PTA Template 269E1 - OCT16 – JR (Admin)

IN THE COURT OF APPEAL, CIVIL DIVISION

REF: **CA-2021-003181 and 3181A**

The Queen, on the application of

R (Angell) –v– Secretary of State for Health and Social Care

ORDER made by the Rt. Hon. Lord Justice Lewison

On consideration of the appellant's notice and accompanying documents, but without an oral hearing, in respect of an application for permission to appeal, against the refusal of the High Court to grant permission to apply for judicial review

Decision: Permission to apply for judicial review granted in part

An order granting permission may limit the issues to be heard or be made subject to conditions

Permission to appeal: GRANTED IN PART

OR

Permission to apply for judicial review: Granted in part on grounds 2 (i) (d) and 2 (vi). Refused on all other grounds

Where permission to apply for judicial review is granted, the application should be returned to the Administrative Court ☒

OR

There are special reasons (set out below) why the application should be retained in the Court of Appeal ☐

Reasons

1. The letter of 20 December 2020 is plainly not a decision capable of challenge by JR. But is arguable that if the substantive grounds are made out, there was a continuing state of affairs in some respects, such as to permit a challenge by way of a declaration or mandatory order.

2. It is clear that an application for JR is not an appropriate vehicle for the determination of contested scientific matters. Most of the contents of the statement of facts and grounds deal with assertions about the safety (or otherwise) of 5G, which are not properly the subject of an application for JR.

3. It is plain from the grounds of resistance that HMG have taken advice on the safety of 5G from a variety of reputable bodies including ICNRIP, the Chief Medical Officer, PHE and COMARE. The extent of advice that a public body is required to take is a matter for the public authority concerned. It is not arguable that taking advice from those bodies is susceptible to challenge on public law grounds. Nor it arguable that the Secretary of State unlawfully exceeded his powers under s 2A of the NHS Act 2006 for the reasons given in the grounds of resistance.

4. The advice on which the defendants rely addresses the position of children as well as adults. The allegation of failure to consider the best interests of children is not arguable.

5. There is no continuing duty to carry out an assessment compliant with the PSED. This allegation could only support an allegation that previous decisions were unlawful because of a failure to comply with the PSED. The grounds of appeal identify decisions on approval of 5G, decisions on permissible locations of 5G and the adoption of the ICNRIP guidelines. But any challenge to those decisions is long out of time.

6. Grounds (2) (i) (d) and (2) (vi) assert a duty to give reasons. The appellants do not point to any domestic authority requiring the giving of reasons in a case like this. The appellants rely on *Giacomelli v Italy* at [83]. But that case does not more than require public *access* to the studies on which the public authority has relied. It does not hold that there is a positive duty to give reasons. Nevertheless in *Guerra v Italy* (1996) EHHR 357 at [60] the ECtHR does appear to have accepted a positive duty to communicate information on environmental matters. This ground does, in my judgment, pass the relatively low threshold required for permission to apply for JR.

7. The Supplementary Bundle is not relevant to those grounds of appeal; and there is no reason why the court should rely on it.

8. There is no special reason why the application should remain in the Court of Appeal. The Administrative Court should give further directions, including directions to excise from the JR claim form the contested scientific evidence.

Where permission has been granted, or the application adjourned, any directions to the parties (including, if appropriate, any abridgement of the 35 day time limit for filing evidence provided for in CPR 54.14)

Signed:
Date: 25 May 2022
BY THE COURT

Notes

(1) Rule 52.6(1) provides that permission to appeal may be given only where –
   a) the Court considers that the appeal would have a real prospect of success; or
   b) there is some other compelling reason why the appeal should be heard.

(2) Where permission to appeal has been refused on the papers, that decision is final and cannot be further reviewed or appealed. See rule 52.5 and section 54(4) of the Access to Justice Act 1999.

(3) Rule 52.15 provides that, in granting permission, the Court of Appeal may grant permission to appeal or permission to apply for judicial review. Where the Court grants permission to apply for judicial review, the Court may direct that the matter be retained by the Court of Appeal or returned to the Administrative Court.

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