

**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

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

<b>London</b>	Fax: 020 7947 6802 email: administrativecourtoffice.generaloffice@hmcts.x.gsi.gov.uk
<b>Birmingham</b>	Fax: 0121 250 6730 email: administrativecourtoffice.birmingham@hmcts.x.gsi.gov.uk
<b>Cardiff</b>	Fax: 02920 376461 email: administrativecourtoffice.cardiff@hmcts.x.gsi.gov.uk
<b>Leeds</b>	Fax: 0113 306 2581 email: administrativecourtoffice.leeds@hmcts.x.gsi.gov.uk
<b>Manchester</b>	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 Fax no.  time sent

☐ 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 Fax no.  time sent

☐ 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)

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	-			-			
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Seal

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.

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

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

<b>name</b>	<b>name</b>
<b>address</b>	<b>address</b>
<b>Telephone no.</b>	<b>Telephone no.</b>
<b>Fax no.</b>	<b>Fax no.</b>
<b>E-mail address</b>	<b>E-mail address</b>

## 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.

<b>name</b> The Rt. Hon. Matt Hancock The Secretary of State for Health and Social Care	<b>address</b> Department of Health and Social Care 39 Victoria Street London SW1H 0EU
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## 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

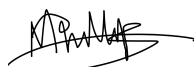
Please see attached

### 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   
Claimant ('s solicitor)

Position or office held Consultant  
(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**

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**FULL LIST OF CLAIMANTS**





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<b>Claimant No.</b>	<b>Name</b>	<b>Title</b>	<b>Address</b>	<b>Postcode</b>	<b>Email</b>
1	Rev. Ade Omooba MBE	Co-Chair, National Church Leaders Forum - NCLF, A Black Christian Voice	70 Wimpole Street, London	W1G 8AX	
2	Dr David Muir	Co-Chair, National Church Leaders Forum - NCLF, A Black Christian Voice	70 Wimpole Street, London	W1G 8AX	
3	Rev. Derek Andrews	Pastor, The Presence of God Ministries	Keresley Village Community Centre, Howat Road, Coventry, Keresley End	CV7 8JP	



4	Pastor Ayo Akinsanya	Deeper Life Bible Church Liverpool	Solway St E, Liverpool	L8 0TY	[REDACTED]
5	Moni Akinsanya	Deeper Life Bible Church Liverpool	Solway St E, Liverpool	L8 0TY	[REDACTED]
6	Dr Gavin Ashenden	Former Chaplain to the Queen, Former Anglican Bishop	[REDACTED] [REDACTED] [REDACTED] [REDACTED]	[REDACTED]	[REDACTED] [REDACTED]
7	Pastor Matthew Ashimolowo	Senior Pastor, Kingsway International Christian Centre, KICC	Prayer City, Buckmore Part, Maidstone Road, Chatham	ME5 9QG	[REDACTED] [REDACTED]
8	Bishop Lovel Bent	Presiding Bishop, Connections Trust	93 Acre Lane, Brixton, London	SW2 5TU	[REDACTED] [REDACTED]
9	Rev. Ian Christiansen	AoG UK, Senior Minister, New Life Christian Centre International	New Life Christian Centre International, Brentfield (Harrow Road), London	NW10 0RJ	[REDACTED]
10	Chris Demetriou	Senior Pastor, Cornerstone	Cornerstone The Church, 38 Station Avenue, Walton-on- Thames, Surrey	KT12 1NU	[REDACTED] [REDACTED]
11	Professor John Durodola	National Chairman, Overseas Fellowship of Nigerian Christians (OFNC)	OFNC, 12 Chambers Walk, Stanmore, Middlesex	HA7 4FN	[REDACTED] [REDACTED]
12	Rev. Asif Gill	Senior Leader, Ecclesia International	70 Rollason Road, Radford, Coventry, West Midlands	CV6 4AL	[REDACTED] [REDACTED]
[REDACTED]	[REDACTED] [REDACTED] [REDACTED]	[REDACTED] [REDACTED]	[REDACTED] [REDACTED] [REDACTED]	[REDACTED] [REDACTED]	[REDACTED] [REDACTED]

14	Rev. Alex Gyasi MBE	Convener & Senior Pastor, Kingdom Culture Alliance & Highway of Holiness	Unit 8, 2-8 Fountayne Road, Tottenham, London	N15 4QL	
15	Rev. Dr David Hathaway D.D.	President, Eurovision Mission to Europe	41 Healds Road, Dewsbury	WF13 4HU	
16	Pastor Thabo Marais	Senior Pastor, Christian Revival Church London	46 Commercial Road, Whitechapel, London	E1 1LP	
17	Canon Yaqub Masih MBE	Secretary General, UK Asian Christians; Secretary General & Founder, New Horizons	New Horizons, Huddersfield, West Yorkshire	HD3 3WW	
18	Bishop Michael Nazir-Ali	President, Oxford Centre for Training, Research, Advocacy and Dialogue – OXTRAD	70 Wimpole Street, London	W1G 8AX	
19	Rev. Dr Brad Norman	Salvation For The Nations Intl. Churches	Unit 2 Sterling Court, Mundells, Welwyn Garden City	AL7 1FT	
20	Pastor John Quintanilla	Hebron Christian Faith Church, Coventry	The Forum, Longfellow Road, Stoke, Coventry, West Midlands	CV2 5HD	
21	Pastor Sally Quintanilla	Hebron Christian Faith Church, Coventry	The Forum, Longfellow Road, Stoke, Coventry, West Midlands	CV2 5HD	
22	Pastor Paul Song	London Shepherd Church	London Shepherd Church, 16-18 High	SM1 1HN	

			Street, Sutton, Surrey		
23	Pastor Kola Taiwo	Senior Pastor, New Wine Church	New Wine Church, Gateway House, John Wilson Street, Woolwich, London	SE18 6QQ	
24	Rev. Melvin Tinker	St John Newland	St John Newland, Clough Road, Kingston-upon-Hull	HU6 7PA	
25	Rev. Keith Waters	New Connexions Church	New Connexions Church, Larkfield, High Barnes, Ely	CB7 4SB	
26	Bishop Alfred Williams BA (Hons), LLB (Hons), LLM (Inter. Business Law), MCI Arb.	Presiding Bishop, Christ Faith Tabernacle International Churches	International Headquarters, CFT Cathedral, Ebenezer Building, 186 Powis Street, Woolwich	SE18 6NL	

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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STATEMENT OF FACTS AND  
GROUNDS FOR JUDICIAL REVIEW

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*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 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 20<sup>th</sup> 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 Blenkharn [142]* and the *supplemental report of Ian Blenkharn [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, appearing to read 'Andrew Storch', written over a horizontal line.

.....

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**

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**DRAFT ORDER**

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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

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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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**Status:** This is the original version (as it was originally made).**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

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## **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](#)<sup>1</sup>, 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.

<sup>1</sup> <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.

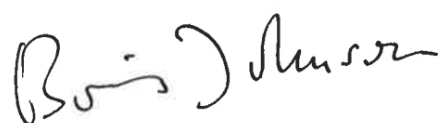
If we get this right we will minimise deaths – not just from COVID-19, but also from meeting all our non-COVID-19 health needs, because our (bigger) NHS will not be overwhelmed.

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).

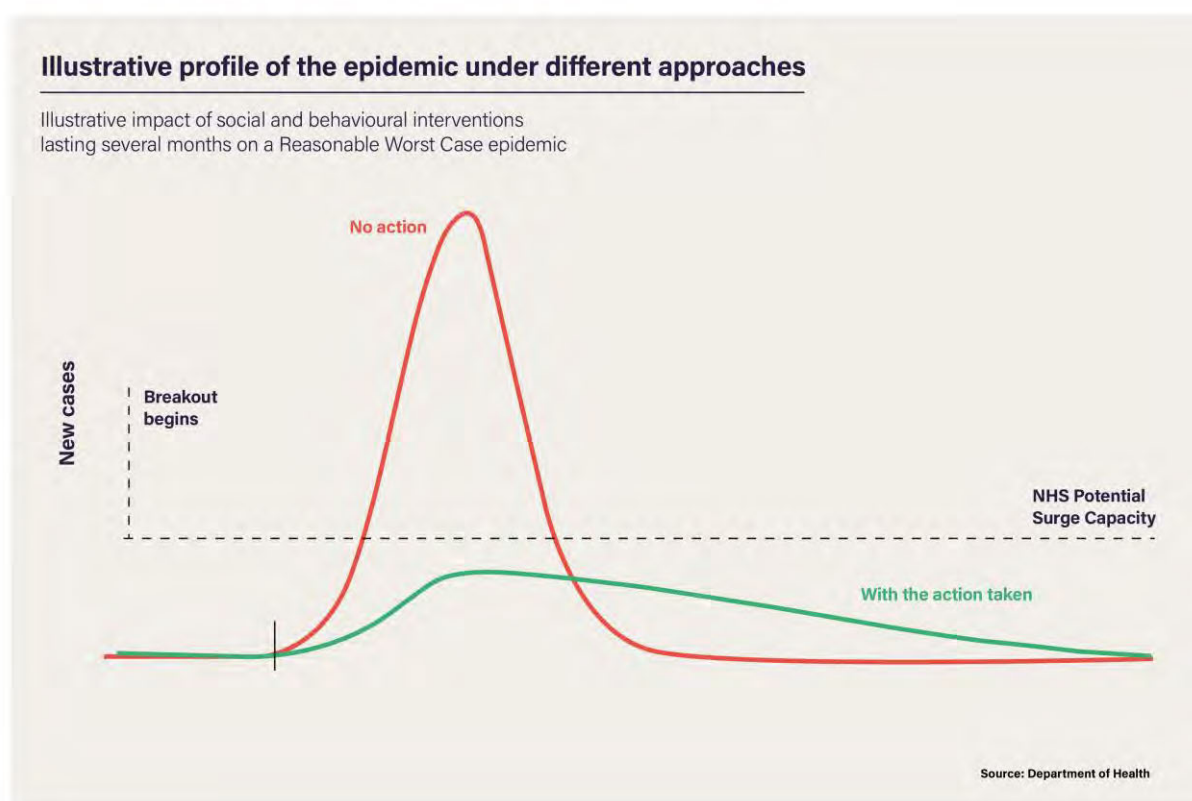
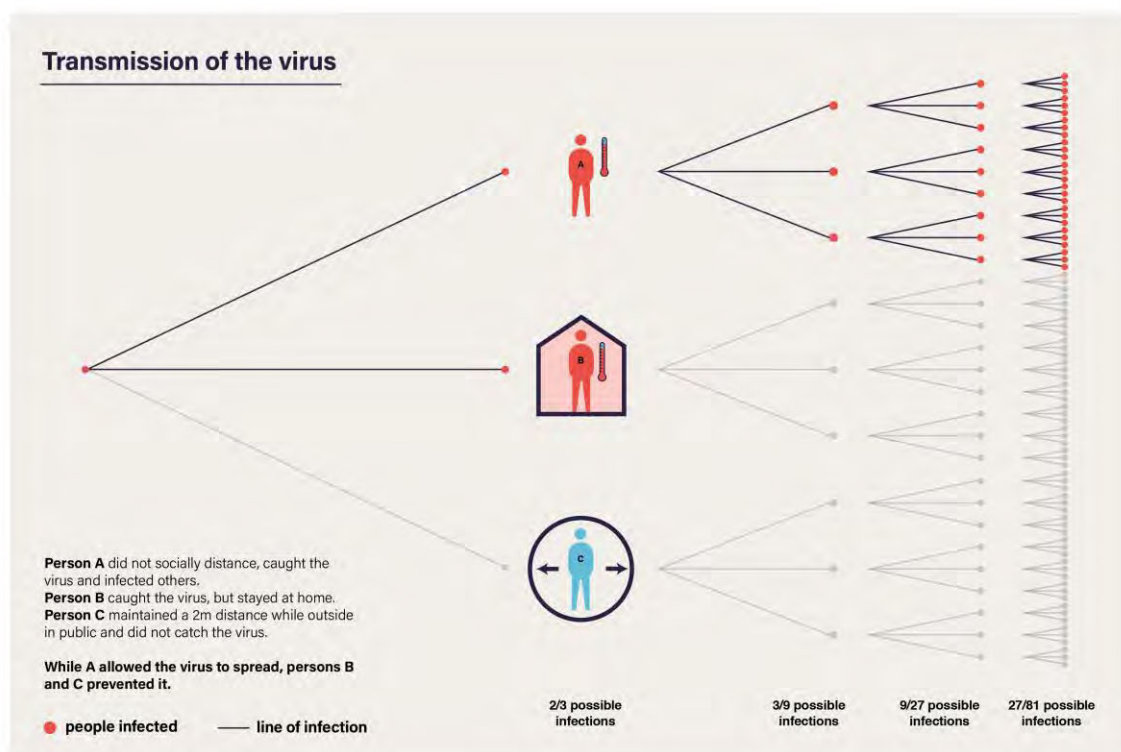


Figure 1: **Illustrative profile of the epidemic under different approaches** Illustrative impact of social and behavioural interventions lasting several months on a Reasonable Worst Case epidemic.

From the start, the Government was guided by science, publishing on 3 March its plan<sup>2</sup> 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.

<sup>2</sup> <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.<sup>3</sup>
- 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.<sup>4</sup>
- 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.<sup>5</sup>

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 January<sup>6</sup>, and daily tests have increased by over 1,000% during April - from 11,041 on 31 March to 122,347 on 30 April.<sup>7</sup>

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

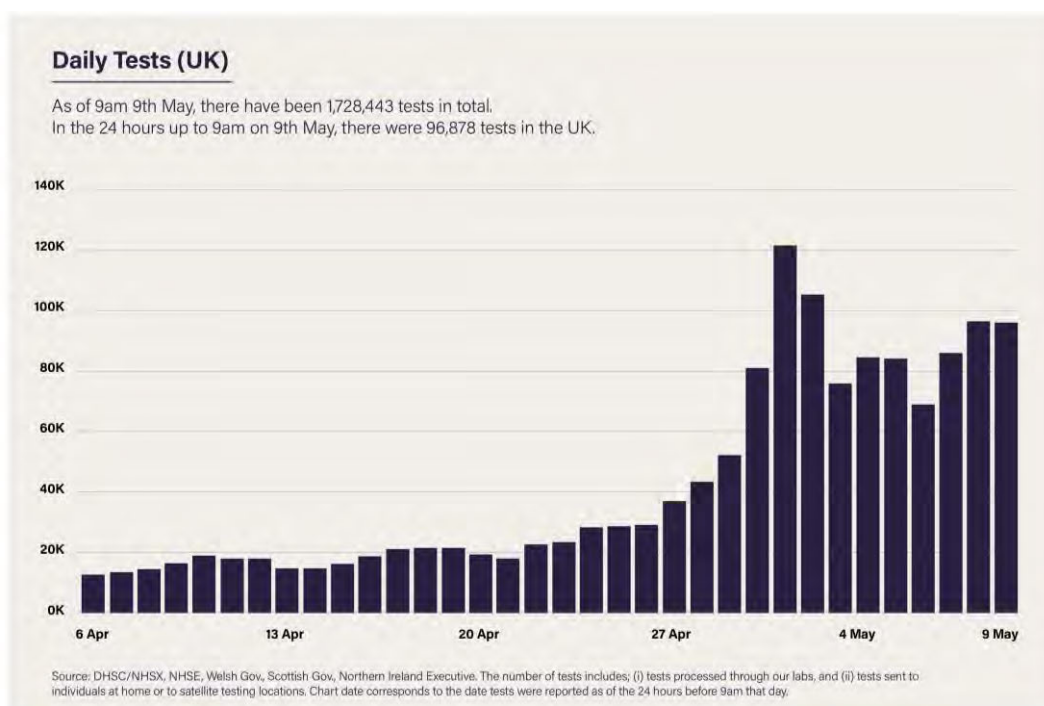
<sup>4</sup> Source: NHSE (COVID daily sitrep), Scottish Gov, Welsh Gov, NI. Note: For NHS acute trusts with Type 1 A&E only

<sup>5</sup> 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.

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

<sup>7</sup> <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.<sup>8</sup> 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,<sup>9</sup> 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.<sup>10</sup>

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.<sup>11</sup>

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.

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

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

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

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

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

<sup>11</sup> 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.<sup>12</sup> 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.<sup>13</sup> 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.<sup>14</sup>

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.<sup>15</sup>

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.

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

<sup>13</sup> OBR, [https://obr.uk/docs/dlm\\_uploads/Coronavirus\\_reference\\_scenario\\_commentary.pdf](https://obr.uk/docs/dlm_uploads/Coronavirus_reference_scenario_commentary.pdf)

<sup>14</sup> OBR, [https://obr.uk/docs/dlm\\_uploads/Coronavirus\\_reference\\_scenario\\_commentary.pdf](https://obr.uk/docs/dlm_uploads/Coronavirus_reference_scenario_commentary.pdf)

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

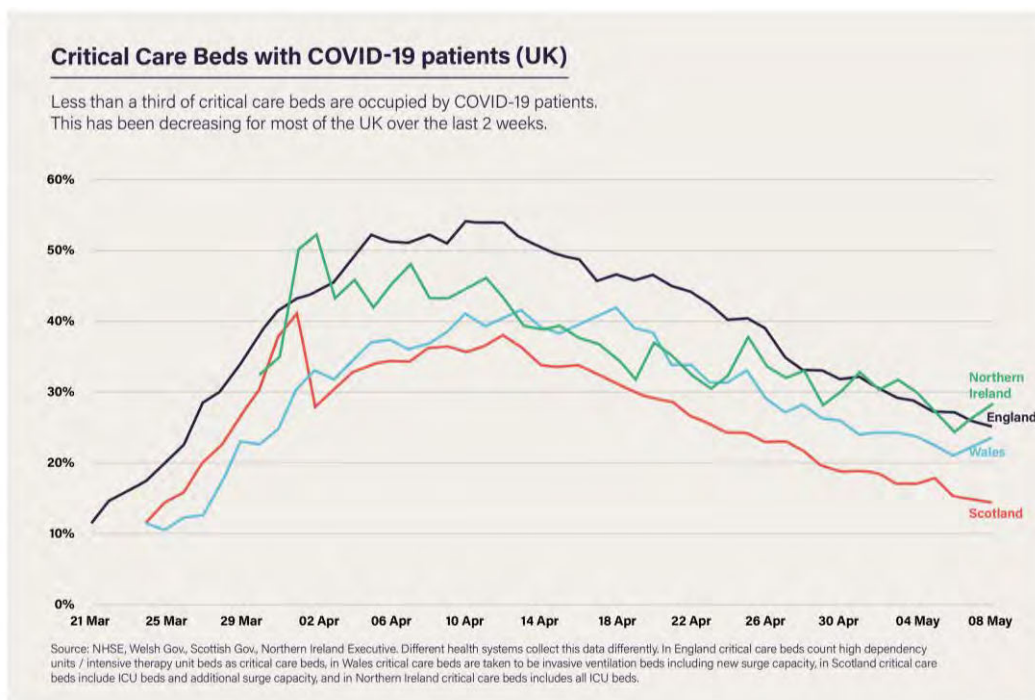
## Moving to the next phase

On 16 April the Government presented five tests for easing measures<sup>16</sup>. 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.

<sup>16</sup> 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.

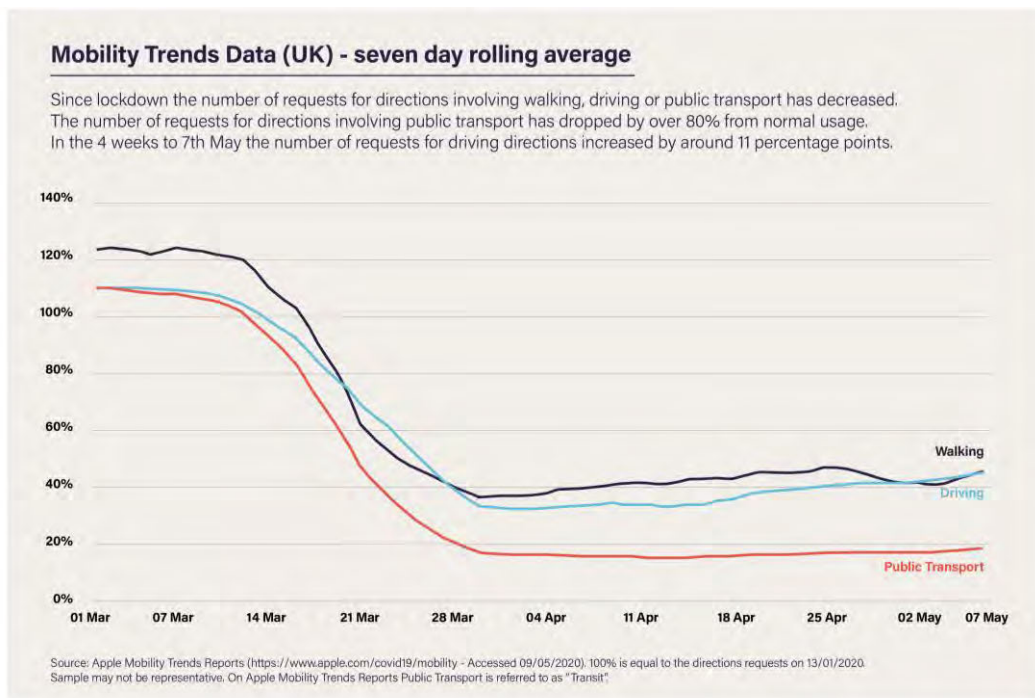
## The challenges ahead

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;<sup>17</sup> and
- The long-term **health effects of any increase in deprivation** arising from economic impacts, as deprivation is strongly linked to ill health.<sup>18</sup>

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.

<sup>17</sup> 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)

<sup>18</sup> 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:

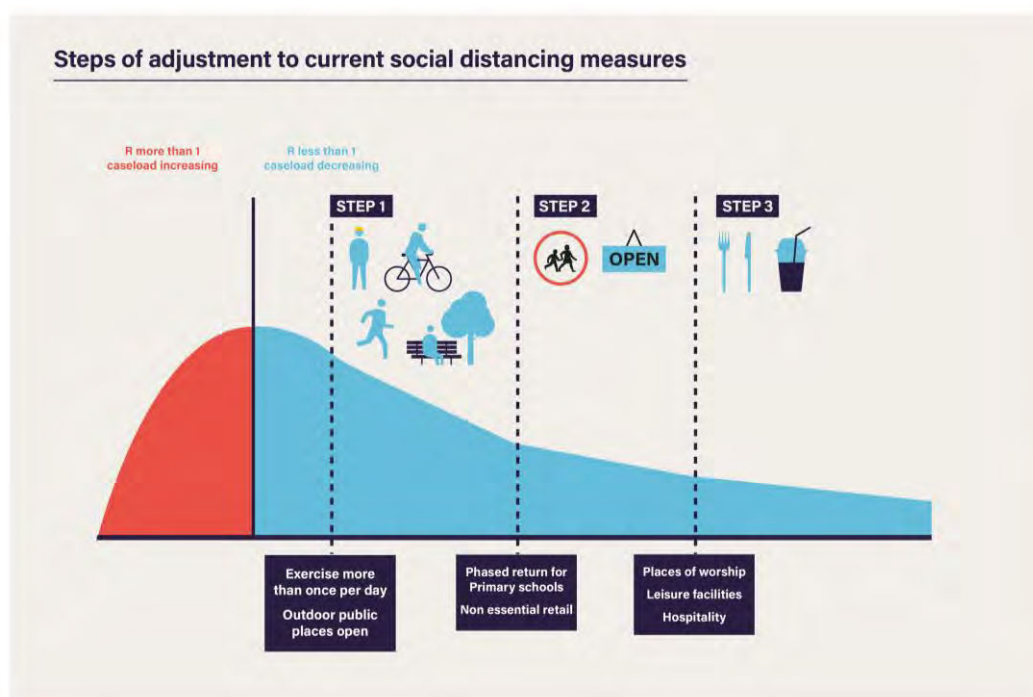
- **making such contact safer** (including by redesigning public and work spaces, and those with symptoms self-isolating) to reduce the chance of infection per contact;
- **reducing infected people's social contact** by using testing, tracing and monitoring of the infection to better focus restrictions 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**.<sup>19</sup> Throughout this period, the Government will need to continue an extensive programme of shielding for this group while the virus continues to circulate.<sup>20</sup> The Government will also have to adjust its protections for other vulnerable locations like prisons and care homes,<sup>21</sup> 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.

<sup>19</sup> 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>

<sup>20</sup> <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>

<sup>21</sup> <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.<sup>22</sup>

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.

<sup>22</sup> <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)<sup>23</sup> and the children of critical workers are able to attend school, as is currently permitted. Approximately 2% of children are attending school in person<sup>24</sup>, 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.

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

<sup>24</sup> [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.<sup>25</sup>

## *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.

<sup>25</sup> 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.<sup>26</sup> **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.<sup>27</sup> 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,<sup>28</sup> 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.

<sup>26</sup> 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#eal-decline>

<sup>27</sup> The Ministry of Housing, Communities and Local Government

<sup>28</sup> 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.<sup>29</sup>

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.<sup>30</sup>

This could be based on the New Zealand model of household "bubbles" where a single "bubble" is the people you live with.<sup>31</sup> 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.<sup>32</sup>

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

<sup>29</sup> 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

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

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

<sup>32</sup> 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.<sup>33</sup>

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

<sup>33</sup> <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.<sup>34</sup>

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.<sup>35</sup> 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

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

<sup>35</sup> 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](#).<sup>36</sup>

## 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

<sup>36</sup> <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.

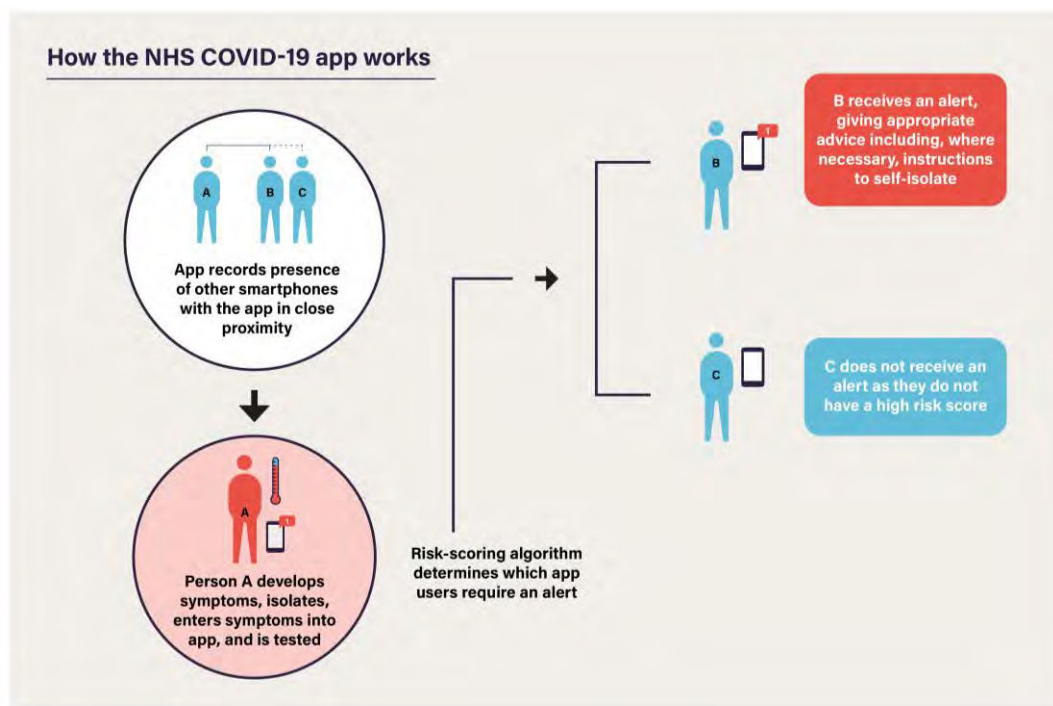


Figure 7: **The NHS COVID-19 app** Model for the NHS COVID-19 app at national launch.

## 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
<b>Clinically Extremely Vulnerable People</b> (All in this cohort will have received communication from the NHS)	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.	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.	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.
<b>Clinically Vulnerable People</b>	People considered to be at higher risk of severe illness from COVID-19.  Clinically vulnerable people include the following: people aged 70 or older, people with liver disease; people with diabetes; pregnant women; and others.	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.	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.
<b>Vulnerable People (Non-clinical)</b>	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.	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.	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.

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

Citygate  
95 Southampton Street  
Reading, RG1 2QU

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](mailto: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.  
70 Wimpole Street  
London  
W1G 8AX

**2. Dr David Muir**, Co-Chair, National Church Leaders Forum – NCLF, A Black Christian Voice.  
70 Wimpole Street  
London  
W1G 8AX

**3. Rev. Derek Andrews**, Pastor, The Presence Of God Ministries  
Keresley Village Community Centre  
Howat Road



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Coventry  
Keresley End  
CV7 8JP

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

**5. Pastor Matthew Ashimolowo**, Senior Pastor, Kingsway International Christian Centre – KICC.  
Prayer City  
Buckmore Park  
Maidstone Road  
Chatham  
ME5 9QG

**6. Bishop Lovel Bent**, Presiding Bishop, Connections Trust.  
93 Acre Lane  
Brixton  
London  
SW2 5TU

**7. Revd. Ian Christensen**, AoG UK, Senior Minister, *New Life Christian Centre International*.  
Brentfield (Harrow Road)  
London  
NW10 0RJ

**8. Chris Demetriou**, Senior Pastor, Cornerstone  
The Church  
38 Station Avenue  
Walton on Thames  
Surrey  
KT12 1NU

**9. Professor John Durodola**, National Chairman, Overseas Fellowship of Nigerian Christians (OFNC).  
12 Chambers Walk  
Stanmore  
Middlesex  
London  
HA7 4FN

**10. Rev. Asif Gill**, Senior Leader, Ecclesia International  
70 Rollason Road  
Radford  
Coventry  
West Midlands  
CV6 4AL

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



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43 Auckland Hill  
West Norwood  
London  
SE27 9PF

**12. Revd Alex Gyasi MBE**, Convener & Senior Pastor, Kingdom Culture Alliance & Highway of Holiness.  
Unit 8  
2-8 Fountayne Road  
Tottenham  
London  
N15 4QL

**13. Revd. Dr David Hathaway D.D.**, President, Eurovision Mission to Europe.  
41 Healds Road  
Dewsbury  
WF13 4HU

**14. Pastor Thabo Marais**, Senior Pastor, Christian Revival Church London  
46 Commercial Road  
Whitechapel  
London  
E1 1LP

**15. Canon Yaqub Masih MBE**, Secretary General, UK Asian Christians; Secretary General & Founder, New Horizons  
Huddersfield  
West Yorkshire  
HD3 3WW

**16. Bishop Michael Nazir-Ali**, President, Oxford Centre for Training, Research, Advocacy and Dialogue – OXTRAD.  
70 Wimpole Street  
London  
W1G 8AX

**17. Revd Dr Brad Norman**, Salvation For The Nations Intl. Churches.  
Unit 2 Sterling Court  
Mundells  
Welwyn Garden City  
AL7 1FT

**18. Pastor Sunday Okenwa**, Regional Overseer, Deeper Christian Life Ministry  
Deeper Christian Life Ministry  
Dulwich  
SE22 8LD

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

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Legal Service



*Longfellow Road  
Stoke  
Coventry  
West Midlands  
CV2 5HD*

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

*The Forum  
Longfellow Road  
Stoke  
Coventry  
West Midlands  
CV2 5HD*

**21. Pastor Paul Song**

*London Shepherd Church  
16-18 High Street  
Sutton  
Surrey  
SM1 1HN*

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

*Gateway House  
John Wilson Street  
Woolwich  
London  
SE18 6QQ*

**23. Rev. Melvin Tinker**

*St John Newland  
Clough Road  
Kingston-upon-Hull  
HU6 7PA*

**24. Rev. Keith Waters**

*New Connexions Church  
Larkfield  
High Barnes  
Ely  
CB7 4SB*

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

*Prophetic Voice Ministers  
International Headquarters  
CFT Cathedral  
Ebenezer Building  
186 Powis Street*

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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 20<sup>th</sup> 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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## Government Legal Department

Andrew Storch Solicitors  
Citygate  
95 Southampton Street  
Reading  
RG1 2QU

By email only- michael@andrewstorch.co.uk

Litigation Group  
102 Petty France  
Westminster  
London  
SW1H 9GL

T 020 7210 3000

DX 123243, Westminster 12 [www.gov.uk/gld](http://www.gov.uk/gld)

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

11 June 2020

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](mailto: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).<sup>1</sup>

### **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.**

<sup>1</sup> 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.

[REDACTED]

[REDACTED]

[REDACTED]

For the Treasury Solicitor

D 0207 210 3439

F 0207 210 3480

E [REDACTED]@governmentlegal.gov.uk

Tel: 0118 958 4407

Mobile: [REDACTED]

Email: [REDACTED]

Secure: [REDACTED]

[www.andrewstorchsolicitors.com](http://www.andrewstorchsolicitors.com)

Government Legal Department  
102 Petty France  
Westminster  
SW1H 9GL

Citygate

95 Southampton Street  
Reading, RG1 2QU

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.

Criminal  
Defence Service



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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*<sup>1</sup>, 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,

<sup>1</sup> [2020] EWHC 1392 (Admin)



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2007)<sup>2</sup>. 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**

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



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Andrew Storch Solicitors  
Citygate  
95 Southampton Street  
Reading  
RG1 2QU

By email- [REDACTED]

Litigation Group  
102 Petty France  
Westminster  
London  
SW1H 9GL

T 020 7210 3000

DX 123243, Westminster 12 [www.gov.uk/gld](http://www.gov.uk/gld)

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

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

[REDACTED]  
[REDACTED]  
For the Treasury Solicitor

D 0207 210 3439  
F 0207 210 3480  
E [REDACTED]





Michael

Mon 6/22/2020 1:01 PM

To: [REDACTED]  
Bcc: Staff - Legal Team <legal.staff@christianconcern.com>



Dr Martin Parsons Expert Stat...

709 KB

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]  
Consultant | Andrew Storch Solicitors Ltd  
City Gate 95-107 Southampton St  
Reading RG1 2QW

01189 584 407 (tele)

01189 873 250 (fax)

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[www.andrewstorchsolicitors.com](http://www.andrewstorchsolicitors.com)secure email: [michael.bertram.phillips@michaelbphillips.cjsm.net](mailto:michael.bertram.phillips@michaelbphillips.cjsm.net)

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Andrew Storch Solicitors  
Citygate  
95 Southampton Street  
Reading  
RG1 2QU

By email- [REDACTED]

Litigation Group  
102 Petty France  
Westminster  
London  
SW1H 9GL

T 020 7210 3000

DX 123243, Westminster 12 [www.gov.uk/gld](http://www.gov.uk/gld)

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

[REDACTED]  
[REDACTED]  
For the Treasury Solicitor

D 0207 210 3439  
F 0207 210 3480  
E [REDACTED]@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**

---

**EXPERT WITNESS STATEMENT**

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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.<sup>1</sup> 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 meaning<sup>2</sup>; 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.

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<sup>1</sup> 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.

<sup>2</sup> 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; 1 Thessalonians 1:1; 2:14 (x2); 2 Thessalonians 1:4; 1 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?"*<sup>3</sup>

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 Hades<sup>4</sup> will not overcome it"*<sup>4</sup> and where even *"two or three gather in my name, there am I with them."*<sup>5</sup>
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.<sup>6</sup> The Acts of the Apostles describes some at least, as physically meeting together on a daily basis,<sup>7</sup> which Hebrews also implies.<sup>8</sup> 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"*;<sup>9</sup> while Hebrews, which is written in the context of persecution gives a

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<sup>3</sup> 1 Timothy 3:1-7.

<sup>4</sup> Matthew 16:18.

<sup>5</sup> Matthew 18:20.

<sup>6</sup> John 20:19; Acts 4:23-31; 5:42; 12:12-17.

<sup>7</sup> Acts 1:14; 2:1; 2:44-46; 5:12.

<sup>8</sup> Hebrews 3:13.

<sup>9</sup> 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.”*<sup>10</sup>

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.<sup>11</sup> 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.”*<sup>12</sup>

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)<sup>13</sup>

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

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<sup>10</sup> Hebrews 10:24-25.

<sup>11</sup> Acts 20:7ff.

<sup>12</sup> Romans 14:5.

<sup>13</sup> 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,”<sup>14</sup>*

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.”<sup>15</sup>*

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.<sup>16</sup>

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.<sup>17</sup>

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<sup>14</sup> 1 Corinthians 12:12-22.

<sup>15</sup> 1 Corinthians 12:27-31.

<sup>16</sup> 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.

<sup>17</sup> 1 Timothy 4:13; 5:17.

- ii) Corporate prayer.<sup>18</sup>
- iii) Gathering together for Christian fellowship.<sup>19</sup>
- iv) Worship – which includes both a) *“singing to one another” with Psalms, Hymns and spiritual songs,*<sup>20</sup> and b) songs of worship addressed specifically to God.<sup>21</sup> 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.”*<sup>22</sup>
- v) The Lord’s Supper i.e. communion/eucharist.<sup>23</sup>
- vi) Baptism.<sup>24</sup>
- vii) Ministering to the church by means of spiritual gifts.<sup>25</sup> 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.”*<sup>26</sup>
- viii) Evangelism i.e. preaching to outsiders.<sup>27</sup>
- ix) It is also implied, though not specifically stated that weddings may have been conducted.<sup>28</sup>
- x) Similarly, there is evidence of something approximating to funerals having been conducted by the church.<sup>29</sup>

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.

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<sup>18</sup> Acts 2:42.

<sup>19</sup> Acts 2:42.

<sup>20</sup> Ephesians 5:19.

<sup>21</sup> Acts 16:25.

<sup>22</sup> Colossians 3:16.

<sup>23</sup> Acts 2:42; 1 Corinthians 11:17-34.

<sup>24</sup> Acts 2:38,41; 8:12, 36-38.

<sup>25</sup> Romans 12:3-8; 1 Corinthians 12:7-31; 14:1-28.

<sup>26</sup> 1 Corinthians 14:26.

<sup>27</sup> Acts 2:14ff.

<sup>28</sup> 1 Corinthians 7:8-9; 1 Timothy 5:11-14.

<sup>29</sup> 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.."*<sup>30</sup>

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. <sup>14</sup> 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."*<sup>31</sup>

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<sup>30</sup> Matthew 28:18-20.

<sup>31</sup> 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."*<sup>32</sup>

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."*<sup>33</sup>

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

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<sup>32</sup> Acts 8:36-38.

<sup>33</sup> 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.<sup>34</sup>

#### *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."<sup>35</sup> 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."*<sup>36</sup>

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.<sup>37</sup> 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:

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<sup>34</sup> The sole exception, being by hospital chaplains.

<sup>35</sup> 1 Corinthians 11:17.

<sup>36</sup> 1 Corinthians 11:20-21.

<sup>37</sup> 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.”<sup>25</sup> 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.<sup>38</sup>
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.<sup>39</sup> 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 of 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.<sup>40</sup> 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”*.<sup>41</sup>

As such, this too cannot be conducted over the internet.

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<sup>38</sup> 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.

<sup>39</sup> 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.

<sup>40</sup> 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.

<sup>41</sup> 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)<sup>42</sup>

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.<sup>43</sup> 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."*<sup>44</sup>

The latter term which is rendered as 'fornication' in some English translations covers all forms of sexual activity outside of marriage.<sup>45</sup>

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<sup>42</sup> Wayne Grudem *Systematic Theology: An Introduction to Biblical Doctrine* (Grand Rapids: Zondervan/Leicester:IVP,1994):991-96.

<sup>43</sup> 1 Corinthians 5:9-11; 6:12-20.

<sup>44</sup> Hebrews 13:4.

<sup>45</sup> 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 unmarried<sup>46</sup> 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."*<sup>46</sup>

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.<sup>47</sup> 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.<sup>48</sup>
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."*<sup>49</sup>
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

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<sup>46</sup> 1 Corinthians 7:8-9.

<sup>47</sup> 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'.

<sup>48</sup> 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.

<sup>49</sup> 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."*<sup>50</sup>

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.<sup>51</sup> However, in the New Testament the church only met either in homes or occasionally, as at Ephesus in public halls.<sup>52</sup> 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.

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<sup>50</sup> Allan Mallinson *The Making of the British Army: From the English Civil War to the War on Terror* (London:Bantam, 2009, 2011):434.

<sup>51</sup> M.A. Smith *The Church Under Siege* (Leicester:IVP,1976):18.

<sup>52</sup> 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 Carta<sup>53</sup> 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.<sup>54</sup> 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.”<sup>55</sup>*

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<sup>53</sup> 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.

<sup>54</sup> Act of Supremacy 1558 c.1 (1 Elizabeth 1) and Act of Uniformity 1559 (Public Act, 1 Elizabeth I, c. 2).

<sup>55</sup> 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.”*<sup>56</sup>

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 sacraments<sup>57</sup> and the sacraments are specifically stated to be outside the sphere of the state to interfere with.<sup>58</sup>
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.”*<sup>59</sup>

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<sup>56</sup> Church of Scotland Act 1921 c.29 (Regnal.11 and 12 Geo. 5) Schedule 5.

<sup>57</sup> Article 25 *Of the Sacraments*.

<sup>58</sup> Article 37 *Of the Civil Magistrates*.

<sup>59</sup> *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,<sup>60</sup> which HM Queen Elizabeth II 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.”<sup>61</sup>*

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.

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<sup>60</sup> Prescribed by the Coronation Oath Act 1688.

<sup>61</sup> 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.<sup>62</sup> 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'.<sup>63</sup> 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).<sup>64</sup> 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.<sup>65</sup>

## 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

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<sup>62</sup> David Starkey *Magna Carta: The True Story Behind the Charter* (London: Hodder, 2015): 56.

<sup>63</sup> 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.

<sup>64</sup> 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].

<sup>65</sup> <<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 to which they refer.

Signature...



ate.....

*20th Jan 2020*

**Christian Concern**  
**Potential litigation concerning the reversal of church closure as**  
**part of COVID-19 precautions**

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Report prepared under  
the instruction of:

**Michael B Phillips**  
**Andrew Storch Solicitors**  
**Citygate**  
**95 Southampton Street**  
**Reading RG1 2QU**

Reference:

MP:MP3515

Report prepared by:

**Ian Blenkarn** CBiol CSci FRSB FRSPH  
**Blenkarn Environmental**  
**18 South Road**  
**Ealing, London W5 4RY**

5 May 2020



*Led by Science*  
*Driven by Research*



**Blenkarn Environmental**

[www.ianblenkarn.com](http://www.ianblenkarn.com)



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## **1 Documents received**

Following a brief telephone enquiry, a Letter of Instruction sent by email and dated 1 May 2020.

## **2 Instruction**

To provide an independent expert report that considers:

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**

I have no conflicts of interest in any aspect of this case.

## **4 Current COVID-19 precautions (community)**

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.

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.

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.

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 metre<sup>1</sup> 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

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<sup>1</sup> 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 wipes<sup>2</sup>. 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.

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<sup>2</sup> <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 nearby<sup>3</sup>.
- 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

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<sup>3</sup> <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:

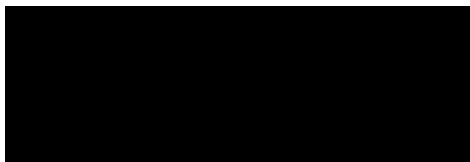
- 1 I understand that my duty in providing written reports and giving evidence is to help the Court, and that this duty overrides any obligation to the party by whom I am engaged or the person who has paid or is liable to pay me. I confirm that I have complied and will continue to comply with my duty.
- 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;
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- 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.
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- 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.
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- 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**

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Report prepared under  
the instruction of:

**Michael B Phillips**  
**Andrew Storch Solicitors**  
**Citygate**  
**95 Southampton Street**  
**Reading RG1 2QU**

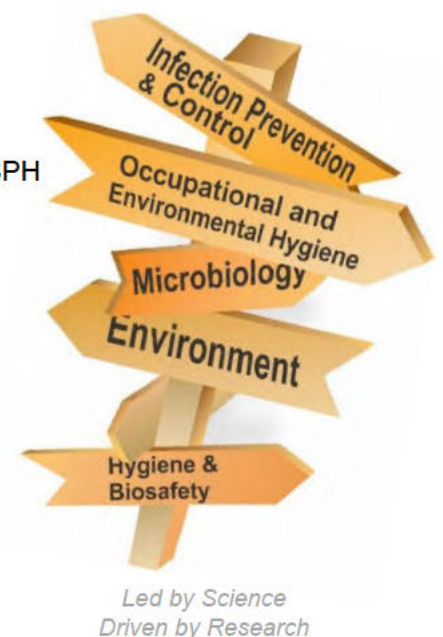
Reference:

MP:MP3515

Report prepared by:

**Ian Blenkarn** CBiol CSci FRSB FRSPH  
Blenkarn Environmental  
18 South Road  
Ealing, London W5 4RY

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 Government<sup>1</sup> 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, Jummah 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*

<sup>1</sup> <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.

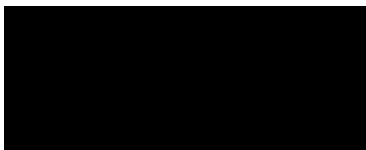
35 Regrettably, the Government announcement includes some significant contradictions that I have discussed above. Eliminating those contradictions to permit regular church services, with the strict proviso that all church activities are properly risk managed and undertaken in strict accordance with the 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.
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*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  
\_\_\_\_\_

**T R A N S C R I P T   O F   J U D G M E N T**

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.

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**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 RENAISSANCE FOUNDATION**

Amicus Curiae

and

**THE MINSTER OF COOPERATIVE**

**GOVERNANCE AND TRADITIONAL AFFAIRS**

Respondent

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**JUDGMENT**

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**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 power<sup>1</sup>”.*

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 any conditions to allow the competent authority to correct the defect<sup>2</sup>”.*

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 becoming<sup>3</sup>”.

<sup>1</sup> Affordable Medicines Trust v Minister of Health 2006 (3) SA 247 (CC) per Ngcobo, J (as he then was).

<sup>2</sup> Section 172(1) of the Constitution.

<sup>3</sup> “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.

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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<sup>2</sup> 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 20002 (“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 15<sup>th</sup> 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 above<sup>4</sup>.
- 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 conferred<sup>5</sup>. 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

<sup>4</sup> 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]

<sup>5</sup> 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 above<sup>6</sup>.

- 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*”<sup>7</sup>.
- 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*”<sup>8</sup>.
- 6.5 The Chief Justice labelled such a failure a “disconnect” between the means and the purpose<sup>9</sup>.
- 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.

<sup>6</sup> *Law Society v President of the RSA* 2019 (3) SA 30 (CC) at [61] – [63].

<sup>7</sup> *DA v President of RSA* (supra) at para [32].

<sup>8</sup> *Allbert v Centre for the Study of Violence and Reconciliation and others* 2010 (3) SA 293 (CC) at para [51].

<sup>9</sup> *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 means<sup>10</sup>”. 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 life<sup>11</sup>, to access to health care<sup>12</sup> and an environment that is not harmful<sup>13</sup>. 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

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<sup>10</sup> 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.

<sup>11</sup> Section 11 of the Constitution.

<sup>12</sup> Section 27 of the Constitution.

<sup>13</sup> 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 itself<sup>14</sup>. 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

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<sup>14</sup> 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 from 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 judiciocracy<sup>15</sup>”. 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*

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<sup>15</sup> 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 government*<sup>16</sup>”.

- 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 apply<sup>17</sup>. 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:

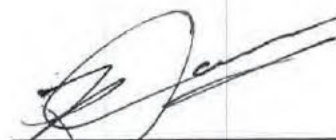
1. The regulations promulgated by the Minister of Cooperation and Traditional Affairs (“the Minister”) in terms of section 27(2) of the Disaster Management Act 57 of 2002 are declared unconstitutional and invalid.
2. The declaration of invalidity is suspended until such time as the Minister, after consultation 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

<sup>16</sup> Economic Freedom Fighters v Speaker of the National Assembly 2016 (3) SA 580 (CC) at paras [92] and [93].

<sup>17</sup> 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.



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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... All ... 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 VARIEUR  
Madejda BIDAULT  
Traductrice assermentée, langue anglaise  
Expert près la Cour d'Appel de Rouen  
N° 2020/6-2211  
L 22.06.2020

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 :

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Stamp: **Ministère de l'Intérieur**  
Signature: *[Handwritten signature]*  
Text: *Reçu pour le Conseil d'Etat*



1°) 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°) 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° 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°) 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°) 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°) 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°) 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°) 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° 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

  
Tribunal administratif de Paris  
Le Président du Tribunal administratif de Paris



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°) 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°) 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°) 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°) 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°) 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°) 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° 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°) to stay the execution of the provisions of article 10 (III) of decree n° 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°) 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;

*Madeira BIGALLO*  
*anplais*

- 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 AL... 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

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Handwritten signature: *Amplius*  
Stamp: *Madame la Présidente*  
Date: *14/03/2020*  
Time: *14h00*

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 1<sup>st</sup> 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 2<sup>nd</sup>".* 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.

The block contains a handwritten signature in blue ink and an official circular stamp. The stamp is from the 'Tribunal administratif de Paris' and includes the text 'Département de Paris' and 'Service des Recours'. The signature appears to be 'M. [illegible]'.



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*

*Madame PIDAULT*  
*Épouse de Monsieur PIDAULT*  
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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<sup>o</sup> 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 m<sup>2</sup> 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

*Madame EUGENIE*  
*compte*



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.

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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.

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.

  
Valérie BIGAULT  
Ministre de l'Intérieur  
10 rue de la Harpe  
75004 Paris

# 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) <sup>1</sup>The 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.

<sup>2</sup>Sales 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) <sup>1</sup>The 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.

<sup>2</sup>The 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.

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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.

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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  
1995 3<sup>rd</sup> Street, Suite 220  
Baker City, OR 97814  
(541) 523-6303

Matthew B. Shirliff, Circuit Judge  
Elaine A. Calloway, Trial Court Administrator  
FAX (541) 523-9738

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STATE OF OREGON  
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May 18, 2020

Ray Hacke  
Pacific Justice Institute  
1850 45<sup>th</sup> Ave. NE, Suite 33  
Salem, OR 97305

Marc Abrams and Christina Beatty-Walters  
Oregon Department of Justice  
100 SW Market Street  
Portland, OR 97201

Kevin Mannix  
2009 State St.  
Salem, OR 97301

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.

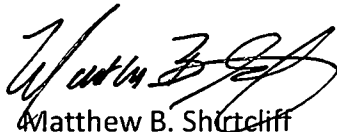
#### INJUNCTION IS IN THE PUBLIC INTEREST

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. Shirtcliff  
Circuit Judge

STATE OF OREGON )

) ss

CERTIFICATE OF MAILING

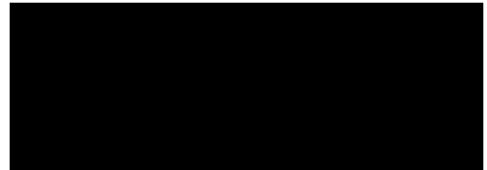
County of Baker )

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  
Kevin Mannix, attorney for intervenor-plaintiffs  
Marc Abrams, Assistant Attorney General  
Christina Beatty-Walters, Assistant Attorney General



Dated at Baker City, Oregon this 18<sup>th</sup> day of May, 2020.

  
\_\_\_\_\_  
Judicial Assistant



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I hereby certify that the foregoing is a true and correct copy of the original in its entirety.

Dated this 18<sup>th</sup> day of May, 2020.

\_\_\_\_\_  
Judicial Assistant

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# Texas Gov. Says Churches May Remain Open Amid COVID-19

By Michelle Casady

Law360 is providing free access to its coronavirus coverage to make sure all members of the legal community have accurate information in this time of uncertainty and change. Use the form below to sign up for any of our daily newsletters. Signing up for any of our section newsletters will opt you in to the daily Coronavirus briefing.

Law360 (March 31, 2020, 8:46 PM EDT) -- Texas Gov. Greg Abbott on Tuesday issued an executive order that classifies churches as “essential services” just a day after a group of pastors challenged local government orders that prohibited in-person services in light of the spread of COVID-19.

The executive order — which also extends school closures statewide through May 4 — comes one day after Fox News guest commentator Dr. Steven Hotze and three Houston pastors asked the [Texas Supreme Court](#) to declare unconstitutional a March 24 order from Harris County Judge Lina Hidalgo barring in-person religious services.

“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](mailto:reprints@law360.com).*

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