



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

CO Ref:

CO/4537/2020

In the matter of an application for Judicial Review

The Queen

on the application of

**AJ and CC**

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) and the Claimant's application for interim relief**

Following consideration of the documents lodged by the Claimants and the Acknowledgement of service filed by the Defendant

**ORDER** by the Honourable Mrs Justice Steyn DBE

1. The application for permission to apply for judicial review is granted.
2. The Claimant's application for interim relief is refused.
3. Pursuant to CPR 39.2, no person shall publish the Claimants' names and address, or any other information likely to identify the Claimants, in any report of these proceedings, without the leave of the Court. The First Claimant is to be referred to by the initials 'AJ' and the Second Claimant is to be referred to by the initials "CC".
4. The hearing of the claim is expedited and shall be listed for hearing in week commencing **19 April 2021**, or as soon thereafter as the court can accommodate the hearing, with a time estimate of 1.5 days. If the parties disagree with this time estimate they shall provide a written time estimate within 7 days of service of this order.
5. Costs reserved.

**Case Management Directions**

6. The Defendant and any other person served with the Claim Form who wishes to contest the claim or support it on additional grounds shall, within **28 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 written evidence that is to be relied on. For the avoidance of doubt, a party who has filed and served Summary Grounds pursuant to CPR 54.8 may comply with (a) above by filing and serving a document which states that those Summary Grounds

shall stand as the Detailed Grounds required by CPR 54.14.

7. Any application by the Claimant to serve evidence in reply shall be filed and served within **14 days** of the date on which the Defendant serves evidence pursuant to §6(b) above.
8. The parties shall agree the contents of the hearing bundle and must file it with the Court not less than **2 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.
9. The Claimant must file and serve a Skeleton Argument not less than **14 days** before the date of the hearing of the judicial review.
10. The Defendant and any Interested Party must file and serve a Skeleton Argument not less than **7 days** before the date of the hearing of the judicial review.
11. 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.

### **Observations**

1. The grounds of claim are clearly arguable. I reject the Defendant's submission that permission should be refused on grounds of failure to exhaust alternative remedies. The possibility that the First Claimant may be granted leave to remain, and she may then have an entitlement to the Healthy Start Scheme ("HSS") if the No Recourse to Public Funds condition is lifted, does not constitute an adequate alternative remedy in circumstances where those outcomes are uncertain and she does not presently have such an entitlement. Nor does the speculative possibility that she could seek an increase in support from the local authority amount to a suitable alternative remedy warranting the refusal of permission.
2. Nevertheless, I am not satisfied that the Claimants meet the test for the grant of the mandatory interim relief they seek, namely, an order requiring the Defendant to make weekly payments (of £6.20 for the next three weeks and thereafter £3.10) to the First Claimant. Such payments would have to be made outside HSS scheme.
3. Although I consider the *claim* has a real prospect of success, the pertinent question when considering interim relief is whether the Claimants have a real prospect of obtaining at the substantive hearing the *relief* they now seek on an interim basis. An equivalent mandatory

order is not sought by way of substantive relief. An order is sought "quashing the requirements in the eligibility criteria that an applicant otherwise in the position of the First Claimant be entitled to a mainstream benefit (such a Universal Credit, income support; income related jobseekers' allowance; or child tax credit); be ordinarily resident; and provide a national insurance number". The prospects of an order being granted in such terms are low, in my view, because the extent to which regulation 3 is quashed would be unclear.

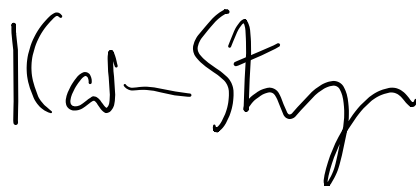
4. I consider that the balance of convenience weighs against the grant of interim relief. I accept that given the First Claimant's low income, and the difficulty she has described making ends meet, the weekly payments would be of some assistance, although the payments sought are low. On the other hand, there is a strong public interest in permitting a public authority's decision (here, in the form of regulations) to remain in force pending a final hearing. In addition, if a flaw is identified which can be remedied in more than one way, it is in the public interest to leave the choice as to how it is remedied to the public authority, a point which is particularly pertinent given the Defendant's stated intention to undertake a consultation in relation to the eligibility criteria for the HSS, and in particular the eligibility of children who do not qualify for the HSS by reason of their parents' immigration status.
5. However, as the Claimants are potentially being unlawfully deprived of the HSS, I have granted expedition.

Case NOT suitable for hearing by a Deputy High Court Judge\*

Criminal case NOT suitable for hearing by a Single Judge\*

[\*Tick if applicable]

Signed



15.2.21

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:

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.