



Neutral Citation Number: [2024] EWHC 3283 (Admin)

Case No: AC-2024-LON-002661

IN THE HIGH COURT OF JUSTICE
KING'S BENCH DIVISION
ADMINISTRATIVE COURT

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 18/12/24

Before :

MR JUSTICE CHAMBERLAIN

Between :

THE KING
on the application of
THE TRAVELLER MOVEMENT

Claimant

-and-

CHAIR OF THE UK COVID-19 INQUIRY

Defendant

Christopher Jacobs (instructed by **Howe & Co Solicitors**) for the **Claimant**
Natasha Barnes (instructed by **Fieldfisher LLP and Burges Salmon LLP**) for the **Defendant**

Hearing date: 3 December 2024

Approved Judgment

This judgment was handed down remotely at 10am on Wednesday 18 December 2024 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

.....

Mr Justice Chamberlain:

Introduction

- 1 The claimant is the Traveller Movement, a registered charity, which represents and advocates for the Gypsy, Roma and Traveller communities in the UK. It is a core participant in the Vaccinations and Therapeutics module of the UK COVID-19 Inquiry (“the Inquiry”). It seeks to challenge a decision of 22 July 2024 by the Inquiry’s Chair, Baroness Hallett, to refuse or maintain refusal of the claimant’s application for funding for legal representation. Permission to apply for judicial review was refused on the papers by Linden J on 8 October 2024. The claimant renewed its application at a hearing on 3 December 2024.

Legal framework

- 2 Section 1 of the Inquiries Act 2005 (“the 2005 Act”) confers on a Minister the power to establish an inquiry. Section 17(1) provides that, subject to the Act and to rules made under s. 41, the procedure and conduct of an inquiry are to be such as the chairman of the inquiry may direct. Section 17(3) provides:

“In making any decision as to the procedure or conduct of an inquiry, the chairman must act with fairness and with regard also to the need to avoid any unnecessary cost (whether to public funds or to witnesses or others).”

- 3 Section 40 empowers the chairman to award funding for legal representation “subject to such conditions as may be determined by the Minister and notified by him to the chairman”. In this case, the conditions are contained in a Notice of Determination by the Prime Minister (Boris Johnson MP). Under the heading “No financial resources test for certain applicants”, paragraphs 2-3 provide as follows:

“2. Given the exceptional nature and gravity of the Covid-19 pandemic, the Prime Minister recognises that it will be in the public interest for certain applicants to be provided with funding for legal representation without investigation as to the financial resources otherwise available to them.

3. The Prime Minister has therefore determined that Rule 21(2)(a) of the Inquiry Rules 2006 (financial resources) may be satisfied without enquiry as to means on an application for an award for legal expenses by families of people who were infected with Covid-19 and who died (including people who not unreasonably believe that they or their family member were so infected).”

- 4 Under the heading “Conditions and qualifications”, paragraphs 5-7 provide as follows:

“5. The Chair shall only make an award relating to a person’s costs of legal representation where she considers it necessary, fair, reasonable and proportionate to make an award.

6. As in all decisions as to the procedure or conduct of the Inquiry, the Chair must act in accordance with the obligations under Section 17 of the Inquiries

Act to act with fairness and with regard to the need to avoid any unnecessary cost.

7. Awards should not be made in respect of the legal expenses of substantial bodies, or of individuals who could reasonably expect their expenses to be met by such bodies, unless there are special circumstances which justify a call on public funds.”

- 5 The COVID-19 Inquiry Costs Protocol (dated 21 March 2022) makes further provision regarding the grant and allocation of public funding. It provides in relevant part as follows:

“6. Subject to the qualifications and conditions placed on her by the Prime Minister, the Chair will, when determining an application for an award relating to legal expenses to be incurred, take into account: the financial resources of the claimant, subject to paragraph 3 of the Prime Minister's Determination; and whether making an award is in the public interest.

7. Having regard to the criteria set out in paragraph 6 of this Protocol, the considerations set out in the Prime Minister's Determination and to her powers under section 17(1) of the Act, the Chair envisages that awards will be made only in cases where she decides that... the claimant would be prejudiced in seeking representation if they were to be in any doubt about funds becoming available and there are no other means by which such representation can be funded, subject to paragraph 3 of the Prime Minister's Determination; and it is fair, necessary, reasonable and proportionate to make an award.

8. Awards will generally not be made, therefore, in respect of the legal expenses of substantial bodies, or of individuals who could reasonably expect to be met by such bodies, unless there are special circumstances which justify a call on public funds.”

Factual background

- 6 On 27 June 2023, the claimant applied for Core Participant status in the Vaccinations and Therapeutics module of the Inquiry. On 17 July 2023, the Chair issued a determination granting the claimant that designation, having been satisfied pursuant to rule 5(2)(b) of the Inquiry Rules 2006 that the claimant had a significant interest in an important aspect of the Vaccination Module, namely barriers to vaccine uptake and whether vaccine delivery appropriately considered the needs of marginalised or vulnerable communities.
- 7 On 4 August 2023, the Chair designated Martin Howe of Howe & Co Solicitors as the claimant’s recognised legal representative, but said that the claimant should share counsel with other core participants. Howe & Co submitted representations on separate representation on 11 August 2023. On 22 August 2023, the Chair agreed that the claimant should be represented by separate counsel.
- 8 On 28 September 2023, Howe & Co applied to the Chair on the claimant’s behalf for funding for legal representation during the hearings of the Vaccination Module, saying

that the claimant could not afford to pay for legal representation, and noting that without appropriate legal representation it would be unable fully to fulfil its role as a Core Participant.

- 9 On 2 November 2023, the Chair refused the request, because the claimant had sufficient finances and was accordingly a “substantial body” which ought to be capable of funding its own legal representation. There were no special reasons to deviate from this principle. Accordingly, it was not necessary, fair, reasonable or proportionate to make an award.
- 10 On 13 November 2023, the claimant made a renewed application, setting out its financial position and explaining why its responsibilities as a charity amounted to special circumstances justifying the use of public funding. In particular, it said that:
 - (a) It is unable to access any of the restricted income (currently approximately £400,000) which it receives/holds because those funds can only be spent in accordance with the terms of specific grants, none of which relate to participation in the COVID-19 inquiry.
 - (b) Its unrestricted reserve of about £300,000 must be seen in the context of monthly expenditure/outgoings of about £50,000. A charity cannot operate without a significant reserve. This is a requirement imposed by the Charity Commission.
 - (c) Its reserves would likely be reduced in the coming financial year because of the expiry of two funding programmes and the loss of £200,000 in annual funding.
 - (d) It is not a substantial body for the purposes of para. 7 of the Prime Minister's Determination and para. 8 of the Costs Protocol because it cannot reasonably be expected to meet its expenses in the inquiry without jeopardising its ability to secure funds for projects which are essential to the communities whose interests it serves.
 - (e) Its trustees would not be acting appropriately or consistently with their duties if they diverted reserves into legal funding for the inquiry and away from core activities.
 - (f) The constraints imposed upon the claimant as a charity amount to special circumstances.
 - (g) Denial of funding effectively excludes the GRT communities from participation in this important process.
- 11 On 11 December 2023, the Chair refused again, noting that “with an income of approximately £580,000 and reserves over £400,000, the Traveller Movement is a substantial body within the meaning of paragraph 7 of the Prime Minister's determination, which ought to be capable of funding its own legal representation to engage with the Inquiry”. Furthermore, “neither the initial application nor the renewed application identifies or sets out special circumstances to an extent that would justify public funds at present”. She noted the representations concerning anticipated reduction in income and reserves in 2024. In the light of that, she indicated that she would be willing to review the position in April 2024, at which point it should be clear whether the

claimant had been able to secure future funding for its core charitable work and whether its unrestricted income and reserves had been impacted by any reduction in funding.

- 12 On 16 May 2024, the claimant submitted a renewed application setting out its updated financial position to date and noting that the claimant had received £476,000 in income in the 2023/24 financial year ending March 2024, but had lost some funding and was also facing further clawbacks of funding for uncompleted projects. Most of its income remained committed to charitable expenditure. There were further submissions on whether the claimant could properly be considered a “substantial body”, and whether there were ‘special circumstances’ justifying an award of public funding. These included submissions that the disclosure provided to the claimant since the chair’s decision of December 2023 showed that.
- 13 On 20 June 2024, the Chair wrote to the claimant acknowledging receipt of its renewed application and requesting further details of its restricted/unrestricted funds and anticipated income for the upcoming financial year.
- 14 The claimant provided its 2024/25 projected budget to the Chair on 27 June 2024. This showed a net operating income estimated at £16,285. There was no figure for unrestricted reserves. The claimant now says that this was an oversight.
- 15 On 22 July 2024, the Chair communicated the challenged decision. On the basis of the further information provided on 16 May and 27 June 2024, she was not satisfied that there had been a significant deterioration in the claimant’s financial position of a kind that would cause her to reconsider her previous decision to decline funding.
- 16 The claimant sent a pre-action letter on 25 July 2024. The Chair responded on 1 August 2024. The claimant filed its claim form on 5 August 2024 and also applied for a cost-capping order.
- 17 On 6 November 2024, the claimant applied for permission to rely upon the further evidence of its solicitor David Enright in support of the renewed application for permission. I read that statement *de bene esse*. Nothing contained in affects my conclusions, so it is not necessary to decide whether to admit it.

Is the claim out of time?

- 18 Natasha Barnes for the Chair submitted that this claim is out of time insofar as it challenges the decisions that the claimant is a “substantial body” and that there are no “special circumstances” why funding should be granted. Those decisions were taken in December 2023 and the offer to review the position thereafter was limited to consideration of whether there had been a material deterioration in the claimant’s financial position since December.
- 19 I do not consider that permission should be refused on this ground. The letter of 11 December 2023 did not make clear that the review promised in April 2024 would be limited to considering changes in the claimant’s financial position in the interim and that other matters (including whether the claimant was a “substantial body” and whether there were “special circumstances” to justify funding) were to be taken as finally determined. If it had, the claimant would presumably have had to bring two judicial review claims,

one to the decision on those matters and a second to the narrowly limited review decision communicated in July 2024. In my judgment, the claimant’s lawyers were justified in thinking that the Chair was offering in the letter of 11 December 2023 to review the position generally. That is the natural construction of the letter. Had the claimant sought judicial review after the letter of 11 December 2023, it might well have been said that the claim was premature.

20 I turn now to the substantive grounds on which the claimant challenges the Chair’s decision (grounds 2 and 3).

Grounds 2 and 3: “substantial body” and “special circumstances”

Summary of the claimant’s submissions

21 The claimant challenges the Chair’s decision that it is a “substantial body” as involving an error of law or as irrational. The phrase “substantial body”, the claimant submits, must be read in context. A charity cannot properly be regarded as a “substantial body” if it would be unable to pay for representation without being unable to fulfil its existing charitable functions, especially where the charity’s trustees would be unwilling to permit the diversion of funds from the body’s primary charitable objects. In this respect, the claimant relies on the policy prior to the 2005 Act, as set out in guidance from the Treasury Solicitor issued in June 1998 and recorded by Colman J in *Re-hearing of the Formal Investigation into the Loss of M/V Derbyshire* [2002] CLC 1304, [2003] 1 All ER (Comm) 784, at [24]. This makes clear that funding should be granted if the body would otherwise be prejudiced in seeking representation.

22 As to “special circumstances”, the Chair took the view that the claimant’s financial position alone disqualified it from being able to establish special circumstances. This, the claimant submits, was an erroneous approach. “Special circumstances” are not so limited. One feature which was critically important to the decision whether “special circumstances” existed was the centrality of the Gypsy, Roma and Traveller communities to the issues to be considered in the Vaccination Module. The claimant was not in a position to make fully informed submissions on that until it had received disclosure. This happened after the initial decision on 11 December 2023. The information disclosed showed that a high proportion of the documents made reference to the impact of Covid-19 on the Gypsy, Roma and Traveller communities. The claimant drew this to the Inquiry’s attention, but the decision of 22 July 2024 did not deal with these points.

Discussion

23 Any analysis of the legal framework within which the Chair makes funding decisions must start from the language of the 2005 Act. Section 40 gives the chairman a broad discretion to award funding for legal representation, subject to conditions imposed by the Minister. The discretion must be exercised in the light of s. 17(3), which entrusts the chairman with the task of balancing the requirements of fairness against the need to avoid any unnecessary cost (including to public funds). The express identification of the latter need is significant.

24 It was in that statutory context that the decision-maker had to consider the terms of the Prime Minister’s Determination and, specifically, whether for the purposes of paragraph

7 the claimant was a “substantial body” and, if so, whether there were nonetheless “special circumstances” which supported the grant of funding.

- 25 In my judgment, a court considering the proper approach to judicial review of decisions on those questions should be guided by the principles set out by Lord Mustill (with whom the other members of the Appellate Committee agreed) in *R v Monopolies and Mergers Commission ex p. South Yorkshire Transport Ltd* [1993] 1 WLR 23. (I drew counsels’ attention to this case at the start of the hearing and heard submissions on it.) There, a competition regulator had to consider whether the claimant company was operating in “a substantial part of the United Kingdom”. Lord Mustill held that the question had to be approached in two stages. First, since “substantial” was a protean term, the court should avoid the danger of “by redefining it thrusting on it a spurious degree of precision”. The word meant simply “worthy of consideration for the purpose of the Act”: see at p. 29. Reading the challenged decision as a whole, there was no misdirection. That being so, where the criterion is imprecise, the second stage involves an evaluative judgment by the decision-maker; and “the court is entitled to substitute its own opinion for that of the person to whom the decision has been entrusted only if the decision is so aberrant that it cannot be classed as rational”: see at p. 32.
- 26 This analysis applies whenever a decision-maker has to interpret a protean or imprecise term and then apply it to the facts of a particular case. As it happens, the dispute in the present case centres on the interpretation and application to the facts of the same word as was in issue in the *South Yorkshire Transport* case: “substantial”.
- 27 In my judgment, the meaning of paragraph 7 of the Prime Minister’s Determination is to be approached on its own terms, rather by reference to any policy pre-dating the 2005 Act. That meaning is clear. In the ordinary course of events, public funds are not to be expended on providing legal representation to bodies whose size and resources are such that, other things being equal, they ought to be capable of funding it themselves. At this stage, in deciding whether the body in question is a “substantial body”, the decision-maker is entitled to limit herself to a broad, high-level analysis, which does not need to descend to the level of individual funding sources or what other activities the body would have to forgo if it chose to fund representation. What is required is a broad judgment about the size and resources of the body. The letter of 11 December 2023 discloses no misdirection in this regard.
- 28 In the absence of any misdirection, the decision whether the claimant is a “substantial body” called for an evaluative judgment by the Chair against the statutory background of the duty imposed by s. 17(3) to act with fairness and with regard also to the need to avoid any unnecessary cost. She was better placed than anyone else to make this judgment because she would have a very clear idea of where the claimant fell on the spectrum of bodies which had applied for (and had by then been granted) funding for legal representation. In the circumstances, and applying the *South Yorkshire Transport* approach, it is impossible to stigmatise the Chair’s decision that the claimant is a “substantial body” as irrational, or indeed wrong (a term sometimes preferred when reviewing the exercise of a discretion).
- 29 At the next stage of the analysis, the Chair was required to consider whether, even though the claimant is a “substantial body”, there were “special circumstances” justifying a call on public funds. These latter words are also broad. The Prime Minister deliberately chose

not to define further the kinds of considerations that could constitute “special circumstances”. The Chair’s approach was to ask herself whether the claimant could be expected to fund representation itself, but this time with a more detailed focus on the claimant’s ability to apply its income and reserves to that purpose. That is why she agreed to review the position in April 2024, when it would be clearer whether the anticipated reduction in income and reserved had materialised.

- 30 There was nothing unlawful about this approach. It explains why the Chair did not deal specifically with the points made, following receipt of disclosure, about the centrality to the Vaccination Module of issues concerning the Gypsy, Roma and Traveller communities. That was taken as given. The question was whether, even though these issues were likely to be central, the claimant’s resources were such as to justify, exceptionally, payment out of public funds.
- 31 As to that, she made some general points in the letter of 11 December 2023: like other charities, the claimant would have to make challenging decisions about priorities; and it was usual for income and reserves to fluctuate as funding programmes come to an end and new sources of funding are sought. When she reviewed the position on 22 July 2024, she focussed on whether the charity’s income and reserves had position had significantly deteriorated and concluded that they had not. In my judgment, there was no justiciable error here. It is not enough for a charity to say that its trustees will not allow it to divert resources from other priorities, which are more central to its objects. Charities must make difficult decisions, as the Chair noted, but so must those charged with disbursing public money for legal representation.
- 32 For these reasons, grounds 2 and 3 are not reasonably arguable.

Grounds 1 and 4: the procedural grounds

- 33 Under ground 1, the claimant submits that the Chair acted unfairly by failing or otherwise refusing to reconsider her decisions as to “substantive body” and “special circumstances” after its renewed application for funding on 16 May 2024.
- 34 Once the proper approach to the “substantial body” and “special circumstances” questions is understood (see the analysis in relation to grounds 2 and 3 above), it can be seen that there is nothing in this point. Fluctuations in the claimant’s income and reserves between December 2023 and April 2024 were more likely to be relevant to “special circumstances” than to the “substantive body” question. In the event, however, the Chair’s conclusion on 22 July 2024 that she was “not satisfied that there has been a significant deterioration in the [claimant’s] financial position” was sufficient to explain why there was no change on either issue.
- 35 There is nothing to indicate that the Chair failed to consider any of the claimant’s representations. It is true that she omitted to deal in terms with the claimant’s submissions as to the centrality of issues concerning the Gypsy, Roma and Traveller communities, but there was no need to deal with those issues because from the outset the funding decision was premised on an acceptance that those issues were likely to be central ones.
- 36 Under ground 4, the claimant complains that the decision of 22 July 2024 was inadequately reasoned.

37 In my judgment, this ground too must be considered in the light of the analysis in relation to grounds 2 and 3. The adequacy of the reasons for a decision can only be judged on the basis of a proper appreciation of what the law requires the decision-maker to consider. The 11 December 2023 letter made clear that the decision-maker had taken into account the claimant’s income and reserves. Those were sufficient reasons for the conclusion, inevitably expressed at a high level, that the claimant was a “substantial body”. The general matters (as to the need to make challenging decisions about priorities) were sufficient to explain the decision on “special circumstances”, subject to a review of the position after April 2023. The conclusion that there had been no significant deterioration in the claimant’s financial position as at 22 July 2024 was also a sufficient basis for maintaining the refusal to fund.

38 For these reasons, grounds 1 and 4 are not reasonably arguable.

Conclusion

39 For these reasons, and despite the attractive submissions of Christopher Jacobs for the claimant, permission to apply for judicial review is refused. Because there was relatively extensive argument at the permission hearing, and because the judgment considers matters of law that may be of general relevance to others making funding applications at public inquiries, I give permission for this judgment to be cited.