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My Ref: MP:MP3515

Date: 15 June 2020

Dear Sir/Madam

Our client - Rev Ade Omooba et al
Your Reference: Z2006192/HHS/H017

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

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

The Issues

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

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Response

Using the numbering in your letter.

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



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

¹ [2020] EWHC 1392 (Admin)



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

ADR Proposals

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

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

Yours faithfully



Andrew Storch solicitors

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

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