In the High Court of Justice
Queen's Bench Division
Administrative Court

CO-3583-2021

In the matter of an application for judicial review

THE QUEEN

on the application of

(1) DR SAMUEL WHITE
(2) [redacted]
(3) [redacted]
(4) [redacted]

Claimants

-and-

SECRETARY OF STATE FOR HEALTH AND SOCIAL CARE

Defendant

Notification of the Judge's decision on the application for permission to apply for judicial review (CPR 54.11, 54.12)

Following consideration of the documents lodged by the Claimant [and the Acknowledgement(s) of service filed by the Defendant and/or Interested Party]

ORDER by the Honourable Mr Justice Mostyn

1. The application for permission to apply for judicial review is granted only on Ground 2 – article 14 (paras 98 – 104 of SFG)

2. Otherwise, permission is refused on all other grounds.

3. The application is to be listed for one day. The time estimate is to be revised in the event that the claimant succeeds on an oral renewal in obtain permission for any of the refused grounds.

Observations/ Reasons

1. I agree with the defendant that the discrimination ground aside, the claimants are seriously out of time in respect of their central challenge. They complain that certain people, including themselves as unvaccinated people, have to self-isolate after arriving on these shores from certain countries. But that requirement has been in place since June 2020. That an exception has been carved out for the vaccinated cohort does not change the restriction that has been imposed on them for 18 months. The only aspect of their claim that does not fall foul of the rule of promptitude in CPR 54.5(1) is the article 14 claim namely that the creation of the exception resulted in unequal treatment being meted out to them.

2. I have come very close to concluding that even that claim does not satisfy the requirement of promptitude. However, in my judgment, the three-month backstop should apply in this case given the complexity and importance of the issues.

3. I am satisfied that the article 14 sub-ground is arguable, and is not out of time. I am not going to hazard any kind of probabilistic assessment of its likelihood of success at trial. Suffice to say that the claimant faces a formidable case against the claim both as to status and proportionality.

4. I am satisfied that, quite apart from the time bar, all the other grounds are unarguable. I cannot accept that in the context of the public emergency of the pandemic the defendant failed sufficiently to inform himself of all material relevant to the decision to make the regulations.

5. I am fully satisfied that the article 5 point is unarguable. The Court of Appeal decision in *Dolan*, in effect disposes of the point.

6. I am not satisfied that any of the stand-alone article 8 sub-grounds is arguable. The argument that the claimants are being coerced to receive medical treatment is completely untenable. It is the stuff of fantasy to portray the arrival of the exception as giving rise to a state of affairs where the refusers are going to be marched off to be compulsorily injected. As the defendant rightly says: individuals are not forced to obtain a vaccination

7. If there was an interference with the claimant's other article 8 rights then this happened a long time ago and was at the time plainly proportionate and justifiable. Since then an exception has been carved out for the vaccinated cohort; this does not have the effect of transforming a regime that was proportionate and justifiable into one that isn't.

8. Ground 3 is in my judgment completely unarguable. A reading down of a piece of legislation to make it compliant with the Human Rights Act requires the new construction to go with the grain of the original language. The construction that is suggested would turn the natural meaning of the words *"P has been advised by a registered medical practitioner that for clinical reasons P should not be vaccinated"* upside down to mean instead *"P has decided, irrespective of the advice of a registered medical practitioner, not to be vaccinated for any reason"*. Such a construction could never lawfully be made.

9. Finally, I make it clear that there is no question of the substantive hearing being expedited at the expense of other important cases which have been waiting patiently in a queue to be heard for a long time. The alleged hardship suffered by the claimants by virtue of their unequal treatment is in reality of a very minor nature; it is arguably not hardship at all. There is no question of them jumping the queue at the expense of other cases.

Case Management Directions

1. The Defendant within 35 days of the date of service of this Order, file and serve (a) Detailed Grounds for contesting the claim or supporting it on additional grounds, and (b) any further written evidence that is to be relied on. For the avoidance of doubt, the defendant may comply with (a) above by filing and serving a document which states that its Summary Grounds shall stand as the Detailed Grounds required by CPR 54.14.

2. Any evidence from the Claimant in reply shall be filed and served within 21 days of the date on which the Defendant serves evidence pursuant to 1(b) above.

3. The parties shall agree the contents of the hearing bundle and must file it with the Court not less than 4 weeks before the date of the hearing of the judicial review. An electronic version of the bundle shall be prepared and lodged in accordance with the Guidance on the Administrative Court website. The parties shall, if requested by the Court lodge 2 hard-copy versions of the hearing bundle.

4. The Claimant must file and serve a Skeleton Argument not less than 21 days before the date of the hearing of the judicial review.

5. The Defendant must file and serve a Skeleton Argument not less than 14 days before the date of the hearing of the judicial review.

6. The parties shall agree the contents of a bundle containing the authorities to be referred to at the hearing. An electronic version of the bundle shall be prepared in accordance with the Guidance on the Administrative Court website. The parties shall if requested by the Court, prepare a hard-copy version of the authorities bundle. The electronic version of the bundle and if requested, the hard copy version of the bundle, shall be lodged with the Court not less than 3 days before the date of the hearing of the judicial review.

7. The Claimant may request that the decision to refuse permission be reconsidered at a hearing by filing and serving a completed Form 86B within 7 days after the date this order is served on the Claimant. The reconsideration hearing will be fixed in due course. However, if all parties agree and time estimates for substantive hearing allow, the reconsideration hearing may take place immediately before the substantive hearing. The Administrative Court Office must be notified within 21 days of the service and filing of Form 86B if the parties agree to this course.

Case NOT suitable for hearing by a Deputy High Court Judge* [X]

Signed Mr Justice Mostyn

The date of service of this order is calculated from the date in the section below

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For completion by the Administrative Court Office

Sent / Handed to

either the Claimant, and the Defendant [and the Interested Party]

or the Claimant's, and the Defendant's, [and the Interested Party's] solicitors

Date: 24/11/2021

Solicitors:
Ref No.

Notes for the Claimant

To continue the proceedings a fee is payable.

For details of the current fee please refer to the Administrative Court fees table at https://www.gov.uk/court-fees-what-they-are.

Failure to pay the fee or submit a certified application for fee remission may result in the claim being struck out.

The form to make an application for remission of a court fee can be obtained from the Justice website https://www.gov.uk/get-help-with-court-fees

You are reminded of your obligation to reconsider the merits of your claim on receipt of the defendant's evidence.