays for tourism purposes

3. gatherings in churches, mosques, synagogues and gatherings of other faith communities, including gatherings in community centres,

4. all public events, excluding meetings of municipal bodies, working groups, party groups and groups, as well as meetings of the federal state parliament (Landtag) and its committees, working groups and party groups.

²The attendance of gatherings according to nos. 1, 3 and 4 of sentence 1, with the exclusion of meetings of municipal bodies, working groups, party groups and groups and meetings of the federal state parliament (Landtag) and of its committees, working groups and party groups is likewise prohibited.

(6) Events, gatherings and similar clusters of people with 1,000 or more participants, spectators and audience members (large events) will remain prohibited until the end of 31 August 2020; attendance of such large events is likewise prohibited.

3

2. The petitioner petitioned the Higher Administrative Court for the issue of a preliminary injunction under Section 47(6) of the Code of Administrative Court Procedure (VwGO) enabling it and its members to congregate in the mosque that it uses, for Friday prayers, in the weeks from 23 April to 23 May 2020, subject to compliance with Sections 2 and 8 of the old version of the Regulation.

4

It offered to ensure compliance with the safety measures under which retail outlets are permitted to open to the public. As specific measures, it refers to compliance with a minimum distance of 1.5 m between believers and, in addition, a reduction in the number of participants at each Friday prayers to 24 persons; the mosque in itself has capacity for 300 believers. It submits as follows: it largely knows the members of the community. As a result, it can invite the believers individually to particular Friday prayers, enabling queues in front of the mosque to be prevented. To ensure the safety distance is observed, floor markings will be applied. In addition, following consultation with the theological authorities, it has received permission to perform several Friday prayers on Fridays. Before entry to the mosque, ritual cleansing takes place, which can be performed using soap. Relevant washing facilities are available in the mosque. Believers will be asked to wear a mask. Door handles and similar surfaces will be disinfected and further disinfectants will be provided. The premises will be thoroughly aired. Under Islamic rules, believers who are ill are not permitted to participate in the joint prayers. The same naturally applies to Coronavirus infections. It will draw attention to that again. According to the teaching that it follows, no singing takes place during the service and the joint prayers are only spoken aloud by the Imam.

5

The Higher Administrative Court rejected the petition (Decision of 23 April 2020 - 13 MN 109/20 -).

II.

6

The petition for the issue of a preliminary injunction is admissible and justified to the extent set out in the operative part of this decision.

7

1. Under Section 32(1) of the Act on the Federal Constitutional Court (BVerfGG), in the case of dispute the Federal Constitutional Court may provisionally decide a matter by way of a preliminary injunction if this is urgently required to avert severe disadvantage, to prevent imminent violence or for another important reason in the interest of the common good. The reasons that are given for the unconstitutionality of the contested act of a state authority should, as a rule, not be considered, unless the constitutional complaint – which in this case is still to be made – is a priori inadmissible or clearly unfounded (cf. BVerfGE 112, 284 <291>; 121, 1 <14 f.>; settled case law). In the preliminary injunction proceedings under Section 32(1) of the Act on the Federal Constitutional Court (BVerfGG) the foreseeable likelihood of success of a constitutional complaint should be taken into consideration, if waiting would thwart the protection of basic rights (cf. BVerfGE 111, 147 <153>; BVerfGE, Decision of the 1st Chamber of the First Senate of 15 April 2020 - 1 BvR 828/20 15 April 2020 - 1 BvR 828/20 - para. 9 f.).

8

2. According to those criteria, the issue of a preliminary injunction is warranted to the extent set out in the operative part of this decision. A constitutional complaint against the decision of the Higher Administrative Court on rejection of the petition for issue of a temporary injunction under Section 47(6) of the Code of Administrative Court Procedure (VwGO) would likely be successful. Waiting until the end of the constitutional complaint proceedings or the end of the main proceedings would be highly likely to thwart the primary aim of the petitioner for its members to be able to gather during the Ramadan month of fasting for Friday prayers in the mosque that it uses and would rule out the possibility of joint prayers, as a significant form in which its religion is practised, for an extended period. Under those circumstances, the failure to grant preliminary legal protection would represent a severe disadvantage for the common good under Section 32(1) of the Act on the Federal Constitutional Court (BVerfGG) (cf. BVerfGE 111, 147 <153>).

9

3. The Higher Administrative Court reasoned that the petition made in the main proceedings under Section 47(1) of the Code of Administrative Court Procedure (VwGO) to declare the Regulation invalid to the extent that it prohibits the holding of religious services in mosques even subject to compliance with the hygiene rules listed in Sections 2 and 8 of the old version of the Regulation, will likely be unfounded, since the prohibition without exceptions is

unobjectionable. That reasoning cannot be accepted. In any case, according to the information currently available and strategies to combat the epidemiological risks, a total ban on religious services in mosques, without the possibility for permitting exceptions in individual cases, subject to conditions and restrictions specific to the situation – where applicable in consultation with the Health Authority – is likely not compatible with Article 4 of the Basic Law (GG).

10

a) The Higher Administrative Court chiefly based its rejection of the urgent petition on the following considerations: Spread of the illness must be slowed as much as possible to avoid overstraining the healthcare system. Social distancing is necessary for that purpose. Admittedly, the prohibition of joint Friday prayers during the Ramadan month of fasting without any exceptions represents a severe infringement of the religious freedom protected under Article 4 of the Basic Law (GG). Friday prayers are of central liturgical significance, especially during the Ramadan month of fasting. Furthermore, citing various passages from the Koran, the petitioner has demonstrated that under Islamic rules, “full” religious participation in the Friday prayers requires the physical presence of the believers.

11

Nevertheless, the prohibition of religious services in mosques to prevent infections remains necessary. The petitioner’s assumption that mosques, like retail outlets and shops, could be reopened under comparable restrictions and conditions (compliance with the distance rules and rules on numbers of persons in a given area applicable to shops and a relevant limit on the number of people with checks at the entrance, wearing of face masks, provision of disinfectants, ritual cleansing with soap) cannot be accepted. Gatherings in mosques would have a significantly higher risk potential than visits to retail outlets and shops if comparable safety measures were in place as prescribed by the Regulation for the opening of the latter. Religious services in mosques, unlike in a retail situation, involve targeted, joint activities of longer duration, with likely high virus emissions, especially due to individuals praying and singing at the same time. In particular, during the Ramadan month of fasting there is a risk that, due to the large numbers of believers and the confined space of many prayer rooms, that checks would fail and that safety distances would continuously be breached. Gatherings in mosques, churches and synagogues are therefore significantly more similar to events such as concerts, sporting events and leisure activities that remain prohibited or subject to strict restrictions than they are to shops, which are permitted to a significantly greater degree. That assessment is evidently also shared by the Muslim umbrella associations.

12

In view of the accordingly low chances of success of a judicial review petition in the main proceedings, the reasons for further implementation of the Regulation override the reasons named by the petitioner for the preliminary suspension of enforcement, although protection against severe infringements of basic rights is thereby thwarted. Without continued enforcement of the Regulation, the risk of infection with the virus, large numbers of people falling ill, overburdening of healthcare facilities in the treatment of severe cases and, in the worst-case scenario, people dying would significantly increase according to the information currently available.

b) aa) These arguments of the Higher Administrative Court are currently reasonable with respect to its rejection of a provisional opening of all mosques during this period subject to similar safety measures as for retail outlets. The court comes to that conclusion, although it accurately recognises the severe infringement of religious freedom protected under Article 4 of the Basic Law (GG), which the petitioner plausibly demonstrated with its explanation of the significance of Friday prayers during the Ramadan month of fasting. The assumption of the Higher Administrative Court that the regulator here did not have to suppose comparably uniform circumstances to those in the retail situation is unobjectionable. In the case of religious services held in mosques, assessment of the risk of infections through contact between individuals depends to a significantly greater extent on the specific circumstances of the given case. The petitioner itself notes that Islamic services differ considerably, depending on which teaching they are based upon. The petitioner submits that according to the teaching it follows, unlike in other mosque communities, no singing takes place during the Friday prayers and only the Imam prays aloud during the community prayers. According to the petitioner, the size, location and construction of the respective mosque and the size and structure of the religious community are also material to the risk assessment. The petitioner submits that it knows the vast majority of the roughly 1,300 members of its community, due to which it can invite believers individually to the respective Friday prayers, thereby allowing queues in front of the mosque to be prevented.

bb) However, in view of the severe infringement of religious freedom that the prohibition of religious services in mosques to prevent infections represents according to the petitioner's submission given that Friday prayers during the month of fasting Ramadan are also included, in the current risk situation and under the resulting present strategy to combat the epidemiological risks it is hardly reasonable that the Regulation does not provide for any possibility for such religious services to be held as an exception in individual cases, where thorough assessment of the specific circumstances – where applicable, with involvement of the relevant health authority – would allow a relevant increase in the risk of infection to be reliably ruled out. There is nothing to indicate that there cannot be such a positive assessment in specific cases.

The petitioner's submission indicates the possibilities that may be considered. Holding the Friday prayers in a manner depending on the teaching that is followed and conceivable measures to prevent crowds of people in front of the mosque have already been mentioned. The petitioner further notes here that, following consultation with the relevant theological authorities, it has received permission to perform several Friday prayers on Fridays in the mosque that it uses and thereby to keep the individual events very small. Further measures mentioned are a requirement for believers to wear a face mask covering the mouth and nose, the marking of positions in the mosque where believers can pray, and a fourfold increase in the safety distance compared to the rules applicable in shops to prevent a higher risk of infection compared to the situation in shops due to a larger group of people congregating for a longer period.

c) Based on the provisional and partial suspension of enforcement of the prohibition of gatherings in mosques as set out in the operative part of this decision, after a relevant petition has been submitted, as can now be submitted by the petitioner, the relevant authority should check – where applicable, in consultation with the relevant health authority – in the specific case whether religious services may, as an exception, be allowed to take place, subject to suitable specific conditions and restrictions, providing that a relevant increase in the risk of infection can be reliably ruled out. The weight of the infringement of religious freedom associated with the prohibition, which is particularly great with respect to Friday prayers during the Ramadan month of fasting, as well as the possibility of effectively checking compliance with the conditions and restrictions, the local conditions, the structure and size of the respective mosque community and not least the current assessment – where applicable, also taking into consideration the relevant region – of the risk to health and life arising from social contacts are also material to the assessment.

17

This decision solely concerns the question of religious services being provisionally allowed by way of exception on the basis of the specific circumstances stated and discussed in the court proceedings.

18

4. The decision on the reimbursement of costs is based on Section 34a(3) of the Act on the Federal Constitutional Court (BVerfGG).

19

This decision is non-appealable.

Masing

Paulus

Christ



CIRCUIT COURT OF OREGON
Eighth Judicial District

Baker County Courthouse
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Baker City, OR 97814
(541) 523-6303

Matthew B. Shirliff, Circuit Judge
Elaine A. Calloway, Trial Court Administrator
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Verified Correct Copy of Original 5/18/20

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Re: Opinion on Temporary Injunctive Relief
Elkhorn Baptist Church, et al v. Katherine Brown Governor of the State of Oregon
Case # 20CV17482

Dear Mr. Hacke, Mr. Abrams, Ms. Beatty-Walters, and Mr. Mannix:

This matter came before the court on May 14, 2020, on Plaintiffs' Motion for Temporary Injunctive Relief Pursuant to ORCP 79 and Defendant's Motion to Dismiss. The Plaintiffs were represented by Ray Hacke. The Defendant, Governor Brown, was represented by Marc Abrams and Christina Beatty-Walters. Kevin Mannix also appeared after filing for intervenor status pursuant to ORCP 33 on behalf of additional plaintiffs. Intervenor status was granted after Mr. Abrams, on behalf of the Governor, did not object to the intervenor status of the additional plaintiffs.

On March 8, 2020, in response to the Covid-19 pandemic, Governor Brown declared a state of emergency pursuant to ORS 401.165. She implemented Executive Order 20-03. Governor Brown implemented Executive Orders 20-03 through 20-25 between March 8 and May 14, 2020.

The Governor has multiple “tools” (as described by counsel for the governor) at her disposal in implementing emergency orders for the State of Oregon. These include ORS 401.165 Declaration of State of Emergency, ORS 433.441 (which include ORS 433.441 through 433.452) Proclamation of Public Health Emergency, and Article X-A of the Oregon Constitution dealing with Catastrophic Disasters.

Governor Brown chose to declare a state of emergency pursuant to ORS 401.165. On March 8, 2020, Governor Brown also utilized provisions of ORS 433.441 in her original executive order (see Executive Order 20-03 sec 1. and 3.) and later orders.

Each of these provisions of Oregon law grant the Governor certain powers and limitations during times of emergencies.

ORS 401.165

This statute allows the Governor to declare a state of emergency within geographical regions of the state or throughout the whole state. It also gives her complete authority over all executive agencies of state government and full constitutional police powers. It authorizes her to direct agencies in the state government through this provision. Other aspects of the statute provide the Governor with control over emergency operations, the power to close roads and highways, and otherwise manage emergency response. This statute has no expiration clause other than upon declaration of the Governor or legislative assembly. The limitations are only in the statutory scope of authority given to the Governor. This statute was passed into law in 1949.

ORS 433.441 to 433.452

This statutory provision allows the Governor to declare a state of public health emergency. Although there are multiple definitions that can trigger a public health emergency, one that the coronavirus clearly meets is contained in ORS 433.442 (4)(a)(B) – (4) “an occurrence or imminent threat of an illness or health condition that: (a) Is believed to be caused by any of the following: (B) the appearance of a novel or previously controlled or eradicated infectious agent or biological toxin that may be highly contagious.” This statute carries additional powers than given in ORS 401.165, including those contained in ORS 433.441 (3)(d) granting the Governor the power to “Control or limit entry into, exit from, movement within and the occupancy of premises in any public area subject to or threatened by a public health emergency and necessary to respond to the public health emergency.” These provisions give the Public Health Director specific powers when authorized by the Governor. ORS 433.452 allows the Public Health Director or Local Public Health Administrator to detain an individual when the director or administrator reasonably believes a person within their jurisdiction may have been exposed to a communicable disease identified by rule of the Oregon Health Authority to be a reportable disease or condition that is the basis for the public health emergency.

This statute provides these additional powers to the Governor in a specific public health emergency. It also states in section (4) that:

“Nothing in ORS 433.441 to 433.452 limits the authority of the Governor to declare a state of emergency under ORS 401.165. If a state of emergency is declared as authorized under 401.165, the Governor may implement any action authorized by ORS 433.441 to 433.452.”

The limitations to ORS 433.441 are given in Section (5) of this provision which states:

“A proclamation of state of public health emergency expires when terminated by a declaration of the Governor of no more than 14 days after the date the public health emergency is proclaimed unless the Governor expressly extends the proclamation for an additional 14-day period.”

ARTICLE X-A OF THE OREGON CONSTITUTION

This provision of the Oregon Constitution was added in 2012 after the voters of Oregon passed it through a ballot measure. It gives the Governor discretion to invoke the provisions of this Article if the Governor finds and declares that a catastrophic disaster has occurred. One of the definitions of a catastrophic disaster is a Public Health Emergency. It also defines a catastrophic disaster (including a public health emergency) as a natural or human-caused event that: (a) results in extraordinary levels of death, injury, property damage or disruption of daily life in this state; and (b) severely affects the population, infrastructure, environment, economy or government functioning in the state.

Clearly the coronavirus pandemic fits this definition. This provision of our Constitution gives the Governor the option and the authority to convene the legislature and allows for certain procedural voting changes in light of the catastrophic event. These include sections allowing the legislature to convene in a place other than the capitol, voting procedures for two thirds of those legislators who constitute a quorum, and allowing attendance through electronic means. Section six of Article X-A limits the time frame allowed for the Governor to exercise extraordinary powers in the case of a catastrophic disaster. Section six provided that the actions taken by the governor once invoked, shall cease to be operative not later than 30 days following the date the Governor invoked the provisions of sections 1 to 5 of the article, or on a date recommended by the Governor and determined by the legislative assembly. This constitutional provision does allow an extension when the legislative assembly extends the Governor’s extraordinary powers beyond the 30-day limit upon approval of three-fifths of the members of each house who are able to attend a session described in the Article.

STATUTORY AND CONSTITUTIONAL PROVISIONS

These two statutory provisions and Article X-A of the Oregon Constitution carry with them certain powers for the Governor and certain restrictions. The general provisions of ORS

401.165 have allowed Governors since 1949 to direct state resources in times of emergencies. This is the most expansive statute of the three laws and has the least restrictions, especially as to the time limitation of the emergency declaration. However, the statute does not grant the Governor power directly over the movement of citizens and gatherings. ORS 433.441 and its various provisions gives the Governor additional and more specific powers to control or limit entry into, exit from, movement within and the occupancy of premises in any public area subject to or threatened by a public emergency in specific times of public health emergencies. See ORS 433.441(3)(d). This statute gives the Governor power over the movement and gathering of citizens. Reference to provisions of ORS 433.441 through 433.452 and more specifically ORS 433.441(3)(d) are found throughout the Governor's various executive orders. ORS 433.441(3)(d) is specifically cited in areas where the Governor has ordered that business and retail establishments are prohibited from operating. See Executive Order No. 20-12 p. 4 sec. 2 Closure of Certain Business and p. 3 sec. 1 Stay Home and Save Lives regulating non-essential social and recreational gatherings, which would include churches. Additionally, ORS 433.452 gives the Public Health Director or the Local Public Health Administrator the power to detain individuals that the director or administrator reasonably believes may have been exposed to the virus.

When granting this additional power over the movement and gatherings of citizens, the legislature saw fit to add additional time restrictions. Those time restrictions contained in section (5) of that provision only allow the Governor to extend the emergency declaration for 14 additional days from the original 14-day period. This provision makes the maximum time restriction to be 28 days by operation of law. The Governor in her original executive order 20-3 set her executive order to 60 days. This is well beyond the maximum 28-days allowed by ORS 433.441. This court finds that when the Governor utilized the provisions of ORS 433.441 in her executive order, she triggered all the provisions of ORS 433.441 including the time restrictions in ORS 433.441(5). By doing so, the executive order became null and void beyond the maximum 28-day time period allowed by the statute. Moreover, by not complying with ORS 433.441(5) timelines, the Governor's subsequent Executive Orders 20-05 through 20-25 are also null and void. (see Executive Order 20-12 extended until terminated by the Governor; Executive Order 20-24 extended for an additional 60-days; Executive Order 20-25 extended until terminated by the Governor as examples of extensions beyond 28 days).

The statutes are to be read to work together with the more specific statute governing. "Where there is a conflict between two statutes, both of which would otherwise have full force and effect, and the provisions of one are particular, special and specific in their directions, and the other are general in their terms, the specific provisions must prevail over the general provisions." *Colby v. Larson*, 208 Or 121 (1956). ORS 401.165 and ORS 433.441 are in conflict over the length of time the Governor's orders last. ORS 433.441, enacted in 2007, is the more specific statute and relates directly to public health emergencies. It is the more specific statute pertaining to the restriction of citizens in the Governor's executive orders and also carries restrictions in time that the legislature saw fit to impose. Once the Governor began utilizing the specific provisions of ORS 433.441(3)(d) in Executive Order 20-12, the rights of citizens to assemble and operate their business became significantly curtailed, thereby ensuring the need

for further justification and the statutory limitations in time which create a check on this additional power of the Governor. Although ORS 433.441(4) indicates that nothing in ORS 433.441 to 433.452 limits the authority of the Governor to declare a state of emergency under ORS 401.165, it also does not suspend the time limitations of section (5).

This court finds that the Governor was not required to invoke the provisions of Article X-A of the Oregon Constitution. Article X-A clearly states that the Governor has discretion to implement the constitutional provisions because the Governor “may invoke the provisions of this article.” See Article X-A, Section 1(3). However, because the Governor implemented statutory provisions, she is bound by them. Thus, once the maximum 28-day time provisions of ORS 433.441(5) expired, the Governor’s Executive Order and all other orders were rendered null and void.

STANDARD OF REVIEW FOR PRELIMINARY INJUNCTION

In order to obtain a preliminary injunction, the plaintiffs must demonstrate that (1) they are likely to succeed on the merits, (2) that they are likely to suffer irreparable harm in the absence of a preliminary injunction, (3) that the balance of equities tips in their favor, and (4) that an injunction is in the public interest. *Winter v. Nat. Res. Def Council, Inc.* 555 U.S. 7, 20 (2008).

SUCCESS ON THE MERITS

The Plaintiffs have demonstrated that the Governor was beyond her statutory authority in ORS 433.441 when she exceeded the ORS 433.441(5) timelines required pursuant to a public health proclamation. This court finds that once the provisions of ORS 433.441 were triggered, especially including the provisions of section (3)(d) relating to the Governor’s powers to restrict the movement of citizens, the time limitations of section (5) are required. Based on these provisions this court finds the Plaintiffs’ likelihood of success on the merits is high.

IRREPARABLE HARM

The United States Supreme Court has recognized that “the loss of freedoms, for even minimal periods of time, unquestionably constitutes irreparable injury.” *Elrod v. Burns*, 427 U.S. 347 (1976). Plaintiffs have alleged that without the preliminary injunction, their freedom of religion will be infringed because they will be prevented from gathering for worship at their churches, including this next Sunday and thereafter. Moreover, many intervenor plaintiffs have provided affidavits indicating that with the current restrictions in the Governor’s orders they are unable to maintain their businesses and provide for their families. This court finds that the Plaintiffs have made a sufficient showing of irreparable harm.

BALANCE OF EQUITIES TIPS IN THEIR FAVOR

Plaintiffs have shown that they will be harmed by a deprivation of the constitutional right to freely exercise their religion. Other Plaintiffs have also shown great economic harm to their

businesses and their ability to seek a livelihood. Indeed, criminal penalties can be imposed if they violate current restrictions that are in place. This court understands that the current pandemic creates an unprecedented crisis in our state as well as in this country. The Governor has an enormous responsibility to protect the lives of the citizens of our state balanced against the citizens' constitutional rights to freedom of religion which includes how he or she chooses to worship. The Governor's orders are not required for public safety when Plaintiffs can continue to utilize social distancing and safety protocols at larger gatherings involving spiritual worship, just as grocery stores and businesses deemed essential by the Governor have been authorized to do. This court finds that based on these factors the balance of equities tips in favor of Plaintiffs.

INJUNCTION IS IN THE PUBLIC INTEREST

The public interest is furthered by allowing people to fully exercise their right to worship and conduct their business. Additionally, the utilization of social distancing protocols without additional restrictions is in the public interest to restore individual liberties and the ability to restore economic viability in our communities.

Based on this opinion, Plaintiffs' Motion for Preliminary Injunctive Relief is granted. Defendant's Motion to Dismiss is denied. The court is not awarding attorney fees.

The court has prepared the order in conformance with this opinion.

Truly yours,



Matthew B. Shurtleff
Circuit Judge

Verified Correct Copy of Original 5/18/2020.

STATE OF OREGON)
) ss CERTIFICATE OF MAILING
County of Baker)

I, Amy Swiger, Judicial Assistant, for the Eighth Judicial District, Oregon, hereby certify that the foregoing was emailed to the parties herein below named:

Case No. 20CV17482

Opinion

Ray Hacke, attorney for plaintiffs	rhacke@pji.org
Kevin Mannix, attorney for intervenor-plaintiffs	kevin@mannixlawfirm.com
Marc Abrams, Assistant Attorney General	marc.abrams@doj.state.or.us
Christina Beatty-Walters, Assistant Attorney General	tina.beattywalters@doj.state.or.us

Dated at Baker City, Oregon this 18th day of May, 2020.



Judicial Assistant



I hereby certify that the foregoing is a true and correct copy of the original in its entirety.

Dated this 18th day of May, 2020.

Judicial Assistant

“The circumstances presented by coronavirus do not excuse unlawful government infringements upon freedom,” Hotze argued in the emergency petition for writ of mandamus filed with the state’s high court on Monday. “Urgent First and Second Amendment issues of immense statewide significance, arising from the largest county in Texas and affecting residents throughout the Lonestar State, are presented here.”

Abbott explained that his order “shall supersede any conflicting order issued by local officials in response to the COVID-19 disaster.”

“If religious services cannot be conducted from home or through remote services, they should be conducted consistent with the guidelines from the president and the [\[Centers for Disease Control\]](#) by practicing good hygiene, environmental cleanliness, and sanitation, and by implementing social distancing to prevent the spread of COVID-19,” the order reads.

The order extends social distancing guidelines through April 30, and adopts the [U.S. Department of Homeland Security](#)’s guidance on what should be considered part of the essential critical infrastructure workforce, with the exception of the governor’s carveout for churches.

Jared Woodfill of Woodfill Law Firm PC, who represents Hotze and the pastors, told Law360 on Tuesday that now the ball is in Judge Hidalgo’s court.

“The big question now is what does Judge Hidalgo do?” he said. “Is she going to ignore the governor and his comments or abide by them and amend her order?”

Woodfill said because this lawsuit presents a matter of statewide importance, he took it straight to the Texas Supreme Court, but should the court decline to take it, he’s already preparing several state court lawsuits to challenge the order in Harris County, as well as the orders in Dallas, Montgomery and Fort Bend counties.

The pastors who joined in the plea to the state’s high court are Juan Bustamante of City on a Hill Church, George Garcia of Power of Love Church, and David Valdez of World Faith Center of Houston Church.

Bustamante alleges he was threatened by a Houston police officer with jail and a \$1,000 fine on March 29 “if he did not stop preaching the gospel to his congregation,” according to the petition.

Hotze and the pastors told the court that the Harris County order “picks winners and losers” by ordering most private businesses, including gun shops, to close but allowing liquor stores, “big box stores” and others to remain open.

“Because her hand-picked losers have been shuttered, her self-identified winners are allowed to thrive while other private businesses are closed indefinitely,” the pastors argued.

Hotze and the pastors are represented by Jared Woodfill of Woodfill Law Firm PC.

Counsel information for the county was not available Tuesday and a message was not immediately returned.

The case is In re Steven Hotze et al., case number 20-0249, in the Texas Supreme Court.

--Editing by Bruce Goldman.

For a reprint of this article, please contact reprints@law360.com.

[View comments](#)

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Your ref: MP:MP3515
Our ref: Z2006192/HHS/HOI7

24 June 2020

Dear Sirs

R (on the application of Rev. Ade Omooba and others) - v - Secretary of State for Health and Social Care

1. We write in response to your claim which we understand was filed at Court yesterday, on 23 June 2020.
2. Your claim was accompanied by an application for urgent consideration, which seeks to significantly truncate the ordinary timescales for responding to a judicial review claim. Your draft directions seek an abridgement of time for the Acknowledgement of Service to 7 days from the date of the order, consideration of permission within 10 days of the order and that a substantive hearing be listed by the Court (with a time estimate of 1 day) on 17 July 2020 or the first available date afterwards.
3. We do not consider that there is any proper basis for the orders you seek in relation to expedition and in light of all the matters set out below we invite you to agree to stay your claim.
4. **Firstly**, the main ground upon which you seek expedition of your claim is without merit.
5. Your application states that “[t]he Government’s announcements at present do not even include an indication as to when the ban on church services or rites may be lifted or relaxed”. Indeed, the main thrust of your claim is to challenge what you characterise as the “continuing lockdown” on the Church. As you will no doubt be aware, this position is not correct and your claim has been overtaken by events.
6. On 23 June 2020 the Prime Minister announced to the House of Commons the Government’s plans to amend the Regulations and relevant guidance from 4 July 2020 to ease current restrictions on places of worship. He said:

“I know that many have mourned the closure of places of worship, and this year, Easter, Passover and Eid all occurred during the lockdown. So I am delighted that places of worship will be able to reopen for prayer and services including weddings with a maximum of 30 people, all subject to social distancing.”

The amendments to regulations and guidance to give effect to these changes are now being discussed and agreed within government.”

7. This announcement was consistent with the strategy published by the Government in May 2020, namely “*Our plan to rebuild: The UK Government’s COVID-19 recovery strategy*” which set out the intention to re-open places of worship with effect from 4 July 2020 provided that it was safe to do so. This further easing of restrictions on places of worship comes following the previous relaxation of measures with effect from 13 June 2020, when individual prayer was permitted in places of worship in accordance with the “*COVID-19: guidance for the safe use of place of worship during the pandemic*” (“the Guidance”) published on 12 June 2020.
8. Accordingly, the basis upon which you seek expedition is no longer correct.
9. **Secondly**, the focus of your claim is a challenge to the Health Protection (Coronavirus, Restrictions) (England) Regulations 2020 (“the Regulations”). As you are aware the Regulations came into force on 26 March 2020 and yet the Claimants have chosen to wait until the very last days of the three month time period to file their claim challenging the Regulations. In these circumstances we do not regard it as reasonable to seek urgent consideration of your claim, particularly where (i) in the intervening period the restrictions of which you complain have been significantly eased (or very shortly will be) and (ii) you have failed to set out any significant prejudice to the Claimants which would justify the Defendant being required to respond and require the Court to list the matter on an urgent basis.
10. **Thirdly**, the issuing of your claim must be considered against the backdrop that the parties were, at the time of filing, in the middle of the pre-action protocol process and the Defendant had agreed to your clients request for a roundtable meeting. Your claim was filed without waiting for the Defendant’s response to your second pre-action letter of 15 June 2020, which the Defendant had indicated would be sent to you by 26 June 2020. Further, the Defendant had agreed to your client’s proposal for a meeting and had scheduled that meeting for 26 June 2020 in order that your clients could discuss their concerns with officials. In these circumstances, the fact that your clients have chosen to file a claim together with an application for expedition without giving any notice to the Defendant is particularly surprising.
11. **Fourthly**, your application to significantly truncate the timeframe in which the Defendant would ordinarily be able to prepare Summary Grounds of Defence and evidence in responding to the claim will place a considerable burden on the Defendant Department in circumstances where resources are already significantly stretched to deal with the operational demands of responding to the COVID-19 pandemic. Time and resources would need to be diverted away from that response to deal with this claim on an urgent basis. We do not consider that there is any justification for such an approach in light of the matters set out above.
12. Accordingly, we consider that your application for expedition has no merit.
13. In light of the fact that:
 - a. your claim has been overtaken by events and the holding of church services (which is the main focus of your challenge) will be permissible from 4 July 2020 (namely in 10 days’ time); and
 - b. the Claimants state that they are committed to continuing to engage with the Defendant in constructive dialogue to discuss their concerns,

we invite you to agree to an immediate 14 day stay of your claim in order to avoid the parties incurring unnecessary time and cost in responding to your applications and your claim.
14. We have copied this letter to the Court on the basis that if you do not agree to the proposed stay, we will invite the Court to refuse your application for expedition and to stay the claim for the reasons set out above.
15. We look forward to hearing from you.

Yours faithfully

Hannah Sladen

Hannah Sladen
For the Treasury Solicitor

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Hannah Sladen <Hannah.Sladen@governmentlegal.gov.uk>

Thu 6/25/2020 4:43 PM

To: Michael



Dear Michael,

Thank you for your email.

As we stated in our original letter, the meeting tomorrow is a roundtable meeting hosted by Miriam Hodgson, Deputy Director for Faith, Integration and Communities at MHCLG. This meeting is part of a series of roundtable meetings which are being held with different faith groups to enable the Department to discuss the re-opening of places of worship and associated guidance and to listen to views on these issues as part of phase 3 of Government's Strategy Our Plan to Rebuild: The UK Government's COVID-19 Recovery Strategy'.

It was not originally our intention that lawyers would attend these roundtable meetings, and as this is not a formal ADR meeting there will be no lawyers in attendance from our side. If you wish to attend, we are happy for you to do so but this meeting will not be discussing the litigation.

It would also be helpful if you could indicate when you might be in a position to respond to our letter of yesterday seeking your agreement to a stay of your claim?

Kind regards,

Han





**In the High Court of Justice
Queen's Bench Division
Administrative Court**

CO Ref:
CO/2238/2020

In the matter of an application for Judicial Review

The Queen

on the application of

THE REVEREND ADE OMOOBA and others

Claimants

-and-

SECRETARY OF STATE FOR HEALTH AND SOCIAL CARE

Defendant

On the Claimants' application for directions to expedite the claim

Following consideration of the documents lodged by the Claimants and the Defendant

Order by the Honourable Mr Justice Swift

1. The Defendant shall file and serve his Acknowledgment of Service and Summary Grounds of Defence in accordance with the requirements of CPR 54.8.
2. Thereafter, this case shall be referred to a judge for consideration of the Claimant's application for permission to apply for judicial review. The court will, on that occasion also consider what directions, if any, should be given for the expedition of this claim.

Reasons

1. The Claimants challenge is directed to regulations 5 and 7 of the Health Protection (Coronavirus, Restrictions) (England) Regulations 2020/350. The Claimants contend that the restrictions contained in those regulations, which restrict the use of and attendance at places of worship. They request expedition in the form of directions (a) for filing and service of the Secretary of State's Acknowledgment of Service within 7 days; (b) a decision on the application for permission to apply for judicial review 3 days later; and (c) if permission is granted, a final hearing on the first available day on/after 21 July 2020.
2. I have decided not to abridge time for filing and service of the Acknowledgment of Service. This case raises significant matters. Notwithstanding that some issues have already been considered in the judgment in *Hussein* ([2020] EWHC 1392 (Admin)), the Secretary of State should still be permitted the usual period of time to prepare and file his response. This time will also permit the Secretary of State the opportunity (should it be needed) to take account of further recommendations (if any) made by his Places of Worship Taskforce.

3. Once the Acknowledgment of Service has been filed, whether expedition is appropriate will be best assessed by the Judge who considers the application for permission to apply for judicial review.

Signed

A handwritten signature in black ink, appearing to read 'SMFT'. The letters are stylized and connected, with a large 'S' at the beginning and a 't' at the end.

Sent to the claimant, defendant and any interested party / the claimants, defendants, and any interested party's solicitors on (date): 26/6/2020

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Your ref: MP:MP3515
Our ref: Z2006192/HHS/HOI7

7 July 2020

Dear Sirs

R (on the application of Rev. Ade Omooba and others) - v - Secretary of State for Health and Social Care

1. We write further to our previous correspondence and in particular to address the implications of the legislative and policy changes which took effect on 4 July 2020. Abbreviations used in our previous correspondence are adopted in this letter.
2. In summary, for the reasons set out below we invite you to withdraw your claim on the basis that it is now academic.

Relevant background

3. As we set out in our previous letter dated 24 June 2020, since the initial pre-action correspondence in this matter and the issuing of your claim, a number of material developments have occurred of relevance to your claim.
4. We explained in our letter that on 23 June 2020 the Prime Minister announced to the House of Commons the Government's plans to amend the Regulations and relevant guidance from 4 July 2020 to ease current restrictions on places of worship. He said:

"I know that many have mourned the closure of places of worship, and this year, Easter, Passover and Eid all occurred during the lockdown. So I am delighted that places of worship will be able to reopen for prayer and services including weddings with a maximum of 30 people, all subject to social distancing."

The amendments to regulations and guidance to give effect to these changes are now being discussed and agreed within government."

5. Given that this statement addressed the substance of the Claimants' challenge (namely the "lockdown" of churches), we invited you to agree to stay your claim. However, you have failed to respond to that request.

Further material developments

6. Further to our previous letter, as the Claimants will be aware there have been two further material developments of relevance to their claim.
7. **Firstly**, on 4 July 2020 the Health Protection (Coronavirus, Restrictions) (No. 2) (England) Regulations 2020 (“**the No 2 Regulations**”) came into force in England. Regulation 2 revoked the Regulations (along with the various regulations amending the Regulations) including, for material purposes, regulations 5, 6 and 7 which imposed restrictions on the use of places of worship and which were the focus of the Claimant’s challenge.
8. The No 2 Regulations impose certain restrictions for the purposes of the emergency period (defined in reg. 3(1)), subject to a review at least once every 28 days (reg. 3(2)). Regulation 4 requires the closure of certain businesses and services during the emergency period. Places of worship, including churches, are not subject to any such closure. Regulation 5(1) imposes restrictions on gatherings (namely to 30 people) in private dwellings or vessels (excluding houseboats) or on public outdoor land (other than that operated by a charitable, benevolent or philanthropic institution). The 30 person capacity limit in regulation 5(1) does not apply to places of worship, being none of those things.¹
9. Accordingly, with effect from 4 July 2020 there is no legal restriction in respect of the opening of places of worship, including churches.
10. **Secondly**, on 29 June 2020 the Government published “COVID-19: Guidance for the safe use of places of worship from 4 July”² which came into effect from 4 July 2020. The guidance is enabled to support the re-opening now permitted in law and in particular to facilitate:
 - a. communal worship taking place, subject to guidance on numbers limited on the basis of capacity of the place of worship following a risk assessment and subject to social distancing advice;
 - b. marriage ceremonies taking place subject to advisory limits on 30 people in attendance and social distancing;
 - c. funerals taking place subject to advisory limits on 30 people in attendance and social distancing; and
 - d. life cycle ceremonies taking place subject to advisory limits on 30 people unless taking place during routine communal worship.
11. The guidance advises that risk assessments be undertaken by individual churches and contains guidance on sharing items, food and drink, singing, chanting and the use of musical instruments, wedding and life cycle events, use of water, cash donations, children and young people attending places of worship, restrictions on capacity, social distancing, etc. Guidance was also published on 29 June 2020 in respect of wedding services.³
12. Further, the Government has and continues to engage with representatives of all faith groups. Discussions with the Places of Worship Taskforce (“the Taskforce”) and further roundtable meetings, including with the Claimants, has enabled dialogue around mitigating risks, permitted activities and the opportunity to explore the implications and handling of proposed easing of measures. Roundtable discussions will continue over the coming weeks and you are invited to continue to be part of that process if you wish to.

¹ The only other restriction on indoor gatherings is set out in regulation 5(4) and is not applicable to places of worship (it restricts gatherings of more than 30 people of a kind mentioned in s.63(1) of the Criminal Justice and Public Order Act 1994 if it took place on land in the open air i.e. a rave).

² <https://www.gov.uk/government/publications/covid-19-guidance-for-the-safe-use-of-places-of-worship-from-4-july/covid-19-guidance-for-the-safe-use-of-places-of-worship-from-4-july>

³ <https://www.gov.uk/government/publications/covid-19-guidance-for-small-marriages-and-civil-partnerships/covid-19-guidance-for-small-marriages-and-civil-partnerships>

Consequences of these matters for the Claimants' claim

13. In light of the above, we consider that the Claimants' claim is now clearly academic.
 - a. The challenge to the Regulations is now academic given they have been revoked by the No 2 Regulations and there is no legal restriction on opening places of worship.
 - b. The challenge to the phased approach in the Strategy and the alleged failure to give assurances in relation to prioritising the re-opening of churches simply falls away because the Government has already relaxed the restrictions on churches and permitted them to re-open for a variety of purposes.
 - c. The main thrust of the claim, which relates to the "lockdown" of churches, no longer reflects the factual position.
14. The academic nature of the claim is clearly illustrated by considering the relief which the Claimants seek. Paragraphs 78 – 79 of the Statement of Facts and Grounds set out the nature of the relief sought, namely (i) an order quashing Regulation 5(5), (ii) a declaration that Regulation 7 does not apply to church services and rites and/or mandatory order or injunction to amend the Regulations and (iii) a mandatory order or declaration in respect of the Strategy and alleged "failure to give assurances".
15. Regulations 5 and 7 of the Regulations have now been revoked and therefore there is no basis for quashing or amending these provisions. Further, any relief targeted at the Strategy and the alleged "failure to give assurances" in relation to the re-opening of churches is of no practical effect given that churches are now permitted to re-open.
16. In light of these matters your claim is clearly academic and there is no good reason for the continuation of the claim. Accordingly, we consider the Court will refuse permission in accordance with the principles set out in *R v SSHD ex parte Salem* [1999] 1 AC 450 at 457. This was the approach of Lewis J in relation to a series of arguments in respect of the regulations in *Dolan v SSHSC* [2020] EWHC 1786 (Admin) which he rejected as academic where they had been materially amended by the time of the hearing before him (2 July 2020). At the time of writing, he has asked the parties for submissions on the question of whether the Article 9 ECHR ground (raised by the Second Claimant in that case who is a Roman Catholic) is now also academic in light of the No 2 Regulations (which post-dated the hearing). A decision on this point is likely to follow later in July 2020.
17. We therefore invite you to agree to withdraw your claim in order to avoid the parties incurring further unnecessary time and costs in responding to your claim. In the event that you agree to withdraw your claim by no later than 12pm on 9 July 2020 the Secretary of State is prepared not to seek the costs it has incurred to date in responding to your claim. If we do not receive confirmation of your withdrawal by this time the Secretary of State will proceed to file his Summary Grounds of Resistance together with an application for costs.
18. We look forward to hearing from you.

Yours faithfully

Hannah Sladen

Hannah Sladen
For the Treasury Solicitor

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Hannah Sladen <Hannah.Sladen@governmentlegal.gov.uk>

Thu 7/9/2020 12:37 PM

To: Michael



Dear Michael,

Our clients consider that the proceedings no longer serve any useful purpose and therefore should be withdrawn, as per our letter. We look forward to hearing from you when you have your clients' instructions on this, although we appreciate that this may be logistically difficult.

In the meantime, we will take instructions on a stay. In principle we can see that a stay or an agreed extension of time in relation to existing directions may be a sensible way forward, but only if you are not able to obtain all your clients' instructions today.

Kind regards,

Hannah





Hannah Sladen <Hannah.Sladen@governmentlegal.gov.uk>

Fri 7/10/2020 10:58 AM

To: Michael



Draft Consent Order (signed) ...

111 KB



Draft Consent Order 10.07.20...

15 KB

2 attachments (126 KB) Download all Save all to OneDrive - Andrew Storch Solicitors

Dear Michael,

Thank you for providing an update on the position. In the circumstances, and in particular bearing in the mind the difficulties that you have alluded to in terms of the short delay in obtaining formal consent from your clients to withdraw the claim, the Secretary of State is minded to agree to your proposal for a stay of 28 days in order for you to obtain the necessary consent and formally withdraw the claim.

We attach a draft order for your agreement. If you are happy with the draft Consent Order, I have attached a signed copy for you to sign and file with your Application for a stay of proceedings. I would be grateful if you could please confirm and copy me into any correspondence with the Court.

We will consider your request for a meeting with the minister and revert to you in respect of this as soon as we have instructions.

Kind regards,

Han



IN THE HIGH COURT OF JUSTICE

Claim No. CO/2238/2020

QUEEN'S BENCH DIVISION

ADMINISTRATIVE COURT

BETWEEN:

THE QUEEN

on the application of

REV. ADE OMOOBA AND OTHERS

Claimants

- v -

SECRETARY OF STATE FOR HEALTH AND SOCIAL CARE

Defendant

CONSENT ORDER

UPON the Claimants' application for a stay of the claim for judicial review in the above proceedings

BY CONSENT IT IS ORDERED THAT:

1. The claim for judicial review be stayed for 28 days.
2. The Claimant inform the Court and the Defendant within 21 days of the date of this order whether they intend to proceed with the claim or withdraw the claim.
3. Costs reserved.

.....

On behalf of the Claimants

Dated

For the Treasury Solicitor

.....

On behalf of the Defendant

Dated ...10 July 2020.....

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My Ref: MP:MP4017

Date: 23 October 2020

Dear Sirs

Our clients: Rev Kevin Berthiaume 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:

- | | |
|------------------------------------|---|
| 1. Pastor Kevin Berthiaume | Calvary Chapel, Cardiff |
| 2. Pastor Karen Cleverly | Bethel Community Church, Newport |
| 3. Dr Paul Corney | Immanuel Presbyterian Church, Cardiff |
| 4. Peter Davies | Treboeth Gospel Hall, Swansea |
| 5. Rev'd Edward Evans | Westgate Evangelical Chapel, Pembroke |
| 6. Darrin Gilchrist | St. Mellons Baptist Church, Cardiff |
| 7. Pastor Peter Greasley | Christchurch, Newport |
| 8. Rev'd Timothy Hodgins | Sandfields Presbyterian Church, Swansea |
| 9. Rev'd Richard Holst | Emeritus Professor of New Testament
Exegesis and Biblical Theology |
| 10. Pastor Math Hopkins | Thornhill Church, Cardiff |
| 11. Rev'd Iestyn ap Hywel | Townhill Baptist Church, Swansea |
| 12. Rev'd Mark Johnston | Bethel Presbyterian Church, Cardiff |
| 13. Pastor Ewan Jones | Bethel Baptist Church, Bedwas |
| 14. Rev'd Dr Peter Naylor | Immanuel Baptist Church, Cardiff |
| 15. Chris Owen | Baptist Minister (Ret'd) |
| 16. Rev'd Clyde Thomas | Victory Church, Cwmbran |
| 17. Dr Ayo & Pastor Moni Akinsanya | Deeper Christian Life Ministry |
| 18. Pastor Oliver Allmand-Smith | Trinity Grace Church, Manchester |



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- | | |
|--------------------------------------|---|
| 19. Rev'd Dr Gavin Ashenden | Former Chaplain to Her Majesty the Queen |
| 20. Paul Brown | Sheffield Evangelical Presbyterian Church |
| 21. Pastor Ian Christensen | New Life Christian Centre Int, Wembley |
| 22. Rev'd George Curry | Elswick Parish, St Peter & St Paul |
| 23. Pastor Christos Demetriou | Cornerstone the Church, Surrey |
| 24. Pastor Dennis Greenidge | Worldwide Mission Fellowship, London |
| 25. Rev'd Dr David Hathaway | President, Eurovision Mission to Europe |
| 26. Rev'd Nathan Hilton | Sunderland Evangelical Presbyterian Church |
| 27. Rev'd Matthew Jolley | Bury St Edmunds Presbyterian Church |
| 28. Pastor Thabo Marias | CRC International, London |
| 29. Rev'd Douglas McCallum | Cambridge Presbyterian Church |
| 30. Dr Brad Norman | Salvation for the Nations International |
| 31. Pastor Ade Omooba MBE | New Life Assembly, London |
| 32. Pastors John & Sally Quintanilla | Hebron Christian Faith Church, Coventry |
| 33. Rev'd Dr Matthew PW Roberts | Trinity Church, York |
| 34. Rev'd Dr Bill Schweitzer | All Saints Presbyterian Church, Newcastle |
| 35. Rev'd Aled Seago | Poynton Parish, Stockport |
| 36. Rev'd Melvin Tinker | Director of Theology, The Christ Church Network, Hull |
| 37. Rev'd Benjamin Wontrop | All Saints Presbyterian Church, Newcastle |

The proposed defendant: The Welsh Ministers

Defendant's ref: Coronavirus firebreak

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

Details of the matters being challenged:

On 19 October 2020, the First Minister announced the Defendant's intention to introduce a "firebreak lockdown" across Wales. The Defendant has published a guidance document titled *Coronavirus firebreak: frequently asked questions*, available at <https://gov.wales/coronavirus-firebreak-frequently-asked-questions> ("the Guidance"). The Guidance materially provides:

What are the rules for religious services?

Places of worship will not be open to the public, other than for wedding or civil partnership ceremonies or funerals, where people can attend at the invitation of the organiser. Please see the guidance on funerals for more information.



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Ministers may access the place of worship to broadcast (without a congregation) an act of worship or funeral, whether over the internet or as part of a radio or television broadcast.

It is anticipated that the formal legislation to that effect will be passed on or before Friday 24 October 2020. The proposed judicial review claim is against that legislation, insofar as it imposes a legally enforceable 'lockdown' on churches, and/or prohibits divine services in Wales.

The Issues

Introduction

1. In the event the Welsh Ministers carry out their stated intention to impose a blanket ban on church services in Wales, our clients intend to apply for judicial review of any such legislation on the grounds that it is (a) in breach of Article 9 ECHR and/or (b) *ultra vires* the powers of the Welsh Ministers, and/or the National Assembly for Wales, under the domestic constitutional law.
2. Our clients readily acknowledge the seriousness of the Covid-19 epidemic, and the need for extraordinary precautions to prevent the spread of the virus. However, our clients' position is that, as a matter of principle, the imposition of appropriate anti-epidemic measures in the Church is ultimately a matter for Church authorities rather than secular state authorities.
3. Our clients contend that, since the outbreak of Covid-19 in March 2020, the churches' response to the epidemic has been eminently responsible and cautious. Most of the churches introduced a voluntary 'lockdown' before a UK-wide 'lockdown' was introduced by the secular authorities in March 2020; and were slower to lift that self-imposed 'lockdown' in or after July 2020 than the secular authorities. All churches introduced drastic precautions against the spread of the virus. All legal requirements were followed by the churches, and all advice and guidance carefully considered and appropriately applied. There can be no suggestion that the churches' response to the epidemic has been in any way inadequate, so as to justify an interference from secular authorities by means of binding legislation (rather than reasoned advice or guidance).
4. In a series of judicial review claims which the UK-wide lockdown in March-July 2020 entailed, the Courts repeatedly warned that the limitations imposed by the secular government upon the ancient liberties of the Church were arguably unlawful in the circumstances.

The principle of Church autonomy under Article 9 ECHR

5. The principle of Church autonomy is zealously protected in ECHR jurisprudence under Article 9 (see *Metropolitan Church of Bessarabia v. Moldova*, no. 45701/99, ECHR Reports 2001-XII, 13



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December 2001, § 118). A public authority may not interfere with the internal workings of a church or religious organisation and may not impose rigid conditions on the practice or functioning of religious beliefs. See further: *Serif v. Greece*, No. 38178/97, Reports 1999-IX, 14 December 1999, §§ 51-53; *Manoussakis v. Greece*, No. 18748/91, Reports 1996-IV, 26 September 2000, § 82. So strong is this principle that it has been upheld three times by the Grand Chamber of the European Court of Human Rights. ECHR, *Hasan and Chaush v. Bulgaria* [GC], No. 30985/96, Reports 2000-XI, 26 October 2000, § 82; ECHR, *Case of Fernandez Martinez v. Spain* [GC], No. 56030/07, Judgment of 12 June 2014; ECHR, *Case of Sindicatul "Pastorul Cel Bun" v. Romania* [GC], No. 2330/09, Judgment of 9 July 2013. Most recently the Court again upheld the same principle regarding respect for the internal workings of religious organizations in a judgment against Hungary. ECHR, *Case of Karoly Nagy v. Hungary*, No. 56665/09, Judgment of 1 December 2015.

6. Article 15 ECHR gives member-states a right to derogate from the Convention in the event of a national emergency, by giving notice to the Secretary General of the Council of Europe. However, unlike several other member-states, the United Kingdom has chosen not to avail itself of that right in connection with Covid-19. Therefore, Article 9 applies to the government's anti-Coronavirus measures in the usual way.
7. The forced closure of churches by the state is an extreme interference with Article 9 rights. Such a far-reaching and large-scale intervention may only be justified by the most compelling scientific evidence of a resulting benefit to public health. The broader the impact of the Regulations on the Convention rights, the more compelling must be the justification: *R (on the application of UNISON) v Lord Chancellor*.
8. For interference with freedom of worship to be legitimate, the interference in question must be *necessary in a democratic society*. The term 'necessary' does not have the flexibility of such expressions as 'useful' or 'desirable'. *Svyato-Mykhaylivska Parafiya v. Ukraine*, App. No. 77703/01 § 116 (Eur. Ct. H.R. June 14, 2007). Fundamentally, only convincing and compelling reasons can justify restrictions on a fundamental Convention freedom, see *Wingrove v. United Kingdom*, 1996-V Eur. Ct. H.R. 1937, 1956.
9. Proportionality in relation to Article 9, and the supervisory authority over any restrictions imposed on the freedom to manifest all of the rights inherent in freedom of religion, call for "*very strict scrutiny*": ECHR, *Manoussakis and Others v. Greece*, Reports 1996-IV: AFDI, 1996, p. 1354, § 44.
10. Proportionality under the Convention is an objective test for the Court to apply, not for the decision-maker: *R (British and American Tobacco and Others) v Secretary of State for Health* [2016] EWCA Civ 1182. It is for the Defendant to adduce evidence to justify interference as proportionate and necessary.



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Church autonomy under the domestic constitutional law

11. In the domestic law of England and Wales, the principle of church autonomy is of a much greater antiquity than, and at least as important constitutional status as, under the Convention. It is enshrined in c. 1 of Magna Carta 1297. The martyrdom of Thomas Beckett for that very principle is of enormous significance in the Anglican Tradition. The Acts of Supremacy were necessary to establish the status of the Monarch as the Supreme Governor of the Church of England precisely because ecclesiastical authority is recognised by the common law as distinct from the temporal authority. Henry VIII could dissolve monasteries only after, and because, he had assumed the supreme ecclesiastical office; the measure would have been *ultra vires* the temporal powers of the Crown.
12. The 1559 Church-State Settlement still has legal force and is specifically affirmed by every English sovereign in their coronation oath. This sets out separate spheres for church and state. Broadly speaking, the state may not interfere in either the interpretation of Scripture or the sacraments i.e. in effect worship, while the church must be subject to the law in other matters. The government of the realm and the government of the Church of England were always distinct in our Constitution, despite the same Monarch being ultimately at the head of both.
13. *Articles of Religion 1562* provide in Article 37: “*Where we attribute to the King’s Majesty the chief government... we give not to our Princes the ministering either of God’s Word, or of the Sacraments*”. The government of the Church of England is subject to its own constitutional law, currently governed by the *Church of England Assembly (Powers) Act 1919*.
14. The Church of Wales has been disestablished by the *Welsh Church Act 1914*. S. 13(1) of that Act relevantly provides:

“Nothing in any Act, law, or custom shall prevent the bishops, clergy, and laity of the Church in Wales from holding synods or electing representatives thereto, or from framing, either by themselves or by their representatives elected in such manner as they think fit, constitutions and regulations for the general management and good government of the Church in Wales and the property and affairs thereof”
15. The use of the words “nothing in any Act, law or custom” reveals the legislative intention (consistent with the pre-existing law on the Church-State separation of power) to protect the self-government of the Church of Wales from *any* form of interference by secular state authorities.
16. Whatever difficulties may sometimes arise in drawing a precise boundary between temporal and ecclesiastical matters, there is no doubt, and has never been any doubt, that closure and opening of churches for services and rites is a matter for ecclesiastical authorities and not for



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temporal ones. The only historical precedent for a 'lockdown' of churches similar to the one introduced in the present Regulations is the suspension of all the church services and sacraments (except baptism) from 23 March 1208 to 1214 pursuant to the Interdict of Pope Innocent III. The services were suspended by the English bishops pursuant to an Interdict from Vatican. The suspension was expressly against the wishes of the temporal government and contrary to its interests. However, the lawfulness of that suspension was never questioned; nor has it ever been suggested that the temporal government had legal power simply to order a re-opening of churches.

17. Conversely, in the long history of epidemics and anti-epidemic measures in this country, up to and including the Spanish influenza in early 20th century, there is no precedent for state legislation which in any degree prohibits and criminalises church services or sacraments.
18. There is no basis for suggesting that this constitutional principle has become obsolete in modern times. On the contrary, the principle has been reinforced by Article 9 of the ECHR and the jurisprudence on Church autonomy which developed under it. It was further reinforced by s. 13 of the Human Rights Act 1998. Further, under the modern anti-discrimination law, the principle must apply equally to the Church of England, Church of Wales, and various other churches and denominations.
19. In the circumstances where the Church has responded adequately to the public health threat, there was no lawful basis for the state to interfere with its rights and liberties in this drastic fashion. If it was necessary to supplement the Church self-regulation with any degree of state regulation, that interference had to be proportionate, and confined to exercising the powers which have a proper basis in law. A blanket ban imposed by the state on all church services does not meet those requirements.
20. While the short-term practical difference between state regulation and church self-regulation may be limited in present circumstances, the principle of Church autonomy is extremely important in the broader constitutional context and must be protected for the benefit of present and future generations.

Rationale behind the principle

21. The principle identified above is important for the simple reason that a believer's worldview is radically different from a non-believer's worldview. It may seem natural for a temporal authority, well-meaning and intending no disrespect to religion, to see a church service as simply an example of a 'public event' which attracts a peculiar kind of people interested in it – roughly similar to entertainment. In that worldview, church services are important for welfare of those who need them, but obviously less important than things like steady food supplies and protection of health.



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22. By contrast, in a believer's worldview, church services are part of our means for achieving eternal salvation of the soul, which is infinitely more important than even a survival of the body. The Bible and centuries of tradition oblige Christians to gather weekly for worship and witness around the Word of God and sacraments; we need one another to flourish in our service to Christ (Ex. 20: 9-11; 1 Cor. 16: 1-2; Heb. 10:24-25; Acts 2:42, 20:7). Neither confessional Christian faith nor the Church as an institution can *faithfully exist* without a Lord's Day gathering. The Church has adhered to that obligation through long periods of persecution, where fulfilling it meant a risk of death at the hands of temporal authorities. The church does not exist by *permission* of the state, for its establishment and rule is found in Jesus Christ himself.
23. The restrictions imposed on the Church activity principally affect the believers. Hence it is important that the decisions about them are taken by believers – not by people who, in their minds and/or as a matter of professional duty, live in a wholly different world. If churches are to be closed, that must not be done by people who may well have never been to a church in their lives, or at least, have little understanding of the role, functioning, and ministries of the church.

UK court decisions in relation to 'lockdown' of churches in 2020

24. The *Health Protection (Coronavirus Restrictions) (England) Regulations SI202/350*, as in force in March-July 2020, imposed a similar blanket ban on church services to the one currently proposed in Wales. Several judicial review claims against that aspect of the Regulations were given consideration by the High Court:
25. 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.
26. 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).
27. In *R (Omooba et al) v SSHSC*, which raised very similar argument to this pre-action letter, Mr Justice Swift observed that the claim "raises significant issues", which required an proper response from the Secretary of State following consultation with church leaders within the framework of Places of Worship Taskforce.
28. Following those judicial decisions and observations, the Secretary of State amended the Regulations to lift the legally enforceable 'lockdown' on the places of worship, thereby



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rendering the claims obsolete. Our clients respectfully suggest that if any of the claims were to proceed to a full hearing, the chances of success are high.

Foreign judicial decisions in relation to 'lockdown' of churches

29. The proportionality of similar 'lockdowns' of places of worship in other jurisdictions was also repeatedly questioned by the relevant foreign courts.
30. In *MW et al* the highest Administrative Court in France, the Council of State, found that the blanket ban on religious services in France was a "serious and manifestly illegal infringement" of the religious rights under Article 9 and other French and international provisions.
31. The same issue was analysed by the Federal Constitutional Court of Germany in *F* (1BBQ 44/20), 29 April 2020, a challenge by a Muslim religious association. The Court granted interim relief permitting Friday prayers in a mosque, on the grounds that a blanket ban with no mechanism to apply for exemptions was a disproportionate interference with constitutional rights.
32. Similarly, the Circuit Court of Oregon in *Elkhorn Baptist Church, et al v. Katherine Brown, Governor of the State of Oregon* granted a temporary injunction suspending the 'lockdown' of religious services. The Court observed: "*The Governor's orders are not required for public safety when Plaintiffs can continue to utilize social distancing and safety protocols at larger gatherings involving spiritual worship, just as grocery stores and businesses deemed essential by the Governor have been authorized to do.*"
33. A similar claim was brought in Texas by *Steven Horze et al (Case 20-0249)*. In response to the claim, the Governor of Texas issued the Executive Order which included churches in the list of "essential services" which were permitted to remain open. The claim was then withdrawn.
34. A further insight may be gained from the decision of the High Court of South Africa in *De Beer v The Minister of Cooperative Governance and Traditional Affairs* (2 June 2020). The challenge was against the 'lockdown' generally. In analysing the proportionality of the interference with constitutional rights (similar to the Convention analysis in this jurisdiction), the Court found (para 7) that "in an overwhelming number of instances" (para 7.21) the regulations were not even 'rationally connected' to the legitimate aims. See in particular the observations in paras 7.5-7.6 in relation to funerals. Religious services were exempted from the South African 'lockdown' in the first place (see para 8.1 of the judgment), but had they not been, similar criticisms would no doubt apply to the prohibition of religious services.
35. There is an emerging international judicial consensus to the effect that a blanket ban on church services is a disproportionate interference with the freedom of religion. In these circumstances, an Article 9 ECHR challenge to the proposed legislation in Wales has high prospects of success.



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Action(s) that the defendant is expected to take

For those reasons, we respectfully invite your client to desist from introducing any binding legislation banning or restricting church services in Wales as part of the proposed 'firebreak lockdown'.

For the avoidance of doubt, our clients do not dispute the right of your clients to issue advice or guidance to churches about the protection of public health during the epidemic. Any reasonable advice or guidance would be gratefully considered.

ADR proposals

Our clients have no specific ADR proposals at present, but are open to dialogue with your clients about the issues raised in this pre-action letter in whatever form your clients consider appropriate.

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

Please disclose all scientific and other evidence the Welsh Ministers rely upon to justify the proposed legislation under Article 9(2) ECHR.

Proposed reply date

Given the Ministers' stated intention to ensure the passage of legislation by no later than this Friday 23 October 2020, with immediate effect, this matter is extremely urgent.

We therefore request a substantive response to this pre-action letter as soon as possible, and in any event, by **4pm Monday 26 October 2020**.

In the event the proposed legislation is introduced, our clients intend to file the claim without further notice.

We look forward to hearing from you.



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Yours faithfully,



Andrew Storch Solicitors



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[REDACTED]@michaelphillips.cjsm.net
Your Ref: MP: MP4017

BY EMAIL ONLY

26 October 2020

Dear Sirs,

1. We refer to your letter before claim, which was received at 15:41 on Friday 23 October 2020. You have requested a response by 4 pm on Monday 26 October 2020, thereby allowing the equivalent of one working day to respond.
2. We have endeavoured to respond to your letter within the timescale specified by you. However, inevitably this has meant that we have had only a very limited opportunity to consider the matters that you raise. Accordingly, this response should not be taken as anything more than the Welsh Ministers' preliminary response to the proposed claim. In particular, we reserve the right to advance further or alternative arguments in the future should the need arise.
3. Whilst your letter purports to have been sent pursuant to the Pre-Action Protocol for Judicial Review, we also note your stated intention to file a claim for judicial review immediately, regardless of the contents of any response. We consider that such an approach is contrary to both the letter and the spirit of the Pre-Action Protocol, and should your clients commence a claim, we will if necessary refer to this on the question of costs.

(1) The proposed claimants

4. We note that you have listed 37 proposed claimants (“the claimants”) in your letter, but you have provided only very limited information about them. We return to the position of the claimants below, but for the time being we observe that, as we understand the position, each claimant is acting in a purely personal capacity.

(2) The proposed defendants

5. The proposed defendants are the Welsh Ministers.

(3) The matter being challenged

6. Although you do not expressly refer to them in your letter, we assume that the proposed challenge would relate to the Health Protection (Coronavirus Restrictions) (No 3) (Wales) Regulations 2020 (SI 2020 No 1149 (W 261)) (“the Regulations”). The Regulations were made by the Welsh Ministers on 21 October 2020 (two days before you sent your letter), were laid before Senedd Cymru on 22 October (the day before you sent your letter), and came into force at 6 pm on 23 October 2020. By virtue of reg 2(1), the Regulations will expire at the end of 8 November 2020. Accordingly, the Regulations will be in force only for a period of just over 16 days.
7. The Regulations were made by the Welsh Ministers in the exercise of their powers under Part IIA of the Public Health (Control of Disease) Act 1984.
8. The Regulations are part of the Welsh Ministers’ response to the imminent and serious threat to public health that is posed by the incidence and spread of the coronavirus across Wales. They implement in Wales what has been referred to colloquially as “a firebreak”. As such, they impose restrictions and requirements on individuals, businesses and other organisations across Wales.
9. We assume that the proposed challenge would be specifically directed at reg 14 of the Regulations. Insofar as is relevant, reg 14 provides as follows:
 - “14. *Closure of places of worship, community centres and crematoriums*
 - (1) A person responsible for premises of a kind listed in paragraphs 30 to 32 of Schedule 1 must ensure that the premises are closed to members of the public, except for the uses permitted by paragraphs (2), (3) and (4).
 - (2) A place of worship may be open -
 - (a) for funerals;

- (b) for the solemnization of a marriage or formation of a civil partnership;
- (c) to broadcast (without a congregation) an act of worship, funeral or the solemnization of a marriage or formation of a civil partnership (whether over the internet or as part of a radio or television broadcast);
- (d) to provide essential voluntary services;
- (e) to provide public services upon the request of the Welsh Ministers or a local authority.

...

(6) In this regulation, 'public services' includes the provision of food banks or other support for homeless or vulnerable people, childcare, blood donation sessions or support in an emergency."

10. Further, reg 4(3) of the Regulations makes specific provision permitting outdoor gatherings to commemorate Remembrance Sunday.
11. Paragraph 30 of Schedule 1 to the Regulations lists "places of worship".
12. In light of the above, we consider that your characterisation of the effect of the Regulations as "a blanket ban on church services in Wales" is clearly wrong. In particular, places of worship may open for wedding and funeral services, and they may open in order for religious services to take place for the purposes of broadcasting them to the community.

(4) Response to the proposed claim

13. As we understand your letter, the claimants propose to advance two grounds of claim:
 - (1) the Welsh Ministers have no power to make regulations requiring the closure of churches in Wales; and
 - (2) the Welsh Ministers have acted contrary to s 6(1) of the Human Rights Act 1998 ("the 1998 Act") by making the Regulations because reg 14 constitutes an unjustified interference with the claimants' rights under Article 9 of the European Convention on Human Rights ("Article 9").
14. At the outset, we make two general points.
15. *First*, you have not explained why each of the claimants has the requisite standing to challenge the Regulations. You have not provided any details of the position of any of the individual claimants, but from the limited descriptions that you have provided it

seems unlikely that each of them is responsible for, or practises his or her faith at, a place of worship covered by the Regulations. Accordingly, we reserve the right to argue that all or any of the claimants do not have the requisite standing to bring the proposed claim. Further, we reserve the right to argue that all or any of the claimants are not “victims” for the purposes of s 7(1) of the 1998 Act.

16. *Secondly*, and importantly, it is not clear to us what practical advantage the claimants envisage obtaining by way of any claim for judicial review. Judicial review is a practical remedy, and the courts will not entertain an academic claim unless there is good reason in the public interest to do so (*R v Secretary of State for the Home Department, ex p Salem* [1999] 1 AC 450, 457 per Lord Slynn). As we understand your letter, the position adopted by the claimants is that persons responsible for places of worship in Wales would be content to follow any guidance issued by the Welsh Ministers, presumably including any guidance to the effect that places of worship should be closed for the period of just over 16 days to which the Regulations apply. Accordingly, it does not appear that, even if the claimants were to bring the proposed claim and it were to succeed, places of worship would in fact open. This indicates that the proposed claim is academic.
17. In our view, each of these points constitutes a substantial obstacle to the proposed claim. In addition, the second point also raises a further matter upon which we invite the claimants to reflect. If the claimants were to commence the threatened proceedings, it would inevitably divert officials and resources away from the vitally important task of combatting the coronavirus and onto the job of preparing a defence to legal proceedings. In light of the important public health issues at stake, we are confident that the claimants would not wish this to occur.
18. However, we shall nevertheless address each of the two proposed grounds of challenge. In this respect, it is logical to address the *ultra vires* ground first, because if that ground were made out, there would be no need to consider the Article 9 ground.

(1) Proposed ground 1: no power to require closure of churches in Wales

19. As we understand your letter, your first ground of challenge is predicated on the proposition that the Welsh Ministers have no power to restrict the closing and

opening of churches for services, as this is a matter solely within the province of ecclesiastical authorities. However, we are unclear as to the exact scope of this proposition. For example, although you refer to “churches” generally, you appear to focus particularly on the status of the Church of England and the Church of Wales. Accordingly, we are unclear as to what you mean by “churches” in your letter.

20. In any event, whatever the scope of the proposition that you advance, we do not consider that it has any support in either legislation or case law. The powers exercised by the Welsh Ministers were expressly conferred on them by an Act of Parliament, and you have not pointed to a single legislative provision, or a single case, which states that the fundamental constitutional principle of Parliamentary sovereignty is somehow limited in the manner that your proposition necessarily implies. With respect, we consider that your proposition is a constitutional solecism.
21. Accordingly, we consider that your first ground of challenge is totally without merit.

(2) Proposed ground 2: alleged breach of Article 9 of the Convention

22. As we understand the second proposed ground of challenge, it is to the effect that the Welsh Ministers have acted contrary to s 6(1) of the 1998 Act by making the Regulations because reg 14 constitutes an unjustified interference with the claimants’ Article 9 rights.
23. Whilst we accept that reg 14 will constitute an interference with certain individuals’ rights to manifest their religion, we consider that that interference is plainly a proportionate means of achieving the legitimate aim of the protection of health. In this respect, we consider that the following factors are of particular relevance.
24. *First*, as we have pointed out above, the effect of reg 14 of the Regulations is not “to impose a blanket ban on church services in Wales”; it is more nuanced than that. In particular, the restriction imposed by reg 14 is limited in scope and, importantly, in time.
25. *Secondly*, the entirety of the United Kingdom and, more particularly, the entirety of Wales is presently affected by the public health pandemic caused by the coronavirus. The extremely serious risk to life and health posed by the virus has obliged the

Welsh Ministers to take unprecedented, vital steps to limit the ability of the virus to spread and to reduce the burden on the National Health Service in Wales. Both of these aims seek to protect and reduce the risk to the lives of the population, in circumstances in which there have been (as at 25 October 2020) 42,681 cases of Covid-19 in Wales and, tragically, 1,777 deaths. Accordingly, the Regulations, including Regulation 14, seeks to protect the fundamental Article 2 rights of the population of Wales. In these circumstances, the Welsh Ministers have a broad margin of discretion.

26. *Thirdly*, the scientific advice is that the coronavirus is highly contagious and particularly easily spread in gatherings of people and indoors, including gatherings in places of worship. The basic principle underlying the Regulations is to introduce a “firebreak” by, for a limited period, significantly reducing the degree to which people gather and mix with those outside of their households, particularly in indoor spaces. The restriction on places of worship is plainly consistent with this basic principle and is an important part of the firebreak introduced by the Regulations.
27. On 19 October 2020, the Welsh Government’s Technical Advisory Cell (“TAC”) provided advice on the implementation of a firebreak. TAC recommended a “2-3 week hard fire break to bring R below 1 in order to both lessen the impact and slow the growth of the epidemic in Wales” (and TAC noted that this recommendation was consistent with the papers published by the Scientific Advisory Group for Emergencies (“SAGE”) on 21 September 2021). TAC’s advice concluded that:

“Without intervention, continued increase of cases of Covid-19 in Wales, in hospitals and in ICU will be too high for the NHS to sustain. In order to balance the four harms effectively, TAC recommends urgent consideration and execution of a hard national fire break to massively reduce transmission for a period of weeks, reduce the number of cases to a sustainable level and then a set of sustainable, national interventions to keep Rt around 1 while maximising social, economic and health benefits.”
28. TAC’s advice was echoed by the Chief Medical Officer for Wales.
29. TAC expressly contemplated that such a “firebreak” should include restrictions on places of worship:

“*Closure of places of worship/community centres* Low to moderate impact (moderate confidence) Potential reduction in Rt of up to 0.1, though precise estimation very difficult.

Strong association with places of worship including significant outbreaks linked to religious community in South Korea, cases in churches in Singapore, and Germany (despite social distancing). Environmental risks vary depending on the building. Small venues higher risk than large spaces as the volume mitigates aerosol transmission. Some ceremonies involve touch surfaces and proximity for short duration (e.g. communion).”

30. *Fourthly*, when deciding to make the Regulations, the Welsh Ministers expressly took into account the likely impact on persons of faith. Further, the Welsh Ministers have, throughout the coronavirus pandemic, sought the views of major faith communities, through the Welsh Government’s Faith Communities Forum. The Task and Finish subgroup of the Faith Communities Forum met on the morning of 19 October 2020 to discuss the proposal for the firebreak, and the overall view of the meeting was understanding and supportive of the firebreak.
31. In summary, therefore, the Regulations plainly pursue a very important legitimate aim, the restrictions that they impose are obviously rationally connected to that aim, and they maintain a fair balance between the rights of the individual and the general interests of the community.
32. Accordingly, we do not consider that the second proposed ground of challenge has any realistic prospect of success.
33. We note that you refer to challenges to the regulations that were formerly in place in England and to various cases from other jurisdictions. However, we do not consider that it is helpful to draw analogies with those other cases without first properly considering the precise factual circumstances in which they arose, something that you have not sought to do.

(5) Response to the requests for information

34. In light of the extremely short period of time that you have allowed for a response to your letter, it has not been practicable, and it would not have been proportionate, to respond to your request for “all scientific and other evidence the Welsh Ministers rely upon to justify” the Regulations. However, we refer you to the TAC advice dated 19 October 2020, mentioned above, which is available on the Welsh Government website: https://gov.wales/sites/default/files/publications/2020-10/technical-advisory-group-fire-breaks_2.pdf.

(6) Address for any further correspondence and service of court documents

35. We are willing to accept electronic service during office hours at the following email addresses: Rosalind.young001@gov.wales and LSHealthandFood@gov.wales (please use both).

Yours sincerely

A handwritten signature in black ink, appearing to read 'Rosalind Young', with a stylized flourish at the end.

ROSALIND YOUNG
Legal Services Health Team

Tel: 0118 958 4407
Mobile: [REDACTED]
Email: [REDACTED]@andrewstorch.co.uk
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Citygate
95 Southampton Street
Reading, RG1 2QU

National Assembly for Wales
Crown Building
Cathays Park
CARDIFF
CF10 3NQ

My Ref: MP:MP4017

Date: 29 October 2020

Dear Sirs

Our clients: Rev Berthiaume et al

We are grateful for your prompt pre-action response dated 26 October 2020. We do not propose to litigate this case in correspondence by answering each and every point in your letter of response. However, to avoid any misunderstanding of our clients' position, and to explore all avenues for an amicable resolution of this dispute, we make the following points by way of clarification:

Firstly, each of our clients is a Christian pastor or in an oversight position within their church closely involved and responsible for their congregations and outreach within their local communities. Many of the proposed Claimants are leaders within churches in Wales, some serving the most deprived communities in their midst. Their churches play a significant role within their communities. Some of the proposed claimants are church leaders from other parts of the United Kingdom, genuinely concerned about the important constitutional issues raised by this claim. We do not accept that there is any arguable issue over *locus standi*.

We attach to this letter some brief resumes of the leaders and churches in order to assist you in understanding the breadth and necessity of their work in their communities. We would be happy to provide more information about individual claimants and/or their churches, but at present, we are not clear what sort of information may assist your clients and/or help to resolve this dispute.



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Secondly, we acknowledge that the Regulations in their present form will expire after 16 days. However, the Ministers have made it clear that the 'firebreak lockdown' may be extended beyond that period, and/or re-introduced at a later stage, if the Ministers deem that necessary. In the light of those intentions, compatibility of the Regulations with the principle of church independence is by no means an academic issue but a constitutional one. Our clients' concerns would be significantly alleviated by a reassurance from the Ministers that any future legislation would respect the principle of church independence, and in particular, would not impose a legally binding ban on church services. If there is a prohibition on our clients' freedom to worship following the expiration of the index regulations, our clients reserve their position concerning future judicial review proceedings.

Thirdly, far from declaring any "intention to file a claim for judicial review immediately, regardless of the contents of any response", our pre-action letter made it clear that our clients "are open to dialogue with your clients about the issues raised in this pre-action letter in whatever form your clients consider appropriate". This remains the position. Our clients fully appreciate that the Regulations were introduced as a matter of urgency in response to a public health crisis, and any breach of the principle of church independence may have been unintentional. In those circumstances, it is not unrealistic to hope that the issues may be resolved in a constructive dialogue and without litigation. To achieve that, we respectfully invite the First Minister to meet our clients via an online conference call within the next 7 days, to ensure that the concerns of churches are taken into account in the Welsh Ministers' Covid-19 policy, and the ancient constitutional liberties of the church are properly safeguarded and respected.

We look forward to hearing from you.

Yours faithfully



Andrew Storch solicitors



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Appendix 1 – List of signatories

Appendix 2 – Letter from Peter Naylor

Appendix 3 – letter from Oliver Allmand-Smith

Appendix 4 – letter from Iestyn ap Hywel - Minister of the Presbytery, Montgomeryshire Presbytery

Appendix 5 – letter from Heath van Staden

Appendix 6 – letter from Joel Morris

Appendix 7 – letter from Clyde Thomas

Appendix 8 – letter from Chris Owen

Criminal
Defence Service



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Community
Legal Service



Appendix 1

Signatories to the pre action letter re potential judicial review of church closure in Wales:

Welsh Ministers

- | | |
|------------------------------|--|
| 1. Pastor Kevin Berthiaume | Calvary Chapel, Cardiff [Lead claimant] |
| 2. Terry Bees | Immanuel Presbyterian Church – Cardiff |
| 3. Pastor Andrew Cleverly | Bethel Community Church, Newport |
| 4. Dr Paul Corney | Immanuel Presbyterian Church, Cardiff |
| 5. Peter Davies | Treboeth Gospel Hall, Swansea |
| 6. Rev'd Edward Evans | Westgate Evangelical Chapel, Pembroke |
| 7. Darrin Gilchrist | Itinerant Minister, St Mellon's, Cardiff |
| 8. Philip Haines | Minister, Ely Presbyterian Church, Cardiff |
| 9. Rev'd Timothy Hodgins | Sandfields Presbyterian Church, Swansea |
| 10. Minister Richard Holst | Christ Church Evangelical Presbyterian Church, Barry |
| 11. Pastor Math Hopkins | Thornhill Church, Cardiff |
| 12. Minister Iestyn ap Hywel | Montgomeryshire Presbytery, Presbyterian Church of Wales |
| 13. Pastor Ewan Jones | Bethel Baptist Church, Bedwas |
| 14. Dr Joel Morris | ED of Union in Bridgend and Trustee of Grace Church, Porthcawl |
| 15. Rev'd Dr Peter Naylor | Immanuel Presbyterian Church, Cardiff |
| 16. Chris Owen | Baptist Minister - Sandfields Presbyterian Church, Port Talbot |
| 17. Rev'd Clyde Thomas | Victory Church, Cwmbran |

- 18. Chris Rees
- 19. Heath Van Staden

Bethesda Chapel Narbeth
Liberty Church Newport

English ministers

- 20. Dr Ayo & Pastor Moni Akinsanya
- 21. Pastor Oliver Allmand-Smith
- 22. Rev'd Dr Gavin Ashenden
- 23. Paul Brown
- 24. Pastor Ian Christensen
- 25. Rev'd George Curry
- 26. Pastor Christos Demetrio
- 27. Pastor Dennis Greenidge
- 28. Rev'd Dr David Hathaway
- 29. Rev'd Nathan Hilton
- 30. Rev'd Matthew Jolley
- 31. Pastor Thabo Marais
- 32. Rev'd Douglas McCallum
- 33. Dr Brad Norman
- 34. Pastor Ade Omooba MBE
- 35. Pastors John & Sally Quintanilla
- 36. Rev'd Dr Matthew PW Roberts
- 37. Rev'd Dr Bill Schweitzer
- 38. Rev'd Aled Seago
- 39. Rev'd Melvin Tinker
- 40. Rev'd Benjamin Wontrop

Deeper Christian Life Ministry
Trinity Grace Church, Manchester
Former Chaplain to Her Majesty the Queen
Sheffield Evangelical Presbyterian Church
New Life Christian Centre Int, Wembley
Elswick Parish, St Stephen and St Paul
Cornerstone the Church, Surrey
Worldwide Mission Fellowship, London
President, Eurovision Mission to Europe
Sunderland Evangelical Presbyterian Church
Bury St Edmunds Presbyterian Church
CRC London, UK & Europe
Cambridge Presbyterian Church
Salvation for the Nations International
New Life Assembly, London
Hebron Christian Faith Church, Coventry
Trinity Church, York
All Saints Presbyterian Church, Newcastle
Poynton Parish, Stockport
Director of Theology, The Christ Church Network, Hull
All Saints Presbyterian Church, Newcastle

Immanuel Presbyterian Church
Heol Trelai, Caerau, Cardiff CF5 5LJ
Telephone 029 2040 5750
Website: www.immanuel.org.uk

Andrea Minichiello Willians
Chief Executive
Christian Concern, Christian Legal Centre
70 Wimpole Street
London W1G 8AX

28 October 2020

Dear Andrea

R (Berthiaume *et. al.*) v Welsh Ministers

My name is Rev. Dr Peter J. Naylor. I am a Minister of Immanuel Presbyterian Church. (I also hold the position of Adjunct Professor of Biblical Studies, Westminster Presbyterian Theological Seminary, Newcastle upon Tyne.)

Immanuel Presbyterian Church is a congregation of the Evangelical Presbyterian Church in England and Wales. This church is constituted upon the Westminster Subordinate Standards of 1648.

My congregation is situated in Caerau, a council estate in Cardiff that would generally be recognized as ‘deprived’ with many social problems – family breakdown, depression, suicides, drug abuse, antisocial behaviour. We serve the community first and foremost as a place of Christian worship, but also in many other direct ways, for example, by the provision of youth groups, a ‘mums and tots’ group, by food bank collections. We offer pastoral care to vulnerable individuals and needy families in the community. We have cared for those suffering with mental illness, and those who are bereaved and grieving the loss of loved ones. We have also had a mutually supportive relationship with the local police.

In joining in this matter, I am acting officially on behalf of the church.

Yours sincerely



Peter J. Naylor B.A. (Hons), D. Phil. (Oxon)

October 28th 2020

To whom it may concern.

We have been asked to confirm that we are a worshipping community of God's people based in the Bury area in the northern part of Greater Manchester.

We have been serving to our community for over 65 years and our highest priority has always been to maintain the worship of God and minister the word of God faithfully here. We also believe that meeting to pray for our community, nation and world are critical for the blessing of God upon us all.

Out of this worship, ministry and prayer come a wide range of other services that we have provided over the years, including:

- ✘ Children's clubs and youth meetings catering for 5 to 18 years and serving the local area including the nearby council estate.
- ✘ Coffee mornings, largely providing a context for the elderly to connect with one another in a church context.
- ✘ Marriage and relationship counselling.
- ✘ Family conflict resolution.
- ✘ Meals for the elderly.
- ✘ Support for the bereaved and those suffering with long-term illness.
- ✘ Visitation of the elderly, the lonely, those with mental health difficulties, those suffering from alcohol and substance abuse and many other difficulties.
- ✘ Mentoring, training and support for children and young families.
- ✘ Community outreach events such as Easter Celebrations, Family Fun Day, Bonfire Night and Christmas Carol Services.

During lockdown it has been extremely difficult to maintain these services to our community, and we believe that those who have suffered most are the elderly and the vulnerable – the very people that lockdown is intended to help.

If we are placed again in a position where our churches are unable to meet for worship, the ministry and God's word and prayer, we will find ourselves unable to fulfil our wider service of the community.

For this reason, we support the action being taken to call the Welsh Assembly to reconsider its closure of churches in Wales.

Oliver Allmand-Smith MA(Cantab), Pastor.

Rev. Iestyn ap Hywel

28 of October 2020

To whom it may concern,

My role within the Presbyterian Church of Wales is as an ordained Minister of the Presbytery, Montgomeryshire Presbytery. This means that, as recognised by ecclesiastical authority and legal convention, I am called by God to this work and am to serve his church in this capacity.

My work includes ministering amongst three church centres in Machynlleth, Newtown and Llanidloes. I provide leadership and guidance to the elders and members of these and certain other congregations in the surrounding areas. I preach, minister the sacraments, provide pastoral care, and am responsible for coordinating and leading Welsh language ministry across the Presbyterian Churches of Montgomeryshire.

With an aim to further the Christian wellbeing and joy of every believer, equipping them for ministry and every good work in their local communities, I affirm that the weekly Sunday services are absolutely indispensable. Many of my congregants are acutely feeling the need for the restoration of the means of grace but are now also faced with the anxiety of legal restrictions upon the practice of their faith. The means of grace are integral to their happiness and health and I have witnessed a deterioration in both as a result of lockdown.

I hope this information is helpful to you.

Kind regards,

Iestyn ap Hywel

Heath van Staden

[REDACTED]

[REDACTED]

[REDACTED]

29 October 2020

Dear Sirs

I write this letter in support of our letter before action. I can confirm that as a church the main effect of the pandemic we are seeing, is on families that are struggling with the church not opening, due to the lack of consistent input into whole family. As a church we are looking after 200 + families weekly. Sadly we are seeing marriage break ups, parenting issues, loneliness and suicides of fathers. Worship & gathering together is their lifeline.

Yours sincerely

Heath van Staden

Union
Union Campus,
Bridgend,
CF31 4DX, UK

29 October 2020

Dear Sirs

This letter is support of a pre action letter prepared on my behalf.

I would be honoured to be included in the cause.

I and the Executive Director of Union in Bridgend and also a Trustee of Grace Church,
Porthcawl
May the Lord bless your endeavours!

Yours sincerely

Dr. Joel Morris
Executive Director

Clyde Thomas - Lead Pastor
Victory Church



29 October 2020

Dear Sirs

This letter is in support of the pre action letter prepared on my behalf.

Victory Church is a local church with several sites serving some of the most deprived areas of Wales. Our worship services include people from all walks of life, and many lives are inspired and changed during these moments. Everything we do is an outworking of the message of Jesus, that includes drug and alcohol rehabilitation homes, Supported Housing for the homeless, day-to-day outreach and emergency support, a vast array of life-skills and practical courses. We are a community of believers, impacting the nation of Wales and beyond.

Yours sincerely

Clyde Thomas

*Showing
People Christ!*

A PLACE OF REFUGE,
PEACE AND
CHRISTIAN LOVE.



*For families and
singles; for all.*

**ON THE ESTATE,
FOR THE ESTATE.**

Western Avenue SA12 7LS 

I am a retired Baptist minister, who has served two churches in Wales, one in Splott Cardiff and another in Chepstow. I currently assist at Sandfields Presbyterian Church in Port Talbot. Half our congregation, many of these are the most vulnerable, cannot join in with any online service, so the lockdown has hit them severely.

My wife is a trained counsellor, and we need to meet in person in order to meet the spiritual and pastoral needs of people. Mental health is suffering during the lockdown and causing major concerns.

Chris and Heather Owen.



Llywodraeth Cymru
Welsh Government

Ein cyf/Our ref FCFTFG301020

Members of the Faith Communities Forum
Task and Finish Group

October 2020

Dear Members of the Task and Finish Group

I wanted to write to you to express my thanks to you for our meeting last Thursday and for the positive engagement you continue to offer Welsh Government. I, of course, learnt a lot from your wise counsel and this will help shape the positions and the guidance that we produce. However, what particularly struck me was the sense that we can, and are, tackling this terrible public health threat together, each with our own role to play.

I don't underestimate the impact that our regulations and rules have had on people of faith for whom worship is not discretionary but is central to their identity and duty as a person of faith. I appreciate also that decisions that we have taken may be difficult for you and your communities to accept, for example the closure of places of worship during the firebreak.

However, the recognition that you have of the gravity of the pandemic and the fundamental need to protect your communities and the wider public does make it easier to navigate the difficult course between freedoms and protections. I strongly believe we have made significant progress in developing our Covid-safe frameworks which, we must not forget, we understood very little only a short few months ago.

I want to thank you and the army of voluntary workers in your places of worship for the responsible way in which you have taken on not only the letter but also the spirit of our regulations and protected the vulnerable.

You have been at the forefront in responding to the concerns and frustrations of many worshippers. I thank you for your fortitude in this. We want to work together to communicate as effectively as possible the reasoning behind decisions, of recognising the good practise that is taking place and the progress that we have made. I commit myself and my officials to that task. It is essential that we are able to share the message, I know you understand, that what we are doing is not an attack on faith or faith communities, but an honest attempt to protect the vulnerable.

The challenge Government faces is to change the narrative from 'what we are or are not allowed to do' to one of understanding how this virus transmits and a sense that by working together as a whole society we can continue to learn new and creative ways to live our normal lives safely. I know people of faith will play more than their part in helping make that happen.

Thank you all

Jane Hutt AS/MS

Y Dirprwy Weinidog a'r Prif Chwip
Deputy Minister and Chief Whip

Andrew Storch Solicitors
Citygate
95 Southampton Street
Reading, RG1 2QU

Email: [REDACTED]@andrewstorch.co.uk
[REDACTED]@michaelphillips.cjism.net
Your Ref: MP: MP4017

BY EMAIL ONLY

3 November 2020

Dear Sirs,

1. Thank you for your letter of 29 October 2020. We welcome the constructive approach that it evinces, which we shall endeavour to reciprocate, and we hope that you and your clients will take this letter in that spirit.
2. In your letter, you express concern that the “firebreak” imposed by the Regulations might be extended, or that a similar “firebreak” might be imposed again in the future. You may be aware that, on 2 November 2020, the First Minister announced that the “firebreak” will end as planned on 9 November 2020. Accordingly, the Regulations will expire in less than a week. In his statement, the First Minister expressly confirmed that “places of worship will also be able to reopen”. We hope that this will be welcome news for your clients.
3. Whilst you will appreciate that we cannot predict what steps it might be necessary for the Welsh Government to take in the future in order to address the serious threat to public health posed by the spread of the coronavirus, we wish to assure you that the Welsh Ministers are mindful of the potential impact on faith communities, and they have taken steps to engage with faith groups in order better to understand this impact. In our previous letter, we referred to the Task and Finish subgroup of the

Welsh Government's Faith Communities Forum. The subgroup met twice last week, and the Deputy Minister attended the meeting that took place on 30 October 2020. We enclose a copy of the letter that the Deputy Minister sent to the members of the subgroup after that meeting, which clearly indicates the importance that is attached to the views expressed by faith groups.

4. In your letter you suggest an online meeting between your clients and the First Minister, in order to ensure that the concerns of churches are taken into account. You will appreciate that, at present, the First Minister is extremely busy, and therefore we regret that such a meeting will not be possible. However, as we have explained above, that does not mean that the concerns of churches are not being taken into account. On the contrary, the Task and Finish subgroup affords an established avenue for such concerns to be aired. If your clients have not already done so, we would encourage them to pass on their concerns to the appropriate member of the Task and Finish subgroup so that they may be raised at the subgroup. A list of the represented members can be found here: <https://gov.wales/faith-communities-forum/terms-of-reference>.
5. Finally, you have provided further information about some of your clients. We wish to stress that nothing in our letter of 26 October 2020 was intended to cast doubt on the sincerity of your clients. However, as you will be aware, s 7(1) of the Human Rights Act 1998 requires that a claim under that Act (including a claim for judicial review) may only be brought if the claimant has the particular status of "victim". One of the points that we were making was that it was not obvious to us from the information that you had provided that all of the proposed claimants could be properly characterised as "victims" for the purposes of that Act, as it did not appear that all of them practised their faith in Wales. However, we agree that it is unlikely to be productive to focus on this issue now.
6. We hope that this letter affords your clients some reassurance as to the approach that is being adopted by the Welsh Ministers in this sensitive area. If you consider that it would be helpful to discuss this matter with officials, please do not hesitate to get in touch.

Address for any further correspondence

7. We kindly request that you refrain from using the NewProceedings.WG.Legal@gov.wales email address, and that you direct all correspondence to the following email addresses instead: **Rosalind.young001@gov.wales** and **LSHealthandFood@gov.wales** (please use both).

Yours sincerely

A handwritten signature in black ink, appearing to read 'Rosalind Young', with a stylized flourish at the end.

ROSALIND YOUNG
Legal Services Health Team

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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/HOI7 (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

Criminal
Defence Service



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Community
Legal Service



The claimants

1. Rev. Ade Omooba MBE, Co-Chair, National Church Leaders Forum – NCLF, A Black Christian Voice.

[REDACTED]

2. Dr David Muir, Co-Chair, National Church Leaders Forum – NCLF, A Black Christian Voice.

[REDACTED]

3. Pastor Dr Kenny Ademosu, Deeper Christian Life Ministry, UK

[REDACTED]

4. Pastor Dr Dele Adewumi, Deeper Christian Life Ministry, UK

[REDACTED]

5. Pastor Dr Ayo Akinsanya, Deeper Christian Life Ministry, UK

[REDACTED]

6. Pastor Yemi Akinwande, Deeper Christian Life Ministry, UK

[REDACTED]

7. Pastor Paul Akowe, Deeper Christian Life Ministry, UK

[REDACTED]

8. Pastor Oliver Allmand-Smith, Trinity Grace Church

[REDACTED]

9. Rev. Derek Andrews, Pastor, The Presence Of God Ministries

[REDACTED]

10. Dr. Gavin Ashenden, Former Chaplain to the Queen, Former Anglican Bishop

[REDACTED]

11. Pastor Matthew Ashimolowo, Senior Pastor, Kingsway International Christian Centre – KICC.

[REDACTED]

**12. Pastor Dr. Jonathan Bayes, UK Director, Carey Outreach Ministries
*Stanton Lees Chapel,***

[REDACTED]

13. Bishop Lovel Bent, Presiding Bishop, Connections Trust.

[REDACTED]

14. Paul Brown-Ruling Elder, Sheffield Presbyterian Church

[REDACTED]

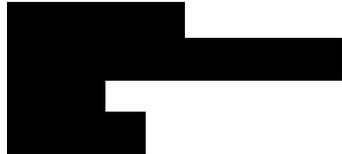
15. Richard Buckle - Elder

[REDACTED]

16. Pastor Stephen Casey, Speke Baptist Church (FIEC)



17. Rev. Ian Christensen, AoG UK, Senior Minister, *New Life Christian Centre*



18. Rev. Will Cockram, Cuckfield Baptist Church,



19. Pastor Benjamin Conway, Tree of Life Church UK



20. Dr Paul Corney, Immanuel Presbyterian Church,



21. Father Mark Crowther-Alwyn, St Giles Parish Church



22. George Curry, Elswick Parish Church,



23. Peter Davies, Elder, Treboeth Gospel Hall,



24. Chris Demetriou, Senior Pastor, Cornerstone



25. Pastor Dr Chima Dioka, Deeper Christian Life Ministry, UK



26. Nick Donnelly, Dukinfield Congregation Church,



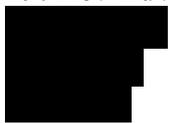
27. Professor John Durodola, National Chairman, Overseas Fellowship of Nigerian Christians (OFNC).



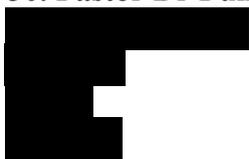
28. Pastor Dr Victor Ebenuwa, Deeper Christian Life Ministry Yorkshire



29. Rev Edward Evans, Westgate Evangelical Chapel,



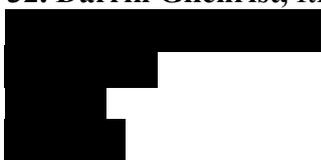
30. Pastor Dr Funso Fabiyi, Deeper Christian Life Ministry, UK



31. Rev. Dr Ian Farley, St John's Church Buckhurst Hill



32. Darrin Gilchrist, Itinerate Minister



33. Rev. Asif Gill, Senior Leader, Ecclesia International

[Redacted]

34. Dennis Greenidge, Senior Pastor, Worldwide Mission Fellowship.

[Redacted]

35. Pastor Andrew Grimshaw, Grace Life Church – Manchester

[Redacted]

36. Rev. Alex Gyasi MBE, Convener & Senior Pastor, Kingdom Culture Alliance & Highway of Holiness.

[Redacted]

37. Rev. Dr David Hathaway D.D., President, Eurovision Mission to Europe.

[Redacted]

38. Rev. Nathan Hilton, Sunderland Evangelical Presbyterian Church,

[Redacted]

39. Rev. Jon Hobbs, Grace Church Haywards Heath,

[Redacted]

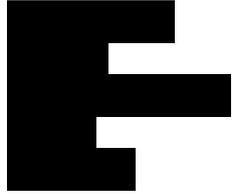
40. Rev. Richard Holst, Christ Church Presbyterian,

[Redacted]

41. Pastor Aaron Jarvis, Londonderry Baptist Church

[Redacted]

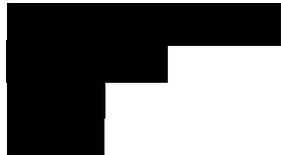
42. Rev. Matthew Jolley, Bury St Edmunds Presbyterian Church



43. Rev. Joshua D. Jones, Therfield Chapel



44. Pastor Thabo Marais, Senior Pastor, Christian Revival Church London



45. Canon Yaqub Masih MBE, Secretary General, UK Asian Christians; Secretary General & Founder, New Horizons



46. Rev. Douglas McCallum, Cambridge Presbyterian Church,



47. Stephen Metcalfe, Elder, Starbeck Mission



48. Rev. Dr Peter Naylor, Immanuel Presbyterian Church,



49. Bishop Michael Nazir-Ali, President, Oxford Centre for Training, Research, Advocacy and Dialogue – OXTRAD.



50. Graham Nichols, Pastor of Christ Church Haywards Heath and Director of Affinity

[REDACTED]

51. Rev. Dr Brad Norman, Salvation for the Nations Intl. Churches.

[REDACTED]

52. Pastor Michael Ogunkanmi, Deeper Christian Life Ministry, UK.

[REDACTED]

53. Pastor Dr Samuel Ohiomokhare, Deeper Christian Life Ministry, UK.

[REDACTED]

54. Pastor Sunday Okenwa, Deeper Christian Life Ministry, UK

[REDACTED]

55. Chris Owen (Retired Baptist Minister) & **Heather Owen** (Christian Counsellor)
Sandfields Presbyterian Church

[REDACTED]

56. Pastor Frank Oyibo, Deeper Christian Life Ministry, UK

[REDACTED]

57. Pastor George Platt, Highgate Road Chapel

[REDACTED]

58. Pastors John & Sally Quintanilla, Christian Faith Church, Coventry

[REDACTED]



59. Rev. Dr. Matthew PW Roberts, Minister, Trinity Church York International Presbyterian Church



60. Rev. Dr. Peter Sanlon, Emmanuel Anglican Church,



61. Rev. Dr William M. Schweitzer, All Saints Presbyterian Church,



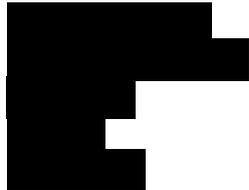
62. Felipe Sediles, Victory Chapel, Hamble



63. Pastor Paul Song, London Shepherd Church



64. Pastor Kola Taiwo, Senior Pastor, New Wine Church.



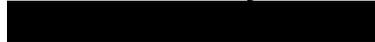
65. Rev. Clyde Thomas, Victory Church,



66. Rev Melvin Tinker, Director of Theology



67. Pastor Goddey Wariboko, Deeper Christian Life Ministry, UK



[Redacted]

68. Rev. Keith Waters

[Redacted]

**69. Bishop Alfred Williams BA(Hons), LLB(Hons), LLM (Inter. Business Law),
MCI Arb. Presiding Bishop, Christ Faith Tabernacle International Churches**

[Redacted]

70. Rev. Josh Williamson, Newquay Reformed Baptist Church

[Redacted]

71. Rev. Benjamin Wontrop

[Redacted]

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By email only: [REDACTED] [@andrewstorch.co.uk](mailto:[REDACTED]@andrewstorch.co.uk)

Your ref: MP:MP3515
Our ref: Z2006192/HHS/HO17

5 November 2020

Dear Sirs

RE: R (Rev. Ade Omooba & Others) v Secretary of State for Health and Social Care

We are in receipt of your letter before claim dated 2 November 2020, seeking an urgent response by 4pm on 5 November 2020. Despite the truncated timescale, we have sought to provide a response.

Proposed Claimant

Rev Ade Omooba & others

Proposed Defendant

The Secretary of State for Health and Social Care.

The Defendant may be contacted via the Government Legal Department (GLD). We confirm that GLD is accepting service by email hannah.sladen@governmentlegal.gov.uk.

Reference Details

Our reference: Z2006192/HHS/HO17

Please cite the above reference number on all future pre-action correspondence. Hannah Sladen is the GLD pre-action contact on behalf of the Defendant.

Details of the Decision being Challenged

1. Your letter seeks to challenge the application of public health restrictions to churches, albeit that your letter was provided before the relevant Regulations were even published in draft. We have assumed that your proposed challenge is to the Health Protection (Coronavirus, Restrictions) (England) (No.4) Regulations 2020 ("the Regulations"), made under the Public Health (Control of Disease) Act 1984 ("the 1984 Act"), and laid before Parliament on Tuesday 3 November 2020. The Regulations came into force on Thursday 5 November 2020, having been approved by both Houses of Parliament on Wednesday 4 November 2020.

2. At present your letter contains a brief outline only of any proposed claim, and does not relate specifically to the Regulations, which are addressed below. Instead you have appended your previous claim which was withdrawn by consent. The Defendant reserves the right to advance further or alternative arguments in the future should the need arise, if and when you have considered the legislation and properly particularised any proposed claim.
3. The proposed claim will be defended and permission opposed.

The Context to the Regulations

4. We note the following significant points of context in relation to the Regulations and the COVID-19 (“the virus”) global public health pandemic.
5. First, the entirety of the UK is presently affected by the public health pandemic caused by COVID-19. The extremely serious risk to life and health posed by the virus has obliged the Government to take unprecedented steps to limit the ability of the virus to spread, and to reduce the burden on the National Health Service. Tens of thousands of people in England have died having tested positive for the virus, with hundreds of thousands having been infected by the virus. Accordingly, there are fundamental Article 2 rights of the population at stake which the measures in the Regulations and the Strategy seek to protect. The UK has a positive obligation “to take appropriate steps to safeguard the lives of those within its jurisdiction” and to do “all that could have been required of it to prevent...life from being avoidably put at risk”: *LCB v United Kingdom* (1997) 27 EHRR 212 at §36. This obligation extends to the public health context: *Stoyanovi v Bulgaria* (App. No. 42980/04) at §60. This duty, in respect of the most fundamental right of all, weighs heavily in any assessment of the measures adopted in the Regulations.
6. Your clients will be well aware of the factual basis upon which the Regulations have been made; the increase in the reproduction rate of the virus in England, the doubling of confirmed cases of infections and the considerably increasing death rate. As with the previous round of restrictions earlier in 2020, the Government will seek to bring the restrictions imposed in the Regulations to an end as soon as possible, and will keep them constantly under review. The Government has sought to maintain the fewest possible restrictions on the public while the public health situation had improved, but when it worsens, increased restrictions are necessary and justified. As set out further below, the restrictions in the Regulations will automatically expire after 28 days.
7. Secondly, a wide margin will be afforded to the Defendant in respect of decision-making based on scientific evidence generally, and in the particular of “public health issues which require the evaluation of complex scientific evidence, the national court may and should be slow to interfere with a decision which a responsible decision-maker has reached after consultation with its expert advisers”: see Lord Bingham CJ in *R v Secretary of State for Health ex p Eastside Cheese Co* [1999] 3 CMLR 123 at §§43-7. This is even more so where the Government is dealing with an unprecedented risk to the lives of the public, and the decisions about how to do that involve no right answers, but rather a series of judgement calls informed by emerging scientific advice: see *R (Hussain) v Secretary of State for Health* [2020] EWHC 1392 (Admin) at §22 per Swift J.
8. Thirdly, the appropriate response to the serious threats posed by the global pandemic are ultimately multi-factoral political judgments which the Courts should be slow to interfere with. “What 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”: see *Hussain* (supra) at §21 per Swift J.
9. Fourthly, the precautionary principle applies. The Government has been and is dealing with a new virus about which relatively little is known, and where the scientific evidence is emerging: see *R (Lumsdon and others) v Legal Services Board* [2016] AC 697 at §§57-61 and *R (Friends of Antique Cultural Treasures Ltd) v Secretary of State for the Department of Environment, Food & Rural Affairs* [2020] EWCA Civ 649 at §§87-94.
10. As the Courts have previously recognised, the Secretary of State is acting on “scientific advice ... to the effect that the Covid-19 virus is highly contagious and particularly easily spread in gatherings of people indoors, including, for present purposes, gatherings in mosques, churches, synagogues, temples and so on for communal prayer”: *Hussain* at §19 per Swift J. This remains the position.
11. Fifthly, the Government has and continues to engage with representatives of all faith groups in considering the extent to which the restrictions on places of worship can be eased. The Government is acutely aware of the effect of the restrictions on religious leaders, groups and

communities and has consulted, and continues to consult, with representatives of these groups, including your clients, to discuss how worship can safely take place. Ongoing dialogue with the Places of Worship Taskforce (“the Taskforce”) and roundtable meetings with other representatives of faith communities, including your clients, have enabled the sharing of ideas and discussion of the relevant issues. Those meetings have taken place right up to this week, as your clients will be well aware. The Taskforce and roundtable fora have previously been of assistance in discussing mitigating risks, how to permit activities and also provided an opportunity to explore the implications and handling of the proposed easing of prior restrictions. The Government anticipates that the Taskforce and roundtables will continue to perform these valuable functions. The recent discussions have been balanced against a well-known considerable increase in rates of transmission of the virus, and in the death rate as a result.

12. Sixthly, the pandemic is a global one, but has developed and affected different countries in different ways and at different times. Each country affected is making its own judgments as to the most appropriate measures to reduce the spread of the virus and to protect life, and when to lift or reduce those restrictions, based upon the particular circumstances of the particular country at the particular time. No two countries share precisely the same context and therefore drawing on the judgments of Courts in other countries examining restrictions that have been imposed elsewhere in different circumstances against the backdrop of different constitutional and legal systems to the UK is of little or no value.
13. Seventhly, the Regulations were approved in accordance with the terms of the 1984 Act by both Houses of Parliament, in advance, on 4 November 2020. The debate and approval by Parliament took place in the light of public commentary about the *vires*, the proportionality and the policy justifications for the Regulations and the restrictions contained within them. Parliament was thus aware of the arguments your client raises, but approved the Regulations nonetheless.
14. Eighthly, the Regulations apply for a strictly time-limited period of 28 days from 5 November 2020: regulation 23(1).

The Regulations

15. The provisions relevant to your proposed claim are as follows. During their period of validity, the Regulations prohibit gatherings of more than two people which take place indoors: regulation 8. There is an exception provided in regulations 11(13) and (14) for attending funerals and other commemorative events following a death, but gatherings for communal worship are otherwise unlawful. A further specific exception is provided for the Remembrance Sunday and Armistice Day event at Westminster Abbey on 11 November 2020 (and otherwise if the commemorative gathering is outdoors): regulation 11(18). This exception is provided in recognition of the importance of the traditional service held to remember the fallen and the significance of this commemoration to people of all faiths and none.
16. Regulation 5(1) provides that “*No person may leave or be outside of the place where they are living without reasonable excuse.*” Included within the non-exhaustive list of reasonable excuses in regulation 6 is to “*attend a place of worship*”: regulation 6(2)(e).
17. Regulation 18(7) provides that “*A person who is responsible for a place of worship must ensure that the place of worship is closed, except for uses permitted in paragraph (8) and regulation 11(18).*” Regulation 18(8) then sets out a list of exceptions in the following terms:

“(8) *A place of worship may be used—*

 - (a) for funerals,*
 - (b) for commemorative events celebrating the life of a person who has died,*
 - (c) to broadcast an act of worship, whether over the internet or as part of a radio or television broadcast,*
 - (d) to provide essential voluntary services or urgent public support services (including the provision of food banks or other support for the homeless or vulnerable people, blood donation sessions or support in an emergency),*
 - (e) for childcare provided by a person registered under Part 3 of the Childcare Act 2006,*
 - (f) for individual prayer, and for these purposes, “individual prayer” means prayer by individuals which does not form part of communal worship, or*
 - (g) to host any gathering which is permitted under regulation 8 or 9.”*
18. By regulation 20, a person who contravenes any of these restrictions without a reasonable excuse commits an offence.

Response

19. Your letter asserts that you intend to challenge the Regulations on two grounds: 1) the closure of churches is in breach of Article 9 ECHR, and 2) that such closure is *ultra vires* the Public Health (Control of Disease) Act 1984 (“the Act”).
20. Before turning to these two grounds, we note that your correspondence is concerned only with churches, and not other places of worship, although the Regulations treat all faiths and places of worship in the same way. You do not explain why it would be lawful or justified for the Government to exempt churches alone from the restrictions imposed by the Regulations.
21. Nor does your letter attempt to define or explain what you mean by “churches”, or which denominations all of your clients purport to represent, or their status within those denominations. The information provided in the schedule and in your previous claim form does not explain these matters sufficiently to explain the nature of the claimants’ standing; the Defendant reserves his position in this respect.
22. It is not clear to us what, if any, practical advantage the claimants envisage obtaining by way of any claim for judicial review. Judicial review is a practical remedy, and the courts will not entertain an academic claim unless there is good reason in the public interest to do so (*R v Secretary of State for the Home Department, ex p Salem* [1999] 1 AC 450, 457 *per* Lord Slynn). The position adopted by your clients appears to be that persons responsible for churches in England would be content to follow any guidance issued by the Government. Given that the Government’s guidance is that that places of worship such as churches should be closed for communal worship for the period of 28 days to which the Regulations apply, we are unclear as to your position. It is incumbent on your clients to explain why, given their stance in your letter, their claim would not be academic in practice.
23. In this case, we do not understand how your letter can simultaneously assert that your clients take the virus seriously but at the same time oppose the restrictions imposed by the Regulations.
24. But further and in any event, the Regulations are neither a disproportionate interference with Article 9 ECHR nor *ultra vires* in any event.

1) No Breach of Article 9 ECHR

25. The relevant restrictions in the Regulations do not give rise to any unlawful interference with Article 9 rights.
26. The Government is acutely conscious of the interference caused by the Regulations to people of all manner of religious faiths. However, the right to manifest religious belief is not unqualified. The law has been recently and conveniently summarised in *R (Haq) v Walsall MBC* [2019] EWHC 70 (Admin); [2019] PTSR 1192.
27. The Regulations pursue the legitimate aims of limiting the ability of the virus to spread and reducing the burden on the National Health Service; both of which seek to protect and reduce the risk to the lives of the population and to protect public health. The Regulations are rationally connected to that aim: they seek to reduce contact between people, most especially in indoor settings.
28. As the Divisional Court held in *Haq* at §73 in relation to Article 9, “*When it comes to whether there are less intrusive means and whether the defendant has maintained a fair balance between the rights of the individual and the general interest of the community, it seems to us that [counsel] is right to submit that a certain margin of judgment must be afforded to public authorities in this sensitive area.*”
29. The margin to be afforded to the Government is particularly extensive, having regard to the following matters set out above.
30. The measures taken in the Regulations, affecting every person and their way of life, are intended to protect the fundamental Article 2 right to life of the population. This is the Government’s overriding concern. It is principally achieved by enforcing an extensive but proportionate reduction in all forms of social contact during the emergency period. All of the measures in the Regulations seek to draw a careful balance between the critical need to protect life and the need for certain essential services to continue, which is being continuously reviewed for the possibility of relaxation or termination of

restrictions where to do so will not materially increase the risk of infection and to life. The restrictions on the use of places of worship reflects the core prohibition in the Regulations on gatherings and social contact in indoor spaces where the risk of infection is, on the basis of scientific advice, higher (and as is common sense in any event).

31. It is important to assess the nature and extent of the restrictions, as these are relevant to the question of justification: *Hussain* at §11.
32. The Regulations include exceptions to allow places of worship to deliver religious messages and support to those who wish to receive it, as in previous iterations of the restrictions imposed to protect life and public health: regulation 18(8). In particular, individual prayer will continue to be permitted, including in churches: regulation 18(8)(f). It is simply incorrect to characterise the Regulations as closing churches in a blanket sense. Leaving one's home to attend a place of worship is a permitted exception (regulation 6(2)(e)), and religious leaders may open places of worship to broadcast prayers and other acts of worship from, for example via the internet (regulation 18(8)(c)). There is no prohibition on the manifestation of religious belief and the celebration of religious festivals within the home and with members of the same, or linked within the meaning of regulation 12, households. Funerals will continue to take place. The interference is temporary in nature and time-limited to 28 days.
33. For the avoidance of doubt, there is no interference with 'church autonomy' such as to engage Article 9. Temporary public health restrictions imposed on access to places of worship are of a fundamentally different nature to interferences with the autonomous organisation and management of religious groups.
34. Accordingly, the undisputed interference with Article 9 ECHR is justified and proportionate in the present unprecedented circumstances.

2) The Regulations are *Intra Vires*

35. We do not understand the assertion made in your letter that the Defendant had no power to make the Regulations because they are inconsistent with clause 1 of Magna Carta 1297, the Church of England Assembly (Powers) Act 1919 and Article 37 of Articles of Religion 1562.
36. None of your clients purport to represent the Church of England; indeed, it is unclear how many of your clients are members of denominations which fall within the auspices of the Church of England (see §21 above). If they are not, they have no standing to advance arguments by reference to measures (such as the Church of England Assembly (Powers) Act 1919 and the Articles of Religion 1562) which concern only the Church of England as the established church.
37. The Defendant made the Regulations in the exercise of the express powers conferred by sections 45C(1), (3)(c), (4)(d), 45F and 45P of the 1984 Act. Those express powers are broad in scope and specifically enable the imposition of "*restrictions or requirements on or in relation to persons, things or premises in the event of, or in response to, a threat to public health*" see s.45C(3)(c). Subsection 4 makes clear that this specifically includes a "*prohibition or restriction relating to the holding of an event or gathering*" (which would include a church service) and "*restriction or requirement relating to the handling, transport, burial or cremation of dead bodies or the handling, transport or disposal of human remains*" (which, at least in respect of burial, expressly includes part of the functions of a church). It is abundantly clear that these express powers permit the Defendant to impose restrictions on places of worship.
38. To the extent that your clients contend that clause 1 of Magna Carta 1297 has the effect that churches can operate without any controls, restrictions or regulation by the State such an argument is clearly incorrect. A plethora of legislative measures adopted by the State which are designed to have a protective effect on people, public health and the environment self-evidently apply to churches as much as any another institution or organisation (for example, the law relating to health and safety, planning, burials, and the criminal law). There can be no dispute that Parliament can legislate for Church of England matters, most recently having done so in section 84 of the Coronavirus Act 2020.
39. The Church of England Assembly (Powers) Act 1919 gave the Church Assembly (now the General Synod of the Church of England) the power to legislate for matters concerning the Church of England by measure, with Parliament reserving the power to consider the measures and to decide whether or not they should be presented to the Sovereign for the Royal Assent. It does not

prescribe that Parliament may not legislate in a manner which affects the church. Even insofar as it is legislation relevant to your clients, it is irrelevant to the Regulations.

40. The Articles of Religion 1562 are of no legal or factual relevance. They are a creed to which ministers of the Church of England must swear their faithfulness, but they have no legal standing and neither purport to or could alter the substantive law. We do not understand how Article 37 could be said to be of any relevance in any event.

41. It is simply wrong for your clients to assert that churches have a constitutional right to take sole responsibility for public health within their walls. No rule of law or of principle has such an extraordinary effect.

Action Requested and Urgency

42. For the above reasons, the Government does not intend to agree to actions requested.

43. For the avoidance of doubt, any claim for judicial review issued will be defended and permission opposed. The Government's legal costs will be sought in the ordinary way in the event that permission is refused.

Details of Other Interested Parties

44. You have not indicated any interested parties. The Defendant agrees.

Alternative Dispute Resolution

45. Alternative dispute resolution is not practical. The Government continues to take the concerns of religious communities very seriously, including through the Taskforce, but must balance those concerns against the public health position.

46. At least some of your clients have recently been able to participate in roundtable discussions with Ministers for representatives of faith communities: the Government is keenly aware of the views of your clients and those of other faiths. Those clients will continue to be welcome to participate in such roundtable discussions, to assist the Government in enabling premises, including places of worship, to reopen safely as soon as possible.

Requests for Information and Documents

47. The nature and scale of the COVID-19 pandemic could not be more obvious, not least from the number of deaths in the United Kingdom. Publication of papers produced by the Government's expert scientific advisory group ("SAGE") is made through the gov.uk website.

Address for Further Correspondence and Service of Court Documents

48. All future pre-action correspondence should be sent to, and in the event that proceedings are later issued, documents should be served by email on hannah.sladen@governmentlegal.gov.uk.

49. Please acknowledge receipt of this letter.

Yours faithfully

Hannah Sladen

**Hannah Sladen
For the Treasury Solicitor**

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Science and Technology Committee

Oral evidence: UK Science, Research and Technology Capability and Influence in Global Disease Outbreaks, HC 136

Tuesday 3 November 2020

Ordered by the House of Commons to be published on 3 November 2020.

[Watch the meeting](#)

Members present: Greg Clark (Chair); Aaron Bell; Dawn Butler; Chris Clarkson; Katherine Fletcher; Andrew Griffith; Darren Jones; Mark Logan; Carol Monaghan; Graham Stringer; Zarah Sultana.

Jeremy Hunt and Lord Patel attended the Committee.

Questions 1433 - 1564

Witnesses

I: Sir Patrick Vallance, Government Chief Scientific Adviser; and Professor Chris Whitty, Chief Medical Officer for England.

Written evidence from witnesses:

– [Add names of witnesses and hyperlink to submissions]

Examination of witnesses

Witnesses: Sir Patrick Vallance and Professor Chris Whitty.

Q1433 **Chair:** This is a special hearing of the Committee to consider the evidence and advice that informed the Prime Minister's announcement of new restrictions that he made on Saturday evening and that will be debated in Parliament tomorrow.

I am very grateful to the Government's Chief Scientific Adviser, Sir Patrick Vallance, and the Chief Medical Officer, Professor Chris Whitty, who agreed straightaway to the Committee's request to appear before it today.

I welcome to the Committee Jeremy Hunt, who is Chair of the Health and Social Care Committee, to Darren Jones, who is a member of this Committee but also chairs the Business, Energy and Industrial Strategy Committee, and Lord Patel, who is Chair of the House of Lords Science and Technology Committee.

Perhaps I may start, before turning to colleagues, with some questions to Sir Patrick. Without the proposed new measures that were announced on Saturday to be debated tomorrow, how many deaths a day from Covid do you expect the peak to be this winter?

Sir Patrick Vallance: It is very difficult to put numbers on an exact peak and when that occurs. What we can see, though, is that the R remains above 1 everywhere. The epidemic continues to grow. If you take the six-week forward projection, that is the part of the modelling where you are going to get greatest reliability, because, in any model that relies on data, theory and assumptions, the further you go out the more unlikely it is that you get the number exactly right. As you come nearer, you get more accuracy, and the six-week projections that the SPI-M modelling groups have been looking at for the past number of weeks have turned out to be pretty good in tracking what happens.

They look as though, during that period, if nothing changed—that is important, because things clearly are about to change—you would expect the number of hospitalisations to breach the first wave number probably towards the end of November. You would expect the number of deaths, potentially, to equal the first-wave numbers somewhere in mid-December. That is what they would look like. That is the range you think of in the trajectory if nothing changed from where it was now.

Q1434 **Chair:** From where it was now—so before these measures had been introduced.

Sir Patrick Vallance: Yes.

Q1435 **Chair:** Can you explain how this relates to the chart you presented, which had some different curves from different research groups, about which there has been quite a lot of interest?

Sir Patrick Vallance: Yes. When that was presented on Saturday, I said that those were scenarios that were put together to try to look at what a new, reasonable worst-case scenario might look like. They are from a

couple of weeks ago. They are longer-term modelling, which come with all the caveats in terms of accuracy.

You can see that different groups have done those scenarios and have made assumptions. The assumptions they were given at that point were that the R would be between 1.3 and 1.5, and that it might go up by 10% during the winter. They modelled on that basis. You can see that the different groups came up with different peaks as a result of that. That would be to inform a reasonable worst-case scenario.

Another example might be, if you go back to June, that the Academy of Medical Sciences did a reasonable worst-case scenario for the winter that came up with higher numbers at that point.

That curve was then to lead into the six-week projection, which are the ones that carry more validity in terms of the numbers. Again, it is still a model, so you just project forward for that period and you see that, quite quickly, we reach similar numbers as in the first wave. The six-week ones are integrated across all the models.

Q1436 Chair: Is there a consensus view in SAGE through the modelling group on when the peak will be, assuming these new measures do not come in, and what level it will be?

Sir Patrick Vallance: The consensus statement of six-week, medium-term projections is a consensus from all the modelling groups taken through SPI-M projected forward over that six-week period. The other graph would come into a reasonable worst-case scenario consensus if that is what the Civil Contingencies Secretariat want, and they would commission that. At the moment, it is not a consensus. That is independent groups having modelled against a series of assumptions.

Q1437 Chair: So SAGE has not come to a consensus view on what the modelling projections would be.

Sir Patrick Vallance: For the six weeks, yes; beyond that, no.

Q1438 Chair: Turning to the NHS capacity, without the proposed measures being taken, when do you expect the acute bed capacity of the NHS to be used up through Covid patients?

Sir Patrick Vallance: I may bring Chris in on this. Clearly, what the SPI-M group can do is model forward the epidemic. Those are then provided to the NHS. Clearly, the NHS owns capacity modelling because it knows what the capacity is and we do not have the insight into the exact bed capacity.

The numbers, if you look at where the six weeks take you, suggest that the first-wave peak equivalent is somewhere at a national level towards the end of November, with greater pressure thereafter, but that will not be even across the UK. Some hospitals are clearly under pressure now; others will be under pressure later. That is an average. It is not expected that everyone will follow that curve.

Chris, you may want to say something about that.

Professor Whitty: It is important to say that a lot of the advice that I have given is not based on significant forward modelling. It is based on what has happened and what is observable. If you look at the number of in-patients—I am using management information service data, which is broadly accurate for England—on 7 September there were 536 cases. By the time you get to the beginning of October, it is over 2,500. As of today, it has breached 10,000 people in hospital. You do not need too much modelling to tell you that you are on an exponential upward curve of beds.

This is completely repeated in the ONS data—backward-looking data—looking at incidents¹ over time, which has followed a very clear upward trend. We know from all epidemics that you get a doubling. Epidemics are either doubling or halving. This is currently doubling. It is doubling at slightly different rates around the country, although bits of the country are starting at different stages.

There are two things to say about your question on beds. The first is that the starting point—how full they are now—is currently very variable. Some hospitals, particularly in the north of England, have reached levels of Covid occupancy higher than they had in the first wave. Our worry about those areas is that although it looks as if the R in the community is flattening but has not fallen below 1 as far as we can see, it is still going up. If it carried on going up from this very high base, they would get into serious trouble with in-patients very quickly.

There are other bits of the country—for example, the south-west—where the rate of increase is faster than in the north now and bed capacity is lower, so, although they look further away at the moment, they could hit difficulties relatively quickly.

To make an obvious point, I hope, to this Committee—I think it is worth it for those watching—there are several different barriers you go through in hitting capacity in the NHS. The first thing we are already having to do in some areas is cancel non-urgent elective care. Then you start to impinge on urgent but non-emergency care. Then you get into acute care being constrained and, finally, into all the intensive care capacity being used up. That happens in sequence, but we are already seeing parts of the country having to cancel non-urgent emergency care.

If this continues, people worry, rightly, about all non-Covid care being affected. This argument is slightly the wrong way round. The way you prevent those services being impinged on and, potentially, being slowed right down or even in some cases cancelled is to keep the Covid rates down. If you do not, that is going to erode the capacity of the NHS to do not just Covid care but non-Covid care.

Q1439 **Chair:** Specifically, one of the slides that Sir Patrick presented on Saturday looking at projected bed usage showed that without these new measures the spring peak would be exceeded on 20 November or thereabouts. With the extra beds it would be a few days later, and, even with the extra

¹ Note by witness: should say 'incidence'

capacity that comes from cancelling operations, that would be early in December. Does that reflect your joint view of what would happen to hospital capacity usage without these measures?

Professor Whitty: There is some evidence of some slowing, particularly in the north-east and possibly in the north-west, that might push that out in time, but until you start to see rates falling—it is a matter of timing as to which week you get into for these various stages—and they do not happen all at once or all at the same rate throughout the country, the trouble about things that start doubling is that you move from very small numbers to very large numbers surprising quickly.

Q1440 **Chair:** As is clearly understood, you are advisers rather than decision makers. You give advice to Ministers. Is it your joint view that without these measures there is a serious risk, to put it no stronger than that, that the NHS intensive care capacity would be overrun?

Sir Patrick Vallance: This slide is from the NHS. This is the NHS view of what would happen based on the SPI-M model.

Q1441 **Chair:** Do you agree with it?

Sir Patrick Vallance: Yes, given the caveat that it is a model.

Q1442 **Chair:** As the Chief Scientific Adviser to the Government and the Prime Minister, your advice would be, based on this modelling, that there is a serious prospect of the intensive care capacity of the NHS being overrun within the period to which this graph refers.

Sir Patrick Vallance: If nothing is done, yes.

Q1443 **Chair:** We come to the importance of the inquiries into these forecasts. Accepting that Ministers decide and advisers advise, in practice, if the advice from advisers to the Prime Minister is that the capacity of the NHS is likely to be overrun within weeks, that is quite difficult advice to gainsay, is it not? That is why there is an interest in understanding the basis of the advice. It is not optional advice in that sense, is it?

Sir Patrick Vallance: That was the forecasting from the NHS. That is what they said.

Q1444 **Chair:** It is also what you said.

Sir Patrick Vallance: Yes. It is what we say from the modelling. As I said, we cannot deal with NHS capacity. I do not have insight into NHS capacity.

Q1445 **Chair:** But your advice to the Prime Minister and the Government, based on NHS data and the modelling data, was that this is a serious prospect and a serious risk.

Sir Patrick Vallance: Yes.

Professor Whitty: It is a serious risk but is not inevitable. The actions being taken by people are already having an effect. Our view is that it is just a matter of time. Once the R is above 1, it will keep on going up and the question is only how long.

Q1446 **Chair:** Do the forecasts and projections include the impact of the tiered restrictions that began in most parts of the country on 14 October?

Professor Whitty: They will not yet be feeding through, in my view, fully into the numbers, but they will push them out in time. They would not change. It is not a question of whether, but it might be a question of when. The only part of the country at the moment where there is realistic evidence that the numbers have flattened where the R is approaching 1 is, probably, in terms of regions in the north-east. There may be some smaller areas elsewhere, but it is still, as far as we can tell, going up, albeit at a much, much lower rate. This is the view of the local directors of public health as well as the NHS view. This is a quite widely held view.

What you are indicating, and rightly, is that putting exact dates on these things is almost impossible because what the Government do—it is also how people themselves respond—is they see a problem locally and neither Patrick, myself nor anyone who is advising Government would say, “This is definitely going to happen on this date.” People who give that degree of certainty have not understood how modelling of this sort with scenario uncertainty properly works.

The inevitability, if your R remains above 1, even if it is by quite a small amount once you have reached a high level of bed usage, is that you have very little headroom. So quite a small R can take you from just about coping to not coping. We are looking forward in a bad way to the fact that the most difficult time for all respiratory viruses, as we all know, is during the winter months. We have not fully got into them. So the chances that things are likely somehow to improve without action between now and the next few months are quite low. If you are giving advice to Ministers, that has to be the advice you give.

Ministers then have to make decisions not just on that advice. They have to use multiple other things that have big social and economic impacts. Ministers have to take them into account. It is right that elected Ministers make those decisions. It is one strand of advice. I believe quite strongly that it is important that these deeply difficult societal measures fundamentally are decided by Ministers.

Q1447 **Chair:** I understand that. The point I have made is that, if the NHS can cope and things can be accommodated, there are decisions that Ministers can make about the impact on the economy. It is much more difficult to make choices and decisions if the bottom line is that people are going to be dying in hospital car parks.

There is a specific issue that I want to explore. I quite understand that specific dates are not possible to ascribe to models—it is the shape of it that counts. Given the presentation and the analysis that was made that justifies action that the Houses of Parliament are considering this week—the information and presentational analysis was given on 31 October—surely it would be reasonable for that analysis to include an assessment of the prospective impact of measures that were decided many weeks before and indeed became operational on 9 October. Why is the prospective

experience of measures taken and implemented on 9 October not factored into the analysis that you shared with the country on 31 October?

Sir Patrick Vallance: It is to the extent that the medium-term projections that were approved were approved on Thursday, so they are the latest estimate from SPI-M on the medium-term projections taking into account all the data that they have up until that moment.

Q1448 **Chair:** So they include an assessment of the impact of the tiered restrictions in different parts of the country.

Sir Patrick Vallance: As far as those tiered restrictions have had their impact at that point. They were looking on that date at the data they could have at that moment, but those data, of course, are also backward looking. They are not going, necessarily, to be able to project everything that happens as a result of changes that are not yet known.

Q1449 **Chair:** We know what those restrictions were. The restrictions were chosen, presumably, on the basis that they were going to have an impact on the prevalence of hospitalisation, deaths and the capacity of use of hospitals. You must have an assessment of what they hoped to achieve. There are at least two weeks, perhaps more, of data on what they were achieving. Were they factored into the projections of the impact on the NHS that was presented on 31 October?

Sir Patrick Vallance: They are factored in. The forward projection is the best estimate by the modelling groups of what would happen going forward.

Q1450 **Chair:** Including the impact of the tier restrictions.

Sir Patrick Vallance: If you look at the performance of the six-week projections over the past month, the actual data has tracked very closely to the projections, suggesting that they are pretty good in being able to look forward and taking into account what would happen, but they cannot be perfect because no model ever is.

Q1451 **Chair:** What has been the modelled impact of the tiered restrictions that were introduced early in October? By how much have they reduced the number of modelled deaths? I refer to Professor Whitty's point: how far back they have pushed the prospective peak?

Professor Whitty: It is difficult to be absolutely confident about how far their effect has gone. I am confident that tier 2 has had an effect and that tier 3 has had a bigger effect. The communities in the north and the midlands, in particular, where most of these are—London is in tier 2, as are some parts of the east of England—have responded remarkably to this. Because of that, I am confident that the rates are substantially lower than they would have been had those activities not happened. The early indications are that this has not achieved getting the R below 1. It has brought it much closer to 1 but it is still doubling over a longer period. It is not possible to put an absolutely accurate fix on that, unfortunately. We now have hospitals, such as in Liverpool, that are above their previous peak. It does not take much of an increase from that to run into quite

serious trouble. On the ability to hang on and say, "Let's wait a couple of weeks; let's just see what happens," the problem is, as you know, that the people who are in hospital now were infected several weeks ago, so there is quite a long lead time between taking an action and having an effect on reducing the number of people going into hospital, into intensive care and, sadly, in some cases dying. Therefore, if you wait too long, you have baked in a very large backlog of things where the rates are still going up. We do not, in my view, have clear evidence at this point that R is below 1 anywhere with significantly high rates. That is a reality that my NHS colleagues in the north of England would say they recognise.

Q1452 Chair: I understand that lagged effect on admissions and, ultimately, deaths, but in Liverpool, for example, which you cited, the peak level of positive tests was around the time of the imposition of tier 3—around 9 October—where there were about 3,500 positive tests a day. That is the seven-day rolling average. The most recent seven-day rolling average, which has come down consistently since that peak, is about 1,900—falling towards about half that rate.

Does that indicate, in your view, that the tier 3 restrictions are working, and has that been fully captured in the modelling that has been put forward to justify the new national restrictions?

Professor Whitty: Looking at the data, particularly in the north of England—I tend to look backwards at data as I am, for exactly the reasons you give, Chair, very cautious about short forward projections; I am much more interested in how the data is playing out in real time and, therefore, the immediate future—we are seeing that the rates, particularly in younger people, have fallen. That is a combination of, probably, some slight reduction in uptake and some levelling off and, possibly, a reduction in positivity rates. There is a real effect and an artificial effect, if you see what I mean.

We are not seeing that reliably in the older age bands as it is moved up through the age bands. That is important because the rates falling in people in their 20s will have remarkably little impact on the NHS. A few people in their 20s get into serious trouble. More may have long-term morbidity problems, not necessarily getting into hospital but have a group of syndromes that are currently known as long Covid, but the rates are still steadily tracking up. All the data that I have seen is in the older age groups, who are the ones likely to translate into hospitalisations, ICU cases and deaths.

It would require an extraordinary degree of confidence that the overall data were translating through to say the incidents² are still going up in the age groups who are most vulnerable to having severe outcomes and ending up in hospital and, in some cases, having very bad outcomes. It is that age differential that I do not think is necessarily captured in the headline figures. If people who are spending their entire time looking at hundreds of pages of data see the headline and think it is going down, which is

² Note by witness: should say 'incidence'

reassuring, although not necessarily going down overall, but the rate of increase is going down, there is this quite marked age differential where it is the young adults where the reduction is most marked.³

Q1453 **Chair:** So you believe that the fall in positive tests in places like Liverpool—they are quite marked in the last few weeks—is not reflected in the prevalence among older people.

Professor Whitty: Correct. This is a differential effect among different ages. My hope is that it is now levelling off in the older ages as well. There is some evidence that that may begin to happen, but it is certainly not to the point where you can reliably say, “I know the models show this but I think it may be going lower than that,” but that is not what we are seeing in these older age groups. I would be delighted, obviously, if the answer was that they were going down faster than the data currently are showing. There is always a bit of a data lag. If that was the case, that would be very good news, but it would be very imprudent to work on that basis.

Q1454 **Chair:** The implication is that the local lockdowns and tiered measures are not working for older people.

Professor Whitty: The implication is that all the tiering has slowed things down from where it would have been otherwise. That would be my judgment as to where we are: more in tier 2 than in tier 1, and more in tier 3 than in tier 2.

That is due to the remarkable work of individuals taking quite difficult social decisions for quite long periods in many of the towns in the north. We should not forget how long some of them have been in these measures. There is no evidence, in my view, at this point that in the older age groups the R is now reliably falling below 1. It may be in some places approaching 1 and, therefore, the doubling time is going out in time. That is not the same as the doubling time turning to a halving time, which is what you want to see.

Q1455 **Chair:** It is precisely for that reason, Professor Whitty, that people who have suffered restrictions for a long time would want to be reassured that their experience has been reflected in the model and that we are not justifying a national lockdown without reference to the experience that they have gone through.

Will you publish the NHS capacity usage model that lies behind these figures, because it is such a pivotal one for the measures that are taken?

Professor Whitty: The data that I was talking about were not NHS data. Those were the JBC test and trace data. They are not my data, but I do not see any reason why anyone would not want to publish data of this type.

Q1456 **Chair:** Will you write to the Committee in the next few days with the

³ Witness clarification:

<https://committees.parliament.uk/publications/3279/documents/30950/default/>

details?

Professor Whitty: As I said, it is not my data to release. From my point of view, it should be openly available. Almost all the key headlines are openly available in almost all areas through PAT and other routes.

Q1457 **Chair:** As the Chief Medical Officer, I am sure you have influence.

Professor Whitty: All I am doing is trying to avoid promising something that I cannot guarantee to deliver. I am pretty confident that I can, and I want to because I wish people to see that I am very strongly in favour of people seeing the data. I am very strongly in favour of it.

Q1458 **Graham Stringer:** Following up on your points about infections increasing in the elderly and more vulnerable people, which is the key criterion? Is it the R figure or the rate of infection in elderly people?

Professor Whitty: The rate of infection in elderly people—the number of people infected—tells you what is going to happen in a small but important proportion because the total numbers are very large, with a significant number of people having severe effects. What has happened in people over the age of 60 is the strongest predictor of what will happen in the NHS. For the sake of argument, of course, it is much greater in those in their 70s and much greater again than those in their 80s. There is not a cut-off. It is a log-linear curve.

If R is above 1, it is doubling, and it is halving if R is below 1. At this point in time, all around England, R is either above 1 or tending towards 1 but not falling at this point overall. This is the figure that comes out of SPI-M. Patrick is in a better position to talk about that, but the R is a summary figure—it is either rising or falling. That is the key question. The R, in a sense, is a reflection of that.

Q1459 **Graham Stringer:** I understand that the R is a composite figure. If R is at 0.8 or 0.75, but there are many infections among elderly people and hospitalisations, which is the key factor in your recommendations?

Professor Whitty: In the immediate term, the number of people currently infected is key, but the R will tell you that you have this number of infections now, but if it was 0.8—I would be delighted if it was 0.8—that would tell me that if I look forward two, three or four weeks the numbers of people who are new incident cases would be going down. We would be back to the numbers halving rather than doubling. Currently, they are doubling in most places.

Q1460 **Graham Stringer:** Sir Patrick, Professor Whitty said that for anybody familiar with modelling it was clear what was going in. However, it is fair to say that the vast majority of people in this country are not familiar with modelling. Was it sensible or fair to put forward the graph with 4,000 deaths a day with or without the caveats? Pictures tell a much more powerful story than numbers. That will have frightened many people around the country. Would it not have been better both to give the source data and explain it in great detail, not just that it was modelling, and that the figures that had gone into it were six weeks old?

Sir Patrick Vallance: I positioned that—if it did not come across, I regret that—as a scenario a couple of weeks ago based on an assumption to try to get a new reasonable worst-case scenario, and that those figures, therefore, were not as reliable as the six-week figure, which I spent time talking about. Those figures were done by major academic groups based on those assumptions. In the spirit of trying to make sure that things are shared and open, they are the things that we have seen. It is important that people see that.

Q1461 **Graham Stringer:** I do not think people see that. If you look at the serious broadsheet press and the more popular tabloids, you see that people have been horrified in the way that was presented. They thought it was a biased way of presenting it and not at all clear. You must realise that, if you put a graph up saying 4,000 deaths a day, that is going to be the message that the vast majority of people take home. Do you regret that at all?

Sir Patrick Vallance: The aim of the presentation was to try to get as much information as we could to the public. The six-week projections were important in terms of their reliability. Those were models for the reasonable worst-case scenario, and people have been interested in the reasonable worst-case scenario. They were modelled at the time to try to project that. They came from significant academic groups. They are no more than a model of the reasonable worst-case scenario based upon assumptions. The further the models go out, the more unreliable the numbers are and the more it becomes a qualitative exercise to look at the shape of things. It is important that people understand and see what is being looked at by the modellers who believe that these things are important to have in the reasonable worst-case scenario.

Q1462 **Graham Stringer:** You do not think that you just frighten people who do not have your scientific background and understanding of models.

Professor Whitty⁴: I hope not. That is certainly not the aim. In a sense, we went through this a bit on 20 or 21 September when we said that we thought things could be headed towards 50,000 cases per day if we had a doubling—again, it was a scenario, not a prediction—and deaths might reach 200. The argument was that those slides were meant somehow to scare people, they were not. They were there to give a scenario. As it happened, the numbers turned out to be very close to that by the time we got there. It is very difficult to project forward in a way that does not inevitably lead to a problem of, “Is that real?” No, it is not real. It is a model, but it is what we need to understand because this is a disease that is spreading, like all epidemics, in a way that will affect us in weeks to come but is not felt today. There is a balance between trying to explain what may be coming, basing things, as Chris has said, as far as possible on what data you have today, which again is why things were presented as they were, to say, “Here are data from today and what is happening in hospitals today,” but giving an illustration of what may happen in the future, which is an important part of this. The tendency otherwise is to wait and to say,

⁴ Note by witness: The answer was given by Sir Patrick Vallance not Professor Chris Whitty.

“We will find out in a few weeks’ time,” by which time you have baked in another three or four weeks of cases.

Q1463 Graham Stringer: It seems to me that there are two reasons for having a lockdown: to save lives and buy time so that you can improve test and trace in all parts of the service. In terms of your recommendations, you are very clear in your models, the information you provide in the models and what numbers you want to present to the Prime Minister and to the public. You always add a caveat that there are economic consequences and health impacts, but it is never quantified. The last time you were here you told us of the paper on 8 April, which was a quantification of some of the deaths that will be caused by the failure to treat cancer—I am not going to go through the whole list—and the consequences of poverty on morbidity. Why do you not present both sides of the equation in numbers?

Sir Patrick Vallance: Chris may want to come in on this. The paper you referred to was a paper that we asked for from ONS actuaries, and the other was to try to look at the overall effect. That was a very important paper and it has been updated.

Q1464 Graham Stringer: And the Department of Health.

Sir Patrick Vallance: That is being updated, and Chris may want to say more about that.

It is very clear that SAGE exists to provide the science advice. The Treasury and the Cabinet Office bring in the other parts of the equation, particularly on the economy. I do not think it is right to think that SAGE would be the place that you integrate all of this and come out with a single number. We have a particular part of this to look after and the rest needs to be integrated at Cabinet Office level. Ultimately, of course, Ministers need to look at all those other points.

It is an interesting question. The science advice is very clearly in the public domain. It is very clearly public; you can see it and question it. The other advice, of course, is less visible, so it is more difficult to answer those questions.

Q1465 Graham Stringer: But the advice is lopsided, isn’t it? I would be interested in seeing the updated paper of 8 April, which, from memory, projected more than 200,000 deaths not over a year but over a period of time. I think the public would be very surprised to see that that was the other side of the equation. At the very least, I can accept that you need economists to do it and all sorts of other specialists, but do you not feel a responsibility to make sure that people know there is another side to that equation?

Professor Whitty: Could I add something? I think there is a danger that people watching will have a misapprehension. Most of the additional deaths stack up because you don’t deal with Covid. Basically, there are four different ways in which this causes mortality. I will go through them. This is a really critical point that has been wholly misunderstood in some areas. Direct deaths from Covid is easy to understand. I agree with that.

The second group, which hopefully we will not get to, are deaths from emergency services being overwhelmed. We did not have that in the first wave and we have every intention of trying to avoid that in the second wave.

The third group is things that would happen: because of Covid putting pressure on the service, you have to cancel elective and other urgent care. Those deaths might be cardiovascular. In the medium term, that might be cancer. Those are on the Covid side of the equation.

Then you have some that were around the lockdown itself, which are things like reduction in air pollution on the good side, and an increase in mental health problems on the bad side.

The final ones, which are very important, are the economic ones: counterintuitively, the immediate effect is not negative but in the long term that is very important. That is the bit that is on the other side of the equation. I have always said that clearly. If you are in public health, caring about increasing deprivation is central to what you do. It is absolutely critical. I have always tried to say that that is the other side of the equation.

The cancer and cardiovascular deaths are on the Covid side. If you don't deal with Covid, those are going to get worse.

Q1466 **Graham Stringer:** I am running out of time. I understand the point that you are making that, because of the pressure of Covid, some of those services are reduced. Some of those services were reduced because a service was withdrawn, but not directly because of Covid. That is a more complicated equation. My point to Sir Patrick is: should not that somewhere in the system be put together, whichever side of the equation you put it on? Will you do that?

Sir Patrick Vallance: Again, you are right. It needs to come together with the economic analysis. That is not something that takes place in SAGE, nor should it take place in SAGE. It needs to come together in the Cabinet Office.

Q1467 **Chair:** You have been very good at publishing at the request of the Committee and others the papers and evidence that SAGE has considered. There is a bit of a time lag there. I think this week shows it would be good to have the real-time information. Can you arrange for that economic analysis to be published in the same way?

Sir Patrick Vallance: No, I cannot.

Q1468 **Chair:** Whose decision is that?

Sir Patrick Vallance: That is one that you would need to take up with Ministers and the Cabinet Office.

Q1469 **Chair:** I have another question on publication. You mentioned several times the reasonable worst-case scenario. That, as I understand it, has been leaked rather than published. You can commit, I think, to publish that on a regular basis.

Sir Patrick Vallance: No, it is not our document to publish. That is the Civil Contingency Secretariat.

Q1470 **Chair:** Do you think that should be published?

Sir Patrick Vallance: There is an advantage in having as much published as possible.

Professor Whitty: I would like to add a rider to that. That was a point Mr Stringer was making, which I agree with. There is a danger with these extreme forward projections that people misinterpret them as, "This is what is going to happen," and, as you said, get unduly worried by something that is not intended to happen. The whole point of a reasonable worst-case scenario is to say, "Do we need to do something? We are going to stop this happening."

I can understand why colleagues in the Civil Contingency Secretariat would pause. I am, personally, in favour of publishing as much as possible, but I wanted, in a sense, to reflect back the point that Mr Stringer was making, which has some force and has to be balanced against it.

Chair: I am grateful.

Q1471 **Andrew Griffith:** Sir Patrick, I am sorry for the slightly forensic tone but these are very grave matters. They are some of the most grave matters that we, as Members of Parliament, are ever called to vote on. I want to stay with slide 3, which is one of those you presented on Sunday, "Winter scenarios". The blue line is a clear outlier. Its peak is almost double the level of the next highest scenario. The other three scenarios all have their own peak forecast lying within a range of about 20% of each other. It really is very different in terms of the slide that you present. If you did not have that blue line, for example, you would have to change the scale.

At the time you presented that data to the Prime Minister, did you understand the assumptions behind the blue line that we now know is the Public Health England/Cambridge model?

Sir Patrick Vallance: When we present data from SAGE, we look at the integrated SPI-M output, which is the six-week ones. In due course, it would be an integrated reasonable worst-case scenario. That slide is of independent groups and what they have modelled. As you can see, there is a lot of variability in that slide with most of the groups coming out on the right-hand side and one being left and higher. Clearly, that is an outlier because of the way in which they have done their model and assumptions. That is why we tend to go for integrated views from SPI-M and not go with individual group projections.

Q1472 **Andrew Griffith:** Do you know what it is in those assumptions that produces that very different shape to that curve?

Sir Patrick Vallance: The assumptions underlying the models will be published in full, so it will be possible to look at why curves differ.

Q1473 **Andrew Griffith:** Are they in the public domain now before tomorrow's vote?

Sir Patrick Vallance: The intention is to get the information on the models out as soon as possible. I don't know exactly when that is coming out, but very soon, I think. Some documents are coming out today, if we can get them out today. They are not ours, so they would need to come out from the groups.

Q1474 **Andrew Griffith:** I understand that. It would certainly be very helpful to colleagues if it was.

That chart forecast more than 4,000 deaths a day at peak. I do not think any country in the world has seen that rate of deaths. If you bring it back to today and the time you were presenting that to the Prime Minister and his advisers, it would already have been off the curve. It would have already been predicting around 1,000 a day at this particular moment in time. Can you remind me how many deaths there were yesterday?

Sir Patrick Vallance: I cannot remember the exact figure. It was 138, I think.

Professor Whitty: Mondays are always low. Today will be artificially higher for the same reason. I would not concentrate on individual days.

Sir Patrick Vallance: We have looked at the initial portion of those curves in relation to the data and, indeed, in relation to the six-week forecast as well. What you see is the initial portion of those curves for the other projections are there or thereabouts for two of them and higher than the real data for two of them. Ultimately, of course, data trumps models.

Q1475 **Andrew Griffith:** I agree with that. Sitting here today with the ability of those data, would your advice to colleagues be essentially to discard that model and accept that it is somewhat discredited and that we should set it aside when thinking about whether this is the right course of action?

Sir Patrick Vallance: I do not think it is at all fair to say it is discredited. These are scenarios put together on assumptions to look at what a reasonable worst-case scenario might be. As Chris has said, you do not want a reasonable worst-case scenario to happen but it could plausibly happen if things went in a certain direction.

The right graphs to focus on are the six-week medium-term forward projections. They have been shown to be relatively good over the past four weeks. You would expect them to project forward. They are assuming nothing changes going forward. Things may well change, as you know.

You should also base it on the data we have today, which show where things are at the moment in hospitals, which are filling up. These are models that tell you how things can look; they are not forecasts and should be looked at knowing that.

Professor Whitty: If someone feels that being supportive of these very restrictive and difficult measures is the difference between 1,000 and 4,000 deaths a day, if that is the case, remembering that if there were 1,000 deaths a day it would imply significant pressure on multiple bits of the NHS, this becomes a very material question. I think all of us would say that the

rates would probably be lower than that top peak, but reaching the peak we reached in April strikes me as an entirely realistic situation. Therefore, if people wish to take a conservative view, that would be something the short-term projections would take us to.

Andrew Griffith: That is very helpful and clear.

Q1476 **Chair:** Professor Whitty, there is particular relevance in that statistic, is there not, in that the NHS did cope with the peak last time? One must assume that we have made further improvements during the summer. Therefore, a whole set of other choices is possible if the NHS is not going to be overwhelmed. Therefore, the difference between 1,000 and 4,000 is quite material.

Professor Whitty: Yes. I feel slightly uncomfortable implying that this is a decision for me as a doctor in advising government on 1,000 or 4,000. All I am saying in response to this question is that there has been some rather overblown rhetoric. People can take different projections if they wish, but getting to the stage we got to in April and, if we do nothing, carrying on up from there is entirely realistic.

Q1477 **Jeremy Hunt:** I want to pick up what Professor Whitty has just said. Talking about 4,000 deaths was not overblown rhetoric; some slides were presented to the public. If I take your conservative view that it is not at all unreasonable to say we will reach the same level of deaths as in the first peak, many will find that very curious. We now have dexamethasone; we are much better at knowing when we need to transfer people into ICUs; we understand when to use or not use ventilators; and testing is much better. We are monitoring people who have the disease and finding about them much earlier, and we have had the whole summer to plan capacity. I think a lot of people are very curious about why we are likely to see, if we take no action, the same level of deaths as we had in the spring.

Professor Whitty: The point you make about the reduction in mortality that we will get with some of these interventions is important. On dexamethasone, the UK can feel proud that this is something we did for the whole world very fast. That will reduce mortality. There is less use of ventilators and there are a number of other medical improvements.

Those will reduce mortality but not take it right the way down, unfortunately. Sadly, some people who come into hospital will die whatever you do. The idea that there has been a huge transformation in the infection mortality rate would not be supported by the current data. I am confident there has been a reduction; there might have been a halving. It is difficult to tell on the current data. Let us hope that is the case.

What we are seeing at the moment is that the numbers of deaths have been going up relatively steadily over the past two or three weeks. Given this is an exponential curve, the idea that this could go from the mid-200s to the 1,000 mark over a number of weeks does not strike me as a particularly strong thing to be saying.

Q1478 **Jeremy Hunt:** That sounds very sensible. I just do not understand why,

because you have just said it may be the infection mortality rate has halved, but has certainly come down. I am curious about why we should be looking at the likely prospect of deaths reaching the same daily level as the previous peak.

Professor Whitty: Because if you have doubling incidence all you have to do is have one doubling time and, even if the mortality is half that, you are still at the same number.

Sir Patrick Vallance: If you look at the six-week projections over the past month, deaths track the projections, so that is taken into account in those projections. I do not think the infection fatality rate has necessarily halved. I think the in-hospital mortality rate has gone down.

Professor Whitty: My halving was that that is the best we can hope for. It is probably less than that. I want to be clear about that, Patrick.

Q1479 **Jeremy Hunt:** I want to follow up Graham Stringer's questions to the Chief Scientific Adviser about the two graphs.

You show in slide 3 one graph of scenarios—you were very clear that they are not predictions or forecasts—that indicate deaths could be two to four times higher than the first wave peak. The very next slide, slide 4, was the SPI-M medium-term projection of daily hospital admissions in England. That showed hospital admissions going up by approximately 25%, not doubling, tripling or quadrupling. Is it not very confusing to show two slides consecutively, one suggesting we could see two to four times the number of deaths and another showing hospital admissions going up by just 25%?

Sir Patrick Vallance: They were very different timelines. Clearly, one is a longer-term modelling scenario and the other is a shorter-term projection. The shorter-term projections are rather similar to the upswings at the very base of some of those curves.

Q1480 **Jeremy Hunt:** Slide 3, the winter scenario, shows those deaths peaking at around the end of December and the hospital admissions rate is shown for the week of 8 December. There might be a difference of a week or so, but that is not a massive difference in the timeline, is it?

Sir Patrick Vallance: If this is confusing, I apologise, but I was clear that the model projections for six weeks were the things on which one needed to concentrate. Those are the things about which you can have more reliability in terms of the numbers. The others were scenarios for reasonable worst-case planning, making an assumption about what the R would be and that it may increase over the winter.

The projections are a forward look over the next six weeks with a greater degree of reliability, but it is still a model. They show in the hospital admissions that under these projections quite quickly you would get to a hospital level above the first wave peak somewhere towards the end of November, about 3,000, and deaths would move up towards several hundred by early December. As the CMO has just said, with a doubling that can increase very quickly, depending on what the doubling rate is at that point. The whole aim is to make sure that not only the doubling rate goes

out much further but that ideally it becomes a halving rate, and that is what you would want to do to get these down.

Q1481 **Jeremy Hunt:** Professor David Spiegelhalter said today, referring to slide 3, which talked about the winter scenarios and the potential quadrupling of the death rate, "I was very unimpressed. I was disappointed that graph was shown." I know that Professor Whitty has previously praised Professor Spiegelhalter for his insights into how to use statistics. Does he have a point?

Sir Patrick Vallance: I am second to none in my admiration for David Spiegelhalter. I would reiterate that the two graphs that are important are the six-week projection ones.

Professor Whitty: Can I be clear that for that reason I have never used anything beyond six weeks in anything I have ever said to any Minister on this issue?

Q1482 **Jeremy Hunt:** I understand that, but I am curious that you have not used it with any Minister but you were prepared to present it to the public jointly at a very important press conference on Saturday afternoon and a day when the Prime Minister made a complete about-turn in his policy. Therefore, if it was not important or reliable enough to present to Ministers I am surprised you both decided it was important or reliable enough to present to the public.

Sir Patrick Vallance: That graph had also been presented to the Prime Minister.

Q1483 **Jeremy Hunt:** He has seen projections beyond six-week projections.

Sir Patrick Vallance: Yes.

Q1484 **Jeremy Hunt:** Professor Whitty, I want to ask you about the role of test and trace as we go forward. You will know the latest figures. We reach only about a third of the total number of those who have been infected when you take into account the ONS projections of the daily numbers being infected. Probably fewer than a quarter of those being asked to isolate are actually isolating. That led SAGE to say on 21 September that this system was having only a marginal impact on transmission. You chair SAGE. Is that your view about NHS test and trace?

Professor Whitty: Let me start off with the figures with which you began. Test and trace has gone from a standing start to a long way down the track. However, there are two "buts" to this. The first is that you have very high rates in many parts of England now. We have all said from the beginning that this is most effective when the rates are low. Therefore, one of the reasons why getting rates low is a very good thing is that it gives test and trace greater ability to pick up a much higher proportion of people.

There are probably two caveats to the data you have just talked about. The first is that you would expect test and trace to pick up only symptomatic people. The ONS data also pick up asymptomatic people, so you do not set them a completely unfeasible target. The second is that

some of the commentary on this, including the epidemic commentary⁵, implies that if someone has been contacted and does not follow exactly every single element of an isolation scheme they are doing nothing. Therefore, in a way they take a one/zero approach. A lot of people may well be responding to being contacted by changing their behaviour very substantially in a way that reduces transmission, but it is not an exact replica of what is expected. I am not disagreeing with you. All I am doing is finessing slightly an understanding of the numbers you have just given.

Q1485 **Jeremy Hunt:** Perhaps you could explain that. As I understand it, what the contact and trace element of test and trace does is contact people who have been in close contact with someone who is confirmed as positive and asks them to isolate. Therefore, it is contacting people who are potentially asymptomatic transmitters of the disease, and that is why you get overall a rather low number. Is that not correct?

Professor Whitty: No. The point about picking people up is that it is the entry point or first point. For the person it picks up, the index case, they do it on the basis of symptoms. This person has gone in for a test.

Q1486 **Jeremy Hunt:** I understand, but then they contact the close contacts.

Professor Whitty: That is the index case you are judging them against in terms of the ONS stuff. In a sense, that is the correct denominator.

Q1487 **Jeremy Hunt:** But we are still asking only a low proportion of the people who are potentially transmitting the disease to isolate. Anyway, you are saying you do not disagree with what SAGE said. It is having only a marginal impact on transmission, but the reason for it is that we have such high levels of transmission. Do you think test and trace is likely to be more effective when you have lower transmission? Is that essentially what you are saying?

Professor Whitty: Even under optimal conditions it will do a lot better with much lower incidence. All other things being equal—that is a big “if”—it will probably be having a bigger effect now, if anything in the areas which have slightly lower incidence than higher incidence areas. That is what most modelling in this area would imply.

Sir Patrick Vallance: You would expect it to be more effective. You can see across Europe that that is also the case. Even very effective test and trace systems do not work well at high prevalence.

Professor Whitty: The secondary gain of reducing incidence due to what the Prime Minister has announced, if it is voted through by Parliament, is that it will bring the numbers down to a rate where this becomes a much bigger part of the solution, but we need to be clear that, even under perfect conditions, test and trace takes only a proportion of the R. It is not that that you do that and forget everything else; it is a proportion. That is all we can reasonably expect of it.

Q1488 **Chair:** The SAGE paper Jeremy Hunt quoted from referred to the system

⁵ Note by witness: should say ‘including the academic commentators’

having a marginal impact on transmission at the moment was dated 21 September, when prevalence was much lower than it is now. Therefore, even in those conditions the verdict of SAGE was that it was having marginal impact. What assessments have you made in your models of the contribution that test and trace is making?

Sir Patrick Vallance: I cannot give you the exact proportion; it varies from model to model and what view people take on that.

Q1489 **Chair:** You are looking ahead; you are familiar with the plans of test and trace. Are you modelling it with an expectation that it is going to make an appreciable impact?

Sir Patrick Vallance: I think there is a paper from June which looked at the question of the impact and effectiveness of different levels of test and trace on the overall ability to control R, and what other measures you would have to have in place depending on that. The papers lays that out.

Q1490 **Chair:** Going back to our earlier discussion, in making sure your projections and modelling for the next six weeks take account of all the relevant information have you assumed that test and trace is going to make an impact on transmission over the next six weeks?

Sir Patrick Vallance: I cannot tell you exactly what is in each of the models, but it will not be an assumption that there is a big impact from test and trace at current levels of prevalence.

Q1491 **Dawn Butler:** It is a known fact that lockdown buys us time but it is in no way a solution to anything. What we have to do is focus on actions. Sir Patrick and Professor Whitty, I think you are both contradicting yourselves when it comes to test, trace and isolate. Let me explain what I mean. You have spoken a lot about trying to get the R rate below 1. We know that once you start testing people if you do not get the results back within 24 to 72 hours it has an effect on the R rate. Therefore, you cannot talk about the R rate without talking about testing and getting the results back on time. Am I correct or incorrect in my thinking?

Professor Whitty: You are probably bringing together two separate important points. The first one is that you are absolutely right that to reduce R test and trace systems need to get the results back as fast as possible. The faster they do so the bigger the effect on R. That is a critical part of it. One of the reasons that I among others are keen not to have test and trace always being asked to do yet more things is that the shortening of the time is a critical part of it. The calculation of R itself does not depend on the length of time, but on the number of cases over a period of time. Therefore, the point you make is a perfectly reasonable one, but it does not affect the R in terms of how you calculate it. We must try to reduce those times because that is how test and trace has its biggest impact.

Q1492 **Dawn Butler:** Therefore, over the short term it will have an effect because you will know the infection rate. When we went into national lockdown in the summer about 100,000 people were showing symptoms of Covid. During the winter that number will rise exponentially to 500,000 people a

day who show symptoms of Covid. They may have Covid; they may have flu, or something else. Surely, that means we need to ramp up our testing capacity to 500,000 tests a day. How close are we to achieving that?

Professor Whitty: I am very cautious about getting into the business of trying to talk about the tests that are available, the tests that are done and the tests done on individual people. They are all slightly different calculations, but the capacity to do testing of people who are symptomatic is substantially greater now than it was at the beginning of this month, but I am not going to put an exact number on it because I am not the right person to answer that question.

Q1493 **Dawn Butler:** Who is the right person to answer the question?

Professor Whitty: Test and trace have the data on that.

Q1494 **Dawn Butler:** That is Dido Harding. Are you in any way in discussion with them? Do you know how close we are to achieving what we really need in order for you to be able to model correctly what we need going into winter? I am sure you are aware of the public's frustration. You have both said previously that in order for us to combat and control the virus we need the public to comply. As you know, the public are very frustrated. These questions are important for the public to understand what is going on and why. In your estimation, how close do you think we are to achieving the capacity required to test 500,000 people with Covid-like symptoms a day? We need to know the numbers. How close are we to achieving that in regard to testing?

Professor Whitty: I am trying to answer your question helpfully, I hope. There are varying indications for testing. The point you are making, completely rightly, is that as we go into winter and autumn we are likely to have more people with symptoms compatible with Covid but who do not have Covid, but they still need to be tested. I hope I am paraphrasing you correctly. Part of the key reason to increase capacity for test and trace in my opinion has been exactly to achieve the point you have just raised. My hope and expectation is that test and trace will have the capacity to test people who are symptomatic through the winter period.

There are also some very clear indications on which everybody agrees in terms of other uses. There are clinical uses in hospital; there is testing in care homes and a variety of other indications; and there is also a lot of additional things people think of which could be used for testing.

As you know, there was an asymptomatic mass testing pilot launched yesterday in Liverpool. People are talking about doing much more widespread testing of health and social care workers. Mr Hunt on the Health and Social Care Committee has rightly made a very strong point on this. It depends on the denominator you are talking about, but for those who have symptoms my expectation is that test and trace, which has done a really good job in this area, should have the capacity in terms of numbers of tests to be able to do that.

Q1495 **Dawn Butler:** Professor Whitty, in February you said SAGE recommended

that there be an increase in testing. We also know that testing people who are symptomatic is not good enough, because we have been told by SAGE that if we test only those people who are symptomatic we miss 70% of people who have the virus. In the summer when we went into national lockdown did the shielding of vulnerable people help to save lives?

Professor Whitty: We have not had a really clear answer. There were definite benefits and disbenefits of shielding. The benefits were reducing the risk that people got Covid. The trouble with that is that it was not a denominator because you took all the people who were at risk into the shielding group.

The downsides to it were also clear: an increase in loneliness and, in some cases, probably mental health issues and so on. In trying to work out the balance between those, our impressionistic view is that shielding was useful but there should be a less strict version of shielding in the next phase to allow people a little bit more time outdoors particularly and so on. There was a real worry that people were feeling trapped in their houses with all the downsides that went with that. There has been an adaptation of that.

We are also intending to change over time the group of people who are in the shielding list, and something was published in the *BMJ* a couple of weeks ago which explains how we are going to do that. The exact risk factors that led to the shielding list were generated at a stage when we understood much less about Covid than we do now. We are still learning a hugely greater amount and we will know more in another six months, but at the moment we think we can change that, the biggest change being a very high proportion of children who were shielded. The view is that the risk is not sufficient to justify the significant downsides, but there have been other important changes with the shielding, so you have asked an important question.

Chair: We need to keep questions and answers more succinct. I will come back to Dawn if we have a chance, but I turn now to Chris Clarkson and then Aaron Bell.

Q1496 **Chris Clarkson:** Gentlemen, thank you for appearing today. I want to go back to testing, in particular PCR. At what rate have you accounted for false positives and false negatives in your modelling, and what are those rates?

Sir Patrick Vallance: I am not sure I can give you an exact answer to that. PCR does not have much in the way of false negatives apart from swab negatives. It is very sensitive and picks up lots of things, even very small amounts of RNA. That is probably one of the reasons it picks up people who are not actually infectious but those with residual RNA from having a virus. In that sense it is a false positive in terms of infectiousness. PCR is extremely sensitive and, apart from swab failures, does not have a big false negative in that way, and I am not sure it would make a big difference to any of the modelling assumptions.

Professor Whitty: The ONS data, which are the old standard⁶, have a series of good technical slides on how they have made their estimation on PCR, which is probably the best way to look at that. It is quite a technical area. The point I make as an epidemiologist is that the key metric is not sensitivity or specificity, although that is important, but the positive and negative predictive value which varies by point prevalence to point in time⁷. Those tests will become more accurate, depressingly, as prevalence rates go up, so the risk of a false positive is higher when the rates are lower.

Q1497 **Chris Clarkson:** What about the risk of false negatives?

Professor Whitty: The converse is true. At sufficiently low levels it makes much less difference.

Q1498 **Chris Clarkson:** If you had to put a figure on it what would it be?

Professor Whitty: On false negatives?

Q1499 **Chris Clarkson:** Yes.

Professor Whitty: It depends on what use you are using it for. Is it a clinical use or an epidemiological sampling use? If it is an epidemiological sampling use I refer you to the ONS data because it is a really good technical document on that. For clinical use, what you want to do is pick up those people who have symptoms that are important enough to want to do something about them.

The big risk there is about sample acquisition more than the lab side of it. The lab side of it is pretty good. Do you do swabs properly? That is one of the reasons I am very keen that particularly for social care and NHS staff we are moving towards saliva testing because that has a much lower difference, if we can get it right, in terms of sample acquisition.

Q1500 **Chris Clarkson:** Would you be able to make that ONS document available to us?

Professor Whitty: It is a public document. I can point you in the direction of it.

Q1501 **Darren Jones:** Professor Whitty, is it right to assume that there are health implications associated with the economic consequences of decisions around tiered regions and the national lockdown?

Professor Whitty: Yes.

Q1502 **Darren Jones:** Sir Patrick, earlier you said it was inappropriate for Treasury officials or economists to be on SAGE. Why do you think that in this context?

Sir Patrick Vallance: We do have somebody from Treasury on SAGE. What I said was that it is inappropriate for SAGE to be the place where all economic advice gets integrated with the health advice. Chris and I have said many times that we think very carefully about the health impact of

⁶ Note by witness: Should say 'ONS... are the gold standard'

⁷ Note by witness: Should say 'varies by point prevalence at a point in time'

lockdown and other measures. We are very aware there are impacts, and the paper that has been referred to already from June from the ONS actuaries and DHSC, which is being updated, looks at that in great detail.

Q1503 **Darren Jones:** I am interested to understand the depth of the economic assessment. For example, I looked at the last set of SAGE's minutes and searched for the word "economic". It only came up saying "excluding economic impact". How much time or input do you have at SAGE about the economic consequences of these decisions?

Sir Patrick Vallance: We do not. That is not the role of SAGE. We have been very clearly instructed that the economic impact of this sits in HMT. HMT looks at the economic impact. Therefore, we do not look at the economic impacts and we are not mandated to.

Professor Whitty: It is very important that our economic colleagues also understand the epidemiology. I talk to my colleagues in the Treasury. For example, yesterday I talked to the governor of the Bank of England. We take our responsibility to inform the economic debate very seriously. Patrick, I and Clare Lombardelli, chief economist in the Treasury, have been involved in some joint discussions on this on many of the key issues for exactly the reasons you are implying. These are very difficult decisions. We have no illusions that there are health disbenefits to the economic things; there are massive economic disbenefits. None of us is under any illusions. This is really problematic. We are choosing between bad choices. None of us should shy away from that and pretend that is not the case.

Sir Patrick Vallance: To be clear, SAGE is not the place where this happens. There are other places in which this integrates. As Chris has said, we are involved in discussions where we will be presenting some of the health and other aspects and others will be thinking about and presenting the economic aspects.

Q1504 **Darren Jones:** Therefore, you present the health aspects to an economic committee; there is no presentation of the economics to SAGE.

Professor Whitty: For example, the paper referred to earlier by Mr Stringer, which is a fairly weighty document, has within it economic analyses. What SAGE is good for is doing a formal review of all the science from the different disciplines. I think it would be very dangerous if a group of scientists started to try to make economic pronouncements. It is, however, important and absolutely right that the economic elements are integrated in policy in the end.

Q1505 **Darren Jones:** I understand that. It is just that the answers on where the economic debate comes into it are not particularly clear. Professor Andrew Hayward, who I understand is a member of SAGE, said on Radio 4 this week that the two-week circuit breaker in September would have saved thousands of lives and would clearly have inflicted substantially less damage on our economy. Do you agree with Professor Hayward?

Sir Patrick Vallance: The advice in September was about a circuit breaker with the intention of driving the numbers back to how they were in August,

going back to the discussion on test and trace, because that means you have a greater chance of test and trace being effective. That takes more of the load in managing the disease and you may have to do fewer in terms of other non-pharmaceutical interventions. That is the logic behind that suggestion and I think that is what Professor Hayward is reflecting in that comment.

Q1506 **Darren Jones:** Therefore, you agree.

Sir Patrick Vallance: I think there is a logic that, if you can drive something back down to very low levels, you get a bigger return for test, trace and isolate. It can carry more of the burden and fewer other measures are required.

Q1507 **Darren Jones:** Therefore, it is "yes". Professor Whitty, do you agree with Sir Patrick?

Professor Whitty: I am trying to give an answer which is helpful but does not mean I fall into the trap of giving a yes/no response. It is not a yes/no response. You have to think of what my economist friends would call the counter-factual on this and what is realistic and possible. Different things will have different effects at different times. I am very cautious about ever saying, "If we just did things differently in a slightly different way at a different point of time", where there is a whole series of imponderables that you do not know, "the following would definitely have happened as a result." We should be cautious about that. As scientists, we should be humble enough to realise there is a lot of uncertainty in these things.

Q1508 **Aaron Bell:** Thank you both for appearing today and in the past before this Committee and other Select Committees. It has been very helpful to Parliament. You said earlier that your best estimate of R right now is still above 1. Would either of you comment on King's College's Zoe app report this morning that now estimates it is at 1.0 across England, and that is before we have gone into lockdown.

Sir Patrick Vallance: We get different estimates of R from different places. You will know that the REACT study from Imperial from the end of October suggested that the R was 1.6 across the UK. One of the reasons we have the SPI-M group do what it does is that it tries to integrate the values from different places and comes up with an overall estimate of R, taking into account ONS results, REACT studies, the Zoe app and so on and the data it sees. Therefore, we will expect a new updated R from the SPI-M group which will be published on Friday and see where that is.

Q1509 **Aaron Bell:** Other colleagues have already spoken about the PHE report. The modelling seems to be based on an R between 1.3 and 1.5, yet the Government had already published on Friday before those slides that the current rate was between 1.1 and 1.3. Why was that not reflected in the charts presented to the nation on Saturday? The current R was below that driving the charts that you showed the nation.

Sir Patrick Vallance: It was an assumption in that one graph; it was not in the six-week projections. The reasonable worst-case scenario is based on an assumption of an R between 1.3 and 1.5 getting potentially 10%

worse over winter. That is how you construct a reasonable worst-case scenario. You put in a series of assumptions and say that could happen and what it would look like. That is what those scenarios were projecting. The six-week projections were based on what we are seeing now.

Q1510 **Aaron Bell:** You mentioned the reasonable worst-case scenario. The fact we were proclaimed to be above is what seems to have driven the rapid change in policy. Is the leaked version of the reasonable worst-case scenario on 30 July which was published in *The Spectator* accurate?

Sir Patrick Vallance: The reasonable worst-case scenario is a document owned by the Civil Contingencies Secretariat, and I think it is for them to respond to that. We model what the Civil Contingencies Secretariat sees as a reasonable worst case and that is then modelled by the SPI-M modellers.

Q1511 **Aaron Bell:** SPI-M must have had input into the reasonable worst-case scenario.

Sir Patrick Vallance: Yes.

Q1512 **Aaron Bell:** To quote David Spiegelhalter again, what explains the odd plateau in October in that reasonable worst-case scenario? The infection rate in October was shown as being perfectly flat in a worst-case scenario, which I cannot equate with the meaning of either "reasonable" or "worst case".

Sir Patrick Vallance: They were the assumptions put to the modelling group to model as to what that might look like. There would be people at that time who thought that reasonable worst-case scenario was excessive; there were others who would think it not. One of the challenges is to come up with a scenario that is both reasonable and worst case. I think that was exceeded in terms of the speed of the upswing. We still do not know what shape this is going to be. It is quite plausible that as R comes down further, as we hope it will not only with the measures in place but also with any new measures put in place, at 1 you would reach a plateau. That is what you would see. Numbers would effectively stop at that level for quite a long period. That is why it is quite important not to end up fixing it at a high level because then you have baked in a very large number of hospitalisations and deaths from one period.

Q1513 **Aaron Bell:** I understand that. Given we all know it is a respiratory disease and we expect it to be seasonal, I cannot quite understand how, even with a heroic assumption about what Government intervention might do, October infections were forecasting the reasonable worst-case scenario to be static throughout the month, whereas we all know they have been doubling approximately on a fortnightly basis.

Professor Whitty: None of us has been through this virus at this time of year, so how can we know exactly in advance exactly what different things will do? Let us be a little bit cautious about our own ability to predict.

Q1514 **Aaron Bell:** In SAGE's assessment on 21 September, looking at non-pharmaceutical interventions, it forecast there could be up to 3,000

hospital admissions per day by the end of October. The figure on 28 October was 1,442. I find it very hard to square those numbers—it was half as much as you potentially forecast as recently as 21 September—with the idea that we are suddenly above a reasonable worst-case scenario. Would either of you comment on those numbers?

Sir Patrick Vallance: They were from the modelling group looking at the interventions. At that point the view was that it was going to breach the reasonable worst-case scenario. That was predicted. What you are really getting at, which is entirely reasonable and is a point I made right at the outset, is that as you look at the longer-term projections the numbers are almost bound to be wrong in one direction or another. As you look at shorter time periods you can have much more confidence in that. In the next two weeks you can have some degree of confidence that you will probably be there, or thereabouts. Over six weeks they have performed reasonably well. When you go beyond that you start to have uncertainty. That is when you have to rely on data and it is a changing baseline, because measures have been introduced since that document which have undoubtedly brought things down.

To echo what Chris has said, there have been heroic efforts from people across the country to adhere to some quite difficult things that have brought levels down. That has been important in getting the R, which would naturally want to be at about 3, to somewhere between 1.1 and 1.3 at the moment.

Q1515 **Aaron Bell:** I understand the point you are making. Modelling is difficult; forecasts are difficult, particularly ones about the future. The hospital data is what has driven the decision to go into lockdown. I presume you would agree that we need to be focusing on the over 60s admission data and so on. To go back to the same points colleagues made about the public presentation of that, the slide you showed about hospitals included my local hospital, the Royal Stoke. They were only the top 29 hospitals in the country. It was put out to indicate that a number of hospitals were over capacity, but what proportion of hospitals at the moment are above where they were in the first wave?

Professor Whitty: At this point in time, quite a small proportion. What I said and what was on the slide—in my view, having seen it replayed, it was not an ideal slide from the point of view of it being seen it on the TV—was that those were just hospitals which at this point in time had 100 Covid cases or more. My point about it is that you have 100 and you are now about half where it was in sequence. It is a small number of hospitals at this point, but it is an increasing number and they have exceeded what they were at the peak. It was clear from that slide that the number at this point in time is small. What we are trying to do is keep it that way. A situation where a very large number of hospitals exceed the first wave is exactly what we are trying to prevent.

Q1516 **Aaron Bell:** I understand. You said yourself it was not an ideal slide. There was an avalanche of data. I just wonder whether either of you have any reflections on whether that was an appropriate way to make the case you

were making to the nation at large, or whether simpler, clearer data would have been more helpful.

Sir Patrick Vallance: I always like to make things simpler and clearer than they are. That would always be an aim. Some of those slides are quite complicated and it is a very complicated subject.

Professor Whitty: This Committee keeps telling us, "Publish more data, publish more data." When we publish more data you say we have published too much. We do our best and accept there is no perfection in this.

Chair: Touché!

Q1517 **Katherine Fletcher:** Gentlemen, thank you for your time today but also for your service. I am sure it has not been an easy few months. I also thank you for the acknowledgment you have made about the efforts that have been going on in Lancashire, Liverpool, Greater Manchester and large parts of the north-west to keep the R rate down. It has been a difficult few weeks. My question to you is on their behalf.

They have been doing lots of work. Quite a lot of people are saying that the existing tier restriction system has not worked and, therefore, how can we believe that a lockdown is going to work. I want to dive into the behavioural side of the modelling. There was talk that we had underestimated the levels of compliance in the original lockdown. I wonder whether we have overestimated levels of compliance in the slightly complex local restrictions under the burden of which we have been working up in the north of England. Do we think we understand how people complying can help to translate into defeating this virus through those models?

Professor Whitty: I will go first and Patrick may want to talk about the social science more widely. I have the privilege—and it really is a privilege—of talking to colleagues, particularly the directors of public health, who are just remarkable, across all of the north of England and the midlands, but also local authority colleagues, on a regular basis, and I get their idea about how people are adhering to what is being recommended, first in guidance and then in some cases in law.

Across the board, my reflection is that the great majority of people—and this is reflected in all the polling and a variety of other things—both intend to stick to the rules and do stick to the rules to a remarkable degree. To go back to Patrick's point, were that not the case, we would be in a massively worse place than we are at the moment. My expectation is that R would have shot right up if people had not massively reduced the number of people they have contact with, had not stuck to all the things we need to do in individual actions they can take—such as hands, face and space—and businesses had not done a huge amount to try to make them Covid secure. Without that, we would be in a very difficult place compared with where we are now.

It is a huge tribute to the people that you represent, and more widely in the country, that we are where we are at the moment. The fact that the

north-east has managed to flatten things and that things are coming down, although not quite fast enough, in Liverpool, and Merseyside more widely, and so on, are because people have done a lot more. It is very easy to get a couple of photographs in the newspapers that imply widespread flouting of the laws and guidance. Actually, that is not the reality on the ground that is described to me and when I go out and about that I see in places like Morecambe or Morpeth, or wherever it is.

Sir Patrick Vallance: First, you are absolutely right to raise the point that these interventions do work. It is not that they don't work. They have an effect, and you can see that in terms of the R having come down a bit. There is no doubt they work, and they work because people have adhered to them. If you go back to the first wave, it is very clear that, in the modelling, the hospital admissions track very closely to a good adherence model. People really did adhere. The simpler things are and the more people are engaged with the information, the more likely it is that we get to good adherence.

Q1518 **Katherine Fletcher:** I am glad for those comments, because it is difficult to not see your family and hug your relatives, and worry about what is going to happen at Christmas. So, yes or no, is this lockdown going to work?

Professor Whitty: If people adhere to it in the way that I expect they will, it will reduce R below 1, in my view, in the great majority or all of the country, and that will pull us back in time and make a huge difference. I would not want to imply that that suddenly means that Covid is over as a problem. This is a long haul, and I have said repeatedly—and I think people broadly accept this—that we need to see this through winter. This does not mean that we need to stay in these measures through winter—I want to be very clear about that—but we will need to be doing things that keep the rates down, which, for exactly the reasons you say, at every level, even well short of the lockdown, are very much not what we want to do.

People have been incredibly good at adhering to it. Going back to your point from the beginning of this hearing, young people, who everybody gave a whack at, have brought the rates down in their own age group by their actions. That has been remarkable. We should really celebrate that and mark the fact that they have done this on behalf of society.

Sir Patrick Vallance: I do not think I have anything to add to that. I agree entirely with what Chris has said.

Q1519 **Chair:** On Katherine's point, do you expect us to be able to lift these restrictions on 2 December?

Professor Whitty: The Prime Minister has stated that that is what he intends to do.

Q1520 **Chair:** On your modelling predictions, based on these measures being taken—we have talked about what would happen if they did not—would you expect to recommend that we did?

Professor Whitty: The decision as to whether to lift the restrictions on 2 December is not a modelling decision. It is, rightly, a decision for Ministers and Parliament. What I am trying to do is exactly what at the beginning I said we must do, which is to provide technical data and helpfully interpret it as best we can, but it is for Ministers and elected politicians to make those sorts of decisions.

Q1521 **Chair:** You must have modelled the prospective impact of the measures that are being recommended to the House of Commons and the House of Lords tomorrow. If we adopt these measures and vote for them, will they succeed? According to your best ability to forecast this, do you think they have a good chance, a reliable chance, of succeeding to the point that they can begin to be lifted on 2 December?

Professor Whitty: The aim of this is to get the rates down far enough that it is a realistic possibility to move into a different state of play at that point in time.

Q1522 **Carol Monaghan:** Can I say to start with that more data is better? I think all of us on the Committee would agree with that. It is up to people how they interpret it. As people who advise the Prime Minister, are you confident that your advice is actually being heeded and acted upon?

Sir Patrick Vallance: Our job is to make sure that the science advice that we pull together is heard and understood, and can, therefore, inform decision making. It is clearly not advice that turns into the decision. Do I think that the advice has been well put together by scientists who know what they are talking about? Absolutely. We have great people working on SAGE, including many of them from all of the devolved Administrations as well. The advice has been clearly presented and it has been understood. As we have alluded to several times during this, there are many other factors that need to be taken into account, including economic analyses and other societal considerations, that must ultimately come into a decision. I do not think it is linear to say, "Has the science advice been taken and turned into action?" That is a decision for Ministers.

Professor Whitty: I talk to my fellow CMOs from the four nations very regularly, often on a daily basis. I am very confident that in all four nations—and that, therefore, represents multiple parties if you look across the four nations of the UK and local authorities—people are listening to medical advice in a way that has not happened for a very long time, and that is for a bad reason, which is that we have a pandemic on our hands. But I am not sensing from my fellow CMOs, from the directors of public health, that they are not being listened to at all in any of these environments. I am not making a point about any particular Administration or any particular level of Government. What then happens is that politicians have to take difficult decisions that integrate the economic and societal aspects as well, which is as it should be.

Q1523 **Carol Monaghan:** We have seen across the world that those who have taken action quickly have seen less of an economic impact. I do not want to really get down the line of it. Why are we at the moment among the

worst in the world at dealing with this pandemic?

Sir Patrick Vallance: There is a long way to go in understanding how this all plays out across different countries. We clearly had a big infection, for sure. We were seeded with multiple introductions in February and March, and we had a very big nationwide pandemic, whereas many other countries ended up with quite localised outbreaks. We ended up with one right the way across the country. That has been a big problem. All sorts of reasons to do with population demographics and other things have played into that as well. We are broadly similar to other countries in Europe—not all of them—and we know that some that have had very well-funded and well-structured public health systems like Germany have done very well. We still do not really understand why. Even they do not really understand why they are different. There is a long way to go to understand why there are differences.

What has become absolutely clear is that it is important to go quite early and to go quite significant in terms of reaction to this. It is a problem, because, at the time you need to move, the problem is not evident. That is exactly what we are facing at the moment.

Q1524 **Carol Monaghan:** Sir Patrick, you made your grim predictions, scenario or whatever you are calling it. I will take you to task slightly on that. You tried to make a difference between a scenario and a prediction. When answering questions from my colleague, Aaron Bell, a few minutes ago, you referred to your own prediction, not scenario. It is difficult for members of the public, and indeed politicians, to understand the difference between predictions and scenarios if these words seem interchangeable. On 21 September—you have referred to that already this afternoon—you made this prediction/scenario, and yet here we are over six weeks later and it seems as though we are only now starting to pay heed to this. Have we learned no lessons since March?

Sir Patrick Vallance: Just to be clear, what I said on the 21st was very clearly not a prediction. It was a model saying, if it doubles, this is what it could look like. It turns out that it does look like what we said, not because it doubled but because it started from a higher baseline, but those numbers turned out to be just about exactly where we ended up in October. That is exactly the point. These are things you need to take account of when you see them. They are there.

Q1525 **Carol Monaghan:** Having seen what happened in March, why were we not acting on 21 September? Why did we wait till 31 October before we saw England taking any action?

Sir Patrick Vallance: The choices, as both Chris and I have said, are difficult ones for Ministers to take. They have to take into account many other factors. The fact that we are having this rather difficult discussion today about what may happen over the next few weeks and whether or not we have the action required to bring this back under control—whereas everything we are seeing says, “Yes, there is a big problem that needs to be dealt with”—shows how difficult it is to make these decisions. All I would reiterate is—

Q1526 **Carol Monaghan:** How regularly between 21 September and 31 October were you giving this advice to Government that we had to take action?

Sir Patrick Vallance: We have been consistent all the way through that there is an increase coming and, therefore, if you want to do something about it, the increase does not go away on its own.

Q1527 **Carol Monaghan:** How many times have you given this advice?

Sir Patrick Vallance: Probably Chris and I have been in meetings virtually every day.

Q1528 **Zarah Sultana:** The proposed set of restrictions will see educational institutions staying open. We have seen data from the Office for National Statistics showing that the biggest growth rate is among secondary school pupils, and the National Education Union has analysed these figures showing that virus levels are now nine times higher among primary school pupils and a shocking 50 times higher among secondary school pupils since the start of term in September. On one particular day, 15 October, the Department of Education estimated that 412,000 state school pupils were not at school for Covid-related reasons. That is a huge number.

We know that, while the virus does not badly affect children themselves, there is clear evidence of transmission into the wider community, staff and parents. As long as schools are open, do you believe that the R rate will fall below 1 or do you predict that we may have to have a longer lockdown purely because schools and universities are staying open?

Professor Whitty: For the four nations, all the CMOs and DCMOs did a joint statement on this because they wanted to be really clear about where they stood on it. I divide the problem into three sets of problems.

The first and most important problem, rightly, is children. There is really clear evidence that not being at school is a big disadvantage to children. It is particularly a big disadvantage to disadvantaged children. It has mental health impacts. That will be true for all the children who are not at school. Set against that for children, although they do catch Covid, they usually catch it much more mildly. Severe disease is really substantially less than even for young adults, and deaths are mercifully very rare—not completely none but very rare. On balance of risk for children, that balance in our view, professionally, is firmly for children to be at school.

The second set of questions that are legitimately asked are: what are the risks to teachers? That is a fair question. As to the risks internationally, although the data are not absolutely overwhelming, all the data, including ONS data, do not imply that teachers are a high-risk occupation, unlike, for example, social care workers, medical staff like myself and others who when they go into work have an increased risk. If you look at the ONS rates, they look almost identical to the communities from which they are drawn at this point in time. Data moves on, but at this point in time that would be my judgment as a public health epidemiologist.

The third bit is the question about R. Here, we have quite a lot of consensus that the transmission in primary school children probably is a relatively

small contribution. It will not be zero but it is really pretty small. There is more debate around the questions about secondary school, particularly older secondary school children—17, 18, 19-year-olds. In a sense, there is then a societal question. Given the huge benefits to children, what is the right balance for society? That is fundamentally a political question, but the reality is, in our view, that the benefits to children are really clear.

Q1529 **Zarah Sultana:** I would like to move on to university education. On 21 September, SAGE advised that higher education tuition should move online or to distance learning for the first term until prevalence has fallen. The proposed measures that come into force from Thursday advise increased levels of online learning where possible. What is the effect on transmission of higher education institutions remaining open for face-to-face learning, even if that is partial opening?

Sir Patrick Vallance: All of the things that are open carry some price on R. That is just a fact. The more contacts you have and the more interactions you have, you will increase the pressure on R. I think the universities have done a really good job of trying to get on top of this. You can see levels decreasing across that age group both outside and inside universities. That is an age group where we see the numbers coming down. Many of them have really done a lot in trying to test in their own institutions. They will have to make their own judgments around what courses are best delivered face to face and what can reasonably be done online. Many of them have gone to very large lengths to make that happen, and they have also gone a long way in terms of making sure they have appropriate ventilation in rooms, space and so on. The universities are handling this in a very mature way to try to make sure they get on top of this. The evidence is that, among that age group, things are coming down a bit in some places.

Q1530 **Zarah Sultana:** In Coventry specifically, as my constituency is there, the Cannon Park area and the university area have seen the highest concentration of cases, and that has been the case for some time. There have been around 119 university Covid outbreaks so far this term, and figures from the University and College Union say that there have been more than 35,000 student cases since term began.

In what scenario could we see universities being told quite firmly that they must move all non-essential in-person teaching to online, and what would you say to students who feel that they are locked in their university halls or private accommodation who are essentially trapped and want to go home before we move into a national lockdown or just before Christmas?

Sir Patrick Vallance: I will try to stick to the science on this. There are lots of questions in there about how universities want to run and what politicians may want to advise. In terms of the impact, I think the universities have done a rather good job of making sure that this is damped down. There is a real issue about two things. One is the quality of education that people are getting, which is important. In some cases that needs to be face to face, which will be important for some courses and some approaches; and it is obviously important that the mental health and other aspects of student life are properly considered. It cannot be nice to be

locked in a place for isolation, and I know universities are thinking about that very hard.

Q1531 **Mark Logan:** Sir Patrick and Professor Whitty, what advice does SAGE give to Government in making decisions where evidence is weak—for example, on the closing of places of worship?

Sir Patrick Vallance: In looking at a package that might get R below 1, which is the aim, we have said that it has to be a package. You have to think of this as a series of things that interrupt individual activities but that, as a whole, will also have an effect on contact and interaction. The danger in trying to pick apart each one, and when you get down to the ones towards the lower level where you might say, "This doesn't make much of an impact on its own," is that you keep cutting things off and you end up with a suboptimal package that does not get R below 1.

You are right: we do not have good evidence on the exact value of each intervention on R. We produced a paper suggesting what that might be in different areas but said that this is not a very exact science at all. Therefore, I am afraid it is a rather blunt instrument, and it is about making sure that there is a package of measures that, together, has a chance of getting R below 1, because shrinking this is the key thing.

Q1532 **Mark Logan:** Since 4 July, whenever we have had national relaxations, in these last few months, how much transmission do you think has taken place within places of worship? Is it significant or is it quite negligible?

Sir Patrick Vallance: I do not think we have good data to answer that with any degree of certainty.

Professor Whitty: One additional thing is that there is some very weak data to imply that, even if the place of worship has been incredibly good about being Covid secure, by bringing people together, people can congregate outside and do things that lead to transmissions, but this is very variable. A lot of this is anecdotal, so we should be a little careful about putting that out as a scientific fact. These are just reported behaviours.

Sir Patrick Vallance: There are reports of outbreaks, as we know. Particularly in the US, there have been several reports of outbreaks from churches. There are environments where you are bringing together people who might not normally come together in internal environments. So there is an environmental aspect of this, but we cannot put an exact number on this, for sure.

Q1533 **Mark Logan:** Looking at it from the perspective in my constituency, Bolton North East, we have roughly 59,000 Christians and about 11,000 Muslims. My constituents have been emailing me and saying that they feel that the Government see faith as nothing more than an optional social activity. What would you say about that?

Professor Whitty: I would say that we are not the right people to advise on that. It strikes me as a theological question.

Q1534 **Mark Logan:** It is quite important, if we want people—constituents—right across the country to adhere to Government advice and the science, that we make a convincing argument. When I look at the SAGE advice from the NPI paper of 21 September, it does not make a hugely convincing argument about the R rate in relation to places of worship. You have talked about a whole package, but when it comes to places of worship, would you advise the Government to reconsider on this one example?

Professor Whitty: We are trying to avoid a situation where we are constantly double-guessing at a micro level what individual Government decisions are. However, all the faith communities of the UK have been extraordinarily responsible in the way they have tried to address this. I have spoken to faith leaders from every faith for which it is possible to find a faith leader group. In every case, they have been very much of the view that this is very regrettable for everything they are trying to do, but at the same time they absolutely see the need to put health at a very strong premium to protect the health of citizens of all faiths.

Q1535 **Chair:** Staying on this theme, it is not a theological question when it comes to exercise. As chief medical officer, you are someone who promotes the importance of exercise, not least in being fit and well in the face of Covid. Presumably it continues to be the case that we should take exercise.

Professor Whitty: I would strongly say to anybody that taking exercise of any sort, whether indoors or outdoors, is something that people should try to promote at all stages. It is important that people take extra care that they build it into their day during lockdown. In fact, the data would imply that quite a lot of people have done more exercise in lockdown than they have normally, but other people have not. Exercise as a whole is something that we absolutely would want to promote, and it is one of the exceptions for going out of your home for exactly this reason.

Q1536 **Chair:** That being the case, Sir Patrick, are you aware of any instance in which a Covid infection has taken place between children playing football out of doors?

Sir Patrick Vallance: Not that I am aware of, but there may be evidence; I have not seen it.

Q1537 **Chair:** Given what Professor Whitty said about the benefits of exercise, it is the case that children's sports teams outside school settings are now not allowed to meet. This seems perverse given the importance of exercise, and, as you have told this Committee before, the very low incidence outdoors of transmission. It seems to me that this a matter that is not theology but scientific advice. Is it something that you could further advise the Government on, because there is a lot of concern among children's sports teams across the country?

Sir Patrick Vallance: We have been very clear as to where we think the areas of transmission are most likely to be. We have also been very clear that an entire package that takes into account everything including interactions around events becomes quite important. It is not just the

event itself but what happens in and around it, and it is then for policy makers to decide what policies they want to adopt on the basis of that.

Q1538 **Chair:** Would you advise that children's outdoor sports should be banned?

Sir Patrick Vallance: As Chris said, we just do not go down to that level of individual activities.

Q1539 **Chair:** So who does? You are the chief scientific adviser and the chief medical officer. We talked about the importance of exercise and fresh air, yet a decision has been made to suppress children playing sport outdoors, and it does not benefit from your advice. Who is advising the Government on this? Who is telling the Government what to do?

Sir Patrick Vallance: They have had advice from us in terms of the general principles and some of the areas, but, as I say, not down to individual specific activities like that, and the same is true on the medical side as well.

Professor Whitty: To be honest, it would be deeply unhelpful if we then started to try to unpick really difficult packages that policy groups have put together. This is a difficult balancing act across Government. We fully understand that. Our job is to give the broad advice and then leave it to those who have to integrate the various elements.

Q1540 **Chair:** I do understand that, Professor Whitty, but part of our role as parliamentarians is to voice the concerns of our constituents, and the fact that a package has been stitched together does not qualify for it to be exempt from scrutiny and understanding. It might be helpful if we were able to think about these things before they are irrevocably stitched together. This seems to be an important one. SAGE has advised in its assessment of what are called non-pharmaceutical interventions that, for outdoor gatherings in general, there is a very small reduction in transmission to the extent that, quoting from the paper, the reduction in R is likely to be less than 0.05%. In the context of not just what you said to the Committee but the work you do to promote health and exercise, is this not something that, notwithstanding what you said about the whole package, needs to be looked at again?

Professor Whitty: I am going to rather boringly repeat myself. If Patrick and I end up trying to unpick quite complicated packages that have been put together, in that way disaster lies for everybody. We have to give broad principles, which we have done. You accurately reflect some of the broad principles. They are published in SAGE minutes. Packages then have to be put together, which is very difficult to do. Everybody who is doing this is balancing really difficult things and it is not our job to make their lives even more difficult in these difficult balancing acts.

Q1541 **Chair:** How can MPs representing their constituents influence this if we can only scrutinise things that are too late to do anything about?

Professor Whitty: I suggest the people to scrutinise are those who have to put together these very complicated packages. It is stupid for us to try

to act as a proxy for a process in which we should not be interfering at that level of detail. It would be very unhelpful to the process if we did so.

Q1542 **Lord Patel:** Good afternoon, Patrick and Chris. It is nice to see you both. I am an interloper from the genteel side of the Palace, so my question, I hope, will be more gentle.

I would like to understand what your thinking is in terms of the metrics that you will use to assess the effectiveness of the measures we are about to go into. You mentioned several times admissions to hospital, so that would be one. Following on from that, when we come to the end of the period, whatever decision is made beyond that, no doubt we need to be thinking right now how we will maintain the transmission at a low level so that we do not get back to the same scenario. What are your comments on those two aspects?

Sir Patrick Vallance: In terms of the measures, it is very important that we are in a much better position than we were first time round with things like the ONS survey, the REACT survey, the ability to measure infections in the community, and all the work JBC is doing. We should absolutely look at infection rates. That is the way we are going to find out earliest what the effect is. Contact rates may give you more information even earlier. For infection rates, hospital admissions will be a slightly lagging indicator. Unfortunately, there will be deaths, and they will be an even more lagging indicator. For example, if things worked almost instantly, and you got the R down to 0.8 or 0.7, you would expect to see an effect on infections quite quickly. You would expect to see an effect on hospitalisations maybe after two or three weeks. You may still see an increasing number of deaths over the period because they are lagging even further. We have to get leading indicators rather than relying on lag indicators.

At the end of whatever happens there, it is going to be important to determine what the measures are that will continue to be required to keep R down. As Chris has said several times, we are likely to need degrees of social distancing and other measures over the course of the winter. It is only come springtime and beyond when other things such as testing improvements, vaccines and improved therapeutics might start to allow further relaxation. I expect at the end of this there will still be a need for some changes, and, hopefully, increased testing can come along first out of all of those interventions and would potentially help.

Q1543 **Lord Patel:** Chris, do you have any comments?

Professor Whitty: No, I agree with that.

Q1544 **Lord Patel:** If the current measures are stopped after 2 December, we will soon enter into a period of festivities when there is likely to be more likelihood of contact. What effect do you think that might have on transmission, and what would be the measures that will need to be taken to keep the transmission rate below R1 on the basis that we will not have a vaccine or anything by then?

Professor Whitty: The policy that the Government have announced is that the aim would be ideally to move into a series of tiers at the end of

that period. That is what the Prime Minister has said he intends to do. We will have to design those to try to match the situation we see ourselves in at the end of this month epidemiologically. You are quite right that the festive season for all religious traditions—obviously they come at slightly different times—has risks associated with it. There is no two ways about that. It is true for every religion. That is one of the reasons why festivals are held. We will have to work out ways in which we can advise people in a way that maximises their ability to keep to the essence of what the festivity is but minimises the risk of transmission. We are trying to work that through at the moment. How risky that is going to be and how far we can go down that path will very much depend on what epidemiological situation we face as we head into December and towards the peak festive season at the end of the year.

Lord Patel: Thank you both very much. The burden on your shoulders is enormous. I could not think of two better guys to do it.

Q1545 **Chair:** On the criteria for coming out of the proposed restrictions, alluded to by Lord Patel, is it possible to imagine lifting the restrictions if the R is still greater than 1?

Professor Whitty: The aim of the whole thing is to make sure that R is not greater than 1.

Q1546 **Chair:** But if we get to 2 December and R is greater than 1, does that mean that we cannot come out? Is that what your advice would be?

Professor Whitty: I do think it is sensible to see how we go on this. I have quite a lot of faith in the adherence of the general public in a way that will lead to the R reducing. That is what I anticipate. That is what all the polling and other data show. People intend to do this and I am expecting that the R will drop.

Q1547 **Chair:** You expect by 2 December the R to be less than 1.

Professor Whitty: Yes. Nothing is certain in this world. It may not be absolutely everywhere, but my expectation is that over the country as a whole that is what I would hope to happen.

Q1548 **Chair:** If the R was very slightly above 1, and the NHS was adjudged to have the capacity to cope with it, given the importance of overrunning the NHS's capacity in this, would it be possible to contemplate that the infection could still be spreading, albeit at a rate that we could contain comfortably within the capacity of the NHS?

Professor Whitty: The problem we have here—I am making an obvious point—is that we have almost infinite future scenarios as to what this could look like come the end of this month. Rather than try to speculate on almost infinite numbers of them, which may well be regionally different and may well have different stages of NHS capacity being threatened in different parts of the country, the sensible thing to do is to wait until we see the effects of this and then take a view. I am sure you will want to ask some pretty hard questions of the political leaders who make those decisions as we get closer to that point in time. Before we have even had

Parliament vote on these, speculating where we will be in three to four weeks' time is a little premature in terms of exactly the kinds of questions you are asking about what plans should happen next.

Q1549 **Chair:** It is not to speculate. In voting on these restrictions, the support of many MPs may be contingent on having an idea as to how they will be lifted and whether, if they are persuaded that the threat to overrun the NHS is removed but, nevertheless, the R is still technically above 1, that will be a veto. They need to have an ability to interrogate that now before they vote tomorrow.

Professor Whitty: The decision as to the strategic goal is rightly a decision for Ministers. I make the point—and we make it repeatedly—that it is important that we do not claim to take the strategic decision. The strategic decision is a ministerial decision answerable to Parliament and, therefore, to the people.

You could have a scenario where R is just below 1 but there is an incredibly high rate and a very struggling NHS in one area, and in another area R is above 1 but the NHS is a long way away from difficulties. I am not saying this will happen; it is just a theoretical possibility. Those kinds of scenarios would lead to different responses from Ministers at that point in time, and reasonably so. Patrick and I, and I suspect all the people on the Committee, could probably paint 100 scenarios, each one of which is not implausible—there will be varying degrees of plausibility—that will lead to different places. The sensible thing is to see where the data finds us as we get through to the point that this decision has to be taken.

Q1550 **Chair:** Are you aware of what the strategic goal of the Government is?

Professor Whitty: The strategic goal of the Government is primarily to reduce mortality, but they have much wider strategic goals, including protecting the economy and society. There are multiple strategic goals and they are the ones that you should ask Ministers about.

Q1551 **Graham Stringer:** Professor Whitty, you said earlier on that there were really remarkable directors of public health. I agree with you. They have done a good job. Sir Patrick said—or it might have been you—that there had been a huge increase in the testing at an essential level. Both those things are true. My view is that the test and trace system would have been more effective had it been concentrated more locally. What is your view, and do you feel it is within your purview to give advice on that?

Professor Whitty: I am going to emphasise the bit of my role that is chief medical officer and de-emphasise the element that is chief scientific adviser at the Department of Health and Social Care. My point is not a science point; it is an operational point in a sense.

As you rightly say, the directors of public health in local authorities have done an absolutely amazing job throughout this. Standing this up from a standing start in the first wave, when—with the possible exception of London—there was quite a degree of similarity across the whole country, given that we had much less capacity on testing and so on at that point in

time, there was a strong logic to take a more national approach, but I completely agree with you that the capacity of local authorities, particularly on the trace and isolate element of test, trace and isolate, is there steadily to increase the ability for people to do things. The question is at what rate and how, but I broadly agree with your general idea that, where possible, we should be using local skills.

Q1552 **Graham Stringer:** It is good to hear that. One of the problems has been communication from the central test and trace system. It has either been slow or the quality of information has been pretty useless. It has been very difficult to disaggregate at a local level or apply to individual situations. That is one of the arguments for moving it to a local area. More generally, it has been difficult to get information both out of test and trace and out of the NHS at a trust level. Is that a problem you have had?

Professor Whitty: I try to get as much information from as many different areas as I can and then I try to disseminate it as widely as I can. I speak to the directors of public health on a weekly or bi-weekly basis. Part of the aim of that is to try to pass on what I know. One of the things that Sir Patrick has made a real push on—and I completely agree with this—is that not just the NHS but the whole system needs data to flow more fully in every direction. That is in everybody’s interest so that everybody sees as much information as possible. This is important scientifically, operationally and for public health.

Q1553 **Graham Stringer:** In answering the question about international comparisons, you mentioned in passing that some health services were much better funded than our health service. We come mid-way in the European pecking order. Had we had six times the capacity in intensive care units—and I realise this is a hypothetical question—would our response have been able to be less dramatic than it has been?

Sir Patrick Vallance: Clearly, if we had had six times the intensive care capacity, there would have been more headroom, but you still would have had an enormous number of deaths associated with that. The question then for Ministers and society is whether you are prepared to tolerate those numbers of deaths. But, yes, it must be the case that, with a larger healthcare system, you would have more headroom to avoid collapse of the system or get close to real pressures.

Q1554 **Dawn Butler:** Sir Patrick and Professor Whitty, thank you very much for your evidence today and all the work that you are doing. I am sure that it is extremely frustrating being scientists and giving advice that is not always the sole factor for decisions that are made. I am just asking for your advice really. Have you given any advice to Government in regard to how Parliament works, the number of people that are currently in Parliament and how we operate?

Professor Whitty: That is a straight factual question and the factual answer is that, quite early in the epidemic, I spoke to the Speaker and the Lords Speaker, but most of this has been done with Public Health England giving the professional advice since that time.

Q1555 **Chair:** Sir Patrick, do you have anything to add?

Sir Patrick Vallance: No. It is a Public Health England matter and maybe Health and Safety Executive as well. Regarding the frustration about the sole advice being science, I do not think it is. We absolutely recognise there are many other bits of evidence and important parts that need to come into decision making.

Chair: Viewers will notice today that we are abundantly socially distanced in this room. Aaron Bell has one brief supplementary question.

Q1556 **Aaron Bell:** Regarding the projected end of this lockdown period in December, do you think that going back to the tiered system, as is proposed, would push R back above 1?

Professor Whitty: That very much depends on the situation in which we find ourselves and what takes its place, and those are two imponderables.

Q1557 **Aaron Bell:** The proposal at the moment is to go back to the tiered system we currently have. Any relaxations will clearly push R back up again, so is there an absolute case rate that you would want to see by the end of this lockdown period before you would recommend relaxations? For example, would it be sub-200, given that the average in England is around 300 at the moment?

Professor Whitty: The Prime Minister would probably want us to look at where there should be variations on exactly the same tiering system as at the moment rather than just assuming we would revert to an absolutely identical one. There is a lot to learn. In fact, over the next two or three weeks we will start to see the effects of the tiering in an even more granular way than we have to date. We should wait until we have that before we start to decide how best to use that in future.

Q1558 **Chair:** Are you comfortable with the prospect that Wales may lift its restrictions whilst England is imposing them?

Professor Whitty: I am very strongly of the view that, under the devolved settlement, what happens in Wales is for Wales. I talk to my Welsh colleagues regularly, but I certainly do not see that as something that I should interfere with in any way.

Q1559 **Chair:** If it is the case that there are different restrictions in Wales, reflecting no doubt different choices and circumstances there, is it reasonable for Cornwall or Devon, for example, to have a different regime over the next four weeks than London?

Professor Whitty: The whole basis of the last few weeks has been that there has been a significant difference in contrast to the first wave, which was pretty similar across the country, in different parts of the country. One thing that is happening at the moment is that, because the R is in fact higher in some of the lower areas now, that difference is being eroded. That is just an epidemiological point. The reality is that the settlement for health is that there is an English system and there is a Welsh system, and it is important that we respect the fact that those are separate systems.

Q1560 **Chair:** It is a reflection of the constitutional settlement rather than the epidemiological difference.

Professor Whitty: It is a reflection of the constitutional settlement; exactly so.

Sir Patrick Vallance: The point that Chris has just made that the growth is faster in some of the low prevalence areas is important because that growth is not visible to people, and it comes back to the point that the tendency is to want to act when things are very extreme and you can see hospitals in real trouble, whereas there is real merit in acting sooner to stop areas becoming high prevalence areas.

Q1561 **Chair:** Indeed, but, if I take the case of Devon for example, there has been a rate of less than 100 infections per 100,000 population since the middle of October. That seems to have been relatively stable by contrast to other places. I was interested in whether there is the capacity to have differences such as there are between the two sides of the border in England and Wales.

Professor Whitty: That has been the basis of policy for the last few weeks. Our worry in the south-west in general is that it is not just a matter of the rate, which is certainly higher than in some parts in the north now, but also the fact that the bed base and other issues mean that the ability to constrain that is also different. These things are not just about R numbers; it is also about where you find yourself.

Q1562 **Chair:** There is a school of thought, something called the Great Barrington Declaration that you will be familiar with, whose signatories' view is that there should be a different approach to managing this pandemic such as the more aggressive shielding of vulnerable people. Do you model the prospective impact of different approaches, or is your work on SAGE exclusively focused on the lockdown and social distancing measures that we have been talking about today?

Professor Whitty: I have no doubt that the scientists and others involved in the Great Barrington Declaration feel they are providing a useful contribution, and I mean no disrespect to them in what I am about to say at all. Although it said some perfectly sensible things like lockdowns are very destructive, and no one can argue with that, the basis for this is, in my view, scientifically weak, probably dangerously flawed, operationally impractical, and, I think personally, ethically a little difficult. I will explain why that is and Patrick might want to say a little about how SAGE views this.

The biggest weakness in this is that it starts from the thesis that inevitably herd immunity will be acquired if you leave things long enough. That is not the case for a very large proportion of the most important diseases in the world. On all the ones I have worked on, you never acquire herd immunity ever. You do not for malaria; you do not for HIV; you do not for Ebola; and you do not for most of the things that come in from the front door of hospitals. You just do not. It never occurs. The idea that this is an inevitable thing, which is a fundamental tenet to this, is simply incorrect.

We do know that with this particular infection you can get some degree of immunity early on—that is reasonably clear—but we do not know how long that lasts for. Even if it could be achieved over time and people maintained that immunity for long enough, you would need to get up to probably 60% to 70% of the population, which we are a very long way short of. So, for all of those reasons, that bit of it is wrong.

The second bit that is problematic is the next assumption that you have what they call focused protection, by which they mean identifying all the people who are vulnerable and keeping them out of the way of anyone who might have the disease. That is theoretically a perfectly attractive idea practically with this disease, which has a huge force of transmission. You can catch it from people who do not have any symptoms, is highly transmissible and is everywhere. The idea that you can do that and do it for year after year is simply impractical. We have been asked this multiple times—and Patrick might wish to talk about how SAGE has looked at this—but everyone who has looked at this says what a great idea until they look at the practicalities. How are you going to look after people in nursing homes? How will you look after people in hospitals? How will the elderly meet their grandchildren?

It is practically not possible, and it would make an assumption that very large numbers of people would inevitably die as a result of that decision. You would have to get all the people up to that 60% naturally infected, and, for something that has a 0.5% to 1% infection fatality rate, that means a very, very large number of people—if you think of the 60% or 70% of the UK population⁸—would inevitably die as a result unless you could achieve this perfect identification of everyone who is going to get ill, which you cannot, and entirely isolate them for several years, which you cannot. Other than that, it no doubt has some merits.

That is the reason why I am really quite cautious of this and I share the view with the director general of the World Health Organisation that, given all of those, to have this as an element of policy would be ethically really difficult. There is only one place you should be thinking to get herd immunity as an element of policy, and that is when you have a good vaccine. That is the one situation where it genuinely makes sense, but we currently do not have one. I hope we will get one soon.

Sir Patrick Vallance: We published a paper outlining exactly that a few weeks ago as the argument why this really is not a good idea and why the argument has some fatal flaws. There are two others that I would add. First of all, I completely agree that you get to an attempt to herd immunity through vaccination, if you can, but that is not always possible either.

There are two other things to bear in mind. It is not that people under the age of 70 do not die from this disease. You do get deaths. Even if you were

⁸ Witness clarification: when referring to 60% or 70% of the UK population, I was referring to 60% or 70% of the UK population infected, rather than suggesting 60% or 70% of the population would die.

able to shield totally, you would still see a significant number of deaths in younger people as it went through the population.

We also know that the long Covid syndrome causes quite a lot of problems for people. You would have a big burden from that as well.

The final point, to build on something Chris said, is that multigenerational households are a very real thing in this country, particularly among certain communities. That would be a major problem. You would be essentially causing a big problem among some of the communities that are most hard hit by this already.

Q1563 **Chair:** With the exception of vaccines and effective treatments as they come—that aside—there is no alternative to the types of measures that we have been talking about today, in your view.

Professor Whitty: Clearly, we want to get to medical countermeasures. They may be drugs or vaccines, or some combination of drugs, vaccines, diagnostics and other things. I am really confident, Chair, that we will get to that because we have got to that with every other major infection. We are incredibly good at handling infections over time. The problem is that until that happens—and none of us can know which ones will finally get over the finishing line and when—it will usually be an accumulation of small advances that add up to a big enough advance so that we can say, “This hasn’t gone away, but it is much smaller.” We are left with these very destructive, blunt tools. None of us would wish to use them. If you could say then, “We will never get a scientific answer,” then you might say, “Well, okay, fine, it’s never going to happen.” Anyone who thinks about this would be very confident that over the next year, and probably even sooner than that, we will have multiple shots on goal from science.

The situation will get steadily better, in my view, from early next year onwards. It will be a rolling through of the extraordinary scientific effort currently going on internationally across the public and private sector all working on this. I am very confident that we will get medical countermeasures. We have to hold the line until that point, and that is where unfortunately these economically and socially destructive tools are what we have in the absence of anything else.

Q1564 **Chair:** A difficult winter but a bright spring.

Sir Patrick Vallance: Yes; I think that is right.

Professor Whitty: A brighter spring.

Sir Patrick Vallance: There are some concrete bits to this. First of all, we have one drug already that we know reduces mortality in patients that require oxygenation in hospital, and that is Dexamethasone. There will be others that come along. That is looking concrete. Secondly, testing technologies, near-patient testing and things that are faster, are here and now. They are beginning to happen. That will improve the ability to do that. Thirdly, on the vaccine situation, we did not know at the beginning of the year where we would get to. There are now vaccines that produce good

immune responses. It does not mean they are going to work but they are on track. They are in late stage clinical trials and we will get the readouts. Those are all quite concrete things that are pointing in the right direction.

Chair: Thank you. We are very grateful. This Committee with the Health and Social Care Committee in its joint inquiry will take evidence tomorrow morning with the leaders of the vaccines and treatment programmes in this country. This time next week, we will be talking about test, track and trace with the leaders of that programme. We will go into that in great detail.

I would like to thank our two witnesses for coming today at necessarily short notice. I can say that Sir Patrick and Professor Whitty have accepted every invitation that I have issued as Chair of this Committee. I am very grateful for the extensive evidence that you have given today. These are very important decisions, as has been evident in our discussions, which I know you appreciate. Parliamentarians have an important debate and vote tomorrow.

It is important to be able to ask questions and to understand the basis of the advice, which, in turn, leads to recommendations by Ministers. You have given us the chance to do that today, and we are very grateful and hope that you will do so again at similar junctions in the future. Thank you very much.

Christian Concern
Potential litigation concerning the reversal of church closure as
part of COVID-19 precautions

Report prepared under
the instruction of:

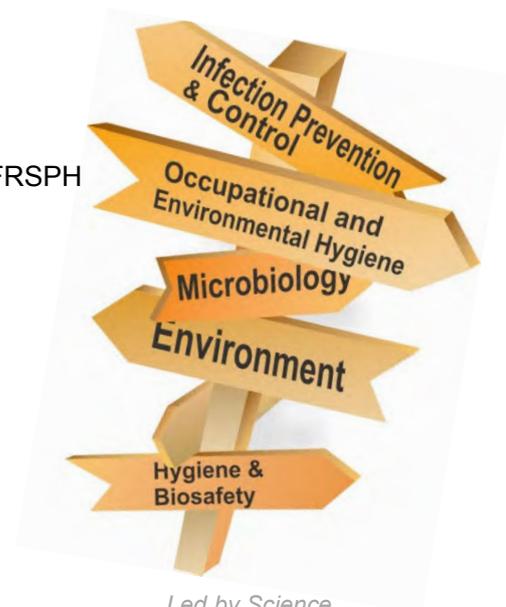
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1 Introduction

1 As the impact and spread of Covid-19 infection in the UK and elsewhere continues to
escalate, the evolution of precautionary infection prevention and control measures
recommended by government continues. Increasingly stringent control measures are being
imposed, and to the most part these measures seem well-found though among some groups
compliance is poor or non-existent.

2 Compliance with control measures is clearly appropriate yet there can be no doubt that a
single all-embracing 'rule' does not fit all situations. In many cases, the rule will be entirely
suitable, easy to apply and, hopefully effective. We must recognise that a general rule may be
inadequate and fail to afford the intended degree of protection, while in others excessive
constraint may have unintended and unwanted consequences far beyond the risk of
transmission of infection.

3 There is a strong and clear case that the church fills a sometimes critical role in times of need
through the support it gives to its members and to others. Additionally, the church provides a
focal point for communities that can extend far beyond the active members of the church.

2 Analogous 'rules'

4 Can church services continue to be held safely? As I note in my report of 5 May 2020 and a
14 June 2020 Addendum report with clarifications, it is my expectation that the activities of the
church can continue safely, though with some specific precautions and constraints.

5 It is wholly intentional that there are broad similarities between the rules proposed for safe
church services and for other church activities and those recommendations, guidelines and
rules set by government for 'essential' and other shopping activities, public houses, cafeterias
and restaurants etc. Much of those government recommendations, guidelines and rules were
adopted for other commercial and community undertakings until the recent heightening of
Covid-19 control precautions. Notwithstanding, the model rules I propose here do not conflict
with those of the government but rather extend far beyond their scope to enhance protection.

6 Though perhaps it was unlikely ever to be the true intention of government to set COVID-19
related rules that were variable in their interpretation it is widely reported in the press and plain
for all to see that considerable variation in interpretation has arisen, remaining unchallenged
by government and its advisers. Despite this variation, there has been no recognised increase
in COVID-19 infection rates, whether local, regional or national.

7 Examples include shops and offices, factories, home delivery services, some sporting and
social events etc. Shops and supermarkets are a particular example worthy of further
comment. Though initially tight constraints were placed upon access to supermarkets in order



to ensure, without draconian measures, adequate social distancing this did not extend to the length of queues snaking through the car park. Over time, it is clear that standards intended to maximise social distancing have relaxed substantially, not supported by government though no doubt to and for the benefit of shops and shoppers alike, but without any evidence of an increase in virus transmission linked to such activities.

3 Model rules for church services and other activities

8 Previously, I have proposed a series of model rules that I believe should be applied by the church to ensure safe operation of their on site activities, of other activities on church premises such as access for private worship etc which is still permitted under the latest iteration of government-led rules, of off-site activities such as one-to-one home visits, visits to care homes and hospitals.

9 All off-site activities would be conducted only with the approval of site managers and undertaken entirely in accord with their rules of prevention. To enhance and expand these activities without compromise to overriding safety rules I had proposed the use of one-to-one or group meetings using one of the many web-based video communication systems such as Microsoft Teams or Zoom. This remote and thus inherently safe approach I also recommended for more regular church services, to reduce if necessary the number of attendees at church when this is constrained by available space, To facilitate access to services by the elderly and infirm who would find it difficult to travel, and if necessary to serve a large congregation that may of necessity be spread over more than one site.

10 I fully commend these model rules and believe that diligently applied the risk of infection transmission will be as low as possible and certainly no greater than is the risk of transmission in the activities of daily life under lockdown.

11 I had made clear the compliance with all of the rules including access to buildings, one-way systems for entry and exit, hand hygiene, rudimentary health questionnaires and temperature checks on arrival would be required. I now make it abundantly clear that to this list of requirements I would add registration of premises and visitor recording under the Government's Track and Trace system.

12 All of these requirements will require careful management to ensure their success. To ensure this, I had recommended that each church should appoint a minimum of two responsible officers to manage entry to church premises, to remind visitors of the required infection prevention rules that must be adopted that would include hand hygiene on arrival an appropriate social distancing once on site.



13 Failure to comply with these rules will be the responsibility of the church authorities who
14 themselves will be subject to prevailing official sanction.

4 Private worship

14 Access to church premises is still permitted for private worship.

15 As far as I am aware, there are no restrictions placed on the number of individuals who may
16 attend at any one time for their own private worship. However, I anticipate that the numbers
17 will be small and the attendance will be irregular.

16 With this in mind I had included in the proposed model rules for churches to ensure that all
17 such visitors requested access, perhaps by ringing a doorbell in order to gain access. In this
18 way, visitors would be discreetly supervised with at least one member of the church team
19 remaining on site to ensure that basic hygiene and related rules were maintained, and
20 inevitably to ensure the safety and security of church premises.

17 I think such rules would be eminently workable and fulfil all of the requirements for access to
18 private worship while maintaining the best possible infection prevention precautions.

5 Weddings, christenings & funerals

18 With careful adoption of the model rules that I had proposed which build upon the
19 recommended social distancing, the use of a mask or other face covering, regular hand and
20 environmental hygiene, I anticipate no valid reason for prohibition of weddings, christenings,
and funeral services, some of which might otherwise be transferred to civic or commercial
properties.

19 Logically, the location for religious or civil ceremonies make no difference to the overall risk of
20 transmission of infection providing core precautionary measures have been implemented and
are maintained. However, it is tempting to speculate that if taking place on church premises
these more rigorous precautions will ensure the highest standards of infection prevention.

6 Inconsistencies

20 It has been widely reported in the media that there exist many inconsistencies in the 'rules'
imposed by government in its tiered Covid-19 control measures. Perhaps first among these
was the government advice regarding what constitutes a substantial meal. Apparently, a pasty
served with chips or a side salad is considered by local government secretary Robert Jenrick a
substantial meal and is permitted to be served while the same pasty but without a salad is
considered a mere snack and cannot be served.



21 Elsewhere, public houses must close though some exploit a loophole in the regulations to sell
beers that are pre-ordered. indeed, some are going as far as providing facilities to pre-order at
the door and to consume drinks at chairs and tables placed immediately outside the premises.
Despite this and other inconsistencies and loopholes, the government have not updated,
corrected or clarified their advice, effectively condoning exploitation of these inconsistencies
and loopholes.

22 University students presently living in halls have now been offered an evacuation-style
operation to get students home safely for Christmas after England's lockdown. The
government has told universities to allocate departure dates during a "student travel window"
between 3 and 9 December, to minimise the risk of them spreading Covid-19.

23 Travel between Wales and England and between Scotland and England has become a
particularly contentious issue with some petty squabbles between the devolved governments,
inconsistent tier structures, and the inevitability that individuals are driving back and forth
across the borders to take full advantage of the differences in the prevailing rules. At the same
time, police forces have been wholly inconsistent in their interpretation and in their
enforcement of these rules.

7 Setting standards, leading by example

24 It is easy to see that on a regional or national scale the setting of rules regarding lockdown is
far from easy and sweeping generalisations resulting in inconsistencies and loopholes which
will be exploited. The extent to which these rules and their implementation, with or without
inherent inconsistencies and exploitation of perceived loopholes, actually contribute to overall
reduction in infection levels is a matter for much debate and it is clear that the government and
its scientific advisers, and others cannot agree on the value of these imposed rules, which
should be retained, which should be revised or strengthened, and indeed which might be
abandoned as worthless or simply unworkable.

25 Having set standards for Covid-19 related infection prevention measures, the government and
others at times struggle with their own compliance. So too do NHS employees. So too do the
operators and employees of supermarkets etc, but little seems to be done to improve
standards of compliance and thereby overall levels of protection.

26 Schools have returned and universities continue to teach though in the majority of cases
teaching, when possible has been delivered online. There is, however, little in the way of
official guidance and both schools and colleges/universities interpret the outline guidelines as
they see fit, often with hugely different interpretations and application, some good and some
not, of even the most basic rules.



27 It is to be hoped that the church will be permitted to open and offer services as usual, but in full compliance to the model rules proposed here which I believe substantially exceed those notional guidelines offered by government. Structured so as to be somewhat more specific and with the additional benefit of a proposed chain of supervision and team approach, I would expect that deviations or neglect by members of the church team and thereby by members of their congregations should be minimal. In turn, it is to be hoped that this will set a standard of performance and compliance that can be used to guide and support others.

28 I do not propose that penalties for non-compliance are waived. However, I do propose that the church should additionally create an overarching management structure to adopt a supervisory role in the implementation of Covid-19 precautions, acting as a central voice and source for guidance about interpretation of these enhanced standard rules. Through this central management group close standardisation will be assured, while problems are identified, expert assistance sought as required, and solutions rapidly cascaded to all members.

8 Conclusions and recommendations

29 The Covid-19 infection prevention guidelines and rules laid down by government are vague, inconsistent, and open to interpretation. Loopholes have been identified and are exploited, not more so than on the periphery of local lockdowns and on the borders between England, Wales and Scotland.

30 The government and its scientific advisers have received much criticism about the development and implementation of these rules and in particular of their inconsistencies. However, there is no evidence of the government's intention to correct those matters.

31 One major consequence of this is that across the UK, church services are now prohibited. Clearly, this is causing some distress that has prompted a detailed review of the issues involved. In that review, I have taken guidance from the government and its scientific advisers, and from my work in medical microbiology and infection prevention and control. Taking all of these factors into account I proposed a set of core 'rules' (Appendix 1) that can be applied to church services and related activities whether taking place on site or at some remote location. Quite intentionally, little if any flexibility in interpretation of those rules is proposed or permitted.

32 It is accepted that the church fulfils a unique role in society. That role takes on many different forms; the church is central to the social and mental health of many people. In these particularly difficult times, the church performs a valuable role that is complimentary to the welfare and physical health of many, and can complement and expand upon those services provided by the Department of Health and Social Care, some private providers in the care home sector, and many other charitable organisations.



- 33 It cannot be overlooked that the church is active in every hospital and care home to provide welfare and comfort to patients and staff alike. Though these activities have been greatly curtailed by the evermore stringent infection prevention and control measures in place in hospitals and care homes, it is to be hoped that the activities of the church can continue and can continue safely at the present time. To that end, I propose and recommend the model rules summarised here and in my substantive report, together with the training and supervision that I have indicated to ensure full compliance. It is my professional opinion that, through implementation of these rules, churches can safely deliver services on site. Moreover, those services can be live-streamed to others in nearby overflow premises, and to others who may be in their own home or care home and unable to travel.
- 34 It is somewhat perverse that the government will permit presently access to church premises for individuals wishing to engage in private worship but have chosen to suspend all organised church services. In my professional opinion I think this is unfortunate and inconsistent, preventing the church from providing support and comfort to its members and indeed to the rest of the community.

Appendix 1

Core 'rules'

- Thorough cleaning of the venue using disinfectant wipes or equivalent on all likely touch surfaces
- Enhanced ventilation with open windows where possible
- Visitors are met at the door; rules and processes explained to visitors
- Booking system with multiple services available if necessary, to avoid overcrowding
- Visitors register with Track and Trace at the point of entry
- Masks or suitable face covering must be worn by all; face masks made available for those who arrive without
- Hand hygiene mandatory for all; hygiene stations at the door
- Marked one-way system of transit throughout the building, from entry to exit
- Active management of seating arrangements to ensure necessary social distancing; flexible arrangements will allow members of the same household to sit together
- No live music
- No singing
- Optional live video casting of services to additional visitors who can be accommodated in an adjacent room or building to maintain to the same safe standard



- Optional live video casting of services streamed to those who wish to or must stay at home
- Supervisory team to ensure compliance with all rules

Appendix 2

Community focus – virus screening, vaccination programmes etc

35 We are all aware of the current and soon to expand programme of virus screening for at risk individuals, and the impending introduction of mass vaccination. The Department of Health and Social Care and others are working hard to plan and deliver these key programmes. However, it is already apparent that there exist significant manpower issues and that GP surgeries could not continue to offer a meaningful range of services to patients if space must be redirected toward the vaccination programme.

36 Presently, screening services are operating out of doors in council car parks, and in some council run sports and community centres. To greatly augment these existing services, it might be appropriate to consider the use of church premises to host these essential programmes. Though I have not explored the feasibility of this proposal in any detail, church premises are located within the heart of every community and could perhaps be made available for use.

37 This seems eminently workable and I happily endorse collaboration between the necessary parties with a view to its implementation. I must make absolutely clear that this proposal has no part whatsoever in the current action. However, if church services are permitted to restart without delay, the proposed rules will ensure a safe and suitable environment for virus screening and vaccination programs

9 Declaration

I, James Ian Blenkharn, declare that:

- 1 I understand that my duty in providing written reports and giving evidence is to help the Court, and that this duty overrides any obligation to the party by whom I am engaged or the person who has paid or is liable to pay me. I confirm that I have complied and will continue to comply with my duty.
- 2 I confirm that I have not entered into any arrangement where the amount or payment of my fees is in any way dependent on the outcome of the case.
- 3 I know of no conflict of interest of any kind, other than any which I have disclosed in my report.



- 4 I do not consider that any interest which I have disclosed affects my suitability as an expert witness on any issues on which I have given evidence.
- 5 I will advise the party by whom I am instructed if, between the date of my report and the trial, there is any change in circumstances which affect my answers to points 3 and 4 above.
- 6 I have shown the sources of all information I have used.
- 7 I have exercised reasonable care and skill in order to be accurate and complete in preparing this report.
- 8 I have endeavoured to include in my report those matters, of which I have knowledge or of which I have been made aware, that might adversely affect the validity of my opinion. I have clearly stated any qualifications to my opinion.
- 9 I have not, without forming an independent view, included or excluded anything which has been suggested to me by others, including my instructing lawyers.
- 10 I will notify those instructing me immediately and confirm in writing if, for any reason, my existing report requires any correction or qualification.
- 11 I understand that:
 - 11.1 my report will form the evidence to be given under oath or affirmation;
 - 11.2 questions may be put to me in writing for the purposes of clarifying my report and that my answers shall be treated as part of my report and covered by my statement of truth;
 - 11.3 the court may at any stage direct a discussion to take place between experts for the purpose of identifying and discussing the expert issues in the proceedings, where possible reaching an agreed opinion on those issues and identifying what action, if any, may be taken to resolve any of the outstanding issues between the parties;
 - 11.4 the court may direct that following a discussion between the experts that a statement should be prepared showing those issues which are agreed, and those issues which are not agreed, together with a summary of the reasons for disagreeing;
 - 11.5 I may be required to attend court to be cross-examined on my report by a cross-examiner assisted by an expert;
 - 11.6 I am likely to be the subject of public adverse criticism by the judge if the Court concludes that I have not taken reasonable care in trying to meet the standards set out above.
- 12 I have read Part 35 of the Civil Procedure Rules, the accompanying practice direction and the Guidance for the instruction of experts in civil claims and I have complied with their requirements.



- 13 I am aware of the practice direction on pre-action conduct. I have acted in accordance with the Code of Practice for Experts.

10 Statement of Truth

I confirm that I have made clear which facts and matters referred to in this report are within my own knowledge and which are not. Those that are within my own knowledge I confirm to be true. The opinions I have expressed represent my true and complete professional opinions on the matters to which they refer.



James Ian Blenkharn - Microbiologist
11 November 2020

11 Ian Blenkharn

- 1 I, James Ian Blenkharn CSci CBiol CWM FRSB FRSPH FIBMS MCIWM of Blenkharn Environmental, London, make this report. I am a healthcare, occupational and environmental microbiologist with 45 years' experience in the NHS and University Medical Schools, and in the private sector. I obtained qualification in Medical Microbiology in 1976, with an additional University of London Master's degree in Microbiology (1980). I have extensive research and teaching experience in the UK and elsewhere.
- 2 The greater part of my career was with the NHS, with the Royal Postgraduate Medical School, and with Imperial College London. I left Imperial in 2004 to continue with my long-established private practice. In addition to that extensive private practice, I am a Lecturer at the University of West London where I teach microbiology and infection prevention & control to healthcare professionals at both undergraduate and postgraduate level.
- 3 In the commercial sector I have held, in addition to many ad hoc consultancy engagements, additional appointments as consultant microbiologist, science adviser, technical and safety adviser etc. I have also held consultant appointments to clinical (healthcare) wastes companies and to water testing companies, acting as science adviser, trainer, auditor and assessor etc, and representative at licencing and permitting applications and appeals.
- 4 My research-driven international practice focuses on aspects of general and environmental microbiology, occupational biohazards and bio-safety, healthcare and environmental



infection control & hygiene, and audit and training in the healthcare, water, waste, occupational and environment sectors. I have particular expertise in post-surgical and device-related infections, and in bio-safety with emphasis on environmental and worker hygiene.

- 5 I have published extensively with more than 110 papers on these and related subjects in the medical and scientific literature, and by invitation have contributed to several textbooks and monographs, and to Croner.
- 6 I am a Fellow of the Royal Society of Biology, a Fellow of The Royal Society for Public Health, and a Fellow of the Institute of Biomedical Science. I am a member of the Healthcare Infection Society, the Infection Prevention Society, the British Infection Association, the Microbiology Society, the Association of Professionals in Infection Control and Epidemiology (APIC), the European Society of Clinical Microbiology and Infectious Diseases (ESCMID), and the Royal Society of Medicine. I am a Chartered Biologist, Chartered Scientist, and Chartered Resources and Waste Manager.
- 7 I sat on the Fitness to Practice panel of the Health and Care Professions Council, the independent statutory regulator. I also sat an extended term as Vice Chair of the Royal Society of Biology Professional Registers Panel. Until its dissolution in March 2009, I was specialist adviser in microbiology to The Healthcare Commission and was subsequently appointed specialist adviser to its successor organisation, the Care Quality Commission, the independent regulator of health and adult social care in England. I currently sit as an Independent Specialist member of the clinical safety committee of the Association of Anaesthetists of Great Britain and Ireland.
- 8 I have more than 30 years' experience as an Expert Witness. I received Expert Witness training first at The Royal Postgraduate Medical School and later at Imperial College London. I hold the certificate of completion of the Bond Solon Civil Procedure Rules for Expert Witnesses course, and the Cardiff University Law School/Bond Solon Civil Expert Witness certificate. In 2019, I completed the Bond Solon Expert Witness 2019 update training course.
- 9 I have appeared in Crown, County and High Courts, in the Coronial Court, at Public Inquiry, Planning and Licencing applications and appeals, in Arbitrations and in Tribunals.
- 10 I am registered with the UK Register of Expert Witnesses, APIL, and with similar organisations in the UK. In the US, I am a member of the Gerson Lehrman Group (GLG) and of ORC International (now Expert Engine) consultancy groups, international organisations providing industry- and discipline-focused networks of consultants, physicians, scientists, and engineers to both public and private sector clients.



- 11 I have acted in Planning and related environmental permitting applications, hearings and appeals, in medicines regulatory hearings, in Public Inquiry, and as an Expert Witness in Courts in Gibraltar, The Netherlands, Germany, Ireland, US, Japan, and most recently in notable discrimination cases in Sweden each having their foundation in matters of hygiene and microbiology.
- 12 I continue to engage in Continuous Professional Development programs registered with the Royal Society of Biology, the Institute of Biomedical Sciences, and CIWM.
- 13 I was founding Editor-in-Chief of the International Journal of Hospital Environment & Hygiene Management. Currently, I am a member of the editorial board of The Journal of Hospital Infection and The Open Waste Management Journal. I have additionally served terms on the editorial boards of The Biologist, The Journal of Infection Prevention, The Journal of Electronic Health. and The International Journal of Engineering, Science and Technology. For more than 3 decades, I have been a regular reviewer for many medical and scientific journals.

A full Curriculum vitae with complete publication list is available on request



IN THE HIGH COURT OF JUSTICE

QUEEN'S BENCH DIVISION

ADMINISTRATIVE COURT

BETWEEN:

THE QUEEN

(On the Application of REV. ADE OMOOBA MBE and Others)

Claimants

-and-

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

(2) THE WELSH MINISTERS

Defendants

FIRST WITNESS STATEMENT OF WADE MCLENNAN

I, Rev Wade McLennan, New Hope Community Church of 4 [REDACTED]

[REDACTED] will say as follows:

1. My wife and I run New Hope Community Church. This operates in Llanrumney, which is one of the poorest areas of Cardiff, with a significant amount of social deprivation. We minister to the elderly and those with all manner of social problems and addictions.
2. When the Welsh Government announced their decision to close churches again under The Health Protection (Coronavirus Restrictions) (No. 3) (Wales) Regulations 2020, we were absolutely devastated. We therefore considered what to do, very carefully, however in good conscience, we believed that it was right to continue to meet for worship.
3. Our decision to remain open we believe was justifiable. As Christians we simply cannot turn people away, be they the stranger, our neighbour, our fellow believers etc. Jesus said as much as you have done it to the least of these, you have done it unto me. So for us to turn people away, would be a denial of our faith.

4. It appeared that worship services were unlawful, this seemed to be at odds with paragraph 14 which allows:
 - (1) A person responsible for premises of a kind listed in paragraphs 30 to 32 of Schedule 1 must ensure that the premises are closed to members of the public, except for the uses permitted by paragraphs (2), (3) and (4).
5. Amongst the exceptions noted are:
 - (2) A place of worship may be open—
 - (d) to provide essential voluntary services;
 - (6) In this regulation, “public services” includes the provision of food banks or other support for homeless or vulnerable people, childcare, blood donation sessions or support in an emergency.
6. It was our intention and belief that we were acting both within our charitable objects and the provisions of the legislation by offering support to vulnerable people within our community. This was particularly so as we had three suicides in our community in the preceding week.
7. When the Police arrived at our premises on Sunday 25th October 2020 at approximately 19.20pm, we had 27 adults and 9 children (under the age of ten), all adults were properly socially distanced and was wearing an appropriate face covering. Everyone had temperatures taken upon entry and track and trace were in operation.
8. Since the start of the pandemic, we have followed the law and ensured that we have taken all appropriate measures.
9. We were in the middle of our worship service when someone began pounding on the doors, both front and back, shining torches through windows and letterbox. This caused distress for those vulnerable people and children within the building.
10. Eventually, my wife and I left through the fire exit door and closed the door behind us. We were approached by four or five police officers, who began questioning us, suggesting that a disco was going on, we assured them that there was no disco and the lights these were referring to were flashing Christmas lights, that are on all year round.
11. They asked to come in to search the building, we did not want them to however they said they had the right to come in anyway, even using forced entry.
12. After a bit more discussion, we opened the door and the police came in and searched the building, then one officer explained that we were in breach of the law and that

everyone had to leave. Some of the parishioners objected to leaving. We were eventually allowed five minutes to close our service. After prayer, there were some people crying and were very distraught. Everyone collected their belongings and left the building. The police then waited until everyone had left from the grounds of the premises, before they too left. This event had been recorded and posted on social media by various members of the congregation

13. On Tuesday 27th October, we received an email from the Charity Commission requesting the following information:
 - a. They wanted the trustees' comments, particularly regarding concerns that we knowingly breached current Coronavirus restrictions.
 - b. Whether the trustees discussed the decision to remain open for worship and whether all trustees were in agreement with this.
 - c. Whether the police were to take further action.
 - d. Whether the Church was now been closed for worship.
14. On Tuesday 27th October, we had a telephone conversation with a Trustee of the organisation that holds the title deeds, as they had concerns about the recent publicity arising out of the Police's attendance, and they advised that there were implications for them as a charity as they owned the title deed. There were also implications for us. They said they had already spoken to their legal representatives and would be writing to us.
15. On Thursday 29th October, we received an email from our Insurance Broker (Access Insurance) stating that they had seen a news article regarding the church holding a service on Sunday, which contravened Government regulations. They reminded us of the condition of our Church Insurance policy that we were to "*comply with all statutory and other obligations and regulations imposed by any authority*" and failure to do so could result in a claim being refused.
16. They requested that we confirm in writing that the church will now be abiding by the regulations imposed and they wanted a reply as soon as possible.
17. On the 28th October, we received a telephone call from a Member of Parliament. The MP seemed very concerned about the media attention and in exchange for keeping things out of the media, and to avoid any difficult situations for the forthcoming Sunday; the MP stated that we needed to write an email setting out our mid-week meetings that take place every Thursday and Friday at the church with 22 vulnerable adults attending.
18. The MP insinuated that by keeping things out of the media, he would be willing to speak to the Police to allow us to have our mid-week meetings and also would verify this with South Wales Police.

19. The MP then emailed us on the 29th October with all the information he had received from the Council which clearly stated *'We have to be clear that if the NHCC is allowed to open and provide these services, they can be no acts of worship; the Regulations are clear, that is not permitted.'*
20. On the 1st November at approximately 13.45pm, two riot police vans and seven police officers (some with tasers) attended the church. The plan was to broadcast an online service, however this was not a public service. That said if people turned up, we did not believe in good conscience that we could turn them away. If the police did, then that would be a matter for them. Four police officers came into the building and three police officers escorted our daughter from a cabin (called Kids Zone) and started to question her, this left her very distressed and shaken. One of the police officers suggested to her *'you are the one that made the video'* and another officer constantly had their hand on their taser whilst speaking to her.
21. We had six people within the building, they all had specific roles in the live broadcast of the service. The sergeant was satisfied that no one was in the building that should not be, and explained that they were just responding to a complaint from a member of public. One of the officers told us that they would be on duty throughout the evening and that we would be expecting another visit.
22. We then received a text message from the MP, asking if everything went well on Sunday, I responded and told him about the above incident. The MP was not happy and said he would speak to South Wales Police.
23. We had a telephone call from an inspector from South Wales Police at approximately 4.00p.m. stating that he spoke to the MP and apologising if his officers acted unprofessionally and not acted as they should. This was in part because some of the officers who came out were not on his team.
24. Again, during the evening, there were six people in the church doing the online broadcast and whilst we were live broadcasting, two police officers came into the building, even though the front door was closed. They stated that they had received another complaint from a member of the public and they were under a duty to investigate. The police stated that the music was too loud and that we needed to take the TVs down from our window as we were inciting people to gather outside.
25. We explained that the TVs had been used throughout the summer in the same manner and part of this was our advertising and broadcast procedure.
26. Whilst they were speaking to us, they were stood next to a speaker and so it was hard to communicate, so they told us to turn it down. We unplugged the speaker, they wanted us to tell everyone outside to leave and said that it was our fault that they had gathered.

27. Our focus was what was happening inside, not what was happening outside. My wife and I both refused to forbid people from gathering outside and were not prepared to tell them to leave. The police dispersed the people, we do not know exactly how many were outside. We were told that some got into their cars however again the police told them to leave the area as they were not allowed to sit in their cars.
28. We received another phone call from the Police Inspector on the 4th November stating that he was aware of some difficulties over the weekend which he was keen to avoid for the forthcoming weekend. He asked us what our plans were for the forthcoming Sunday. We told him that we would be doing our annual remembrance services but outside. Due to the number of people that would be attending, we would be holding two remembrance services. The police did not come to either of these services. We told by the Inspector that if anyone gathered outside in the evening during our 6.30pm live online broadcast service, these people would be fined. However, the police did not come to the church on Sunday.

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.



.....
Wade McLennan
12 November 2020



Deeper Christian Life Ministry

[REDACTED]
Liverpool L8 0TY

0151 709 4670

12th November 2020

Dear Christian Concern

I write as requested in support of a judicial review of the forced church closure in the UK. My name is Dr Ayo Akinsanya, the Pastor of the Deeper Life Bible Church (Solway Street East, Toxteth) Liverpool for the past twenty-eight (28) years, and the Regional Overseer for Merseyside & Wales. The Deeper Life Bible Church Liverpool, located in one of the most deprived area of this country (Toxteth), is one of several thousands of Churches worldwide under the umbrella of the Deeper Christian Life Ministry, and has over 80 branches here in the UK. With a background of Leukaemia research and innovative biotechnology spanning a period of over ten (10) years, I entered into full-time pastoral work in 2002. We have a growing membership of over 300 worshippers with regular meetings five (5) times in a week: twice on Sunday (am - Sunday Service & pm - Home Caring Fellowship); Tuesday Bible Study; Friday Revival Prayer meeting; and Saturday Leadership Training / Evangelism. The set up and dynamics of these meetings are vital to the church life and community such that virtual alternatives by streaming or broadcast of church services are very poor substitutes.

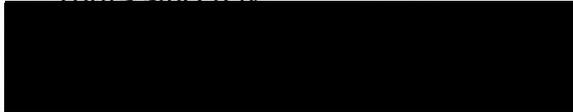
Apart from these meetings which are indispensable to the spiritual wellbeing of our members, our church also provide other essential services to members and the wider community. Such services include a Food Bank, a Homeless Ministry (offering cooked meals & clothing), and an Ofsted-registered After-School Club, operating within the church premises. For instance, since the March lockdown our church's Food Bank has served hundreds of individuals and families, whilst practicing social distancing and other changes to the way the service is delivered just to ensure the safety of clients and volunteers. We all know that crisis times are challenging times, and being able to practice one's faith at such times is a major determinant of spiritual, psychological and social wellbeing.

It is an established fact that the general rise in domestic abuse, loneliness, depression and mental wellness issues, job loss, anxiety, fear of the future, and other physical, psychological and spiritual problems will only grow worse under lockdown conditions. The church occupies a unique position in mitigating and solving these problems through prayers, counselling, uplifting sermons that offer hope, and the shared community that churches afford.

Since the advent of COVID we have taken drastic anti-infection precautions even before the first lockdown and have invested in the region of five thousand pounds (£5k) after the reopening in July. We carried out full scale risk assessments of our church building and put in place comprehensive reopening guidance policy. Floors / carpets have been visibly marked for social distancing with sanitation points indicated by fluorescent posters, and attendance records meticulously kept. It must be highlighted that since reopening we have not had a single incidence of COVID infection among our members. Really, in my opinion, the current forced lockdown of the church is unjustifiable as there is even no scientific evidence whatsoever to back it up as also recently admitted by the Government's scientific advisers.

It is only reasonable to expect that if our church can be trusted to safely operate services such as the Food Bank the Government should extend the same trust to the running of corporate acts of worship. Besides, the Government's action in shutting down the church is illegal and fundamentally challenges our Christian allegiance and devotion to God in a manner that violates the conscience. As we would prefer not to be forced into biblical civil disobedience, this matter must now be given the serious consideration it demands and the only sensible outcome is to have the church lockdown rescinded forthwith.

Yours sincerely



Ayo Akinsanya **BSc., MSc, PhD**
(Pastor / Minister-in-charge)

Tree of Life Family

BM BOX 203I

London

WCIN 3XX

To Whom It May Concern

My name is Benjamin Conway, and I am the founder and lead pastor at the Tree of Life Family. I represent a family of eleven churches and have been running this family of churches for the last ten years when I started our first church in Dagenham, Essex. Our attendance in all those churches is easily over six hundred. I have been in Christian ministry since 1997 when I started as the assistant minister of a church in Cheshire and have occupied a variety of roles until I started the first Tree of Life Church.

Our churches are in a variety of communities, estates, villages, across the United Kingdom. We have over forty nationalities every single weekend, and we have many families, young children, as well as many elderly people as well. All our churches have a service at the weekend, and then several house groups in the week. The weekend services provide a chance to reflect and learn about the Christian faith, engage in corporate prayer and worship, and to encourage and inspire each other.

Our weekly house groups are also an integral part of our church where people can show Christian love and service to one another and make genuine friends in a way that in a larger service is difficult. Not having those house groups since March has affected people's faith and their mental health. The lockdown has restricted our ability to help some of the most disadvantaged in society, and has prevented people whose lifeline is those small meetings, especially the elderly who often find it difficult to access the technology that enables online meetings. I would estimate at least 20% of our congregation are in a position where they absolutely cannot access our online services and have therefore been completely bereft of Christian teaching and friendship during what has been a trying and unnerving year.

Since the lockdown, I have had to organize online services, and to bring our equipment up to a specification where those services are watchable has cost several thousand pounds, and they are in no way as a substitute of actual services. We have also provided a telephone line to call for services, made over one thousand outgoing calls to our people, and fielded several hundred incoming calls.

In the gap between the first and second lockdowns, all our churches met again apart from one as the company that organized their venue went bankrupt. We took every precaution, got professional risk assessments, discussed what we could and could not do with our public liability insurance and our lawyers. It was a long, stressful process, and in

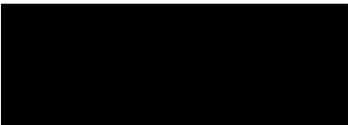
addition the venues we hire regularly have all had different instructions too, some of which have been contradictory.

We have not been able to meet during lockdown as there have been no venues that would allow us to hire them, and it would also invalidate our public liability insurance. Now we have found if anyone would drive to one of our services, they would no longer have valid driving insurance. Corporate prayer is an essential part of our faith and now it cannot happen, which has disquieted our people.

There are several people who have missed getting baptised, we have just cancelled yet another baptism service which was planned for November 14th. We also have had four couples who could not get married within the lockdown. I believe that our not being available in our respective communities is to the detriment of the community.

I represent eleven of the many churches in the United Kingdom that do not as yet own their own venue. Normally we can hire a venue for a few hours because it makes economic sense as we can all meet together at the same time and celebrate and worship and fellowship together, we can engage in corporate prayer and worship, and we can all encourage and inspire each other. To hire a venue for individual prayer would be utterly inefficient, not cost-effective and no one would hire it to us anyway. So, therefore not only has the current lockdown prevented us from corporate prayer, it has prevented us from having a safe space for individual prayer too. I would imagine thousands of churches across the UK have been restricted in the same way.

Kind regards,



Benjamin Conway, MA, PGCE

Lead Pastor, Tree of Life Family



To Whom it may concern,

My name is Alexander Gyasi MBE, I am the founder and senior pastor of Highway of Holiness church.

The church was founded in 1995 in Haringey, north London. In my 25 years of pastoral ministry I have gone on missions to Asia, Africa, America and Europe. I have also established supplementary schools for underprivileged children in Bulgaria, South Sudan, Ghana and Ethiopia. We support churches in India, Pakistan, Nigeria and Philippines who also are persecuted for their Christian faith. I am the convener of Kingdom Culture Alliance which is a ministry that gathers pastors and church leaders across the U.K, it is also active in Europe and Africa.

We have 100 members that attend regularly and hold 4 services on a weekly basis. The majority of our members belong to the BAME community. In addition to our services we run a youth club which we began in 2006, a homeless shelter since June 2009 and a day centre for the homeless, people on the verge of becoming homeless and people that live in isolation since February 2019. Throughout the first lockdown until date we provide meals 6 days a week to the homeless and one day a week to members of the community.

In response to the Covid-19 pandemic we undertook a risk assessment to identify what risk we had to mitigate in order to reduce the risk of transmission. This resulted in us taking the following steps:

1. Asking all members to remain seated in their cars once they arrived on site to be called in by an usher.
2. At the point of entry every family (bubble) sanitise their hands, puts on a face mask provided for the and have their temperature taken; their address and contact numbers are also recorded on the date they attended a service. We also created and posted up our NHS QR code in the venue as soon as it was available.
3. The chairs in the auditorium are distanced a metre and half apart between bubbles and people coming alone. The seating is organised prior to the start of the service.

4. Automatic hand sanitiser dispensers are dotted around the building to give people the opportunity to sanitise their hands throughout the building.

These same measures apply to homeless members of our community that attend our day centre. The amount spent on PPE, hand sanitizer and dispensers since March is about £800.

The consequence of being unable to worship together in person is that when we meet we draw inspiration, strength, guidance, teaching and instruction from corporate worship. We are also motivated to serve our community and we have the opportunity to fellowship and build our personal relationships and comfort one another which particularly negatively effects those that live alone, are vulnerable and or the elderly when this opportunity to meet it removed.

The closure of churches deprives members of the wider community of the opportunity to join in corporate worship and receive spiritual guidance. They would also loose the opportunity to meet people and make new friends who can care, empathise and support them.

Yours sincerely,



Rev. Alexander Gyasi MBE
Senior Pastor
CEO of Highway House



Rev. Iestyn ap Hywel

12th of November 2020

To whom it may concern,

My role within the Presbyterian Church of Wales is as an ordained Minister of the Presbytery, Montgomeryshire Presbytery. This means that, as recognised by ecclesiastical authority and legal convention, I am called by God to this work and am to serve his church in this capacity. I have been in my current position since November 2019. Previously I worked in full time ministry both at Immanuel Presbyterian Church, (EPCEW) Cardiff (2018-2019); and as Church Enabler and Overseer for Carmarthenshire Presbytery (2012-2018).

My current role includes ministering amongst three church centres in Machynlleth, Newtown and Llanidloes. I provide leadership and guidance to the elders and members of these and certain other congregations in the surrounding areas. I preach, minister the sacraments, provide pastoral care, and am responsible for coordinating and leading Welsh language ministry across the Presbyterian Churches of Montgomeryshire.

The above mentioned churches form a focal point in their respective communities and are a vital link for many. Crescent Church, Newtown, is involved with numerous community based projects that use the building as a hub on a weekly basis. At China Street Chapel, Llanidloes, the church has strong and active links with local schools and are active in upholding and furthering the positive influence of churches in the area by working ecumenically for the benefit of the town. At Maengwyn Chapel, Machynlleth, both members and attendees constitute a vibrant community of Welsh speakers who are culturally active in the area, and are an integral component of their rural market town.

Many believers from smaller, rural churches also worship and have close association with these three centres. The members, attendees and family members of these centres number several hundred.

With an aim to further the Christian wellbeing and joy of every believer, equipping them for ministry and every good work in their local communities, I affirm that the weekly Sunday services are absolutely indispensable and the loss of them has been devastating. Many of my congregants are acutely feeling the need for the restoration of the means of grace but are now also faced with the anxiety of legal restrictions upon the practice of their faith. The means of grace are integral to their happiness and health and I have witnessed a deterioration in both as a result of lockdown. Many are struggling deeply with their spiritual loss. According to the ancient Nicene Creed, and alongside all Christians everywhere we confess:

“We believe in one holy catholic and apostolic Church. We acknowledge one baptism for the forgiveness of sins.”

By its very definition a Church (Gk. ekklesia) is a gathered people, and it is only as a gathered people that the gifts of God in the sacraments are administered. Thus, being unable to meet together as the Church and administer the sacraments has proved to be an existential threat to the church.

From the outset we have been diligent in following Government guidelines when we were permitted to open. We have completed risk assessments and ensured that our meetings have been as safe as possible, according to the directions given to us. These measures included, but were not limited to, the use of hand sanitising stations, social distancing and mask wearing. However, by now the disease itself is not of primary concern when meeting together but rather the fear of possible legal repercussions.

I hope this information is helpful to you.

Kind regards,



Iestyn ap Hywel

HEAVEN
2020

CRC LONDON
BUILDING ONE CHURCH IN MANY LOCATIONS

REVIVAL CHURCH EUROPE | REGISTRATION NUMBER: 5328511 | CHARITY NUMBER: 1107956

Pastor Thabo Marais
Senior Pastor CRC London
46 Commercial Road
London
E1 1LP

Dear Jonathan Hough QC,

As requested, please see below information:

1. Your position within the church.

Pastor Thabo Marais, Senior Pastor of CRC London, UK.

2. A short background concerning yourselves, including a description of your experience of Christian ministry.

I grew up in South Africa before coming to London in November 1999. I was radically converted at the end of 2002, and immediately accepted the call of God on my life and forsook all to join the ministry full time.

I started my ministry training as an intern pastor at CRC London and completed my formal Bible School studies during this time. After being released as a Zone Pastor, I faithfully helped build and establish new campuses and was involved in many other church exploits.

I was released in 2009 as the Senior Pastor of CRC London, a non-denominational pentecostal church that is part of an international movement called, Christian Revival Church (CRC). CRC International is led by its founder and visionary, Pastor At Boshoff, who pastors the fastest growing church in South Africa today.

Since my appointment as senior pastor of CRC London, the church has grown year upon year from 300 people to over 3000 people attending Sunday services. Beginning 2020 we had 3 church campuses in and around London and have planted vibrant CRC churches in the north of England, in Manchester, and also in the nations of the Netherlands, Scotland and Poland in the last 6 years.



HEAVEN

CRC LONDON

BUILDING ONE CHURCH IN MANY LOCATIONS

REVIVAL CHURCH EUROPE | REGISTRATION NUMBER: 5328511 | CHARITY NUMBER: 1107956

I believe that to build a great church, is to keep Jesus, and a passion for building God's Kingdom, in the centre of everything. Together with my wife, Pastor Karen, and our 5 young children we are dedicated to cultivate this heart for souls in CRC London, the UK and Europe.

3. A brief description of your church - what type of community the church is in, how many members, how many services are held weekly, how many people attend regularly, what other services the church provides.

CRC London was initially planted in 2001. CRC is a global movement that started in South Africa with visionary leaders Ps At and Nyretta Boshoff 25 years ago.

CRC London has a multicultural membership representing the cosmopolitan metropolis of London, and at our last count over 50 different nationalities were represented as the church is truly home to all ethnic groups of our city's population. We reach people from all walks of life and all ages. Young and old, black and white, rich and poor, worship together at our services hosted on Sunday mornings and evenings at our relevant campuses.

The vision of CRC London is to build one church in many locations, and we are devoted to the cause and purpose of the Church of Jesus Christ according to God's kingdom principles found in the Bible, which includes the work of evangelism and the work of training and equipping of the believer to fulfill their God-given purpose.

Our current campuses in London are located in Bromley-by-Bow, and in Sevenoaks, Kent, with 4 services held on a Sunday. Our third campus venue, which was located in the West of London, in Gloucester Road, had to close in May this year, due to complications associated with Covid-19. Our weekly attendance in person varies between 900 and 1200 per Sunday.

We are also meeting in small groups of 4-10 people on a weekly basis, with more than 160 groups across Greater London.

As part of a global vision, we are involved in various projects outside the UK as well as locally. We are the main supporters of feeding schemes in India and Pakistan, feeding over 400 people weekly. Each year we are involved in various social justice projects throughout the year, these include, JAM (Joint Aid Management) and Hope for Justice (anti human trafficking). We also drive a project called 'Bag of love' reaching prisoners and families in need with essential supplies and gifts.



HEAVEN 2020

CRC LONDON
BUILDING ONE CHURCH IN MANY LOCATIONS

REVIVAL CHURCH EUROPE | REGISTRATION NUMBER: 5328511 | CHARITY NUMBER: 1107956

We operate a full and part time Bible School and vibrant Women's ministries. We also support various Israel charities on a monthly basis.

4. What are the consequences of being unable to worship together? The effect on the members and non-members, and what benefit has been lost from the inability to worship together.

We believe that the church, and meeting together as one for worship and instruction, is central and vital to the Christian faith, even as the Bible tells us in Hebrews 10:25 'not to forsake our meeting together as believers for worship and instruction, but to encourage one another; and all the more faithfully as we see the day of Christ's return approaching'. Jesus also said in Matthew 18:20: *"Where two or more are gathered in My Name, there I am in the midst of them."*

The fact that the government once again does not allow any (safe) meeting together of the church, when it is at the core of the faith to be together, seems to be a serious interference with the human rights of people of faith.

The church ministers to the whole being - spiritual, emotional (hope to hopeless, peace to the fearful, mental health, suicidal, domestic issues) and physical (e.g. needy people, loss of jobs). Being therefore unable to worship together, deprives Christians from this life source of fellowship, receiving instruction, encouragement, and ministering to the whole being as stated.

It also seems that the government does not view faith as essential to national life and is in fact interfering with the religious freedom of people and willing to sacrifice the wellbeing of millions of christians/people of faith in the UK, by neglecting the importance of faith at this time of crisis for the nation. I am concerned that the government does not view church as essential as ie. healthcare, but have chosen to categorise it with secular pastimes ie. going to the pub.

Churches, and certainly my church, CRC, are at the centre of communities offering counselling for real needs including mental health needs, support to the needy including providing meals for school going youngsters in poverty, prayer, comfort, hope and encouragement, in general but also particularly in difficult times as we are facing now. As COVID-19 restrictions and lockdowns mean that the Church can also not have their weekly small group meetings, it is even more necessary to be able to come together to worship on a Sunday.

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It is not only the Church and its members that suffer from being unable to worship together, but the whole of society are being affected, as there is no opportunity for those seeking God, to find Him, for those in distress, to be comforted and supported.

The church has an indisputably vital function to provide relief in dark times and spiritual guidance through these times, and it is alarming that the government has once again completely dismissed the essential role of faith to communities and the nation at large at this time. I am concerned that the government is creating a precedent for excluding churches in fulfilling its role in crisis times but also in general in the future.

5. The measures that you have put in place since the advent of Covid and the cost of these measures.

Closing down our worship places and not allowing our congregation to meet, meant a loss of community and support for individuals and families. This severely impacts and continues to impact the mental health of members and causes additional family pressures etc.

Not allowing meeting together as a church, when it is at the core of the faith to be together, is a serious violation of the human rights of believers, and results in a loss of trust in the government because of it.

Our church has made major progress in crossing cultural barriers in order to grow into the 'house of prayer for all nations' as God commands us to build in Isaiah 56:7. The isolation caused by the restrictions placed on the church by the government has actually created a vulnerability which caused many of our members to be severely affected by the narrative of the BLM movement. I strongly believe that we would have not felt this impact if we were meeting together regularly, in spiritual unity, to encourage each other as our custom is.

One of the biggest losses during this time was our venue in the west of the City (Gloucester Road) that had to close due to complications related to Covid-19. During our reopening of our worship places in July, having only 2 of our 3 campuses in operation, meant that members from these areas had to travel extensive distances to attend a service. This in effect had an impact on our weekly attendance and left our congregation living in those communities, without a local spiritual meeting place.

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Practical and Financial Implications:

Additional resources required for admin related aspects in preparing all relevant Risk Assessments for venues, offices and other spaces being used.

Additional resources required for all relevant training to ensure staff and volunteers operate according to strict government guidelines.

Consumables related to Covid Health & Safety requirements including specialised cleaning products, hand sanitizers, face masks, temperature meters, uniforms and other specialist equipment.

Media and printing resources including signs, posters, banners, floor markers, H&S manuals,

Hire of specialist equipment (fogging machines) for cleaning of certain furnishes in venues used.

Additional hire costs for broadcasting and recording during the first lockdown in order to broadcast services online.

Venue upgrades and equipment procurement for broadcasting purposes.

Equipment procurement to enable house churches to function.

Online registration system for all attendees and associate resources to effectively manage this.

The above measures roughly equated to £22,000.00

The biggest cost to the Church was (during the first lockdown) and is a loss of income - especially cash donations usually received during services.



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6. If you have continued to meet during the present lockdown, what have been and what could be the potential adverse effects to your church e.g. investigation by the charity commission, eviction by landlords, revocation of insurance, potential prosecution for criminal offences etc.

CRC London currently hires all of their facilities, which are government-owned buildings (Schools & Colleges), and as such, their management would not allow the facilitation of services during the present lockdown, as it would go against the Government's rules.

Should CRC London have had their own buildings, services would have continued in the present lockdown, and the risk of all above-mentioned would have been relevant, including potential prosecution and possible defamation of the name of CRC Globally.

7. The effect of not being able to perform baptisms, infant or adult.

The decision by an individual to be baptised after accepting Jesus as his/her Lord and Saviour, is a fundamental principle in the Christian faith, and withholding that from someone, is a violation of their free choice to follow in the doctrine and teachings as commanded by Jesus in the Bible.

8. Measures you have already taken to be 'Covid compliant'.

Please refer to point 5 for a list of these measures, as well as the *Assessment of Risk Document*, attached as an Appendix, setting out all methods currently being followed to ensure we are 'Covid compliant'.

9. The wider cost to the community of being unable to worship together.

As set out in point 4, it is important to understand the role and importance of the Church of Jesus in the wider community and general society. The Church is not a building, but the people of God, existing essentially for their 'non-members'.

As God's ordained vessel on earth, the Church gives hope, life, love, light and salvation to a broken world. The purpose of the Church is for the world to be blessed *through us*. The Church is the hope of the world!

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Our Church is at the centre of communities offering counselling for real needs including mental health needs, support to the needy including providing meals for school going youngsters in poverty, prayer, comfort, hope and encouragement, in general but also particularly in difficult times.

People are looking to God like never before because of the calamity. During this time when many feel isolated and fearful, the Church plays a critical role to bring comfort and hope to their communities.

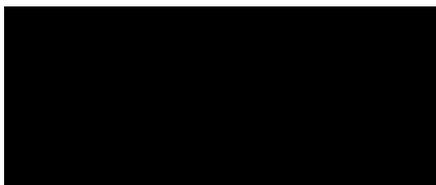
Withholding the church from being that place of refuge, the whole of society is being affected, as there is no opportunity for those seeking God, to find Him, for those in distress, to be comforted and supported.

10. Anything else of relevance.

Nothing to note.

I trust that the above information would be sufficient but please do not hesitate to contact me should you have any further queries.

Kindest Regards



Pastor Thabo Marais



Rev. Rich Owen



11th November 2020.

Dear Sir/Madam,

RE: Request for information: how a national lockdown has affected Worthing Tabernacle Church

I have been serving as Senior Pastor at Worthing Tabernacle Church for over 7 years and prior to this, as Assistant Pastor at City Evangelical Church, Leeds. Worthing Tabernacle was established in 1897 in the heart of our town and has, through two World Wars remained open for Christian worship and witness until this day. Our membership stands at over one hundred and eighty and we would regularly serve over two hundred people for Sunday morning worship, and around fifty for evening worship. Our membership is very well mixed in terms of age but does have a large number of elderly folks. Our church is affiliated to the FIEC and is in the Reformed Baptist heritage.

Our understanding of ‘church life’ according to scripture, is that human life is lived to the full in fellowship with God, and with the local church. Therefore, for us, what happens when we meet on a Sunday, and indeed throughout the week is *ultimate* in our lives. We view all of life as worship, and the weekly gathering with our church community is like entering heaven itself and the highlight of the new week. So many of the Lord Jesus’ commands (which we willingly obey) involve “one another” in the local church. The life and joy that we receive together in obedience to these commands, and under the preached word, and in taking the sacraments of baptism and the Lord’s Supper, are what flow out into Christian service, and that life lived to the full which defines our very being each day.

The result of us not being able to meet is that this life lived to the full is not possible. That which is ultimate, our life and soul, is being held back from us. It is so hard to obey the teaching of Jesus with respect to His “one another” commands when the ability to *be* with one another is highly regulated or forbidden. The lonely, the widow and the troubled are now further pushed back into their loneliness and trouble, for they are unable to be with the Christian family which voluntarily gives itself to care for them. We are commanded to sing psalms, hymns, and spiritual songs, so even when we have had restricted gatherings prior to this second lockdown, we have been deprived of the joy of singing to the Lord. We are unable to have a creche and our Sunday school has been temporarily suspended, due to the space we would need in order to set this up in a COVID secure way. This has made it very difficult for families to attend.

I have been restricted from and sometimes unable to visit dying members, at home, in care homes or in hospitals. I have had to conduct desperately sad funeral services with far fewer people present and have witnessed the sadness of families having to choose which people to exclude from services. The effects that this is having on my congregation is hard to express here and it is heart-breaking to put it into writing.

We have so many people who volunteer and serve through the church. For example, we run a community café, now closed due to COVID, a Christian bookshop which served the entire town, also presently considered non-essential and therefore closed. The café was a place many folks and charities would use through the week, and our bookshop an essential outlet for those who do not shop online, to find study notes, bibles, Christian greetings cards etc. We ran a mid-week toddler group two mornings a week serving nearly a hundred people, including many single mums for whom it was lifeline, but this also has had to close. We ran a lunch club for the elderly on a fortnightly basis, giving around forty people somewhere to come with their friends, this too is now closed. We have managed to continue running the Worthing Foodbank in partnership with another local church, but this has been far from easy. The community impact of lockdown is huge for us. Many of these things are part of our charitable objectives.

Nevertheless, we have worked incredibly hard to maintain the spiritual life of the church despite the lockdown. We have invested over £4000 in cameras and streaming equipment in order to provide something for our members to keep them engaged, taught and under the preaching of the scriptures while unable to physically attend. We are intending to send Christmas gifts to children and families who have lost contact with us due to lockdown. We re-opened in July as soon as we were allowed, fully compliant with government recommendations, including mask wearing, social distancing, sanitising, track and trace, one way systems round the church building, and very limited social contact, rule of 6 etc. We have spent over £500 on tape, hand sanitiser and other sundries. As a result of these efforts, many of our folks consider attending worship on a Sunday far safer than going to the shops, restaurants, or other civic spaces. We have not had a single case of COVID-19 in our membership, and therefore also no known transmissions as a result of us meeting for worship. I am utterly dismayed at the inclusion of places of worship in this present lockdown.

We have reluctantly closed again for the present four week lockdown and our prayer is that, for the sake of the spiritual and mental health our members and for the sake of all that we do to serve our community, we will never be *forced* to close our doors again.

Yours faithfully,

R. J. Owen

Rev. Rich Owen.

11th November 2020

Dear Sir/Madam,

I have been serving as pastor (and/or church planter) of North Church Leicester for three years now. Prior to this I was in an assistant pastor role at Christ Church Loughborough for three years.

We are a new and small Reformed Baptist church in a deprived area of Leicester, with only 8 members, and approximately 20-25 people attending church on an average Sunday. We began meeting together in our local community centre about two and a half years ago. In the beginning of this year we formally constituted as a church. Our practice as a church has been to meet weekly for Sunday worship, as well as holding mid-week bible studies and prayer meetings in homes, and holding various outreach events in the community.

The consequences for us of being unable to worship together have been many and serious. It is our conviction, from the bible (and this conviction is reflected in the Second London Baptist Confession of faith that we subscribe to), that public gathered worship of God is commanded by him, where his people gather in the presence of Christ to hear the word of God read and preached, pray, and participate in the ordinances of baptism and the Lord's Supper. We are made to worship him! Being unable to do this publicly has been troubling to my conscience, and the consciences of others in our congregation. Our theological understanding of church, worship, and what it means to be a human means that to replace this with online meetings is not an acceptable alternative.

In addition, I have spoken to members of our congregation who are really struggling with the lockdown in terms of their spiritual well-being and, what some might call, mental health. In the recent days of wider Covid limitations, church has been somewhat of an 'oasis in the desert' for most of us. Banning church means depriving people of genuine and essential Christian fellowship and communion with God through his means of grace. We believe that as we meet together, to hear the word of God preached, and pray together, and participate in baptism and the Lord's Supper, Christ himself is among us and does good to our souls in a unique and vital way. To be cut off from this does real disservice to the spiritual lives of our people.

This coming Sunday we were due to baptise a new believer in the Lord Jesus. For us, especially as a new and small church, this is a huge occasion. In baptism, God signifies to the person being baptised, and to those baptised persons witnessing, that we are united to Christ and belong to him; that he really has washed away our

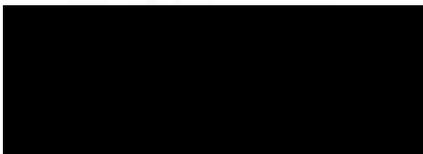
sins and granted us eternal life through faith in Jesus. This individual is unable to receive this great gift, now likely until the new year, and our church will be deprived of this great encouragement that we have been looking forward to for months.

We also have a number of people join us on Sundays who are not believers in Christ but who are exploring Christianity. They, too, have been cut off from this. For some of them, zoom and online communication is very challenging. But for all of them, they are unable to attend the primary means that God uses to reveal Christ to people: the preaching of God's word. By banning church, the opportunity for these people to know Jesus for themselves is severely hindered.

Because our church does not own its own building, we are dependent on renting our local community centre for Sunday worship. Since March, during the first lockdown, this facility has been closed and it is uncertain when it will reopen. When we were finally permitted to begin meeting again (August, here in Leicester) we were thankfully able to use another public space – a local youth centre – for our services. In meeting, we have taken the most care to do what is necessary to reduce the spread of the virus. The congregation has been extremely understanding and compliant. There have been no cases of Covid among church attenders as far as I know. Those who I have spoken to report to feeling safe in our services.

For a small church just starting, this lockdown and current ban on meeting has been a real struggle. I submit this to you in the hope that it will help to demonstrate the essential nature of the local church and public worship of God.

Sincerely,



Pete Petra
Pastor of North Church Leicester



11 November 2020

To whom it may concern,

I am the Assistant Pastor of Christ Church, Loughborough. After being a lay elder of the church for around 10 years, a little over two years ago I took up the position of Assistant Pastor. Christ Church has over 40 members, with a regular attendance at Sunday services of over 60 people. We hold one service on a Sunday (and ordinarily a monthly service in a local Residential Care Home), as well as Thursday evening teaching/prayer meetings and youth meetings on Friday evenings. The church is based in a multicultural area of Loughborough and we have good relationships with local residents of different backgrounds.

We are a people who take seriously the command of Romans 13, calling upon Christians to be in submission to the civil authorities, since they are instituted by God; however, the same passage makes clear that such government ministers are servants of God and thus forbidding what God commands is a clear overreach on their part. Members of the church are deeply troubled in their consciences by the inability under the law to obey the biblical command to gather for public worship. Not only that but legislating that churches are allowed to provide addiction support, food banks, blood donation etc., whilst explicitly forbidding worship of the God in whose Name such services are provided, is meddling in the affairs of the church in an inconsistent, ignorant and demeaning manner.

The consequences of being unable to worship together during this time are considerable. We are not just physical beings; public worship, as well as being biblically mandated, ministers to the spiritual needs of our members. As we gather together, God blesses his people through his ordained means of grace – we hear him speak and enjoy his presence as the Word is read and preached; we sing his praise and encourage one another to hold to the truth in so doing; we celebrate our union with Christ and fellowship with one another by taking the Lord's Supper; we participate in baptisms of new believers, bringing them into membership of the church and delighting in the good news of the gospel as lost sheep are found; and we pray as a corporate gathered body, ministering to one another's needs and difficulties at this uncertain and difficult time.

It is impossible to quantify the impact of losing all this as the government has made it a criminal offence to gather for these purposes. Certainly, we see our members hurt and struggling, not to mention the dishonour done to the Name of God, by such a decision.

In addition to all this, as a church, we are always concerned for those who are not members. To ban public meetings of the church where those who are struggling in the community can come to find hope, meaning, and forgiveness, has a devastating impact on the church's ability to provide support to those outside its membership – to do so at a

time when there is an increased risk of death is short-sighted; to do so whilst allowing garden centres, hardware stores and off-licences to remain open is disrespectful.

As a church, we have taken great care to put in place strict measures in order to reduce the risk of the spread of Covid at our services. We have carefully observed social distancing guidelines, even spreading the congregation across two rooms in order to do so; we usher households to and from their seats; we have shortened our services; we strictly observe the law concerning the wearing of face masks; we have insisted that members disperse straight after the service and do not stay and chat to one another; and we have been careful to take details to support the Track and Trace system. Many have noted that they feel safer at our church services than they do at *any other public setting*.

The cost of these measures has been significant. The fellowship that we enjoy as brothers and sisters in Christ has been all but removed. This has a negative impact for all our members, but is particularly painful and detrimental for those who live alone and are desperate for support in these times. The opportunity to meet with their church family, receiving encouragement and prayer, is a lifeline for those who are struggling spiritually.

Our members are fearful in light of the government's decision to criminalise public worship. They are concerned about receiving large fines or facing police action for seeking to obey the commands of scripture. The consciences of law-abiding citizens are being damaged. There is also the risk of division and disunity within the body of believers.

Furthermore, we also have some who have been attending the church who are now professing faith and have expressed the desire to be baptised. We have not been able to proceed with baptism classes or baptisms, and the cost of this has been profound. As well as the spiritual cost of not being able to celebrate their faith in obedience to the scriptures, the sense of exclusion as they have not been welcomed formally into the church, and not been able to join Members' Meetings, having votes on key decisions, has been palpable.

In spite of the significant costs, as outlined above, of the ban implemented by the government, it is my understanding that there is no evidence of the transmission of the virus in church settings.

I urge the government to reconsider the position that they have taken and to decriminalise public worship with immediate effect.

Yours sincerely,



Nicholas Pollock

HEBRON

CHRISTIAN FAITH CHURCH

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Pastors John and Sally Quintanilla

Hebron Christian Faith Church



To whom it may concern

We are the senior pastors of Hebron Christian Faith Church, a multi-cultural, non-denominational charismatic church based in Coventry.

We have been in full time Christian ministry for over 20 years and came to Coventry to start a church almost 15 years ago. The church has grown to over 200 members today. The church ministers not only to the spiritual needs of the people but also to their emotional and physical needs. Our church has various arms of ministry in addition to our Sunday and mid week services - men, women, mother and toddler group, small groups, counselling, food hampers to those in need in our community. For the past seven years we have also put on a large Family Fun Day in a local park each year completely free of charge which attracts thousands of people from the community.

The New Testament mandates the church to meet together regularly. Being threatened with criminality by government if this is done has deeply grieved the conscience of our congregation and caused great anguish. We are extremely disturbed by the prospect of being forced to elevate government intervention in church affairs above our allegiance to God and one another. Of course, no decent Christian wants to endanger the lives of others, and where such danger genuinely exists (as we were told it did at the 1st lockdown), churches would likely be the first to voluntarily lead by example and close their doors (as many were at the 1st lockdown). But legal intrusion is a step too far and a gross violation of freedom of religion.

Our congregation is so much more than a group of people dropping in on a Sunday. It is a family and meeting together is a much needed lifeline for our people from the oldest to the youngest. Although we are doing our best to connect with our people via social media, emails telephone etc, none of these are feasible (or scriptural) substitute to meeting together in person. Further, the older folks are not as technologically minded as the younger and therefore have had their connection literally severed.

Church Office • 15 Primrose Drive • Bedworth • Warks • CV12 0GL

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HEBRON

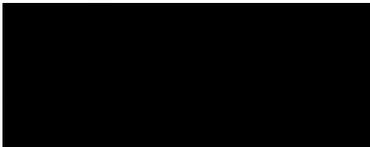
CHRISTIAN FAITH CHURCH

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At Hebron we were careful to ensure that we rigorously implemented all the government health and safety guidelines, carried out numerous risk assessments, purchased sanitising stations, signage, masks and gloves. Our building can comfortably seat 500 so social distancing was adhered to throughout the building. We are ready to hold multiple services if necessary to accommodate our growing congregation safely. There is continual cleaning and disinfecting carried out throughout the building.

Whilst the vital role of the church may not be understood by those outside, it is more than an essential service to most Christians. Therefore, whilst many shops, colleges, work places are permitted to remain open, we very much oppose this discriminatory intrusion by the state into the affairs of the church.

Yours sincerely



John Quintanilla



Sally Quintanilla



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CRC MANCHESTER
BUILDING ONE CHURCH IN MANY LOCATIONS

3301 South Tower, 9 Owen Street, Manchester, M15 4TT

11th November 2020

Dear Sir/Madam

My name is Stephen Ridgely. I am the Pastor of Christian Revival Church Manchester. I planted this Church in January 2018 under the leadership of Pastors Thabo & Karen Marais of CRC London & Europe. We are part of an intentional move of God that has approximately over 100 Churches internationally. We are also part of the International Federation of Christian Churches.

I have served in this ministry for 13 years and have been operating as a Pastor for 5 years. I am 35 years old and reside in Manchester with my wife and son. In the 13 years I have served in the ministry in many different capacities including practical/logistical running of Church and ministering & counselling thousands of people over this time.

CRC Manchester is based in the heart of the city centre of Manchester and is a very diverse group of over 50 people including many cultures and ages. We are focused to build and establish the Church in Manchester. Please find below some of the services we provide as a Church:

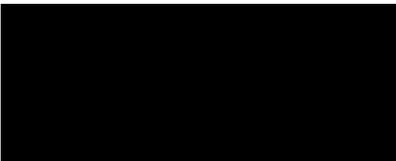
- Sunday morning service celebrations (Weekly, Including Kids Church)
- Leaders Meetings every Monday evening (Weekly)
- Bibleschool Tuesday evenings (Weekly)
- Homecell Meetings (Every Wednesday evening, smaller groups meeting within the local communities that make up Manchester)
- Various prayer meetings (Weekly)
- One to one counselling (Daily)
- Mens breakfast (Quarterly)
- Women's breakfast (Quarterly)
- Large scale outreach events (semiannual, aimed at uplifting members of the community)
- Social days for fellowship (Quarterly)

The consequences of not being able to be together are very visible and in plain sight for those that have given their lives to work with people and particularly they're wellbeing physically and spiritually. Many members are struggling mentally not being able to corporately gather together in the presence of God which is paramount to their spiritual well being. Many members feel like they are being robbed of their freedom that has been fought for by so many. Our Church has provided hope to many and in 3 years we have seen over 300 people give their lives to Jesus, not being able to meet is denying the people of Manchester the opportunity to experience truth for themselves. This truth that we share from the gospel has never left a person that accepts worse off but always better. The Churches doors open mean a healthier, more content, spiritually strong society which benefits all regardless of their beliefs.

Since the beginning of the Covid-19 Pandemic we have been more than compliant with every requirement to help stop the spread and to save lives. We updated our risk assessment and provided all the necessary protocols to keep every member safe that attends one of our services which include the purchase of all necessary PPE along with disinfectant and hand sanitiser. We have updated our protocol for all volunteers and have implemented a registration system that is filled in before Sunday to ensure everyones details are registered.

The brief time we had back together in services between the 2 lockdowns proved to be so necessary and beneficial for every individual. In this time we have seen over 30 new visitors to our Church that have been impacted positively. There is no denying the importance of the Church operating in communities. Many of our families and their children are building life long friendships that clearly benefit their lives and this time of being closed seriously hinders human relationship that we were designed for but also confuses our younger children that don't fully understand why we can't be together. There has never been a greater time in history for the Church to be open and fully operational, people need hope now like never before. The Church is the only middle ground between God and man through Jesus, always has and always will be. If a war can't stop the doors from opening it's an embarrassment that a virus can. Peoples safety is our number one priority which is exactly why the doors should never be closed by a political process.

Yours Faithfully



Stephen Ridgely

Ministers: Revd Dr William Schweitzer, Revd Benjamin Wontrop, Revd Florian Weicken
Elders: Mr. Jonathan Winch, Dr Christopher Richards

Revd Dr. William (Bill) Schweitzer is the founding minister of All Saints Presbyterian church, then Gateshead Presbyterian Church which was planted in early 2009. Benjamin was called back to All Saints as the minister for pastoral care in 2019 having previously served the church as a ministerial assistant from 2011 to 2016 and served as a minister at Bury St. Edmunds Presbyterian Church in Suffolk from 2017 to 2019. Jonathan was a founding member and elder of the church from the time it was planted, and Chris joined the eldership in 2017 as an additional elder.

All Saints Presbyterian Church was a plant of nearby Durham Presbyterian church. From the beginning, the church has sought to be a confessionally reformed church in the Gateshead/Newcastle metropolitan area. A church that would be faithful to the scriptures and the reformed faith alongside being a warm and welcoming community to those interested in knowing more about the Triune God and His Salvation through Jesus Christ. The congregation has seen significant growth reaching over a hundred members at times. However, the church has also been committed to planting other churches and has given up some of its members to form core groups for these new church plants. The church's first plant was in the town of Hexham in the Tyne valley, which began services in 2015. This was followed in 2019 by another church plant in the city of Sunderland. We are now in the process of sending another man to plant a church in Zurich Switzerland. The church also began a theological school for training new ministers: Westminster Presbyterian Theological Seminary – founded in 2013. In 2019, the church moved to the historic building of All Saints church on the quayside in Newcastle. This followed an intense restoration project of this building which is a treasure to the city and had been on a Historic England list for at risk buildings of historic significance. Plans are being developed to make this open to the public for tours after the COVID-19 crisis.

All Saints is a community, and this community is a lifeline for many through its meeting and pastoral care. This includes those who do not have natural family to support them and those struggling with significant mental health challenges. We ordinarily meet twice on a Sunday for corporate worship and fellowship. We also meet once in the middle of the week for Bible Study, fellowship and prayer. This is joined with regular one-on-one discipleship and support led by our minister of pastoral care.

The consequences of not being able to meet together have been grave. First and foremost we were made by for and by God. The cost to His glory in not meeting physically together is unmeasurable. Second, as Christians, meeting together physically for worship is an essential element of our faith. The denial of this means that we cannot practice our faith properly. Third, our ability to preach Jesus Christ and the hope that He has, is and will bring to the world is severely hindered. The preaching that the scriptures call us to is more than just the communication of information. It is to happen in the gathered company of God's people where it is joined to fellowship and discipleship, where those from outside the church may not only hear but be engaged and discipled. This is not possible over YouTube and is impaired – to the point of being fundamentally different – over Zoom and similar mediums. Fourth, the lockdowns have

A Church of the Evangelical Presbyterian Church in England and Wales



All Saints Presbyterian Church is a Charitable Incorporated Organisation registered in England. No. 1184509

taken a heavy toll on the people of our congregation who rely on weekly corporate worship, for mental and spiritual health.

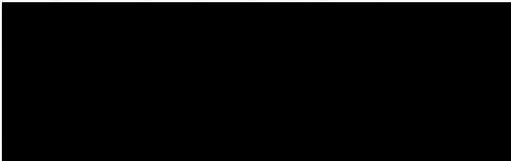
These new regulations also came as a particular blow to us after having spent a great deal of time and effort to ensure that our corporate worship was a Covid safe environment. In this we were helped by the fact that we have a building which seats over 1000 people as our congregation is about a 10th of that size. Through our risk assessment and the procedures we developed, we have sought to take every precaution we could in good conscience. You can find the procedures we developed for re-opening in July at the bottom of this letter. Our risk assessment can be accessed on our website: <https://allsaintspres.org.uk/covid-19-update/>.

As a church the corporate worship of God is at the core of who we are and what we do. It is essential for the glory of God and for our people, and it is commanded by the highest authority in heaven and on earth.

Respectfully yours,



Revd Dr William Schweitzer
(Moderator of Session)



Revd Benjamin Wontrop
(Clerk of Session)

The above ministers have signed on behalf of the session of All Saints Presbyterian Church

Reassembling Procedures

Before Coming To Church

1. **Inform us you wish to come.** This can be done via the provided google form or personally to Peter Lawley or Benjamin Wontrop, particularly tell us if your responses change from what you have told us already.

You will then receive instruction as to which door to attend:

Entrance:	Zone:
Accessible entrance (from graveyard)	Marble Zone
Main entrance (big steps)	Pew Zone
Side entrance (small steps)	Gallery Zone

2. **If you have not let us know you are coming; you can still come.** We will always seek to accommodate everyone, including visitors - it just helps us immensely if we know in advance. If you have not been pre-assigned a zone, come to the main entrance and a steward will assign you to one.
3. **What to bring with you:**
 - A Bible
 - Your own hymn books/psalm books or an app.
 - A face-covering
 - Alcohol gel & disinfectant wipes (these will be provided at the first service which you attend)
4. **Symptoms suggestive of Covid-19:**
 - Cough
 - Fever

- Shortness of breath
- Loss of sense of taste or smell

If you, or anyone in your household, has any of these symptoms, please join the livestream of worship rather than attending church physically. You should also obtain medical advice regarding testing and track and trace. Please also inform Benjamin Wontrop so he can coordinate the pastoral response to this.

When You Arrive

1. **Upon Arrival:** You will be greeted by a steward who will
 - Provide you with (disposable) **face-coverings**, if you have not brought your own.
 - Check that you have what you need for your **hand hygiene/cleaning** needs and help ensure hand hygiene is as effective as possible, thus reducing the risk of transmission to congregants.

On the first Lord's Day back, each family unit will be provided with a pack of disinfectant wipes and a bottle of alcohol hand gel. You are asked to take these home with you and bring them to each service you attend (we would suggest that you leave it in your car).

- If you do not have access to **hymnals or psalm books**, these can be provided by the steward and this copy will become yours for the duration of the current pandemic. It may be sensible to lightly pencil your names or initials in the front of the books for the duration. Please bring those books to any other services you attend subsequently (again, you may wish to leave it in your car).
2. **Put on Your Face-Covering:** This should be worn at all times when you are in the building. This only applies to those aged 11 and over. Face-coverings for children aged 0-10 will be left to the discretion of parents. If you have specific concerns about this policy please discuss them with Peter Lawley in advance of the service.
 3. **Seat Yourself:** You will then be asked to take a seat as directed by a steward, in general filling up the seats furthest from the entrances first.

During The Service

1. **Children:** Children must remain within their family units at all times.
2. **Face-coverings:** We are asking congregants (expecting those aged 0-10) to wear face-coverings at all times (except when eating the bread or drinking the wine/juice in the Lord's Supper).
3. **Social Distancing:** Please keep 2m away from other family units at all times. We do not anticipate the need for any family unit to come within 2m of another, except in the case of an elder serving the Lord's Supper, therefore the 1m+ advice will not apply, this is only for situations where 2m distances cannot be maintained.
4. **Symptoms:** If you develop symptoms suggestive of Covid-19 during the service, please leave immediately with your family unit and inform Peter Lawley via telephone.
5. **Toilets, Baby-Changing and Cry-Room:**

- **Toilets:**

The Accessible Toilet: This will be reserved for the use of those seated in the **Marble Zone only** (those with accessibility needs will always be seated in the Marble Zone), this is a further measure to reduce the risk to our most vulnerable members.

Regular Toilets: The regular toilets will be for the use of those in the **Pew and Gallery Zones**. Access to the toilets from the Gallery Zone is best achieved by exiting the building completely through the side door and re-entering via the main entrance to avoid moving through the Pew Zone. Access to the toilets from the Pew Zone or Marble Zone should be via the marble ramp as normal.

'One Family at a Time' and Cleaning After Use: If you require the toilet, please observe scrupulous hand-hygiene by hand washing using soap and water before and after using the facilities. Please also wipe down all touch-points with the disinfectant wipes provided. Children should be supervised in the toilets by a parent or guardian. Toilets should operate on a 'one family unit at a time policy' to ensure social distancing. Any queues for the facilities should also observe 2m

distancing. Please leave the external doors to the Regular Toilets propped open at all times.

- **Baby Changing:** The baby-changing facility has been relocated to the old cry-room.
 - **Cry Room:** The service will be relayed to the vestry and this will become the new cry-room for the time being.
6. **Kitchen:** Please do not use the kitchen for any purpose other than access to the new baby-changing facility - the sinks are not to be used for hand-washing.
7. **Sacrament of the Lord's Supper:**
- Two deacons will prepare the table together, to ensure that cleaning and hygiene rules have been scrupulously followed in preparation.
 - No 'pressure' will be placed on communicants to receive the Supper, given any health concerns they may have.
 - The elements will be served from the empty pew/row in front of where the communicants are seated. **The bread will be *dropped* into their hands.** The communicants should fully reach out their arms and open their hands flat to receive the bread. Under no circumstances must a communicant serve him or herself from the basket. Larger than usual gaps will be left between glasses of **wine and juice** to avoid the risk of communicants touching any glass other than the one they take. As was the case previously, the glasses in the middle of the tray will be grape juice rather than wine. The grape juice is usually a lighter colour.
 - Communicants will leave their face-coverings on while the elements are being served and will remove them when invited to partake by the minister.
 - The bread will be pre-cut into small pieces. One elder will serve each zone.
 - The minister and elders will sanitise their hands before touching the elements. It is suggested that Communicants do the same.

- Communicants are kindly asked to return their own empty glasses to the trays by the door they use to exit the building. Please do not touch other glasses in the process.
8. **Sacrament of Baptism:** The session is passionate about the continuance of baptism through this period. Plans have been made for the celebration of baptism, when required. If this is relevant to you, please contact one of the ministers.

12th November 2020

The Right Honourable Boris Johnson MP
Prime Minister of the United Kingdom
10 Downing Street
London
SW1A 2AA

Dear Prime Minister,

RE: Government Lockdown of Places of Worship

It is with the deepest concern that I write to you on behalf of the leadership and members of New Wine Church regarding your recent announcement that our places of worship will suffer a second lockdown from the 5th of November 2020.

We are strongly opposed to a decision that puts our places of worship in lockdown whilst allowing business enterprises and some other types of establishments to stay open. This selective approach reflects an awful devaluation of the value of our Churches to the lives of our members and to the wider local communities we serve.

New Wine Church in England has over 2,000 members and attendees at our weekly Church services and other events.

We are a multiracial, multicultural Church serving the various diverse communities within which we operate such as Woolwich, Dartford, East London, Maidstone, Gravesend and Manchester.

New Wine Church is a respected corporate citizen within the Royal Borough of Greenwich and we contribute significantly to the socioeconomic and spiritual well-being of our borough and beyond.

Below is a range of services we undertook for the benefit of our community before the lockdowns.

- We served approximately 40 people each week, providing them with a full English breakfast each Saturday and access to services that help get them off the street and back on their feet in terms of gainful employment, overcoming substance abuse, family reconciliations and active positive participation in community life.
- Over the last 18 years, we have undertaken our annual Christmas Hamper Campaign through which we have distributed over 29,700 Christmas hampers that have benefitted over 148,850 low income members of the community (including elderly, disabled, single parents) within Royal Greenwich and other London boroughs.
- Weekly study sessions and GCSE revision classes for secondary school children – improving their school grades and opportunities for higher skilled, better paying careers.
- Health and fitness classes for senior citizens – contributing to their increased wellbeing, self-esteem and ability to maintain their valued contributions to the society.
- Art & Craft sessions for primary school children – facilitating the children’s creative skills and offering an environment of innovative learning and safety during the school holidays.
- Summer Club for children – held during the school summer holidays, the children (Aged 5 – 12) enjoy a range of activities that expand their minds, stimulate their creativity and enhance their social skills. Activities include visits to museums, theme parks, craftwork sessions and games.
- Music Classes for children – weekly lessons to support the development of musical ability and offer a platform for the expression of their unique gifts.
- Career development workshops – Providing training in CV writing, job searching, interview skills and personal communication skills. These help to enhance the employability of the local populace and contribute to the reduction of local unemployment.
- Financial empowerment workshops – teaching personal finance skills that help people get out of debt, stay out of debt and manage their financial resources more effectively, thus easing the stress on themselves and their families.
- Health Awareness Conference – Our annual event bringing doctors, health and nutrition experts together to offer members of the community advice on preventive healthcare, diet, exercise, mental health and wellbeing.
- Prison Ministry – We offer support to inmates at local prison (HMP Thameside), helping them to improve on their personal skills and prepare effectively for life after prison.
- John Wilson Pantry – Our dry goods foodbank that provides groceries and support to many underprivileged or marginalised members of the community.

- Homeless Christmas Party – We host approximately 90 to 110 homeless people at an annual Christmas party, enabling them to participate in the Christmas festivities. We invite community leaders such as the Mayor or Members of Parliament to speak to them and help to convey a message of hope and empowerment for the future to the homeless persons.

In 2017, we were honoured to be given a civic leadership award by the Royal Borough of Greenwich for outstanding leadership and contribution to the community.

Suffice to say that as a result of the government's lockdown, we have been unable to provide most of our valued humanitarian services to the community, which has a debilitating impact on the thousands of people we serve each week.

The negative consequences include:

- The lockdown has adversely impacted the physical and mental health of the senior citizens who have been unable to meet with friends in their exercise classes.
- The homeless people unable to meet in their safe space on our premises for their meals and positive engagement to help them overcome the emotional and mental health challenges some of them face.
- The adverse impact on the spiritual and mental well-being of our Church members and their family who find attendance at our weekly church services a profound source of inspiration, encouragement and emotional release from the pressures of daily living
- The impact on children within the Church and the local community who would normally come together each week for fun-filled activities.
- The Church has had to invest significant time and financial resources including paid professional counselling to support our members in overcoming the traumatic impact of the lockdown on their mental health and family circumstances.

As a responsible corporate citizen, and without fear of contradiction, we have done as much if not more than many business enterprises, in our approach to maintaining the health and wellbeing of all visitors to our premises.

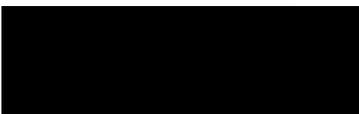
When we reopened for congregational worship services in August, we began and since then have operated a very high level of Covid-compliant practices during our weekly services such as having two (2) Metres social distancing, temperature checks, hand sanitization, regular cleaning and fumigation of our premises and constantly reinforcing the message about each individual's responsibility to help reduce the spread of the coronavirus and keep themselves and others safe.

We therefore find it particularly unfair that our Churches are being placed in lockdown whilst businesses can continue to operate at will.

Churches across the country, including New Wine Church, here in Woolwich and in other parts of England contribute significantly and positively to the mental health and spiritual wellbeing of our members, their families and our community at large. Being able to attend the Church services has played a tremendous part in the revitalized emotional resilience, family stability and general welfare of our members and we are keen for this to continue without government interference through another lockdown.

We would therefore ask that the lockdown of our places of worship be rescinded, **our Churches remain open for congregational worship and our fundamental rights to freedom of worship are not infringed.**

Yours sincerely.



Kola Taiwo

Senior Pastor – New Wine Church



12th November 2020

Dear Christian Concern,

I write to provide information as requested in support of a judicial review into the forcing of Churches in the UK to cancel all corporate worship services.

I have been a member of Kingsmead Baptist Church since 2009 and over the past 2 years it has been my privilege to serve the Church as one of its elders. We are a small Independent Baptist Church with 17 members and congregation of around 25 at our main Worship service on a Sunday morning.

We have 3 main services throughout the week, Sunday morning—worship service, Wednesday—Bible Study and Friday—Prayer meeting. We also run a Foodbank, which has recently expanded from one night a week to two because of the higher demand in recent months.

Much growth in the Church in the last few months has come from our Foodbank community outreach. A number of people have started to attend our Worship service and Bible Study because of this contact. These people have come from backgrounds of homelessness and drug and alcohol abuse and mental illness, and the Church has literally become a lifeline for them.

The effects of the original lockdown on these and others in our congregation has been very concerning. One gentleman who had been freed from drug addiction for a number of months, and had become a regular attendee and lately a member, shared how he was very close to returning to that lifestyle again because of the isolation he felt due to not being able to fellowship with us. Another lady who had mental health issues and who was being counselled by a lady in the church ended up being sectioned as her mental health deteriorated when her attendance at church had to stop due to lockdown.

Others within our congregation who are elderly and isolated literally pleaded with us not to close our doors this time. The Church is an essential lifeline for many in our congregation and in the wider community, and I am guessing that we are not alone in this.

We are not willing for that lifeline to be cut again and are currently continuing to make our Church available to share the love, compassion and mercy of our Lord Jesus Christ with those who need the fellowship more than ever in these uncertain and upsetting times that we are all living through. We do not do this lightly, The Scriptures command us to be 'subject unto the higher powers' (Romans 13) However it is our belief that the current legislation is in itself unlawful by making it a criminal offense to congregate and Worship our Creator, and that the Law of God calling us to do this (Hebrews 10:25) supersedes the law of man.

The Church has been acting on this law for thousands of years through wars and plagues and we feel the government has overstepped its bounds of governance in this matter.

KINGSMEAD BAPTIST CHURCH



Loving. Serving. Walking. Seeking. Worshipping

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www.kingsmeadbaptist.com

We closed our doors in March and reopened them again on the 5th July. During that period and since then we have seen no COVID infections at all within our fellowship or within our immediate families, and I understand that this is a similar story across the country with minimal cases of COVID transmission being attributed to Church attendance. We have however seen the detrimental effects on our congregation caused by our inability to function as the body of Christ (the Church) both individually and corporately.

We have been called by the Creator of the universe to Worship Him, and to minister to one another in a way that He has ordained for good reason, and this has continued unabated for millennia. I believe what God has commanded for our good should not be allowed to be legislated against as evil by man.

In our Saviour Jesus Christ,

Gavin Taylor

Elder



IMMANUEL

Havering Grange Centre
Havering Road
Romford RM1 4HR

Telephone 01708 727078
Fax 01708 738114

Email admin@immanuel.london
Web www.immanuel.london

Registered Charity No 1172044

Wednesday, 11th November 2020

Dear Sir/ Madam (c/o Christian Legal Centre),

I am the church leader of Immanuel, which runs Immanuel School as one of its ministries. I have grown up in and around the church as my father was the previous minister before it was handed on to myself to lead. I also went through our school. I have been involved in ministry for approximately 27 years, with 20 of those being as an employee of Immanuel London, which is the name of the CIO that the church and school come under. I have been a church leader for 18 of those years.

We are an independent church that is a member of the Evangelical Alliance and has relationship with other local churches as well as some further afield. We are situated in Collier Row, North Romford and mainly serve people from the local community as we are very relational in our nature, so most of the church members tend to live close to one another. Most of the children from the church attend our school, although not all, so are in one of the two bubbles we have within the school as part of our COVID-19 safety measures and risk assessment.

We have one morning service on a Sunday and fortnightly an evening service. We also have numerous midweek groups that meet as follows:

- Children's Club (fortnightly)
- Youth Group (fortnightly)
- Home Group for support (fortnightly)
- Marriage Support Group (monthly)
- Exploring Creativity (monthly)
- Various Prayer Groups (weekly)
- Men's Breakfast (monthly)
- Various team meetings for planning (monthly)
- Various community engagement activities (ongoing) – support and food parcels

We have approximately 60 adults and 34 children with most being regular attenders.

We are a close-knit church community with many adult members having been so for 30-50 years and many of the children going to the church run school as I have already said. Therefore, to suddenly find ourselves in a place where we can no longer meet within the church context, but also outside as many of our members would have done regularly, has had an adverse negative effect on people's mental health. Many are expressing feeling low and heavy and are clearly struggling with being 'locked down' and unable to meet up with friends and family for coffee, dinner or a social gathering. The church is multi-generational in that we have grandparents, parents and children from the same family all attending church services and groups. This dynamic has impacted some families more than others, especially where for a variety of reasons they are not in the same support bubble either. Our single people have also struggled in lockdown and so valued when the first lockdown was over and we could meet as church family again. As many were key workers, they only got to see friends or family on a Sunday at church.

Our community engagement activities have been hindered considerably what with lockdowns and social distancing, although we have been able to support a number of elderly people in the local community as we leafleted the area at the beginning of the first lockdown to offer help and assistance. This continued even after we came out of the first lockdown. We also started offering regular food parcels and are serving a number of people and families with this service too.

At this time of year, we would also have done a number of other community engagement projects or events, one of which we cannot do due to the restrictions. This event we call the 'Christmas Feast' and is where we invite poor or needy families, couples or individuals from the local community and bless them with a Christmas dinner, presents for the children and a large hamper for the family. We are finding ways to distribute hampers this year, but many people that attended also came because this time of year is normally very hard or lonely for them.

As we run Immanuel School, we have had to be thorough on our COVID-19 safety measures, procedures and risk assessment, so making the church COVID-19 compliant too was straight forward, especially as we use the same premises, so have the infrastructure in place already. Our risk assessment, procedures and guidance for worshippers was all sent to our insurance company, Ecclesiastical, who approved them as they did for the school.

We wanted to continue to meet during the present lockdown, but stand to lose a lot if we do from what we have been told. Firstly, our insurance is likely to be revoked and secondly, the Charity Commission could potentially investigate us and remove our charity status. Both of these measures would not only impact the church greatly, but also the school we run, which is heavily dependent upon both of those things.

We have had adults ask about being baptised, but have been unable to do those in a manner we feel is acceptable to how we believe it should be done.

Yours


Peter Taylor
(Immanuel Leader)

12th November 2020

Judicial Review

I have been an ordained member of the clergy of the Church of England for 37 years and Vicar of St John Newland, Hull for 26 years. I served as a Vicar in Manchester and prior to that was Anglican Chaplain to the University of Keele in Staffordshire. I am now the Director of Theology of Christ Church Network in Hull, and author over 14 books and over 60 theological articles. The Christ Church Network is an Anglican network comprising of three churches with over 500 adult members and over 100 children. It has a staff team of 10 full time paid workers and a large number of voluntary assistants. Five services are held across the network each Sunday. This is a significant number of people in what is the most unchurches City in the United Kingdom (less than 1% attendance).

The churches provide mid-week activities for numerous children, Toddler groups for small children and their carers, provision of seniors, activities for University students and asylum seekers as well as offering a foodbank in the community.

The inability of not being able to worship together has resulted in the loss of cohesion of the church community, a diminution of energy, inability to properly care for those who are in special need (e.g. the bereaved), prevention of carrying out fully responsibilities such as weddings and funerals and severely restricting our ability to serve the local community spiritually and practically which we consider is vital in the present circumstances.

The measures put in place since Covid 19 have included, multiple services to enable social distancing in meeting, social distancing for smaller groups, provision of hand sanitation and masks, the taking of temperatures on entry to services and meetings, track and trace arrangements. There has also been the streaming of services, the provision of zoom contact for business meetings, and regular phone calls to the pastorally needy.

In line with the view of many leading sociologists, we believe that there are three essential requirements to ensure a stable and flourishing society: effective government, sound economy and a coherent religious base. For the UK the latter has been and is provided by the church, in the

case of the Church of England, 'by law established.' The present Covid restrictions are threatening and weakening this third element in our society. Accordingly we would ask the government to reconsider its present actions.

Melvin Tinker

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November 11th 2020

I am a Christian pastor, a member of the F.I.E.C. Pastor's Network and have served in both F.I.E.C. and Countess of Huntingdon Connexion affiliated Churches.

In every church I have ministered the care and shepherding of the church family, ensuring opportunities for worship, prayer teaching and genuine care for the whole person has been core. However, it is important to note that churches do not just care for our own members but share Christ's love and care with our wider communities. The closure of churches is therefore devastating for the communities we serve, as well as the communities we are.

I have had the experience of moving church during the pandemic and can speak therefore on behalf of two separate churches. These churches are in two very different settings but being part of Christ's church are very similar in both their needs and service to their communities. Meeting together for worship, fellowship, mutual support, teaching and prayer is central to what church is and what church does. Certainly we are still the church when we are not together, but Christ calls His Church to gather together.

Alongside the gathering for church worship services, we provide opportunities for prayer, bible study, pastoral care (including one-to-one care and counselling for a wide variety of needs), hospitality, and we also keep in touch with people by way of telephone where physical meeting is difficult.

We have, of course used technology to fill some of the gaps that church closures have caused, but it is wholly inadequate to meet the majority of our needs. Additionally, the use of technology is not open to all; many do not have the tools to access technology, and others are extremely uncomfortable with it.

Church closures are causing significant and real suffering and they are particularly exacerbating the suffering of the lonely, the addicted, the elderly, and young adults, and many with previous mental health issues.

But as well as the above the lack of regular gathering together is a cause of suffering for the whole of our church family.

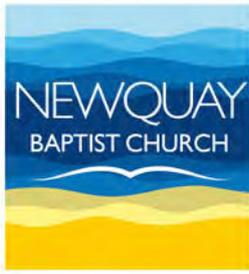
This Government action is forcing us to choose between obedience to God and obedience to our rulers – the bible is clear, that where there is a conflict, we must obey God over and above our rulers. To find ourselves put in such a difficult position is a significant cause of suffering and upset.

We are further perplexed by the fact that as a Church we have worked tirelessly to ensure our buildings are COVID secure and have provided online services to discourage those most at risk from attending. We also believe that there is no record of any church in the UK being the cause of any local outbreak. Yet despite all of this the government has branded the Christian Church non-essential.

Yours Sincerely



Rev. Keith Waters



Rev. Joshua Williamson
Newquay Baptist Church

Tel. [REDACTED]

NewquayBaptist.org.uk

I am a husband, and father of three who has been called to serve as Pastor of a Reformed Baptist Church in Newquay, Cornwall. Behind all the glamour of the tourism season, Newquay is a community that is lacking hope and as such is in desperate need of physical, mental and spiritual care.

As a church, we have been serving the community of Newquay for 200 years, and by God's grace we will continue to do so. Every Lord's Day (Sunday), we have between 40-45 people attend our services. In normal circumstances we would also have several other events and services throughout the week; including a monthly lunch for the elderly, a chapel service at a care home, prayer meetings, Bible studies and other community focused events.

As the shepherd of this congregation, I am deeply concerned for the well-being of my flock. On the Christian Sabbath service before the second lockdown, I broke the news to the congregation that by threat of law we would be forced to close down the chapel. This resulted in several vulnerable people breaking down into tears. Our congregation is made up of people from different backgrounds, with a number of people suffering from drug addiction, alcoholism, anxiety, depression and also members of the LGBT community who are struggling with their identity. All of these people have mentioned that the church is a safe place where they can come for healing, fellowship and to worship God with likeminded people. One of the aspects of church life is that people from a variety of contexts come together to support each other, and to provide care; unfortunately, that support system has now been removed by the Government.

As a congregation we have ensured that our chapel is COVID secure; we have conducted risk assessments, implemented a one-way system, provided hand sanitiser and face coverings, and also maintained social distancing. These measures came at a great financial cost for our small congregation, especially since financially we were struggling due to a previous lockdown which prevented meetings.

As biblical Christians, we take seriously the commands of God to gather on the Lord's Day in order to worship the Creator. We believe that all of humanity was made by God, and as such are accountable to Him. Since He is the One who gives life, we should seek to honour and worship Him, with the failure to do so being sin. By the Government forcing places to worship to close, they are forcing us to compromise our deeply held religious beliefs and are denying us the right to practice our religion in public.

Our fear is that if we defied the Government's new lockdown law, which we believe to be unjust and outside of its God-given authority, that we would be met with investigation from the charity commission, we would also face insurance issues, and potentially criminal prosecution from the Police. As Baptists, we have a long history of our forebears facing

opposition and persecution from the Government over the liberty to worship; we remember back into our history to a time when the Government in this land previously sought to regulate Christian worship. This previous regulation resulted in many Baptists being forced to meet secretly, and if caught the congregation faced harsh punishment from the State. While, we pray that our current Government does not seek to use this new lockdown powers in an evil manner, we are concerned that a precedence may be set. The current regulations have given over control of churches to the Government to the point where the administration of the sacraments (Communion and Baptism) are controlled by edicts from Westminster. It is alarming to us that a new form of Erastianism has appeared in our land which has made the Government the theological head of the Church, and has by this new lockdown law, sought to remove Christ from being that Head.

As Christians, we want to live at peace with all people; we desire that all people have the freedom to worship, so we pray for the day when religious liberty will be restored. We believe that our freedom to worship is given by God, as such, we are firmly convinced that the Government does not have the God-given authority to take those freedoms away. If the State persists in this course of action, then we will be forced to make a decision as to whether we obey God or the Government. Currently, the law is already placing a heavy burden upon our consciences; we long to be good citizens, but we have first allegiance to the Lord Jesus. History has shown that biblical Christians make good citizens, so we believe it would be best for the nation for places of worship to be open, in order that we may rightly worship God and work for the good of our communities.

Yours in Contending for the Faith,



BMin GradDipTh

Pastor
Newquay Baptist Church

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

12 November 2020

Dear Sirs,

I am Pastor of Christ Church, Herbert Street, Loughborough. After completing my PhD in Psychology I lectured at Loughborough University before planting the church in the northeast side of the town in 2005. In 2019 we reconstituted as a reformed Baptist congregational church. In late 2018 the church took over an Independent Methodist building in the centre of our neighbourhood from an older congregation who had faithfully ministered the gospel and provided a place of worship for the community for over a hundred years. We moved into the building in early 2020 to continue the ministry of the previous congregation.

The Lord God has been worshipped in the community on the site of the building for as long as the redbrick terraces have stood and the community was established. Over the years the local community has developed to become a socially, ethnically and economically diverse neighbourhood. The church has had its doors open for the proclamation of the gospel, regular Sunday worship, baptisms, communion, youth work, mums and toddlers' groups and community outreach for generations. Christ Church feel privilege to have had the baton passed to us to carry on worship and mission in this diverse community from this well-established site of ministry. It is our plan to renovate the building and seek to rekindle many of the kinds of ministry that have gone on at the building for generations.

We are a Baptist church who teach the bible and align doctrinally with the historic reformed confessions of the 17th century. Our church is around 40 members, made up largely of young families and a few older folks. We see around 60 or more attend worship on Sundays each week. Gathered worship on a Sunday, according to the commands of scripture, in the presence of the Lord, through the preaching of the bible and communion with him through the ordinance of the Lord's supper, is central to our understanding of the calling, function, and institution of the church and its officers.

Aside from our weekly Sunday service of worship, which is the centre of our week, we meet three times a year for gathered members meetings. Jesus tells us that where two or three are gathered together in his name he is there in the midst (Matthew 18:20). Just as the presence of Christ in the gathered congregation is central to worship, so too is the gathering of God's people in the presence of Christ central to the institutional governance of the church. As a congregational church these times are vital for both the theological leadership of the church and the constitutional life of the church. We also have small group prayer meetings in homes, and bible teaching every other week on a

Thursdays. In the summer months we run a holiday bible club from the building and also summer-long weekly bible teaching and games for families on two parks in the area. We have a program of pub quizzes throughout the year with an evangelistic talk, which we run in partnership with a local pub, and our “story café” which runs in a large kitchen and gives non-Christians the chance to hear the bible read out on a Sunday evening and ask questions about the Christian faith.

Since the lifting of restrictions on meeting after the first lockdown, Christ Church has worked hard to create a Covid-secure environment for Sunday worship. All other meetings have been closed or moved online. People are checked in and out with track and trace data collection. Anyone with symptoms is turned away at the door. There are hand sanitiser stations, and ushers in PPE gear show household bubbles and individuals to their socially distanced chairs. Mask are compulsory. Services have been shortened to an hour, and on exit, people are ushered from the building in stages and encouraged to go straight home without gathering outside. We have had no outbreaks of Covid in the congregation.

The closure of churches under the new lockdown laws indicates a deep misunderstanding on the part of the Government of the nature of the church and humanity, and also effectively denies the practice of the Christian religion in England by the closing of the institutional functions of the church. The measures therefore infringe upon various rights to freedom of religion and worship as well as bring untold damage to the spiritual and mental wellbeing of Christians and communities.

The theology of the presence of the Lord in the midst of the gathered congregation, on the Lord’s day, by his word and the ordinances, makes all these practices central to the Christian faith and the function of the church. This view is shared by all the main traditions. The church gathers physically in the presence of Christ (Matthew 18:20) for worship (e.g. Psalm 149, Ephesians 5:19-21), the preaching of the word of God, prayer, baptism (Matthew 28:17-20), the Lord’s supper (1 Corinthians 10-14), and the exercise of the duties of church members in member’s meetings (Matthew 18:20). All these functions take place in and by physical gathering of the congregation. If physical gatherings are stopped then the institution of the church is closed down. While the spiritual body of the church remains, the institution of the church ceases. The *public* institutional life of the church is as important as the *private* life of faith and belief. The two go together. In order to walk in obedience to Christ’s commands, the Christian needs the institution of the church. The institutional functions of the church - worship, preaching, communion, baptism and corporate prayer and singing - are spiritual means of grace. They are the ways in which Christ himself sustains his people. The book of Hebrews commands us to not stop meeting together for the edification of brothers and sisters. Denial of public worship is denial of the Christian’s communion with God through the institutional functions of the church and the means of grace. It is a denial of the freedom to practice the Christian faith itself.

The Government has categorised churches with other “non-essential” activities in society. In order to arrive at this conclusion, the government must be operating out of a purely materialist view of the world and humanity and a deep misunderstanding of the nature and function of the church. Humans are more than virus carriers, more than

economic agents, and even more than cognitive beings with mental health needs. Humans are bodies and souls and are made to worship and commune with the triune God through his Son and Spirit. The institutional functions of the church are as essential to life as shopping for essentials, medical care, and the premier league. The damage to society, human flourishing, and personal faith of being told that the practice of our religion is non-essential and that it has now been criminalised cannot be overstated.

Romans 13 calls Christians to submit to the state as an agent of God. Christians have more reasons, therefore, than many to uphold the laws and institutions of society. However, the state is not God and is not lord of the conscience. When the state commands things which are contrary to God's law or forbids things the Lord commands Christians are thrown into a deep state of cognitive dissonance and troubled conscience; we want to uphold the law but we cannot disobey the God of creation and salvation who stands above the government. Pastors, leaders and congregations are thrown into turmoil and denied the ability to formally meet, to fellowship, and worship in order to work our way through the complexities. We are criminalised under the lockdown laws for doing the very things we need to do in order to be obedient citizens under God.

Examples of the damage to fellowship, spiritual growth of believers, outreach to the community, the lonely, the elderly, struggling young families and the basic practice of everyday faith and the Christian conscience are legion. Let me illustrate with just one example of the web of damage. A young boy who loves the Lord Jesus is desperate to be baptised and welcomed into membership in the church. As Baptists we believe communion is for believers only. The young lad is desperate to take communion, to enjoy what he sees other believers enjoying as members of Christ and of one another. For him to be baptised requires a gathered members meeting conducted according to God's word, baptism classes, and a baptism service of the gathered flock. All these things are now criminalised under the lockdown regulations. A young boy is being denied his right under God to take up his life in the church in obedience to Christ's commands. For him to do so would result in the dispersion of the congregation by police, fines, and prosecution of church officers, a likely charity commission investigation and the loss of church insurance policies.

The denial of the right to gather for public worship not only affects the congregation. The church is also there so that the community have a place to come and hear the gospel and worship the Lord. The bible teaches that, as well as being both body and soul, humans have our eternal destiny to face. People face uncertainty, loss of loved ones, the reality of their own mortality as well as deep spiritual and mental difficulties and trauma. All traditions of Christian worship, from reformed churches to Pentecostal and charismatic, understand that God is present in worship. Denial of public worship is a denial of the opportunity for people to come to know God and have their deepest questions answered about their eternal destiny.

The restrictions on church worship have been imposed without the support of data showing that churches are causing the spread of infection. I am bringing this action, along with scores of other leaders, because the government's disproportional response to Covid through the closure of churches is causing untold pastoral damage and the

criminalisation of law abiding citizens. It presents a dangerous precedent for the future of religious freedom in the UK.

Yours sincerely



Dr Jonathan Woodrow

IN THE HIGH COURT OF JUSTICE

QUEEN'S BENCH DIVISION

ADMINISTRATIVE COURT

BETWEEN:

THE QUEEN

(On the Application of REV. ADE OMOOBA MBE and Others)

Claimants

-and-

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

(2) THE WELSH MINISTERS

Defendants

FIRST WITNESS STATEMENT OF MICHAEL PHILLIPS

I, Michael Bertram Phillips of Andrew Storch solicitors, City Gate, Southampton Street, Reading RG1 2QW.

1. I work for Andrew Storch solicitors and I am the solicitor with conduct of this matter. I make this statement to provide relevant background to the claim, which is fully outlined in the Claimants' Statement of Facts and Grounds.
2. I was instructed in relation to a prior Judicial Review challenge which I discuss below, and I have been instructed in relation to the present challenge. Many of the Claimants in these proceedings were also Claimants in the first challenge, which was to provisions of *The Health Protection (Coronavirus, Restrictions) (England) Regulations 2020* (SI 350/2020), dated 26 March 2020 ("**Regulations No 1**") analogous to those which are the subject of the present claim. The previous claim (**HC case CO/2238/2020**) was brought on similar grounds to those underpinning the present one. Very substantial efforts were made, both before and after filing that first claim, to resolve the dispute in dialogue with the Secretary of State via the 'Places of Worship Taskforce' and 'Roundtable' processes as well as in pre-action correspondence.

The First Claim

3. On 28 May 2020, a letter before action was emailed to the Government Legal Department on behalf of 25 potential Claimants, asking the Secretary of State to reconsider the prohibition of worship laid down in the Regulations No 1. The letter suggested that the Secretary of State's actions were disproportionate (contrary to Article 9 ECHR) and Ultra Vires. The letter stated that the Churches had acted responsibly in response to Covid 19 and suggested that the principle of Church autonomy had been violated. The letter invited the Secretary of State to:
 - (1) Revoke Regulation 5(5);
 - (2) Amend Regulation 7 to provide for an exception for a reasonably necessary participation in a religious ceremony; and
 - (3) Replace Regulation 5(5) with a Guidance for the appropriate precautions to be taken by churches at the next stage of the epidemic.

The letter invited the Secretary of State's proposals and requested a response by 4 June 2020.

4. The Government Legal Department (GLD) responded on 11 June 2020. The Secretary of State sought to justify the regulations and indicated that any legal challenge would be defended. At the outset, the GLD drew attention to the announcement that Places of Worship would be shortly open for individual private prayer. The letter acknowledged the interference with Article 9, but suggested that this was justified given:
 - (1) The serious nature of the pandemic;
 - (2) The obligation on the Government to safeguard the lives of its citizens;
 - (3) The facts that the interference was to all Places of Worship; that ministers were still permitted to broadcast services; and that the restrictions were time limited;
 - (4) The scientific advice underlying the restrictions;
 - (5) The establishment of the Places of Worship taskforce, which was working on guidance to enable changes to be made as soon as possible; and
 - (6) The margin of appreciation said to be accorded to the state.

The Secretary of State was not minded to engage in ADR, however encouraged the Claimants to engage with the Government, through the Places of Worship Taskforce and the Faith team at the MHCLG.

5. A further letter was sent by the Claimants on 15 June, urging the Secretary of State to reconsider his position. Responding to the letter of 11 June:
 - (1) The Claimants acknowledged the seriousness of the pandemic.

- (2) The Claimants reminded the Secretary of State of the higher standard of review for an Article 9 infringement.
- (3) The Claimants pointed out that the time limited nature of the regulations was largely irrelevant, given their ongoing and serious interference with the Claimant's Article 9 rights.
- (4) The Claimants suggested that there were less restrictive measures to ensure safety that would permit churches to re-open.
- (5) The Claimants explained that they did not believe that the Taskforce adequately represented their interests.
- (6) The Claimants maintained that the Secretary of State had underestimated the importance of freedom of religion to the life of the believer.

The letter again invited the Secretary of State to engage in ADR.

6. On 19 June 2020, the GLD invited the Claimants to attend a roundtable meeting on 24 June hosted by Miriam Hodgson, Deputy Director for Faith, Integration and Communities at MHCLG. On 23 June this meeting was postponed to 26 June 2020.
7. The Claimants lodged their application for Judicial Review on an expedited basis on 23 June. The claim requested that the application be considered by 30 June, and if permission was granted, a substantive hearing by 17 July. There were two grounds to the claim:
 - i. The principle of church autonomy in domestic law.
 - ii. The disproportionate interference with the Claimants' Article 9 rights.
8. On 24 June, the GLD wrote to the Claimants arguing there was no proper basis for the claim to be expedited nor was there any merit in the claim as:
 - (1) The Prime Minister on 23 June had indicated that the relevant regulations would be relaxed from 4 July.
 - (2) The claim had been lodged one day before the end of the three-month period from their enactment. Therefore, there was no basis for expedition.
 - (3) The parties had been engaging in pre action correspondence and the GLD had not sent a formal response to the letter of claim.
 - (4) The request to expedite would place undue demands on a Department that was already stretched.
9. 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 the Acknowledgement of Service, to enable the Secretary of State to consider the issues properly and if necessary, take account of any further recommendation of the Places of Worship Taskforce.

10. Following that order, on 4 July 2020 the Secretary of State revoked the contentious provisions of the March 2020 Regulations, by the *Health Protection (Coronavirus, Restrictions) (No. 2) (England) Regulations 2020* (“**Regulations No 2**”). By letter dated 7 July 2020, the Government Legal Department reassured the Claimants that “with effect from 4 July 2020, there is no legal restriction in respect of opening of places of worship, including churches”, and the claim was now *academic*. On that basis, the Claimants agreed to withdraw the claim on 10 July 2020.
11. Regulations No 2 similarly rendered academic at least two other claims raising similar issues:
 - *R (Hussein) v Secretary of State for Health and Social Care* [2020] EWHC 1392 (Admin): Permission for judicial review was granted by Swift J in this case.
 - *R (Dolan, Monks et al) v SSHSC* [2020] EWHC 1786 (Admin): While other challenges against the wider ‘lockdown’ measures failed, Lewis J found that Mrs Monks’ Article 9 challenge against the closure of places of worship was arguable, so that permission would have been granted but for Regulations No 2 rendering the claim academic.

Events Since the First Claim

12. On 19 October 2020, the First Minister for Wales announced the Welsh Government’s intention to introduce a “firebreak lockdown” across Wales from 24 October by regulations (“**Welsh Regulations No 3**”). On 23 October, 37 of the Claimants wrote to the National Assembly for Wales and asked the Welsh Government to reconsider that prospective decision. It was submitted that the proposed regulations were an unlawful infringement of the principle of church autonomy and an unlawful interference with the Claimants’ Article 9 rights. It drew the Government’s attention to recent legal decisions in the UK and abroad. It invited the Government to engage in ADR and asked for a response by 26 October 2020.
13. On 26 October, the Legal Services Health Team responded for the Welsh Assembly. They argued as follows:
 - (1) There was a question as to whether the Claimants would have standing to bring a claim.
 - (2) The claim would be academic, given the short period that the Welsh Regulations No. 3 would last.
14. In response to the proposed grounds for Judicial Review, they responded as follows:
 - (1) The powers exercised by the Welsh Ministers were expressly conferred by an Act of Parliament. The claimant’s argument based on religious autonomy was ‘*constitutional solecism*’.

- (2) The inference with Article 9 was proportionate as the regulations were:
 - i. Time limited;
 - ii. In response to an '*extremely serious risk to life and health posed by the virus*', such that there was a broad margin of appreciation; and
 - iii. Part of a firebreak which in general terms was based on scientific advice and would prevent people from gathering indoors, with public health benefits.

15. A further letter was sent by the Claimants on 29 October in response to the matters raised by the Welsh Government and asked for a meeting with the First Minister within the next 7 days. The Welsh Government responded on 3 November, and reiterated the point concerning the ending of the restrictive measures on 9 November.

16. On 31 October 2020, the Prime Minister announced the Westminster Government's decision to re-introduce a 'lockdown' across England from 5 November 2020 for 4 weeks.

17. On 2 November 2020, 71 potential Claimants wrote to the Government asking that any regulations did not prohibit church services. The Claimants reminded the Government of the legal grounds advanced in the first claim. The Claimants invited the Government to engage in ADR. They requested a response by 5 November.

18. On 5 November, the GLD responded and defended the regulations ("**Regulations No 4**") as follows:
 - (1) There was no breach of Article 9 ECHR. (The justification given was largely similar to that given in answer to the first claim.)
 - (2) The regulations were not Ultra Vires as:
 - i. the regulations were validly made in the exercise of Public Health (Control of disease) Act 1984 45C(1), (3)(c), (4)(d), 45F and 45P;
 - ii. there was nothing to prevent the state legislating on a wide variety of matters affecting the church e.g. health and safety regulations, burials etc; and
 - iii. the Church of England Assembly (Powers) Act 1919 was confined to the power to legislate for matters concerning the Church of England by measure.

19. The GLD declined again to engage in ADR and suggested that the concerns of the Claimants were taken seriously through the Taskforce.

The Present Proceedings

20. Against that background, the Claimants are pursuing the present proceedings in the public interest and for the benefit of their congregations. The public health and

legislative background is set out more in the Statement of Facts and Grounds, which I have considered. The factual content of that document is true to the best of my knowledge and belief. Relevant documents referenced in the Statement of Facts and Grounds appear in the Judicial Review Permission Bundle which I have compiled.

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.



Michael Bertram Phillips
12 November 2020

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Public Health (Control of Disease) Act 1984

UK Public General Acts 1984 c. 22 Part 2A Power to make regulations Section 45C

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Changes over time for: Section 45C

21/07/2008

Changes to legislation: There are currently no known outstanding effects for the Public Health (Control of Disease) Act 1984, Section 45C.

[F145C Health protection regulations: domestic

- (1) The appropriate Minister may by regulations make provision for the purpose of preventing, protecting against, controlling or providing a public health response to the incidence or spread of infection or contamination in England and Wales (whether from risks originating there or elsewhere).
- (2) The power in subsection (1) may be exercised—
 - (a) in relation to infection or contamination generally or in relation to particular forms of infection or contamination, and
 - (b) so as to make provision of a general nature, to make contingent provision or to make specific provision in response to a particular set of circumstances.
- (3) Regulations under subsection (1) may in particular include provision—
 - (a) imposing duties on registered medical practitioners or other persons to record and notify cases or suspected cases of infection or contamination,
 - (b) conferring on local authorities or other persons functions in relation to the monitoring of public health risks, and
 - (c) imposing or enabling the imposition of restrictions or requirements on or in relation to persons, things or premises in the event of, or in response to, a threat to public health.
- (4) The restrictions or requirements mentioned in subsection (3)(c) include in particular—
 - (a) a requirement that a child is to be kept away from school,
 - (b) a prohibition or restriction relating to the holding of an event or gathering,
 - (c) a restriction or requirement relating to the handling, transport, burial or cremation of dead bodies or the

- handling, transport or disposal of human remains, and
- (d) a special restriction or requirement.
- (5) The power in subsection (1) is subject to section 45D.
- (6) For the purposes of this Part—
- (a) a “ special restriction or requirement ” means a restriction or requirement which can be imposed by a justice of the peace by virtue of section 45G(2), 45H(2) or 45I(2), but
- (b) a restriction or requirement mentioned in subsection (4)(a), (b) or (c) is not to be regarded as a special restriction or requirement.】

Textual Amendments

- F1** Pt. 2A inserted (21.7.2008 for specified purposes, 1.4.2009 for the insertion, insofar as relating to E., of ss. 45A, 45C, 45D, 45E, 45F, 45P, 45Q, 45R, 45S and 45T, otherwise 6.4.2010 for E. and 26.7.2010 for W.) by [Health and Social Care Act 2008 \(c. 14\)](#), **ss. 129, 170(1)(b)**; S.I. 2009/462, art. 3; S.I. 2010/708, art. 6(a) (with Sch. 2); S.I. 2010/1547, art. 2(e) (with Sch. 1)

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The Health Protection (Coronavirus, Restrictions) (England) Regulations 2020

UK Statutory Instruments 2020 No. 350 Regulation 6

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Restrictions on movement

6.—(1) During the emergency period, no person may leave the place where they are living without reasonable excuse.

(2) For the purposes of paragraph (1), a reasonable excuse includes the need—

- (a) to obtain basic necessities, including food and medical supplies for those in the same household (including any pets or animals in the household) or for vulnerable persons and supplies for the essential upkeep, maintenance and functioning of the household, or the household of a vulnerable person, or to obtain money, including from any business listed in Part 3 of Schedule 2;
- (b) to take exercise either alone or with other members of their household;
- (c) to seek medical assistance, including to access any of the services referred to in paragraph 37 or 38 of Schedule 2;
- (d) to provide care or assistance, including relevant personal care within the meaning of paragraph 7(3B) of Schedule 4 to the Safeguarding of Vulnerable Groups Act 2006(1), to a vulnerable person, or to provide emergency assistance;
- (e) to donate blood;
- (f) to travel for the purposes of work or to provide voluntary or charitable services, where it is not reasonably possible for that person to work, or to provide those services, from the place where they are living;
- (g) to attend a funeral of—
 - (i) a member of the person's household,
 - (ii) a close family member, or
 - (iii) if no-one within sub-paragraphs (i) or (ii) are attending, a friend;
- (h) to fulfil a legal obligation, including attending court or satisfying bail conditions, or to participate in legal proceedings;
- (i) to access critical public services, including—
 - (i) childcare or educational facilities (where these are still available to a child in relation to whom that person is the parent, or has parental responsibility for, or care of the child);
 - (ii) social services;
 - (iii) services provided by the Department of Work and Pensions;
 - (iv) services provided to victims (such as victims of crime);
- (j) in relation to children who do not live in the same household as their parents, or one of their parents, to continue existing arrangements for access to, and contact between, parents and children, and for the purposes of this

paragraph, “parent” includes a person who is not a parent of the child, but who has parental responsibility for, or who has care of, the child;

- (k) in the case of a minister of religion or worship leader, to go to their place of worship;
- (l) to move house where reasonably necessary;
- (m) to avoid injury or illness or to escape a risk of harm.

(3) For the purposes of paragraph (1), the place where a person is living includes the premises where they live together with any garden, yard, passage, stair, garage, outhouse or other appurtenance of such premises.

(4) Paragraph (1) does not apply to any person who is homeless.

-
- (1) [2006 c. 47](#). Sub-paragraph (3B) was substituted, with sub-paragraphs (1), (3) and (3A) to (3E) for sub-paragraphs (1) to (3) by s. 66(2) of the Protection of Freedoms Act 2012 (c. 9).

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The Health Protection (Coronavirus Restrictions) (No. 3) (Wales) Regulations 2020

Wales Statutory Instruments 2020 No. 1149 (W. 261) PART 3

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PART 3

Restrictions on businesses and services whose premises are ordinarily open to the public

CHAPTER 1

Overview

References to “premises” and overview

10.—(1) In this Part, references to “premises” are references to premises of a business or service—

- (a) which are in Wales, and
- (b) to which the public have or are permitted access, whether on payment or otherwise.

(2) Chapter 2 makes provision about businesses or services whose premises must close.

(3) Chapter 3 makes provision about businesses or services whose premises must close but to which limited access may be allowed.

(4) Chapter 4 makes provision about businesses or services whose premises may continue to be open.

(5) See regulation 17 for further provision about premises that may continue to be open or are closed but to which limited access may be permitted in accordance with this Part.

CHAPTER 2

Businesses and services whose premises must be closed

Closure of premises used by certain businesses and services

11.—(1) A person responsible for carrying on a business or providing a service which is listed in Part 1 of Schedule 1 must—

- (a) close to members of the public any premises operated as part of the business or service, and
- (b) not carry on the business or service at such premises otherwise than in accordance with this regulation.

(2) Paragraph (1) does not prevent—

- (a) carrying out maintenance and repairs or other work to ensure premises are suitable for use when paragraph (1) no longer applies to the premises;
- (b) the use of premises for any purpose as may be requested or authorised by the Welsh Ministers or a local authority;
- (c) the use of premises to broadcast without an audience present at the premises (whether over the internet or as part of a radio or television broadcast);
- (d) the use of premises for the provision of services or information (including the sale, hire or delivery of goods or services)—

- (i) through a website, or otherwise by on-line communication,
- (ii) by telephone, including by text message, or
- (iii) by post.

CHAPTER 3

Business and services whose premises must be closed but to which limited access may be allowed

Closure of bars and restaurants etc.

12.—(1) A person responsible for carrying on a business which is listed in paragraphs 22 to 25 of Schedule 1 must—

- (a) close to members of the public any premises operated as part of the business, and
- (b) not carry on business at such premises otherwise than in accordance with this regulation.

(2) Paragraph (1) does not prevent—

- (a) the use of premises for—
 - (i) the sale of food and drink for consumption off the premises, or
 - (ii) services providing food or drink to the homeless;
- (b) the provision of room service at a hotel or other accommodation (where the hotel or other accommodation continues to operate in accordance with the limited exceptions allowed by regulation 13);
- (c) a workplace canteen from being open where there is no practical alternative for staff at that workplace to obtain food;
- (d) the carrying out of maintenance and repairs or other work to ensure premises are suitable for use when paragraph (1) no longer applies to the premises.

(3) For the purposes of paragraph (1), an indoor area adjacent to the premises of the business where seating is made available for customers of the business (whether or not by the business) is to be treated as part of the premises of that business.

Closure of holiday accommodation

13.—(1) A person responsible for carrying on a business which is listed in paragraphs 26 to 29 of Schedule 1 must—

- (a) close to members of the public any premises operated as part of the business, and
- (b) not carry on business at such premises otherwise than in accordance with this regulation.

(2) Paragraph (1) does not prevent—

- (a) the use of premises for any purpose as may be requested or authorised by the Welsh Ministers or a local authority;
- (b) the provision of accommodation for any persons staying in that accommodation when these Regulations come into force and who—
 - (i) are unable to return to their main residence, or
 - (ii) are using the accommodation as their main residence;
- (c) the use of premises to carry on the business by providing information or other services—
 - (i) through a website, or otherwise by on-line communication,
 - (ii) by telephone, including enquiries by text message, or
 - (iii) by post;
- (d) the carrying out of maintenance and repairs or other work to ensure premises are suitable for use when paragraph (1) no longer applies to the premises.

Closure of places of worship, community centres and crematoriums

14.—(1) A person responsible for premises of a kind listed in paragraphs 30 to 32 of Schedule 1 must ensure that the premises are closed to members of the public, except for the uses permitted by paragraphs (2), (3) and (4).

(2) A place of worship may be open—

- (a) for funerals;
- (b) for the solemnization of a marriage or formation of a civil partnership;
- (c) to broadcast (without a congregation) an act of worship, funeral or the solemnization of a marriage or formation of a civil partnership (whether over the internet or as part of a radio or television broadcast);
- (d) to provide essential voluntary services;
- (e) to provide public services upon the request of the Welsh Ministers or a local authority.

(3) A community centre may be open—

- (a) to provide essential voluntary services, or
- (b) to provide public services upon the request of the Welsh Ministers or a local authority.

(4) A crematorium may open to members of the public for funerals or burials (and to broadcast a funeral or burial whether over the internet or otherwise).

(5) But paragraph (1) does not apply to the grounds surrounding a crematorium, including any burial ground or garden of remembrance.

(6) In this regulation, “public services” includes the provision of food banks or other support for homeless or vulnerable people, childcare, blood donation sessions or support in an emergency.

CHAPTER 4

Business and services whose premises may be open

Open premises

15.—(1) Despite the preceding provisions of this Part, premises operated by businesses or services listed in Part 3 of Schedule 1 may continue to be open.

(2) And shopping centres, shopping arcades and markets may be open to the public to the extent that this is required for access to a business or service listed in Part 3 of Schedule 1.

(3) But a person responsible for premises authorised for the sale or supply of alcohol for consumption off the premises may not sell or supply alcohol between 10.00 p.m. and 6.00 a.m.

(4) Paragraph (3) does not allow the person responsible for the premises to sell or supply alcohol in contravention of an authorisation granted or given in respect of the premises.

CHAPTER 5

Mixed businesses

Mixed businesses

16.—(1) Where—

- (a) a person responsible for carrying on a business (“business A”) is required, by virtue of regulation 11(1), 12(1) or 13(1), to cease carrying on business A at premises, and
- (b) business A forms part of a larger business (“business B”),

the requirement in regulation 11(1), 12(1) or 13(1) is complied with if the person responsible for carrying on business B ceases to carry on business A at the premises.

(2) So for the avoidance of doubt, where—

- (a) premises operated by a business or service may continue to be open by virtue of regulation 15(1), and
- (b) that business or service forms part of a larger undertaking which includes the carrying on of another business or service on the same premises,

the person responsible for that other business or service must cease to carry it on if required to do so by virtue of regulation 11(1), 12(1) or 13(1).

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The Health Protection (Coronavirus, Restrictions) (England) (No. 4) Regulations 2020

UK Statutory Instruments 2020 No. 1200 PART 4 Regulation 18

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Further restrictions and closures

18.—(1) A person responsible for carrying on a business, not listed in Part 3 of the Schedule, of offering goods for sale or for hire in a shop, or providing library services must—

- (a) cease to carry on that business or provide that service except—
 - (i) by making deliveries or otherwise providing services in response to orders received—
 - (aa) through a website, or otherwise by on-line communication,
 - (bb) by telephone, including orders by text message, or
 - (cc) by post;
 - (ii) to a purchaser who collects goods that have been pre-ordered by a means mentioned in paragraph (i), provided the purchaser does not enter inside the premises to do so,
- (b) subject to paragraph (2), (3) and (4)—
 - (i) close any premises which are not required to carry out its business or provide its services as permitted by sub-paragraph (a);
 - (ii) cease to admit any person to its premises who is not required to carry on its business or provide its service as permitted by sub-paragraph (a).

(2) A person responsible for providing library services may open the library premises for the purposes of—

- (a) support groups;
- (b) childcare provided by a person who is registered under Part 3 of the Childcare Act 2006;
- (c) education or training;
- (d) to provide essential voluntary services or public support services, including digital access to public services.

(3) Paragraph (1) does not prevent any business from continuing to provide—

- (a) hot or cold food for consumption off the premises, or
- (b) goods or services to the homeless.

(4) A person responsible for carrying on a business or providing a service referred to in paragraph (1), may open any premises for the purposes of making a film, television programme, audio programme or audio-visual advertisement.

(5) Subject to paragraph (6), a person responsible for carrying on a business consisting of the provision of holiday accommodation, whether in a hotel, hostel, bed and breakfast accommodation, holiday apartment, home, cottage or bungalow, campsite, caravan park or boarding house, canal boat or any other vessel must cease to carry on that business.

(6) A person referred to in paragraph (5) may continue to carry on their business and keep any premises used in that business open—

- (a) to provide accommodation for any person, who—

- (i) is unable to return to their main residence;
 - (ii) uses that accommodation as their main residence;
 - (iii) needs accommodation while moving house;
 - (iv) needs accommodation to attend a funeral;
 - (v) is isolating themselves from others as required by law;
 - (vi) is an elite athlete, the coach of an elite athlete, or (in the case of an elite athlete who is a child), the parent of an elite athlete, and needs accommodation for the purposes of training or competition,
- (b) to provide accommodation for any person who needs accommodation for the purposes of their work,
 - (c) to provide accommodation for any child who requires accommodation for the purposes of education,
 - (d) to provide accommodation for the purposes of a women's refuge or a vulnerable person's refuge,
 - (e) to provide accommodation or support services for the homeless,
 - (f) to provide accommodation for any person who was staying in that accommodation immediately before these Regulations came into force,
 - (g) to host blood donation sessions, or
 - (h) for any purpose requested by the Secretary of State, or a local authority.

(7) A person who is responsible for a place of worship must ensure that the place of worship is closed, except for uses permitted in paragraph (8) and regulation [11\(18\)](#).

(8) A place of worship may be used—

- (a) for funerals,
- (b) for commemorative events celebrating the life of a person who has died,
- (c) to broadcast an act of worship, whether over the internet or as part of a radio or television broadcast,
- (d) to provide essential voluntary services or urgent public support services (including the provision of food banks or other support for the homeless or vulnerable people, blood donation sessions or support in an emergency),
- (e) for childcare provided by a person registered under Part 3 of the Childcare Act 2006,
- (f) for individual prayer, and for these purposes, "individual prayer" means prayer by individuals which does not form part of communal worship, or
- (g) to host any gathering which is permitted under regulation [8](#) or [9](#).

(9) A person who is responsible for a community centre or hall must ensure that the community centre or hall is closed except where it is used—

- (a) to provide essential voluntary activities or urgent public support services (including the provision of food banks or other support for the homeless or vulnerable people, blood donation sessions or support in an emergency),
- (b) for the purposes of education or training,
- (c) for the purposes of support groups, or
- (d) for the purposes of—
 - (i) childcare provided by a person registered under Part 3 of the Childcare Act 2006, or
 - (ii) supervised activities for children.

(10) A person who is responsible for a crematorium or burial ground must ensure that the crematorium or burial ground is closed to members of the public, except—

- (a) for funerals or burials,
- (b) commemorative events celebrating the life of a person who has died, or
- (c) to allow a person to pay respects to a member of their household, a family member or friend.

(11) If a business referred to in paragraph (1) or (5) ("business A") forms, or is provided as, part of a larger business ("business B") and business B is not restricted under these Regulations, the person responsible for carrying on business B complies with the requirement in paragraph (1) or (3) to cease to carry on its business if it ceases to carry on business A.

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Stephen Dolan, Lauren Monks, AB v Secretary of State for Health and Social Care, Secretary of State for Education



No Substantial Judicial Treatment

Court

Queen's Bench Division (Administrative Court)

Judgment Date

6 July 2020

Case No: CO/1860/2020

High Court of Justice Queen's Bench Division Administrative Court

[2020] EWHC 1786 (Admin), 2020 WL 03643415

Before: The Honourable Mr Justice Lewis

Date: Monday 6th July 2020

Hearing date: 2 July

Representation

Philip Havers Q.C. and Francis Hoar (instructed by Wedlake Bell) for the Claimants.

Sir James Eadie Q.C. , Zoe Leventhal , Jacqueline Lean and Tom Cross (instructed by Government Legal Department)
for the Defendants.

Approved Judgment

The Honourable Mr Justice Lewis:

Introduction

1. This is the judgment on an application for permission to apply for judicial review brought by Simon Dolan and Lauren Monks. By a claim form issued on 21 May 2020, they seek permission to bring proceedings to challenge the [Health Protection \(Coronavirus, Restrictions\) \(England\) Regulations 2020](#) as amended ("the Regulations") and what is described as a decision to close schools and educational establishments.

The Background

2. On 31 December 2019, China notified the World Health Organisation ("WHO") of a cluster of unusual pneumonia cases. They were later identified as being caused by a novel coronavirus, now referred to as Covid-19. On 30 January 2020, the Director- General of the WHO made a statement on the emergence of a previously unknown pathogen which had escalated into an unprecedented outbreak. He said that there were now 98 cases in countries outside China including countries in Asia,

Europe and north America, and they included cases where the disease had been transmitted between humans. He declared a public health emergency of international concern over the global outbreak of novel coronavirus.

3. The following day, 31 January 2020, the first cases of coronavirus were reported in the United Kingdom. Various steps were taken in England, and elsewhere, to address the spread of coronavirus. On 16 March 2020, the government advised members of the public to avoid non-essential contact with others, to stop all unnecessary travel, and to work from home wherever possible. On 18 March 2020, the government announced that schools would stop providing education to children on school premises, save for the children of those classified as key workers and vulnerable children. On 26 March 2020, the Regulations were made imposing restrictions on the activities of those living and working in England. Those Regulations have been reviewed and amended from time to time.

4. As at the date of the hearing, 2 July 2020, there were 43,906 deaths associated with Covid-19 in the United Kingdom and over 39,000 of those were in England. There have been many hundreds of thousands of confirmed cases of persons infected by the coronavirus. The nature of the threat presented by coronavirus, and the rationale underlying the Regulations, is aptly summarised in the following observation by Swift J. in *R (Hussain) v Secretary of State for Health and Social Care [2020] EWHC 1392 (Admin)* considering an application for an interim order to enable a mosque to hold Friday prayers:

"19. The Covid-19 pandemic presents truly exceptional circumstances, the like of which has not been experienced in the United Kingdom for more than half a century. Over 30,000 people have died in the United Kingdom. Many, many more are likely to have been infected with the Covid-19 virus. That virus is a genuine and present danger to the health and well-being of the general population. I fully accept that the maintenance of public health is a very important objective pursued in the public interest. The restrictions contained in [regulations 5 to 7](#), the regulations in issue in this case, are directed to the threat from the Covid-19 virus. The Secretary of State describes the "basic principle" underlying the restrictions as being to reduce the degree to which people gather and mix with others not of the same household and, in particular, reducing and preventing such mixing in indoor spaces. I accept that this is the premise of the restrictions in the 2020 Regulations, and I accept that this premise is rationally connected to the objective of protecting public health. It rests on scientific advice acted on by the Secretary of State to the effect that the Covid-19 virus is highly contagious and particularly easily spread in gatherings of people indoors, including, for present purposes, gatherings in mosques, churches, synagogues, temples and so on for communal prayer."

5. The claimants question the approach taken and the priorities of the government in addressing the coronavirus epidemic. They draw attention to, amongst other matters, the impact on the economy, and the jobs and livelihoods of people, the impact on education, and the effect of the measures taken on treatment of other health conditions. They have drawn attention to the low mortality rate of those under 60 with no pre-existing underlying medical condition. In the light of all those factors, they question the appropriateness of the measures taken. Those are all matters of legitimate public debate. The question on this application is, however, whether the claimants should be given permission to bring a claim for judicial review of provisions of the Regulations to address the risks posed by the emergence of this novel coronavirus.

6. Judicial review is the means of ensuring that public bodies act within the limits of their legal powers and in accordance with the legal principles governing the exercise of their decision-making functions. In addition, Parliament requires public bodies to act in a way which is compatible with rights and freedoms guaranteed by the [Convention for the Protection of Human Rights and Fundamental Freedoms](#) ("the Convention"): see [section 6 of the Human Rights Act 1998](#). The court, therefore, is concerned to ensure that a public body is acting within the law and in a way which does not violate a Convention right.

7. The role of the court in judicial review is concerned with resolving questions of law. The court is not responsible for making political, social, or economic choices. The court is not responsible for determining how best to respond to the risks

to public health posed by the emergence of a novel coronavirus. Those decisions, and those choices, are ones that Parliament has entrusted to ministers and other public bodies.

The Regulations

8. At 1 p.m. on 26 March 2020, the first defendant, the Secretary of State for Health made the Regulations which are applicable to England. The governments of Wales, Scotland, and Northern Ireland made regulations for their respective nations. This challenge concerns only the Regulations applicable in England.

9. The preamble to the Regulations states that:

"These Regulations are made in response to the serious and imminent threat to public health which is posed by the incidence and spread of severe acute respiratory syndrome coronavirus 2 (Sars-CoV-2) in England.

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."

10. The Regulations have been amended a number of times, notably by amendment made on 31 May 2020 and on 2 June 2020. Other amendments are anticipated.

11. [Regulations 4 and 5](#) as originally made on 26 March 2020 required certain businesses to close during the emergency period. Business such as restaurants, cafes, public houses and the like were prohibited from selling food and drink for consumption on the premises (they were permitted to sell take-away food and drink). Other premises, businesses and shops were required to close or to cease carrying on business, save for specified exceptions such as food retailers, pharmacies newsagents, banks, petrol stations and others. Those regulations were amended and, from the 15 June 2020, shops were permitted to open and sell goods.

12. [Regulation 5\(5\)](#) as originally made on 26 March 2020 provided that a place of worship must close for the emergency period (save for certain limited, specified purposes such as funerals or a broadcast of an act of worship). From 13 June 2020, places of worship could be opened for private prayer (but not for acts of communal worship).

13. [Regulation 6](#) , in its original form, imposed restrictions on movement. It prohibited a person from leaving the place where he or she lived without reasonable excuse. A non-exhaustive list of ,reasonable excuses was specified. From 1 June 2020, [regulation 6](#) was replaced by a prohibition on a person staying overnight at any place other than where the person lived without reasonable excuse.

14. [Regulation 7](#) in its original form prohibited gatherings in a public place of more than two people (unless the people came from the same household or for specified purposes such as work). That was amended and, from 1 June 2020, gatherings of more than 6 people in a public place, or more than 2 people indoors, were prohibited unless the persons were members of the same household. Schools were specifically exempt from this regulation and [regulation 7](#) did not prohibit schools from providing education to children on premises. From 13 June 2020, a new concept of a "linked household" was introduced by a new [regulation 7A](#) . That permitted a household of a single adult to "link" with a second household. Members of the two linked households could gather together at outdoor or indoor places.

15. There were provisions for enforcing the regulations, including power for specified persons to direct that persons return to the place where they were living (see [regulation 8](#)). Contraventions of [regulations 4, 5 , 7 or 8](#) without reasonable excuse were criminal offences punishable by a fine or a fixed penalty notice.

16. The Regulations would expire at the end of six months after they were made. The Secretary of State was also required to be review the need for the restrictions and requirements imposed in the Regulations every 21 days (subsequently amended to every 28 days) by virtue of [regulation 3](#) of the Regulations. That regulation also requires the Secretary of State to terminate any restriction or requirement as soon as he considers it is no longer necessary to prevent, protect against, control or provide a public health response to the spread of infection.

The Claim for Judicial Review

17. There are two claimants. The first is Simon Dolan. He is a citizen of the United Kingdom although he lives in Monaco. He is described in the evidence as the owner of a number of business based in the United Kingdom. Together, these businesses employ around 600 people. They include Jota Aviation Limited where Mr Dolan is the sole legal and beneficial owner of all the shares in the company. Its business involved leasing planes to major airlines. Mr Dolan has informed his solicitor that that business has dried up. He has also said that he owns 70% of the shares of another business involved in public relations which has suffered heavily reduced revenues. In his statement, Mr Dolan says that, although he lives abroad, he visited the United Kingdom to see family and friends. He says if it had not been rendered illegal, he would have wished to join in protests against the Regulations.

18. The second claimant is Lauren Monks who works for a company owned by Mr Dolan. Ms Monks is a British citizen who lives with her 10 year old son. She is a Roman Catholic by religion. Her son attends a Roman Catholic school. From late March until June, her son did not attend school. From 2 June 2020, he has attended for two days a week. Ms Monks says that neither she nor her son have been able to attend mass at church. At the time she made the statement, 21 May 2020, she had dropped off food for her grandmother but could do no more. The restrictions had made meeting family friends difficult.

19. There is an application for a third claimant to be joined. He is a pupil at a school. I grant the application to amend the claim form to add the third claimant. I order that his identity, and that of his litigation friend, is not to be disclosed and they be referred to in these proceedings as AB and CD respectively. I am satisfied, having regard to the provisions of the [CPR 39.2\(4\)](#) , and the decision in *JXMX v Darford & Gravehsam NHS [2015] EWCA Civ 96* that it is necessary to make this order to protect his interests. As a young child, he may suffer adverse consequences if he is identified as a litigant or participant in a challenge to the Regulations. This is an area of public controversy and there is a risk that he may be subject to unnecessary and undue criticism by his school friends and others for challenging the Regulations. The restriction is the least restrictive measure possible. Members of the media (who attended the hearing) will be able to report on the fact that a child has brought proceedings (but cannot name him) and can report on the substance of the proceedings. Representatives of the media can apply to the court if they wish to apply to have the order varied.

20. The claimants indicate that the proceedings have been funded by donations from almost 4,000 people who responded to the first claimant's crowd funding campaign. There is also an application to intervene by the Independent Workers' Union of Great Britain. The parties, and the applicant, agreed that that application was better considered after this judgment had been delivered.

21. The claim form filed on 21 May 2020 was 87 pages long. It was accompanied by lengthy witness statements and exhibits. The claim form sought to challenge the Regulations in force on 21 May 2020 and what was described as the decision to close schools. The claim alleged that the Regulations, and the decision, was unlawful on a large number of grounds.

22. I ordered that there be an oral hearing of the application for permission for judicial review. At that stage, it was clear that there were a number of preliminary issues including claims about delay, whether or all part of the challenge was now academic, where there had in fact been a decision by the second defendant to close schools and whether the grounds were arguable.

23. That hearing was held by video hearing on 2 July 2020. It was a public hearing in that parties and others had access to a link and could (and a number of persons, including representatives of the media, did) observe proceedings. The claimants, and the defendants, were represented by counsel. I am grateful to counsel for their submissions. I am grateful to both legal teams for ensuring that all the material was provided in advance in a way which enabled the efficient conduct of the hearing.

The Issues

24. Against that background, the issues that need to be considered can conveniently be summarised as follows:

- (1) Was the claim brought too late and/or are some of the grounds of challenge now academic?
- (2) Are the Regulations arguably unlawful because they are outside the powers conferred by Parliament (ground 1 - *ultra vires*);
- (3) Has the first defendant arguably acted unlawfully by:
 - (a) Fettering his discretion to review the Regulations by requiring that five tests be met before reviewing the Regulations (Ground 2A)?
 - (b) Failing to take relevant considerations into account in the decision- making process (Ground 2B)?
 - (c) Acting irrationally in making or maintaining the Regulations (Ground 2C)? or
- (4) Failing to act proportionately when deciding not to terminate the Regulations (Ground 2D)?
- (4) Do the restrictions on movement contained in the original version of [regulation 6](#), or the amended version of [regulation 6](#), arguably involve a breach of the right to liberty guaranteed by [Article 5](#) of the Convention?
- (5) Do the restrictions imposed by [regulations 6 and 7](#) arguably breach the right to respect for private and family life guaranteed by [Article 8](#) of the Convention?
- (6) Does the requirement to close places of worship save for certain purposes arguably breach [Article 9](#) of the Convention?
- (7) Do the restrictions on gatherings imposed by [regulation 7](#) arguably breach the right to freedom of assembly and association guaranteed by [Article 11](#) of the Convention?
- (8) Do the Regulations arguably involve a deprivation of property or an unlawful control on the use of property contrary to [Article 1](#) of the Second Protocol to the Convention?
- (9) Is the second defendant arguably requiring schools to close in a manner which involves a breach of [Article 2](#) of the First Protocol to the Convention?

25. The claimants initially claimed that the Regulations gave rise to unlawful discrimination contrary to [Article 14](#) of the Convention, read with other articles (see paragraphs 179 to 184 of the amended claim form). At the hearing, Mr Havers Q.C. for the claimant expressly confirmed that the claimants were no longer maintaining that ground of challenge. For the avoidance of doubt, therefore, I refuse permission to challenge the Regulations on the grounds set out in paragraphs 179 to 184 of the amended claim form.

The First Issue - Delay and Academic Claims

26. Sir James Eadie Q.C. for the defendant contends that the claimants did not bring the claim promptly as required by the [Civil Procedure Rules](#) ("CPR") and so it should not be permitted to proceed. The Regulations were made on 26 March 2020, and the decision to close schools was alleged to have been taken on 18 March 2020, but the claim was not brought until 21 May 2020. Further, he submitted that the challenge to regulations which were no longer in force was academic and historic and permission should be refused to bring a claim in relation to those regulations. He relied on the observations of Silber J. in *R (Zoolife International Ltd.) v Secretary of State for Environment, Food and Rural Affairs* [2007] EWHC 2995 .

27. Mr Havers Q.C. for the claimants submitted that the claimants did not realise until about the 23 April 2020 that a legal challenge was possible. Thereafter, they acted promptly by sending a pre-action protocol letter to the defendants (who requested an additional seven days to consider it) and filed the claim shortly afterwards. He submitted that the court could entertain a claim for judicial review, even if academic, if there were a good reason in the public interest for doing so, relying on the observations of Lord Slynn in *R v Secretary of State for the Home Department* [1999] 1 A.C. 450

Discussion

28. [CPR 54.5](#) provides that a claim for judicial review must be filed:

"(a) promptly; and

(b) in any event not later than three months after the grounds to make the claim first arose".

29. The time limit begins to run from the date when the grounds first arose not the date when a claimant first learned of the existence of the measure, still less, when a claimant first realised that there was a prospect of bringing a legal challenge. The grounds first arose in this case when the Regulations were made on 26 March 2020, and, in relation to the challenge to the decision relating to schools, on 18 March 2002. The claim was filed on 21 May 2020, almost 2 months after the Regulations were made and more than two months after the decision relating to schools was said to have been made.

30. In all the circumstances of this case, I would not hold that the claim is barred by reason of any delay in filing the claim. Although a considerable period of time was taken before the claim was filed, I do not find that there was a failure to act promptly given the complexity and importance of the issues. The claimants are not prevented from bringing this claim by reason of [CPR 54.5](#) .

31. One of the consequences of the time taken to bring the claim, however, is that a number of the regulations challenged have been replaced or amended. That has the following consequences.

32. First, I do find that the claim for judicial review of the original [regulations 6](#) (the prohibition on a person leaving home without reasonable excuse) and the original [regulation 7](#) (the prohibition on more than 2 people gathering in public) is academic. Any judicial review of those regulations would be considering historic matters. The remedy sought is an order quashing the regulation. But the restrictions contained in those regulations are no longer in force as they have been replaced. In those circumstances, a claim for judicial review of those regulations in their original form would serve no practical purposes. While the courts may entertain academic claims if there is a good reason to do so, there is none here. The fact that restrictions may be imposed in future, depending on the progress of the pandemic, does not provide a good reason for reviewing the original versions of the regulations now. Any challenge to a subsequent or replacement regulation would necessarily involve considering the content of that regulation and the circumstances leading to its imposition. Any challenge to later versions

of [regulations 6 and 7](#) are, therefore, better considered having regard to the content of the regulation as subsequently made and in the light of the facts and the scientific understanding at that time. For that reason, I refuse permission to bring a claim to challenge [regulations 6 and 7](#) as originally made on 26 March 2020 on the basis that they allegedly involved a breach of [Articles 5 and 11](#) of the Convention (paragraphs 135 to 154 and 169 to 184 of the amended claim form respectively).

33. Secondly, the court on this application has to consider the question of whether there has been any arguable breach of any other Convention right by reference to the facts, and the Regulations, as they are now. Circumstances have changed since the Regulations were made and the position in relation to schools has developed. The court must assess matters as they currently stand.

The Second Issue - the Vires of the Regulations

34. The second issue concerns the question of whether the first defendant had the legal power to make regulations applying to all persons in England under the power conferred by the [Public Health \(Control of Diseases\) Act 1984](#) ("the 1984 Act").

35. Mr Havers for the claimants submitted that the Regulations were purportedly made under powers conferred by [section 45C\(1\) and \(3\)\(c\)](#) of the 1984 Act. He submitted that those powers only permitted regulations to be made in respect of an individual or a group of persons and not in relation to the population of England as a whole. That, he submitted, followed from the fact that the Regulations imposed a special restriction or requirement. That is defined as a restriction which magistrates could impose. Magistrates could only impose a restriction on an individual or a group (see [section 45G and 45J](#) of the 1984 Act) and only where a person was or may be infected and other preconditions were met. Similar provisions apply to premises and things, or groups of premises and things.

36. Sir James Eadie for the defendants submitted that the 1984 Act provides powers for the Secretary of State to make regulations of a general nature. Those powers were not limited to making orders in relation to specific individuals or groups of individuals and, he submitted, it would be absurd if the provisions were to be read otherwise given the nature of the public health threat and the purpose underlying the 1984 Act which was to enable measures to be taken to address the threat of epidemics such as serious acute respiratory diseases or SARS.

Discussion

37. The provisions of the 1984 Act do provide power for the Secretary of State to take measures, including measures applicable to England generally, for the purpose of combating the spread of infection from a disease such as Covid-19. The powers conferred on the Secretary of State are not limited to making regulations in relation to specific individuals or groups of individuals (or specific premises). The powers are broad powers intended to enable the Secretary of State to adopt a wide range of measures to combat the spread of infection. There are other mechanisms in place under the 1984 Act to ensure that those broad powers are used only in appropriate circumstances and that any restrictions imposed are kept under review. That conclusion follows from the wording and structure of the 1984 Act and its purpose.

38. First, on the wording, [section 45C\(1\)](#) of the 1984 Act provides that:

"(1) The appropriate Minister may by regulations make provision for the purpose of preventing, protecting against, controlling or providing a public health response to the incidence or spread of infection or contamination in England and Wales (whether from risks originating there or elsewhere)".

39. [Section 45C\(2\)](#) of the 1984 Act then expressly provides that that power may be exercised, amongst other things, "so as to make provisions of a general nature".

40. Regulations "may, in particular, include" the matters referred to in [section 45C\(3\)](#) of the 1984 Act, namely

"imposing or enabling the imposition of restrictions or requirement on, or in relation to persons, things or premises in the event of, or in response to, a threat to public health".

41. [Section 45C\(4\)](#) of the 1984 Act provides that the restrictions that may be made under that sub-regulation "include in particular" a "special restriction or requirement". That is defined in [section 45C\(6\)\(a\)](#) of the 1984 Act as a "requirement which can be imposed by a justice of the peace by virtue of" certain specified sections. That is a reference, so far as persons is concerned, to [section 45G\(2\)](#) of the 1984 Act which sets out a list of the restrictions or requirements that may be imposed by a magistrate on a person (referred to as "P" in the subsection). The restrictions include

"(j) that P be subject to restrictions on where P goes or with whom P has contact;

(k) that P abstain from working and trading."

42. The wording in [section 45C](#) of the 1984 Act is clear. It is intended to enable the Secretary of State to make general regulations to combat the spread of infection. The provisions that may be made "include" the type of orders that a magistrate could make, such as restrictions on movement and contact and requirements to abstain from working or trading. The provisions are not intended to limit the Secretary of State to making the kind of individualised orders in relation to particular individuals who or are may be infected. Similar provisions apply in relation to premises and things.

43. That interpretation is consistent with the purpose of the 1984 Act. It is clear from the wording of the relevant sections that the whole purpose was to enable the minister to address the spread of infection. The purpose is said in terms to be "preventing, protecting against, controlling or providing a public health response to the incidence or spread of infection". Depending on the nature of the infection, that may require the adoption of a range of measures.

44. That is also confirmed by the explanatory memorandum to the [Health and Social Care Act 2008](#) which amended the 1984 Act to provide the relevant powers. Paragraph 29 of that memorandum explains that much of the legislation dealing with disease was out of date reflecting 19th century concerns about the risks from the kind of health threats arising from infectious diseases such as plague, cholera and the like. Those provisions were increasingly recognised as being unable to deal with new threats such as serious acute respiratory syndromes or SARS. The new international approach, and regulations, were concerned with infectious diseases and contamination generally and paid more attention to the arrangements needed within countries (not simply at borders) to provide an effective response to health risks. The 1984 Act was amended to enable that approach to be adopted.

45. At the hearing, Mr Havers raised an additional point as to whether the 1984 Act provided power to close businesses. The regulations that may be made include regulations requiring a person to abstain from trading. The regulations do precisely

that by requiring persons to cease from carrying on specified business during the emergency period. The 1984 Act does, therefore, provide a power in appropriate circumstances to close businesses.

46. The 1984 Act does therefore confer power on the Secretary of State to make regulations applicable to persons, premises, and things in England as a whole in appropriate circumstances and subject to duty to keep the restrictions under review. The claim that the Regulations were *ultra vires*, that is, outside the powers conferred by the 1984 Act, is, therefore unarguable. Permission to claim judicial review on ground 1 (paragraphs 26 to 48 of the amended claim form) is refused.

The Third Issue - Domestic Law Challenges To the Regulations

47. Mr Havers submits that the actual making of the Regulations in this case, or the failure to bring them to an end, is unlawful for four reasons of domestic public law. Mr Havers submitted that the evidence of speeches by government ministers showed that the government had fettered its discretion by requiring five tests to be met before the Regulations would be replaced and the government was not considering other matters such as the effect on health arising from other conditions not treated, or the effect on the economy, or on schools. He submitted the Secretary of State had failed to have regard to relevant considerations in making the Regulations. He further submitted that the Regulations were irrational. He referred to the government's figures evidence on mortality rates as at 12 May 2020 which indicated that only 3 children and young persons with no pre-existing underlying medical condition had died from Covid-19 and that remained the position as at 16 June 2020. Similarly, only 253 persons under 60 without a pre-existing underlying medical condition had died from Covid-19 as at 12 May 2020 and 297 as at 16 June 2020. Those figures, he submitted indicated the nature and extent of the risk that had to be factored into the decision to make and maintain the Regulations. He identified in written submissions situations where one type of contact was not permitted but other types of allegedly analogous contact would be permissible to support his submission as to irrationality. Finally, he submitted that the making or maintenance of the Regulations was not proportionate under the 1984 Act.

48. Sir James Eadie submitted that the context in which the Regulations were made and reviewed should be borne in mind. The spread of coronavirus presented a serious risk to life. The number of cases of persons infected with coronavirus, and dying, were increasing at the time that the Regulations were made. There were real fears that the National Health Service would be overwhelmed and unable to cope with the increasing number of cases. The coronavirus was a novel pathogen and scientific understanding of coronavirus was limited. Transmission from human to human was seen to be a major cause of the increase in cases of persons suffering, or dying, from coronavirus. Steps were taken to reduce transmission given the severity of the risk. As the risks have diminished, there has been a progressive easing or relaxation in the restrictions imposed. He submitted that there was no basis for considering that the government had even arguably fettered its discretion, failed to have regard to relevant considerations, acted irrationally or disproportionately.

Was there arguably a fettering of discretion?

49. The basis of this aspect of the challenge is to the exercise of the power to review the Regulations and to terminate the restrictions under [regulation 3\(2\) and \(3\)](#). It is important in that regard to read the evidence fairly and as a whole. I have read all the material to which the claimants and the defendant have drawn my attention. In my judgment, the best source of evidence as to how the government is approaching the task of reviewing the Regulations is the document entitled "Our plan to rebuild: the UK Government's Covid-19 recovery strategy". The version I was provided with is that updated on 12 May 2020.

50. Reading the evidence fairly, the following emerges. The five tests to which the claimant refer were first articulated publicly on 16 April 2020. They are tests, or means, for assessing the risk posed by coronavirus. There are five elements: ensuring that the NHS has the capacity to cope, a sustained fall in the daily death rate, reliable data to show that the rate of infection is decreasing to manageable levels, confidence that the range of operational measures needed, such as testing capacity and supplies of personal protective equipment, are in hand, and confidence that any adjustments to the current measures would not risk a second peak of infections. That is a lawful, rational method of assessing the risks posed by coronavirus and the ability to cope with the coronavirus. It is clear from the remainder of the document that the government is acutely aware of managing the risks it assesses as being posed by coronavirus against overall health considerations (including increases in mortality from

other health conditions, not Covid-19, which might have resulted from measures taken to deal with coronavirus), and the effect on the economic and social life of the nation. Read fairly, the document is seeking to articulate the aims of the government to save lives, which it says is the overriding priority, and to minimise other harm to people's wellbeing, livelihoods and wider health concerns. The point is put clearly at section 2 of the document where it says:

"The Government's aim has been to save lives. This continues to be the overriding priority at the heart of this plan.

The government must also seek to minimise the other harms it knows the current restrict measures are causing - to people's wellbeing, livelihoods and wider health. But there is a risk that if the Government rushes to reverse these measures, it would trigger a second outbreak that could overwhelm the NHS. So the UK must adapt to a new reality - one where society can return to normal as far as possible; where children can go to school, families can see one another and livelihoods can be protected, whilst also continuing to protect against the spread of the disease."

51. The Government's aims are said to be to:

"return to life as close to normal as possible, for as many people as possible, as fast and fairly as possible ...

..... in a way that avoids a new epidemic, minimises lives lost and maximises health, economic and social outcomes."

52. That language does not demonstrate the unlawful fettering of discretion. It describes lawful aims, lawful considerations and the difficulties in balancing rival considerations. The government places particular weight on particular aims. The claimants may take different views on the different priorities and may make a different choices as to what measures should be relaxed and when. Those are matters of legitimate public debate. But it cannot arguably be said that the approach of the government involves unlawful fettering of its powers.

Was there a failure to have regard to relevant considerations?

53. The claimants refer in their grounds to a failure to have regard to the uncertainty of scientific evidence, the effect of the restrictions on public health generally (including non-Covid-19 deaths), the increased incidence of domestic violence, the economic effects of the restrictions, the medium and long-term consequences of the restrictions and whether less restrictive measures could have been adopted.

54. It is clear from the evidence, read fairly, that all of those matters have been considered in the decision-making process and continue to be taken into account in the reviews. There has been no failure to take those matters into account. The ultimate decision on how to respond, given the spread of coronavirus and the consequences of the restrictions, is a matter of difficult health, social, and economic choice. People may legitimately disagree on where the balance should be struck. But, as a matter of law, it cannot be argued that the government has not had regard to those considerations in reaching its decision on where the balance should be struck.

Was the decision to make and maintain the regulations irrational?

55. There is no arguable basis for concluding that the decision to make the Regulations or to maintain them in force, with amendments, was irrational. The claimants refer to the risks of mortality to those under 60, and to children and young persons. They point to alleged anomalies in the operation of the Regulations.

56. The basic point, however, is that the measures adopted are intended to reduce the risk of transmission between humans of a disease which is infectious, and can cause death or serious ill health, and where the scientific understanding of the disease is limited. The focus on the death rates of particular groups does not make it irrational to take steps to reduce opportunities for transmission from persons in those groups to others. The fact that not all situations where contact, and potentially transmission, may occur are subject to restrictions does not make it irrational to adopt a set of measures which are intended to bear down on the risk of transmission by prohibiting other contacts. Given the complexities of modern life and social interaction, there may be situations where contact between persons can occur which are not covered by the Regulations. Such differences, or anomalies, do not render the decision to make or maintain the Regulations irrational.

Was the making or maintaining of the Regulations disproportionate under the 1984 Act?

57. Section 45D of the 1984 Act provides that Regulations may not include restrictions or requirements under section 45C(3) (c) of the 1984 Act (restrictions relating to persons, things or premises):

"unless the appropriate Minister considers, when making the regulations, that the restriction or requirement is proportionate to what is sought to be achieved".

58. That obligation applies to the initial making of the Regulations and, in my judgment, to any amendment including any further restriction or requirement. Regulation 3(3) of the Regulations also requires the Secretary of State to terminate any restriction or requirement as soon as he considers it is no longer necessary for combatting the spread of infection.

59. The decision on proportionality and necessity under the 1984 Act and Regulations is, ultimately, for the minister. The courts recognise the legitimacy of according a degree of discretion to a minister "under the urgent pressure of events, to take decisions which call for the evaluation of scientific evidence and advice as to the public health risks" (per Lord Bingham LCJ in *R v Secretary of State for Health ex parte Eastside Cheese Company* [1999] 1 CMLR 123 at paragraph 50).

60. The obligations under the 1984 Act and the Regulations involve a consideration of the proportionality, or necessity, of the measure as a matter of domestic law weighing the effects of the measure against the public health aims being pursued. In that regard, the aim of the Regulation is, as the preamble makes clear, to respond to the:

"serious and imminent threat to public health posed by the "incidence and spread of severe acute respiratory syndrome coronavirus".

61. In terms of the response, the context in which the Regulations were made was the emergence of a novel coronavirus which had already caused deaths throughout Asia and western Europe. On 12 March 2020, the World Health Organisation announced that there were now more than 20,000 confirmed cases and almost 1,000 deaths in Europe. Scientific knowledge and understanding of coronavirus were limited but the disease was highly infectious and could be transmitted from human to human. Against that background, it is simply unarguable that the decision to make the Regulations on 26 March 2020 and to impose the restrictions contained in the Regulations on that date was in any way disproportionate to the aim of combatting the threat to public health posed by the incidence and spread of coronavirus. That is further confirmed by the fact that the Regulations were time-limited and would expire at the end of 6 months, that there was also a duty to review them every 21 days (now every 28 days) and a duty to terminate any restriction if it was no longer necessary to meet the public health aim.

62. Since the 26 March 2020, the minister has reviewed the Regulations. The incidence of coronavirus in England, and the number of deaths, however, increased. The threat to the capacity of the NHS to cope grew. Over time, the incidence of coronavirus has lessened and the daily death rate in England is lower now than at the peak. The scientific understanding of the disease is still limited. The effects of the Regulations on the nation are clearer. A number of restrictions imposed by the Regulations have been removed or eased. There is no arguable basis for contending that there has been any failure to comply with the obligations imposed by section 45D of the 1984 Act or regulation 3 of the Regulations.

Conclusion on Ground 2

63. There is no basis upon which it could reasonably be argued that there has been any fettering of discretion or any failure to have regard to relevant considerations. Similarly, there is no basis for contending that the making and maintaining of the Regulations involves any arguable irrationality or failure to act proportionately. Permission to apply for judicial review on grounds 2A, 2B, 2C and 2D (paragraphs 49 to 92 of the amended claim form) is refused.

The Fourth Issue - Article 5 of the Convention

64. Mr Havers applied to amend the claim form to include a challenge to the version of Regulation 6 of the Regulations which applied from on 1 June 2020 and replaced the earlier obligation in regulation 6 not to leave the place where you lived without reasonable excuse. He submitted that the obligation in the amended regulation 6 not to stay overnight at a place other than where a person is living amounted to a deprivation of liberty within the meaning of Article 5 of the Convention. He relied upon, in particular, the decision of the Supreme Court in *R (Jalloh) v Secretary of State for the Home Department* [2020] UKSC 4 .

65. Sir James Eadie submitted that the claimants should not be given permission to amend their claim, relying on the decision in *R (Spahiu) v Secretary of State for the Home Department* [2019] 1 W.L.R. 1297 at paragraph 62 which indicates that "rolling" or "evolving" judicial claims (i.e. claims amended to take in new decisions or grounds) are not usually appropriate. In any event, he submitted that there is no arguable basis that the restriction in [regulation 6](#) amounted to a deprivation of liberty within the meaning of [Article 5](#) of the Convention having regard to decisions such as that of the European Court of Human Rights in *Guzzardi v Italy* (1980) 2 EHRR 3 . He further submitted that if there were a deprivation of liberty it fell within the exception in [Article 5.1\(e\)](#) which permits the lawful detention of persons for the prevention of the spread of infection.

The application to amend

66. I accept that it is often undesirable to amend claim forms to include new challenges for the reasons given by Coulson L.J. in *Spahiu* . However, there is a need for an appropriate degree of procedural flexibility. In the present case, the issue of the compatibility of the form of [regulation 6](#) with [Article 5](#) of the Convention is a limited, defined and discrete issue arising out of an amendment to the Regulations under challenge. I therefore grant permission to the claimants to re-mend the amended claim form to include a challenge to [regulation 6](#) in the terms set out in paragraph 12 of the claimants' supplementary grounds dated 23 June 2020.

Is it arguable that Regulation 6 is incompatible with Article 5 of the Convention?

67. [Regulation 6](#) of the Regulations as in force on 2 July 2020 provided so far as material that:

(1) No person may, without reasonable excuse, stay overnight at any place other than the place where they are living or whether their linked household is living."

68. [Article 5](#) of the Convention provides so far as material that:

"1. Everyone has the right to liberty and security of person. No one shall be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law.:

(e) the lawful detention of persons for the prevention of the spreading of infectious diseases..... "

69. The case law of the European Court of Human Rights, including the decision in *Guzzardi* , was considered by the House of Lords in *Secretary of State for the Home Department v JJ* [2008] A.C. 385 . The task of the court is to assess the impact of the measures on a person in the situation of the person subject to them and (per Lord Bingham at paragraph 16):

"account should be taken of a whole range of factors such as the nature, duration, effects, and manner of execution or implementation of the penalty or measure in question"

70. In that case, the House of Lords held that a curfew where a person was required to stay in a flat for 18 hours, coupled with the effective exclusion of visitors, resulted in the individual being in solitary confinement for that lengthy period every day, for an indefinite duration, and with very little opportunity for contact with the outside world and with insufficient provision of facilities for self-entertainment and in the knowledge that the flat could be entered and searched at any time. That amounted to a deprivation of liberty (see paragraph 24 of the decision).

71. In the present case, there is no arguable basis that the provision of [regulation 6](#) in force on 2 July 2020 would amount to a deprivation of liberty in the light of the current case law. Persons will be in their own home overnight. They will be with their families or others living with them as part of their household. They will have access to all the usual means of contact with the outside world. The prohibition is on staying overnight at a place other than their home (although that will, in practice necessitate them staying in their own home overnight). They are able to leave their home during the daytime to work or to meet others (subject to the requirements of [regulation 7](#) on gatherings). Furthermore, [regulation 6](#) is limited in time and has to be reviewed regularly and the restriction must be removed as soon as it is no longer necessary

to combat the threat posed. The facts fall far short of anything that could realistically be said to amount to a deprivation of liberty within the existing case law.

72. The reliance on the decision in *Jalloh* does not assist the claimants. That case was dealing with the tort of false imprisonment in domestic law (not [Article 5](#) of the Convention). That tort is committed where a person is detained as a matter of fact and there is no lawful authority for the detention. As a matter of domestic law, the restriction on staying overnight at a place other than where you live does have lawful authority as it is authorised by [regulation 6](#). The tort will not have been committed whether or not the restriction amounts to detention as a matter of fact. More importantly, for present purposes, the scope of what constitutes a deprivation of liberty for the purposes of [Article 5](#) of the Convention is different from, and more limited than, the scope of detention for the purposes of the tort of false imprisonment. The appellant in *Jalloh* sought, unsuccessfully, to persuade the Supreme Court to align the concept of deprivation of liberty in [Article 5](#) with the tort of false imprisonment as appears from paragraph 32 of the judgment in *Jalloh* so that detention would have a more limited meaning. The Supreme Court declined to align the two concepts in that way: see paragraph 34 of the judgment. The decision does not address the issue of what constitutes a deprivation of liberty within the meaning of [Article 5](#) of the Convention.

73. For those reasons, it is not arguable that [regulation 6](#) in the form in force on 2 July 2020 constitutes a deprivation of liberty within the meaning of [Article 5](#) of the Convention. Permission to apply for judicial review of [regulation 6](#) of the Regulations on the ground set out at paragraph 12 of the supplementary grounds dated 23 June 2020 is refused.

The Fifth Issue - Article 8 of the Convention

74. Mr Havers submitted that the restrictions on the ability to see family members and friends imposed by [regulation 6 and 7](#) in particular constitutes an infringement of the right to respect for private and family life guaranteed by [Article 8](#) of the Convention which is arguably not justified.

75. Sir James Eadie submitted that the restrictions imposed on the ability to meet family members and friends are not so serious as to amount to an infringement of the right to respect for private and family life. In event, he submitted, those restrictions are justified under [Article 8\(2\)](#) of the Convention and the contrary is unarguable.

Discussion

76. [Article 8](#) of the Convention provides as follows:

"Right to respect for private and family life

1. Everyone has the right to respect for his private and family life, his home and his correspondence.
2. There shall be no interference by a public body with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, or for the protection of the rights of others."

77. On any analysis, it is unarguable that the restrictions imposed here would be a justified if they amounted to an interference with the right to respect for private and family life. The Regulations seek to achieve a legitimate aim, namely the reduction of the incidence and spread of coronavirus. They do that by seeking to reduce the opportunity for transmission between households. That is a legitimate aim and is in accordance with law as the restrictions are included in Regulations made under powers conferred by an Act of Parliament.

78. Any interference is proportionate. The restrictions are limited. Persons remain free to live with family members or friends forming part of their household. They may communicate with other and family members by means of communication such as telephones and, if available, internet facilities. They may physically meet family and friends outdoors (subject to the restrictions on numbers in [regulation 7](#)). Given the limited nature of the restrictions, the gravity of the threat posed by the transmission of coronavirus, the fact that the Regulations last for a limited period and have to be reviewed regularly during that period, and restrictions must be terminated as soon as no longer necessary to meet the public health threat, there is no prospect of the current regulations, at the current time, being found to be a disproportionate interference with the rights

conferred by [Article 8](#) of the Convention. The contrary is not, in truth, arguable. Permission to argue that the Regulations currently in force infringe [Article 8](#) of the Convention (paragraphs 155 to 159 of the amended grounds) is refused.

The Sixth Issue - Article 9 of the Convention

79. Mr Havers submitted that the prohibition on the use of places of worship for communal acts of worship involved a breach of [Article 9](#) of the Convention. The second claimant is a Roman Catholic who has not been able to attend communal worship, or receive the sacraments, since the Regulations were made

80. Sir James Eadie submitted that the restrictions have been eased and that places of worship may not open, amongst other things for private prayer. He submitted there was no breach in the circumstances or it was justified under [Article 9\(2\)](#) of the Convention.

Discussion

81. [Regulation 5](#) of the Regulations as in force at the time of the hearing on 2 July 2020 provided that:

"(5) A person who is responsible for a place of worship must ensure that, during the emergency period, the place of worship is closed, except for uses permitted in paragraph (6)."

82. The permitted uses include funerals, the broadcasting of an act or worship, or for private prayer (so long as not part of communal worship).

83. [Article 9](#) of the Convention provides that:

"1. Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief and freedom, either alone or in community with others and in public or private, to manifest his religion or belief, in worship, teaching, practice and observance.

"Freedom to manifest one's religion or beliefs shall be subject only to such limitations as are prescribed by law and are necessary in a democratic society in the interests of public safety, for the protection of public order, health or morals, or for the protection of the rights and freedoms of others".

84. Swift J. has already considered the issue of whether [Regulation 5](#) involves an arguable breach of [Article 9](#) of the Convention in *R (Hussain) v Secretary of State for Health and Social Care [2020] EWHC 1392 (Admin)*. That arose in the context of the restrictions on the use of an Islamic mosque for communal Friday prayers during Ramadan. Swift J. held there was a sufficiently arguable case to grant permission to apply for judicial review. He refused interim relief as, although there was an arguable case, there was no realistic likelihood of the claimant ultimately succeeding such as would justify the grant of interim relief.

85. In the present case, the second claimant is a Roman Catholic who wishes to attend mass. In the light of the judgment of Swift J. in *Hussain*, I was minded to consider that it was arguable that the restriction on the use of a Roman Catholic church for communal worship and the taking of the sacraments involves an interference with [Article 9\(1\)](#) of the Convention. I was minded to permit that issue to proceed to a full hearing to enable the court to determine in the light of all the evidence, and full legal argument, whether or not the restriction involves a breach of [Article 9](#) of the Convention.

86. At the hearing on 2 July 2020, Sir James indicated that the Regulations may be amended in the near future to permit communal worship. No regulations, or even draft regulations, amending [regulation 5](#) were produced at the hearing.

87. Following the hearing on 2 July 2020, I learnt that regulations were made at 10 a.m. on 3 July 2020. Those regulations appear to permit places of worship to hold acts of communal worship for up to 30 people with effect from 4 July 2020. If that is correct, this aspect of the claim may have become academic. It would not be right to reach any conclusion on that

issue without first giving the parties the opportunity to make submissions on the relevance of the new regulations on this issue. Equally, it is not necessary or desirable to delay the handing down of the judgment on all the other issues that arise in this case. I propose, therefore, to adjourn consideration of this discrete issue, that is, whether any claim that restrictions arguably involve a breach of [Article 9](#) of the Convention has become academic, for further submission but give judgment on the other issues.

The Seventh Issue - Article 11 of the Convention

88. Mr Havers applied to amend the claim form to include a challenge to [regulation 7](#) in its current form. He submitted that the restrictions on gatherings permitting only six people to gather outdoors and two people indoors amounted to a breach of [Article 11](#) of the Convention.

89. Sir James Eadie objected to the application to amend the grounds as that would amount to a rolling or evolving judicial review of the kind deprecated in *Spahiu*. In any event, he submitted that it was clear beyond any doubt that any interference would be justified.

The Amendment

90. In the present case, the issue of the compatibility of [regulation 7](#) with [Article 11](#) of the Convention is a limited, defined and discrete issue arising out of an amendment to the Regulations under challenge. It is appropriate in the circumstances to allow an amendment to raise that issue. I therefore grant permission to the claimants to re-amend the amended claim form to include a challenge to [regulation 7](#) in the terms set out in paragraphs 16 to 17 of the claimants' supplementary grounds dated 23 June 2020.

The Issue

91. [Regulation 7](#) of the Regulations as in force at the time of the hearing on 2 July 2020 provided so far as material that:

- (1) During the emergency period, unless paragraph (2) applies, no person may participate in a gathering which takes in a public or a private place -
 - (a) outdoors, and consists of more than six persons, or
 - (b) indoors, and consists of two or more persons.

92. There is a list of exceptions where gatherings are not prohibited including gatherings where all the person are members of the same household, or involve attendance at funerals, or attendance at work or the gathering takes place at an educational facility and is reasonably necessary for the purposes of education.

93. [Article 11](#) of the Convention provides:

"1. Everyone has the right of freedom of peaceful assembly and to freedom of association with others, including the right to form and join trade unions for the protection of his interests.

2 No restriction shall be placed on the exercise of these rights other than such as are prescribed by law and are necessary in a democratic society in the interests of national security or public safety, for the prevention of morals or for the protection of the rights and freedoms of others. This Article shall not prevent the imposition of lawful restrictions on the exercise of these rights by members of the armed forces, of the police or of the administration of the State."

94. The restrictions imposed by [regulation 7](#) do involve an interference with the right to freedom of assembly and association within the meaning of [Article 11\(1\)](#) of the Convention. They do restrict the ability of persons to assemble and associate as they may do so only in small groups. They impinge upon the freedom, important in a democratic country, to gather to protest

95. The real issue is whether it is arguable that the restrictions are justified under [Article 11\(2\)](#) of the Convention. They pursue a legitimate aim as they are intended to bear down upon the spread of infection by preventing opportunities for the transmission of coronavirus between humans. They are in accordance with law as they were imposed by regulations made pursuant to an Act of Parliament. The issue is whether it is arguable that they are not a proportionate interference. There is an attraction in leaving that matter to be considered at a full hearing. In truth, however, there is no realistic prospect that the courts would find [regulation 7](#) in its current form to be a disproportionate interference with the rights guaranteed by [Article 11](#) of the Convention. The context in which the regulation was made was one of a pandemic where a highly infectious disease capable of causing death was spreading. The disease was transmissible between humans. The scientific understanding of this novel coronavirus was limited. There was no effective treatment or vaccine.

96. The regulation was intended to restrict the opportunities for transmission between humans. The regulation therefore limits the opportunity for groups of individuals to gather together, whether indoors or outdoors. The regulation was time-limited and would expire after 6 months in any event. During that period, the government was under a duty to carry out regular reviews and to terminate the restriction if it was no longer necessary to achieve the public health aim of reducing the spread and incidence of coronavirus within the population. In all reality in those circumstances, there is no realistic prospect of a court deciding in these, possibly unique, circumstances that the regulation was a disproportionate interference with the rights guaranteed by [Article 11](#) of the Convention. There is, therefore, no purpose in granting permission to bring the claim. Permission to apply for judicial review of [regulation 7](#) of the Regulations on the grounds set out in paragraphs 16 to 17 of the supplementary grounds dated 23 June 2020 is refused.

The Eighth Issue - the Right To Property

97. Mr Havers submitted that the Regulations amounted to a deprivation of possession or an impermissible control on the first claimant's right to property contrary to [Article 1](#) of the First Protocol to the Convention.

98. Sir James Eadie submitted that there was no deprivation of possessions and no evidence of an interference with the first claimant's right to property within the meaning of the Convention. In any event, he submitted, any restriction on the first claimant's right to use property was justified.

Discussion

99. [Article 1 of the First Protocol](#) to the Convention provides that:

"Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in accordance in the public interest and subject to the conditions provided by law and by the general principles of international law.

The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties."

100. A claim of a breach of [Article 1](#) of the First Protocol will require careful consideration of the evidence. In the present case, the claim is made only by the first claimant. His evidence is that he has a number of businesses in England. One is a public relations company which has seen a decline in revenues. Another is a company which leases planes to companies such as British Airways and Air France. That business has been, it is said, severely affected.

101. First, there is no evidence that the Regulations have deprived the first claimant (or anyone else) of any possessions within the meaning of the Convention.

102. Secondly, the first claimant has simply not provided sufficient evidence that the Regulations have involved any unlawful interference with his possessions or property such as would justify permitting this claim to proceed. So far as possessions are concerned, existing case law is that this does not include loss of revenue but will include goodwill. So far as the public relations company is concerned, there is evidence that it has lost revenue but no evidence to indicate that the goodwill of the company has suffered.

103. So far as the airline leasing business is concerned, there is simply no realistic basis on which it could be said that the Regulations have caused the loss or damage to that business. The first claimant has had ample opportunity to file evidence about the effect of the Regulations on his business interests in these proceedings. He has filed one witness statement and his solicitor has filed four. Those do not demonstrate an evidential basis which justifies allowing the claim to proceed.

104. Mr Havers invites me to infer that regulations such as those which originally prevented people leaving their homes without reasonable excuse or which as amended prevent people staying overnight at places other than where they are living inflicted harm to the first claimant's airline leasing business. It is overwhelmingly far more likely that the cause of any economic harm to that business is the restrictions on flights imposed by other countries or the fact that people are unable or unwilling to fly to other countries because of restrictions or fears about the situation in those other countries. If inferences are to be drawn, therefore, the overwhelmingly reasonable inference to draw is that any harm to the first claimant's airline leasing business has been caused by other factors (such as restrictions on flights imposed by other countries or difficulties in travel to other countries) not by the Regulations.

105. The first claimant also suggests that other people, who are not claimants, but who run businesses affected by [regulations 4 or 5](#), might be able to show a violation of [Article 1 of the First Protocol](#) to the Convention. This court is concerned with the position of the current three claimants and the current evidence before it. It is not appropriate to speculate about who else might bring a claim and what evidence they might be able to produce. In all the circumstances, the first claimant has not established an evidential basis that the Regulations have even arguably involved a breach of his rights under [Article 1 of the First Protocol](#). The second and third claimants do not suggest that the Regulations have affected any rights that they may have under that article. For those reasons, permission to challenge the Regulations on the ground that they violate the first claimant's rights under [Article 1](#) of the First Protocol (paragraphs 185 to 190 of the amended claim form) is refused. For the same reasons I refuse permission to re- amend the claim form to include a claim on the basis set out in paragraph 18 of the document entitled supplementary grounds dated 23 June 2020.

The Ninth Issue - the 18 March Announcement Relating To Schools

106. Mr Havers submitted that it was clear from the speeches made by ministers in March 2020 that ministers were directing or instructing schools to close. He submitted that that involved a breach of [Article 2](#) of the First Protocol to the Convention. Given the role that the government had had in bringing about the closure of schools, it was appropriate to grant permission. The court could require the second defendant to request or give guidance that schools should re-open.

107. Sir James Eadie submitted that the government had not exercised any power to close schools. Rather, they had requested schools not to provide education on school premises save for the children of key workers and vulnerable children. and to comply with their continuing duties to provide education by other means. The current policy of the government was to seek to encourage schools to arrange a phased return of schools and, on 2 July 2020, the second defendant had made a statement in which he made it clear that the governments plans were to ensure that children return to school from September. In any event, the obligation in [Article 2](#) to the First Protocol was not to deny anyone the right to education. The obligation to provide education had not been suspended. Education was being provided but not on school premises.

Discussion

108. There has been discussion about the precise meaning of certain of the statements made in relation to schools in March 2020. It is neither necessary, nor helpful, to spend time dealing with that matter in this judgment.

109. The factual position is this. As at about the 18 March 2020, the government considered that education should not be provided at school premises in England save for the children of key workers and vulnerable children.

110. The legal position is that there is currently no legal measure made by either of the two defendants requiring those responsible for running schools to close those schools. The Regulations made on 26 March 2020 prohibited gatherings in a public place but the government did not consider that schools were public places for these purposes. In any event, [regulation 7](#) as amended an in force from 1 June 2020, and which imposes restrictions on gatherings in public and private places, specifically exempts educational facilities. No order has made under the [Coronavirus Act 2020](#) to close any school in England. No other power has been identified as having been exercised so as to impose any legal requirement on any school in England to close.

111. The present position is that it is the current policy of the government to encourage the return of pupils on a phased basis so that they will receive education at school. The government wishes every child who can attend school to do so from September 2020.

112. In all those circumstances, the claim in relation to schools and [Article 2](#) of the First Protocol to the Convention is academic and serves no purpose. The claimants want a remedy which will, in some way, make it clear that school attendance is not prohibited by the government or to require or encourage the government to issue some form of guidance that children should return to school. There is, however, no legally enforceable prohibition in place issued by either defendant preventing attendance at school. The current policy of the government is to encourage children to attend at school. There is, therefore, no relevant remedy which could serve any real practical purposes in the present circumstances. Whatever the precise meaning of the statements made in March 2020, and whatever the position of the government has been over the intervening months, the position in practical terms is that government policy now aims at the result that the claimants are seeking. In those circumstances, this aspect of the claim is academic. I refuse permission to apply for judicial review of the decision said to have been taken on 18 March 2020 on the grounds set out in paragraphs 121 to 196 of the amended claim form. I refuse permission to the claimants to amend the claim form by adding paragraphs 19 to 29 of the document entitled supplementary grounds dated 23 June 2020.

Ancillary Matters

113. This judgment deals with the grounds of challenge specifically alleged in the amended claim form and the supplementary grounds dated 23 June 2020. Those documents make a large number of points about a wide range of matters. Consideration of whether to grant permission has been deferred in relation to [regulation 5](#) on one specific ground, namely an alleged breach of [Article 9](#) of the Convention. Permission has not been granted to argue any of the other matters referred to in the claim form as a free standing ground of judicial review of any regulation, decision or other measure.

Conclusion

114. The Secretary of State had the legal power to make the Regulations. In making and maintaining the Regulations, he has not fettered his discretion. He has had regard to relevant considerations. He has not acted irrationally. He has not acted disproportionately. Permission to apply for judicial review on grounds 1 and 2A, 2B, 2C and 2D in the amended claim form is refused.

115. The claim to challenge the restrictions on movement and gatherings in the original [regulations 6 and 7](#) are academic as those regulations have been replaced. The challenge to the 18 March 2020 announcement relating to schools is also academic in the circumstances. Permission to apply for judicial review to challenge those regulations and that decision is refused.

116. The amended [regulation 6](#) in force on 2 July 2020 requiring persons not to stay overnight other than where they live is not even arguably a deprivation of liberty within the meaning of [Article 5](#) of the Convention. Permission to challenge that regulation is refused.

117. The Regulations in force on 2 July 2020 did involve a restriction on the freedom of assembly and association. That freedom is an important one in a democratic society. The context in which the restrictions were imposed, however, was of

a global pandemic where a novel, highly infectious disease capable of causing death was spreading and was transmissible between humans. There was no known cure and no vaccine. There was a legal duty to review the restrictions periodically and to end the restrictions if they were no longer necessary to achieve the aim of reducing the spread and the incidence of coronavirus. The Regulations would end after six months in any event. In those, possible unique, circumstances, there is no realistic prospect that a court would find that regulations adopted to reduce the opportunity for transmission by limiting contact between individuals was disproportionate. Permission to apply for judicial review on that ground is refused.

118. The Regulations do not, even arguably, involve a breach of the right to respect for private and family life guaranteed by [Article 8](#) of the Convention or of the first claimant's property rights under [Article 1](#) of the First Protocol to the Convention. Permission to challenge the Regulations on those grounds is refused.

In the High Court of Justice Queen's Bench Division Administrative Court

CO Ref: CO/186/ 2020

In the matter of an application for Judicial Review The Queen on the application of

(1) SIMON DOLAN

(2) LAUREN MONKS

(3) AB

versus

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

(2) THE SECRETARY OF STATE FOR EDUCATION

On the application for permission to apply for judicial review

UPON HEARING leading and junior counsel for the claimants and the defendants

Order by the Honourable Mr Justice Lewis

1. Permission is granted to amend the claim form to add AB as the third claimant.

2. Pursuant to [CPR 39.2\(4\)](#) the identity of the third claimant and that person's litigation friend is not to be disclosed and those persons are to be known as A.B, and C.D. respectively.

3. Any person to have liberty to apply to amend the order in paragraph 2 on 72 hours written notice to the claimants and the defendant.

4. Permission is granted to re-amend the amended claim form to include paragraphs 12, 16 and 17 of the supplementary grounds dated 23 June 2020. Permission to re-amend the claim form to include the other paragraphs of the supplementary grounds dated 23 June 2020 is refused.

5. The defendants are to file and serve on the claimants written submissions by 4 p.m. on 13 July 2020 on whether the claim that [regulation 5 of the Health Protection \(Coronavirus, Restrictions\) \(England\) Regulations 2020](#) ("the Regulations") as amended on the grounds set out in paragraphs 160 to 168 of the amended claim form ([Article 9 of the Convention for the Protection of Human Rights and Fundamental Freedoms](#)) has become academic in the light of the amendment or replacement of the Regulations with effect from 4 July 2020. The claimants are to file and serve written submissions in reply by 4 p.m. on 20 July 2020. The papers are then to be placed before Lewis J. for a decision on this issue.

6. Permission to apply for judicial review of the Regulations on all other grounds set out in the amended claim form, and in paragraphs 12, 16 and 17 of the supplementary grounds dated 23 June 2020, is refused.

7. Permission to apply for judicial review of the decision to close schools and educational establishments is refused.

8. The Independent Workers' Union of Great Britain is to notify the Administrative Court Office, the claimants and the defendants by 4 p.m. on Monday 20 July 2020 whether they wish to maintain their application to intervene. If so, the court will decide that application on the papers.

9. Any application for costs or other consequential orders to be made and considered after determination of the issue referred to in paragraph 5 above.

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