



**R (The Independent Workers' Union of Great Britain) v  
Secretary of State for Work and Pensions and another (CO/1887/2020)**

SUMMARY

*This summary does not form part of the judgment. References in square brackets are to paragraph numbers of the judgment.*

Mr Justice Chamberlain, sitting in the Administrative Court (part of the High Court), today gave judgment in a claim for judicial review brought by the Independent Workers' Union of Great Britain (the Claimant).

The Claimant has about 5,000 members who are predominantly low-paid, migrant workers and workers in the “gig economy”. They include taxi and private hire drivers, chauffeurs, bus and coach drivers, van drivers and couriers. The Claimant sought declarations that the United Kingdom has failed properly to implement in its domestic law certain provisions of two EU health and safety directives: Directive 89/391/EC (known as “the Framework Directive”) and Directive 89/656/EC (which relates to the use of personal protective equipment and is known as “the PPE Directive”): [1].

The Claimant’s central complaint was that the Directives require Member States to confer certain protections on “workers”, whereas the domestic legislation protects only “employees”. Many of the Union’s members are not employees (as that term is understood in domestic law), but “limb (b) workers” (i.e. those falling within s. 230(3)(b) of the Employment Rights Act 1996). The Claimant submitted that, in the light of the COVID-19 pandemic, many of its members have particular needs for the kinds of health and safety measures the Directives require: [2].

The Defendants were the Secretaries of State responsible for domestic legislation on health and safety at work. The Health and Safety Executive, the independent regulator for work-related health and safety in Great Britain, was an Interested Party: [3].

The Court noted that the question before it did not depend on whether individual businesses, or businesses in general, were doing enough to protect their workers. It was not part of the Court’s function to decide that issue. The Court was concerned solely with the question whether the UK had properly implemented the Directives. That was a pure question of law: [8].

The parties agreed that, because of the European Union (Withdrawal Agreement) Act 2020, the Court retains the power to grant the declarations sought, as it would if the UK were still a Member State of the EU: [9].

The Court decided that the Claimant was correct to say that the term “worker”, as defined and used in the Directives, included those who are limb (b) workers as a matter of UK law: [54]-[84].

The Court held that:

- the general obligations in Article 5(1) and 6(1) of the Framework Directive were properly implemented as regards limb (b) workers by s. 3 of the Health and Safety at Work Act 1974, taken together with other more specific domestic legislation: [89]-[113];
- however, Article 8(4) and the second paragraph of Article 8(5) of the Framework Directive were not properly implemented in UK law as regards limb (b) workers. These provisions can be summarised as imposing a requirement that workers who take the appropriate steps in response to serious and imminent danger are not to be disadvantaged for doing so, unless they act carelessly or negligently: [114]-[128];
- Article 3 of the PPE Directive was also not properly implemented as regards limb (b) workers. That provision requires PPE to be used in certain circumstances (when risks cannot be avoided by other means): [129]-[140].

The claim therefore succeeded in part and the Court made a declaration that:

*“The UK Government has failed properly to implement in UK law:*

- (a) Article 8(4) and the second paragraph of Article 8(5) of Council Directive 89/391/EC on the introduction of measures to encourage improvements in the health and safety of workers at work (“the Framework Directive”); and*
- (b) Article 3 of Council Directive 89/656/EC on the introduction of minimum health and safety requirements for use by workers of personal protective equipment at the workplace (“the PPE Directive”)*

*by reason that in UK law those obligations have not been extended to workers as defined in section 230(3)(b) of the Employment Rights Act 1996, whereas the definition of “worker” in Article 3 of the Framework Directive (which also applies to the PPE Directive) includes such workers.”*

See [143].

The parties were given until 27 November 2020 to consider whether they wished to apply to the judge for permission to appeal to the Court of Appeal. Any such application will be made in writing and determined by the Court on paper: [146].

*13 November 2020*