



6 July 2023

The King On the application of the Cabinet Office (Claimant) - v - The Chair of the UK Covid-19 Inquiry (Defendant) - and - Mr Henry Cook & The Rt Hon Boris Johnson (Interested Parties) - and - The Chair of The Scottish Covid-19 Inquiry (Intervener)

JUDGMENT SUMMARY

Important note for press and public: This summary is provided to assist in understanding the Court's decision. It does not form part of the reasons for the decision. The full judgment of the Court is the only authoritative document. The judgment is a public document and is available online at Court Judgments and Tribunal Decisions [Judgments Archive - Courts and Tribunals Judiciary](#)

1. A Divisional Court of the High Court of Justice, King's Bench Division, Administrative Court (Lord Justice Dingemans and Mr Justice Garnham) has handed down a judgment of the Court in the case of *The King on the application of the Cabinet Office v The Chair of the UK Covid-19 Inquiry* [2023] EWHC 1702 (Admin). The paragraphs numbers below are references to the judgment.
2. Paragraphs 1 to 3 identifies the parties and sets out the issues raised by the application.
3. Paragraphs 4 to 5 summarise the evidence considered by the Court including a confidential annexe described in general terms in paragraphs 5 and 18. Paragraphs 6 to 12 sets out the relevant factual background. Paragraphs 13 to 18 describes the request for documentation made by the Inquiry and the Cabinet Office's response in correspondence.
4. Paragraphs 19 to 23 summarise the section 21 Inquiries Act Notice issued by the Chair on 28 April 2023 requiring the Cabinet Office to produce certain documents in unredacted form, and paragraph 24 sets out the Cabinet Office's response by application pursuant to section 21(4) of the Inquiries Act to revoke that notice. Paragraphs 26 to 32

summarise the ruling of the Chair of the Inquiry rejecting the Cabinet Office's application.

5. Paragraph 34 sets out the grounds on which the application for permission to apply for judicial review was made by the Cabinet Office. The submissions of the respective parties and intervener are summarised in paragraphs 35 to 40. The issues for the Court to determine are set out in paragraph 41 namely "(1) whether we should grant permission to apply for judicial review to the Cabinet Office; and if permission to apply is granted: (2) whether the section 21 notice was valid; (3) whether the Chair of the Inquiry's conclusion that the material produced by the notice was or might be relevant was irrational."
6. The relevant statutory provisions are set out at paragraphs 43 to 51 and the relevant principles of law are set out at paragraphs 52 to 59.
7. At paragraph 60 the court explains its decision to grant the Cabinet Office permission to apply for judicial review.
8. In paragraphs 61 to 71 the Court explains why the section 21 notice issued by the inquiry was valid. In paragraph 62 the Court explains why the section 21 notice did require documents that "relate to a matter in question at the inquiry". In paragraph 64 the Cabinet Office's contention (that because the section 21 notice will yield some irrelevant documents the factual basis for the exercise of the power in section 21(2)(b) was not satisfied) is summarised, together with the response on behalf of the Chair of the Inquiry.
9. The Court gives three reasons for rejecting the Cabinet Office's contention in paragraphs 65, 66 and 67 (those paragraphs are set out at the end of this summary). The Court explains the scheme for responding to a section 21 notice which might yield

documents which do not relate to a matter in question at the inquiry in paragraphs 68 to 71.

10. In paragraphs 72 to 75 the Court explains why the Chair of the Covid Inquiry did not act irrationally in issuing the notice and making the ruling.
11. The Court's conclusions on the three issues before it are summarised in paragraph 76 as follows: "For the detailed reasons set out above we: (1) grant the Cabinet Office permission to apply for judicial review; (2) find that the section 21 notice issued by the Chair of the Inquiry to the Cabinet Office was valid; (3) find that the Chair of the Inquiry acted rationally in issuing the section 21(2)(b) notice and making the ruling. We therefore dismiss the claim for judicial review but record that the Cabinet Office may respond to the notice by making an application pursuant to section 21(4), that it is unreasonable to produce material which does not relate to a matter in question at the inquiry. It will be for the Chair of the Inquiry to rule on that application."

Paragraphs 65 to 67 are set out in full below:

"65. In our judgment the fact that the section 21 notice will yield some irrelevant documents does not invalidate the notice or mean that the section 21(2)(b) cannot be lawfully exercised. This is for a number of reasons. First the authorities referred to above show that inquiries are to be given a latitude, not provided to parties in civil proceedings, to enable them to "fish" for documents, meaning to make informed but speculative requests for documents relevant to lines of inquiry, or documents which lead to new lines of inquiry. Such an exercise is bound to lead to the inclusion of some irrelevant material. This fact does not answer the question but suggests that the approach contended for by the Cabinet Office needs to be carefully examined.

66. Secondly the fact that a request for documents in civil proceedings for disclosure may yield some irrelevant documents does not invalidate the request, it simply means that the irrelevant documents may be redacted. It was common ground that the analogy with civil proceedings could only be a loose one, because there were different rules applying for civil proceedings and civil proceedings pursue a different aim to public inquiries, but it would be surprising if a valid request in civil proceedings made under the former Rules of the Supreme Court (“relating to any matter in question in the action”) might yield irrelevant documents and still be lawful, but such a request by an inquiry acting under a statutory power permitting requests for documents (“that relates to a matter in question at the inquiry”) would be unlawful.

67. Thirdly the scheme of the Inquiries Act recognises that irrelevant documents might be obtained by a section 21 notice. This is why there is a provision in section 21(4) enabling a party required to produce documents to make an application to the Chair of the Inquiry saying that “it is not reasonable in all the circumstances to require him to comply”. One of the grounds that a recipient of such a notice might rely on is that although the document was lawfully requested as part of a class of documents under section 21, the document caught by the request does not, as a matter of fact, relate to a matter in question at the inquiry. In this sense the statutory and factual limitation on the power exercised under section 21(2)(b) is preserved."