

TILBROOK'S

SOLICITORS & COMMISSIONERS FOR OATHS

AGENS IN LITEM

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Our Ref: RT/37

Your Ref:

Date: 26/04/20

The Prime Minister
10 Downing Street
London
SW1A 2AA

And the

Secretary of State Health & Social Care
39 Victoria Street
London
SW1H 0EL

Dear Sirs

English Democrats (1) Robin Tilbrook (2) – v – The Prime Minister and the Secretary of State Health and Social Care

Letter Before Claim

This letter is drafted under the Judicial Review protocol in section C of the White Book, which normally provides for a response within 14 days, but in view of the importance and urgency of the issues raised a response within 7 days is sought.

- 1. Respondents:** The Prime Minister and the Secretary of State Health and Social Care

Principal: Robin Tilbrook
VAT Reg No: 665 7785 74

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2. **Applicants:** The English Democrats (Reg. No. 6132268) & Robin Tilbrook both of Quires Green, Willingale, Ongar, Essex, CM5 0QP

3. **The details of the Applicant's legal advisers, if any, dealing with this claim:-**

Tilbrook's Solicitors, of Quires Green, Willingale, Ongar, Essex, CM5 0QP

4. **The details of the matters being challenged:-**

The disproportionate inference with English rights and freedoms and the legality of:-

I Statutory Instrument: 2020 No. 350

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

Made at 1.00 p.m. on 26th March 2020

Laid before Parliament at 2.30 p.m. on 26th March 2020

Coming into force at 1.00 pm. on 26th March 2020

The Secretary of State purported to make Regulations in exercise of the powers conferred by sections 45C(1), (3)(c), (4)(d), 45F(2) and 45P of the Public Health (Control of Disease) Act 1984(1).

These Regulations are:-

1. Contrary to the fundamental constitution of England as set out in Magna Carta and the English Parliamentary Constitutional Convention Declaration of Right of 1689

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and its subsequent enactment in the English Bill of Rights 1689.

2. Contrary to the Common Law of England in that (non-exhaustively) they are:- Ultra Vires; disproportionate and irrational.
3. Contrary to the European Convention of Human Rights (pursuant to the Human Rights Act).

II The "Guidance Covid-19: Guidance on Social Distances which inter alia states:-

"Stay at home

- Only go outside for food, health reasons or work (but only if you cannot work from home)
- If you go out, stay 2 metres (6ft) away from other people at all times
- Wash your hands as soon as you get home

Do not meet others, even friends or family. You can spread the virus even if you don't have symptoms."

This is neither proper nor an accurate reflection of the said Regulations.

III The Coronavirus Act 2020 is:-

1. Contrary to the fundamental constitution of England as set out in Magna Carta and the English Parliamentary Constitutional Convention Declaration of Right of 1689 and its subsequent enactment in the English Bill of Rights 1689.
2. Contrary to the Common Law of England in that (non-exhaustively) it is:- Ultra Vires; disproportionate and irrational.
3. Contrary to the European Convention of Human Rights (pursuant to the Human Rights Act).

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5. The details of any Interested Parties:-

None have notified as yet, but every person in England has an interest in the issues raised herein.

6. The Issues:-

The above are a disproportionate and unwarranted interference with English rights and freedoms and human rights.

The Coronavirus Regulations and the European Convention on Human Rights

The lockdown measures imposed by the Health Protection (Coronavirus, Restrictions) (England) Regulations and the Coronavirus Act 2020 as misrepresented in the “Guidance Covid-19” are the some of the most extreme restrictions on fundamental freedoms imposed in the modern era; and are a disproportionate interference with the rights and freedoms protected by the European Convention on Human Rights (‘the Convention’) and therefore unlawful.

In considering their proportionality, the failure to derogate from the European Convention on Human Rights (under Article 15) is a relevant factor, as it might suggest that the public health crisis is not one that threatened the ‘life of the nation’. Likewise, the failure to use the Civil Contingencies Act is both relevant to question of whether the Regulations could lawfully have been passed under the delegated powers of the Public Health (Control of Disease) Act 1984 and to proportionality, given that the CCA requires much more regular Parliamentary scrutiny and has specific limitations on the extent of any regulations passed under its delegated powers;

The Regulations have grave impact upon a number of rights and freedoms, including at least to family and private life (Article 8),

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religious practice (Article 9), association and assembly (Article 11), property (Article 1 of Protocol 1) and education (Article 2 of Protocol 1) and probably to liberty (Article 5). They represent an unprecedented intrusion into the freedoms and livelihood of the public at large and the gravity of this impact is a key consideration in determining whether they are the least restrictive means of tackling, proportionately, the spread of the virus.

Article 2 of the Convention (the right to life) does not impose a positive obligation to impose Draconian restrictions as a public health measure and is limited (in so far as is relevant) to imposing positive obligations on states to ensure a functioning criminal justice system and to react proportionately to immediate and individual threats to life.

The means by which proportionality should be judged are the Siracusa Principles, developed and recognised by international law to determine the proportionality of quarantines and measures responding to public health crises. These require such measures to be:

- provided for and carried out in accordance with the law;
- directed toward a legitimate objective of general interest;
- strictly necessary in a democratic society to achieve the objective;
- the least intrusive and restrictive available to reach the objective;
- based on scientific evidence and neither arbitrary nor discriminatory in application; and
- of limited duration, respectful of human dignity, and subject to review.

The five tests for the continuance of the Regulations declared by the First Secretary of State on 16th April, were as follows:

- That the NHS is able to cope;
- a "sustained and consistent" fall in the daily death rate;
- reliable data showing the rate of infection was decreasing to 'manageable levels';

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- that the supply of tests and Personal Protective Equipment (PPE) could meet future demand; and
- that the government can be confident that any adjustments would not risk a second peak.

It is submitted that these tests: (a) impose an over-rigorous and unreasonable fetter on the government's discretion to remove or reduce the restrictions and are wholly incompatible with an application of the Siracusa Principles; (b) would (if applied) retain the restrictions (if, for example, there was not a 'sustained and consistent' fall in the death rate) even if an objective evaluation showed that less restrictive measures might have the same object; and (c) fail to require the Secretary of State to have any regard to the impact of the Regulations on the important rights and freedoms they restrict.

An evaluation of the scientific evidence would be unavoidable for any court reviewing the lawfulness and proportionality of the Regulations, as it would otherwise be unable to consider whether the measures were the least restrictive necessary in a democratic society. This scientific evidence is far more uncertain than is generally accepted and there is, in particular, a great deal of uncertainty about the effectiveness of lockdowns in containing spread, the true mortality and infection rates and the accuracy of the modelling from Imperial College that has been key to government policy.

In conclusion, the application of the Siracusa Principles in a judicial review, taking account of the gravity of the removal of so many and such important rights and freedoms with so little democratic scrutiny, is likely to conclude that the measures are disproportionate to their object, were imposed following an unreasonable fetter on the government's discretion and are thus unlawful.

7. The details of the action that the Respondents are required to take:-

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- a) To admit that the said Regulations, Guidance and Act should be rescinded and replaced within an agreed timetable.
- b) In accordance with the agreed timetable, to rescind the same and to replace them with agreed Regulations, Guidance and Act which does not improperly interfere with English Rights and Freedoms.

8. ADR proposals:-

None.

9. The details of any information sought:-

Not applicable.

10. The details of any documents that are considered relevant and necessary:-

Not applicable.

11. The address for reply and service of all documents:-

Tilbrook's Solicitors of Quires Green, Willingale, Ongar, Essex,
CM5 0QP

12. Proposed reply date:-

In view of the urgency and importance of the issues 7 days from the date hereof.

Yours faithfully

R C W Tilbrook

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