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# HUMAN RIGHTS

## Covid in the courts: challenges to lockdown measures in the United Kingdom

Dr Ben Stanford\*\*

### Introduction

The COVID-19 global pandemic has undoubtedly been one of the most challenging episodes in recent human history, impacting virtually all aspects of life and states worldwide to a greater or lesser extent.<sup>1</sup> In that respect, in September 2020, the United Nations General Assembly passed an omnibus resolution calling the crisis ‘one of the greatest global challenges in the history of the United Nations’.<sup>2</sup> As of 21 July 2021, the World Health Organization revealed that there have been 191,148,056 confirmed cases of COVID-19 worldwide, including 4,109,303 deaths reported by states, with the United Kingdom accounting for over 5 and a half million confirmed cases and almost 130,000 deaths.<sup>3</sup> Whilst obviously presenting itself initially as an enormous public health crisis, the pandemic has also raised massive social, political and legal issues as lockdown, physical distancing and various surveillance measures have restricted the freedoms and liberties of individuals.

Following this introduction, the second section sets out the legal framework in the UK which has proven particularly complex for several reasons, not least of all due to changing strategic approaches and easing of restriction measures, as well as the nature of the disease itself which has rapidly evolved over the past 18 months, and also the nature of devolution leading to some divergence in how the nations of the UK have responded. The third section then provides an overview of the most significant legal challenges heard in the UK since the beginning of the pandemic, with the majority of judgments showing a degree of judicial deference to the Government to tackle the public health crisis. The final section concludes and looks to future developments.

### The legal instruments

In the United Kingdom, a large number of legal instruments have been steadily implemented across the past 18 months in response to the crisis.<sup>4</sup> However, the legal framework governing lockdown measures and restrictions in the UK is complex for a number of reasons. The COVID-19 pandemic rapidly escalated in early 2020 and has surged again in several ‘waves’ since, amidst changing strategic responses and the easing of lockdown measures. At the same time, the emergence of new, more infectious variants has also presented further challenges.<sup>5</sup> These factors have necessitated new measures and regular amendments to existing legislation.

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<sup>1</sup> See Ben Stanford, Steve Foster and Carlos Espaliú Berdud (eds), *Global Pandemic, Security and Human Rights: Comparative Explorations of COVID-19 and the Law* (forthcoming Routledge 2021); Luo Li, Steve Foster, Carlos Espaliú Berdud and Ben Stanford, *Global Pandemic, Technology and Business: Comparative Explorations of COVID-19 and the Law* (forthcoming Routledge 2021).

<sup>2</sup> UN General Assembly, ‘Omnibus Resolution Comprehensive and Coordinated Response to the COVID-19 Pandemic’ UN Doc. A/74/L.92 (11 September 2020) para 1.

<sup>3</sup> World Health Organization, WHO Coronavirus Disease (COVID-19) Dashboard <[https://covid19.who.int/?gclid=Cj0KCQiA9P\\_BRC0ARIsAEZ6irjWNIw-8nn2-MNzFFI2vmcr4V8lrrKhillD\\_D1UOa2gmTzJJ-Y4juEaAvXjEALw\\_wcB](https://covid19.who.int/?gclid=Cj0KCQiA9P_BRC0ARIsAEZ6irjWNIw-8nn2-MNzFFI2vmcr4V8lrrKhillD_D1UOa2gmTzJJ-Y4juEaAvXjEALw_wcB)> accessed 22 July 2021.

<sup>4</sup> For a comprehensive and accessible breakdown of UK lockdown laws, see Sarah Barber, Jennifer Brown and Daniel Ferguson, ‘Coronavirus: Lockdown Laws’ *House of Commons Library No. 8875* (10 June 2021).

<sup>5</sup> Public Health England, Research and Analysis: Variants: Distribution of Cases Data (last updated 16 July 2021) <<https://www.gov.uk/government/publications/covid-19-variants-genomically-confirmed-case-numbers/variants-distribution-of-cases-data>> accessed 22 July 2021.

Additionally, the legislative authority for the implementation of delegated legislation to impose lockdown restrictions, in the form of statutory instruments made by Government Ministers, has come from two principal sources – first, the Public Health (Control of Disease) Act 1984, and second, the Coronavirus Act 2020 – adding a layer of complexity. Powers contained in the former Act have generally been used to implement lockdown restrictions regulations in England and Wales, whereas in Scotland and Northern Ireland, powers in the latter Act have generally been used. Moreover, as health and social care are devolved matters, the issue of devolution has also further complicated the matter with the various nations of the United Kingdom sometimes implementing different levels of restrictions at different times.<sup>6</sup> In what follows, for practical reasons only the most significant historic and currently in force legislative provisions in the four nations will be set out.

### *England*

Beginning with England, the Health Protection (Coronavirus) Regulations 2020 were implemented on 10 February 2020,<sup>7</sup> as a statutory instrument pursuant to the Public Health (Control of Disease) Act 1984. This instrument was limited in scope and mostly concerned initial isolation and screening measures when the pandemic first came to the UK's shores. It was then revoked and replaced on 25 March 2020 by fast-tracked primary legislation in the form of the Coronavirus Act 2020. This Act, applicable in all four nations of the UK to some extent depending on the particular provisions, conferred significant powers upon Government Ministers to take swift action to combat the spread of the virus. Shortly prior to the Act, the Health Protection (Coronavirus, Business Closure) (England) Regulations 2020 were implemented on 21 March 2020 to enforce the closure of indoor premises selling food and drink, and other leisure and hospitality establishments.<sup>8</sup>

These measures were then followed by the more well-known Health Protection (Coronavirus, Restrictions) (England) Regulations 2020 on 26 March 2020,<sup>9</sup> commonly referred to as the 'Lockdown Regulations' for containing the most serious restrictions of the initial enforced lockdown. These were later revoked and replaced on 4 July 2020 by the Health Protection (Coronavirus, Restrictions) (No. 2) (England) Regulations 2020 which allowed some easing of restrictions.<sup>10</sup>

For some months after, attempts were made to impose targeted 'localised' lockdowns in response to spiking infection rates, initially in Leicester,<sup>11</sup> and then in other areas of England such as Luton, Blackburn, Bradford and then much of Northern England.<sup>12</sup> However, in October 2020, this localised approach was abandoned and replaced by a series of so-called tiered restrictions, made possible through three further Regulations.<sup>13</sup> Nevertheless, with the second wave of the pandemic taking hold and worsening in November 2020, a more general 'lockdown' system was once again implemented on 3 November 2020 by the Health Protection (Coronavirus, Restrictions) (England) (No. 4) Regulations

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<sup>6</sup> See Akash Paun et al, 'Coronavirus and devolution' *Institute for Government* (last updated 1 July 2020) at <https://www.instituteforgovernment.org.uk/explainers/coronavirus-and-devolution> accessed 22 July 2021.

<sup>7</sup> SI 2020/129.

<sup>8</sup> Also made pursuant to the Public Health (Control of Disease) Act 1984. Revoked and replaced by the more extensive 'Lockdown Regulations' (SI 2020/350) below.

<sup>9</sup> SI 2020/350.

<sup>10</sup> SI 2020/684.

<sup>11</sup> The Health Protection (Coronavirus, Restrictions) (Leicester) Regulations 2020 (SI 2020/685).

<sup>12</sup> See for example, The Health Protection (Coronavirus, Restrictions) (Blackburn with Darwen and Luton) Regulations 2020 (SI 2020/800); The Health Protection (Coronavirus, Restrictions) (Blackburn with Darwen and Bradford) Regulations 2020 (SI 2020/822); The Health Protection (Coronavirus, Restrictions on Gatherings) (North of England) Regulations 2020 (SI 2020/828).

<sup>13</sup> 'Tier 1': The Health Protection (Coronavirus, Local COVID-19 Alert Level) (Medium) (England) Regulations 2020 (SI 2020/1103); 'Tier 2': The Health Protection (Coronavirus, Local COVID-19 Alert Level) (High) (England) Regulations 2020 (SI 2020/1104); 'Tier 3': The Health Protection (Coronavirus, Local COVID-19 Alert Level) (Very High) (England) Regulations 2020 (SI 2020/1105).

2020.<sup>14</sup> Shortly before the Christmas period, a tiered system of restrictions returned via the Health Protection (Coronavirus, Restrictions) (All Tiers) (England) Regulations 2020.<sup>15</sup>

Finally, these Regulations were replaced by the Health Protection (Coronavirus, Restrictions) (Steps) (England) Regulations 2021 which came into force on 29 March 2021.<sup>16</sup> These Regulations have gradually phased out the most significant restrictions in three steps, subject to some limitations of group size such as weddings, civil partnership receptions and funerals. On 19 July 2021 England moved to the final stage, Step 4, whereby most remaining legal restrictions were removed, including the legal requirement to wear face coverings.

### *Scotland*

In Scotland, the UK-wide Coronavirus Act 2020 was swiftly followed by the Coronavirus (Scotland) Act 2020, enacted by the Scottish Parliament on 6 April 2020. This Act addressed some of the pre-existing statutory requirements placed upon public services in Scotland, which had become particularly onerous at the onset of the crisis, such as the regulations imposed upon the NHS, jury trials and tenants facing eviction. This was followed by the Coronavirus (Scotland) (No.2) Act 2020 on 27 May 2020 which made further reforms to tenancy agreements, care homes and the justice system, amongst others, to enable public services to continue functioning during the crisis. Certain provisions of both Acts have been extended on several occasions via a series of Regulations, whilst some provisions have been allowed to expire.<sup>17</sup> Further powers are contained in the Health Protection (Coronavirus, Restrictions) (Directions by Local Authorities) (Scotland) Regulations 2020, made on 28 August 2020,<sup>18</sup> which allow public authorities to give directions concerning specific premises, events or public outdoor places such as closing or restricting access to premises.

Similar to England, the most serious lockdown restrictions in Scotland to enforce social distancing measures and impose restrictions on gatherings, events and business activities were implemented by means of a statutory instrument. The Health Protection (Coronavirus) (Restrictions) (Scotland) Regulations 2020 were made on 26 March 2020,<sup>19</sup> pursuant to the powers conferred upon the Scottish Government by the Coronavirus Act 2020. These Regulations were eventually replaced on 14 September 2020 by the Health Protection (Coronavirus) (Restrictions and Requirements) (Scotland) Regulations 2020,<sup>20</sup> which were in turn replaced on 9 October 2020 by the Health Protection (Coronavirus) (Restrictions and Requirements) (Additional Temporary Measures) (Scotland) Regulations 2020.<sup>21</sup>

The current restrictions in Scotland are governed by the Health Protection (Coronavirus) (Restrictions and Requirements) (Local Levels) (Scotland) Regulations 2020 which came into force on 5 January 2021.<sup>22</sup> These Regulations introduced a five-tiered system of restrictions and have been amended on numerous occasions to allow for the gradual easing of lockdown measures in Scotland. In contrast to England and Wales which have generally applied nationwide measures, these Regulations have applied localised measures and significant differences have come into effect across the different regions of

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<sup>14</sup> SI 2020/1200 as amended.

<sup>15</sup> SI 2020/1374 as amended.

<sup>16</sup> SI 2021/364 as amended. This was revoked by The Health Protection (Coronavirus, Restrictions) (Steps etc.) (England) (Revocation and Amendment) Regulations 2021 (SI 2021/848).

<sup>17</sup> The Coronavirus (Scotland) Acts (Early Expiry of Provisions) Regulations 2020 (SSI 2020/249); The Coronavirus (Scotland) Acts (Amendment of Expiry Dates) Regulations 2020 (SSI 2020/299); The Coronavirus (Scotland) Acts (Amendment of Expiry Dates) Regulations 2021 (SSI 2021/152).

<sup>18</sup> SSI 2020/262.

<sup>19</sup> SSI 2020/103 as amended.

<sup>20</sup> SSI 2020/279 as amended.

<sup>21</sup> SSI 2020/318 as amended.

<sup>22</sup> SSI 2020/344 as amended.

Scotland.<sup>23</sup> On 19 July 2021, however, all of Scotland was moved to Level 0 restrictions, with a view to removing all remaining major restrictions on 9 August 2021 if certain conditions are met.

### *Wales*

In Wales, powers in the UK-wide Coronavirus Act 2020 were given effect to by the Coronavirus Act 2020 (Commencement No. 1) (Wales) Regulations 2020 which were made on 26 March 2020.<sup>24</sup> These Regulations, similar to the two Coronavirus (Scotland) Acts, alleviated some of the pressures placed upon Welsh public authorities caused by their pre-existing statutory duties.

As with England and Scotland, the most significant lockdown restrictions to enforce social distancing measures and impose restrictions on gatherings, events and business activities were made by statutory instrument.<sup>25</sup> The Health Protection (Coronavirus Restrictions) (Wales) Regulations 2020, made pursuant to powers in the Public Health (Control of Disease) Act 1984, came into force on 26 March 2020.<sup>26</sup> These Regulations were replaced the Health Protection (Coronavirus Restrictions) (No.2) (Wales) Regulations 2020,<sup>27</sup> which mostly came into force on 11 July 2020, which were in turn replaced by the Health Protection (Coronavirus Restrictions) (No. 3) (Wales) Regulations 2020,<sup>28</sup> coming into force on 23 October 2020. These were replaced by the Health Protection (Coronavirus Restrictions) (No. 4) (Wales) Regulations 2020,<sup>29</sup> coming into force on 9 November 2020.

The current restrictions in Wales are governed by the Health Protection (Coronavirus Restrictions) (No. 5) (Wales) Regulations 2020 and are due to expire by 27 August 2021.<sup>30</sup> These Regulations, similar to those implemented recently in England, implement levels or a ‘steps’ approach to the phased easing of restrictions. At the time of writing all of Wales is subject to Alert Level One, which presents the lowest level of restrictions, with a view to moving to Alert Level Zero on 7 August 2021.

### *Northern Ireland*

As with the other nations of the United Kingdom, the most significant lockdown restrictions to enforce social distancing measures and impose restrictions on gatherings, events and business activities were made by statutory rules.<sup>31</sup> Similar to Scotland, the initial and most significant restrictions were enacted pursuant to powers conferred upon the devolved administrations by the Coronavirus Act 2020, in the form of the Health Protection (Coronavirus, Restrictions) Regulations (Northern Ireland) 2020 which took effect on 28 March 2020.<sup>32</sup> These Regulations enforced the closures of premises and imposed restrictions on gatherings and were revoked and replaced by the Health Protection (Coronavirus, Restrictions) (No. 2) Regulations (Northern Ireland) 2020, taking effect on 23 July 2020.<sup>33</sup> The current restrictions in Northern Ireland are governed by the Health Protection (Coronavirus, Restrictions)

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<sup>23</sup> See Scottish Government, ‘Coronavirus (COVID-19) protection levels: What you can do’ (last updated 19 July 2021) at <https://www.gov.scot/publications/coronavirus-covid-19-protection-levels/> accessed 22 July 2021.

<sup>24</sup> SI 2020/366 (W 81).

<sup>25</sup> For the full list of Regulations applicable in Wales, see Welsh Government, Coronavirus legislation: Restrictions on individuals, business and others (last updated 16 July 2021) at <https://gov.wales/coronavirus-legislation-restrictions-individuals-business-and-others> accessed 22 July 2021.

<sup>26</sup> SI 2020/353 (W 80) as amended.

<sup>27</sup> SI 2020/725 (W 162) as amended.

<sup>28</sup> SI 2020/1149 (W 261) as amended.

<sup>29</sup> SI 2020/1219 (W 276) as amended.

<sup>30</sup> SI 2020/1609 (W 335) as amended.

<sup>31</sup> These are formally known as Statutory Rules rather than Statutory Instruments but perform the same function.

<sup>32</sup> SR 2020/55 as amended. The powers were formally conferred by the Public Health Act (Northern Ireland) 1967, as amended by the Coronavirus Act 2020.

<sup>33</sup> SR 2020/150 as amended.

Regulations (Northern Ireland) 2021 which came into effect on 9 April 2021,<sup>34</sup> with a view to easing restrictions on 26 July 2021.

### **An overview of the legal challenges**

The complexity and duration of the lockdown measures set out above have significantly restricted basic freedoms and liberties for people across the United Kingdom to some extent for almost 18 months. Thus, it is not surprising that the various Governments across the nations have faced numerous legal challenges throughout the course of the pandemic. What follows is not intended to be an exhaustive account of these challenges, but a brief account and reflection over some of the most significant, most of which have had very limited success. Owing to what most generally accept to be a genuine public health crisis necessitating tough restrictions, the courts have generally shown a deferential approach to Government, thus conferring a significant margin of discretion in the making and enforcement of lockdown and physical distancing measures. That being said, the impact and proportionality of restrictions has been seriously considered in some cases.

Even prior to the implementation of the formal lockdown regulations, on 25 March 2020 the Court of Protection in England had to consider the best interests of an 83-year-old man suffering from Alzheimer's where his care home had suspended all family visits in the wake of the pandemic. In *BP v Surrey CC*,<sup>35</sup> the Court strangely applied Article 15 of the European Convention on Human Rights (ECHR) which permits derogations from certain human rights obligations in times of emergency, despite there being no formal derogation from the British Government. Mr Justice Hayden found that the restrictions to the applicant's right to liberty (Article 5) and privacy and family life (Article 8) were justified by the crisis and the implementation of alternative means of family communication. This was a particularly awkward decision due to the absence of a formal derogation announcement from the British Government at the time, or even since the beginning of the pandemic.

Another legal challenge which pre-dated the formal lockdown regulations also came in March 2020 concerning immigration detention and the impact of COVID-19 upon detainees. In *R (Detention Action) v Secretary of State for the Home Department*,<sup>36</sup> the charity 'Detention Action' sought interim relief via judicial review, seeking the release of detainees with particular medical conditions who were thus placed at greater risk to the pandemic. Relying upon the right to life (Article 2) and the prohibition of torture and inhuman and degrading treatment (Article 3) of the ECHR, the charity challenged their detention and especially those with increased vulnerability to the pandemic, and the absence of an effective system for protecting detainees in the pandemic more generally. The High Court rejected the plea, pointing to the fact that the Home Office had already released several hundred detainees during the pandemic and was taking 'sensible, practical and precautionary steps to address the possible effect of the COVID-19 pandemic in immigration detention centres'. In particular, it was stressed that it was the role of the court to assess the legality of the secretary of state's actions, not to second-guess legitimate operational choices.<sup>37</sup>

Following the introduction of the formal lockdown regulations across the four UK nations at the end of March 2020, set out earlier in this article, one of the earliest and most significant challenges to the Regulations in England came in May 2020 in *R (Hussain) v Secretary of State for Health and Social Care*.<sup>38</sup> In this case the applicant relied upon the freedom of thought, conscience and religion (Article 9) of the ECHR to seek interim relief in respect of the enforced closure of places of worship contained in the so-called Lockdown Regulations.<sup>39</sup> Mr Justice Swift refused the application, finding that the interference with Article 9 was not disproportionate and the closure of places of worship was rationally connected to the objective of protecting public health. Moreover, the Court concluded that

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<sup>34</sup> SR 2021/93 as amended.

<sup>35</sup> *BP v Surrey CC* [2020] EWCOP 17.

<sup>36</sup> *R (Detention Action and another) v Secretary of State for the Home Department* [2020] EWHC 732 (Admin).

<sup>37</sup> *ibid* paras 17-20, 22-25 and 27.

<sup>38</sup> *R (Hussain) v Secretary of State for Health and Social Care* [2020] EWHC 1392 (Admin).

<sup>39</sup> See above, SI 2020/350.

the Health Secretary was allowed a suitable margin of appreciation in deciding the order in which to lift restrictions. The question was whether the decisions, in so far as they interfered with ECHR rights, struck a fair balance with societal interests, and the Secretary had been entitled to adopt a cautionary stance.<sup>40</sup>

In contrast however, a successful and more recent legal challenge on a similar issue arose in Scotland concerning the continuation of Lockdown Regulations. In *Philip v Scottish Ministers*,<sup>41</sup> Christian church leaders challenged via judicial review the Regulations applicable at the time in Scotland concerning the enforced closure of places of worship.<sup>42</sup> The petitioners argued that the Scottish Government did not have the constitutional power at common law to restrict the right to worship in Scotland, and that the closure of places of worship was an unjustified infringement of their rights to manifest their religious beliefs and to assemble with others, as guaranteed by Articles 9 and 11 of the ECHR respectively. The Court of Session held that the Regulations constituted a disproportionate interference with the right to manifest religious beliefs pursuant to Article 9 of the ECHR, and thus the Scottish Ministers had acted *ultra vires* by imposing the enforced closure of religious premises.

Care home settings have been particularly hard hit by the effects of the pandemic. In that respect a challenge was brought in June 2020 in England by an individual, Dr Cathy Gardner, against the Department for Health and Social Care, NHS England and Public Health England following the death of her father to the virus. The claimant argued that certain policies and decisions were to blame for the significant death toll in care homes in violation of several human rights, namely the right to life (Article 2), the prohibition of torture, inhuman and degrading treatment (Article 3), the right to respect for privacy and family life (Article 8), and the prohibition of discrimination (Article 14) of the ECHR. In November 2020 Mr Justice Linden gave permission for a full hearing,<sup>43</sup> and after several months of delay the trial is now set to begin on 19 October 2021.

Restrictions in education settings have also attracted significant legal challenges. Arguably the most significant challenge to the general Lockdown Regulations came in England in July 2020 in *Dolan and others v Secretary of State for Health and Social Care*.<sup>44</sup> This involved an application to the High Court for judicial review of the legality of the initial Lockdown Regulations in England,<sup>45</sup> and the decision to stop providing education on school premises. The claimants argued *inter alia* that the Regulations had been issued *ultra vires*, that the Health Secretary had acted irrationally in making them, and that he had acted disproportionately by not terminating them. The claimants also raised objections on human rights grounds, arguing *inter alia* that the restrictions on movement, gatherings and the closure of places of worship breached various ECHR rights. Mr Justice Lewis rejected the application, finding that the Regulations were lawful, that some of the grounds for complaint were merely academic following the amendment of the Regulations, and that there was no remedy of any practical purpose in respect of school closures given the Government's subsequent pledge to re-open them in September 2020. The case was subsequently appealed to the Court of Appeal which granted the application in part, but dismissed the claim on its merits.<sup>46</sup> The Court of Appeal held that the Health Secretary had not acted *ultra vires* by making the Regulations, that the other public law grounds for challenge were flawed or unarguable, and finally that the various human rights arguments put forward were flawed, unarguable or merely academic given the subsequent developments.

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<sup>40</sup> [2020] EWHC 1392 (Admin) Swift J, paras 24-25.

<sup>41</sup> *Philip v Scottish Ministers* [2021] CSOH 32.

<sup>42</sup> Health Protection (Coronavirus) (Restrictions and Requirements) (Local Levels) (Scotland) Amendment (No 11) Regulations 2021 (SSI 2021/3).

<sup>43</sup> BBC News, 'Covid: Judge allows legal challenge into care home deaths' (19 November 2020) at <https://www.bbc.co.uk/news/uk-england-devon-55007355> accessed 22 July 2021.

<sup>44</sup> *Dolan and others v Secretary of State for Health and Social Care* [2020] EWHC 1786 (Admin).

<sup>45</sup> See above, SI 2020/350.

<sup>46</sup> *R (Dolan and others) v Secretary of State for Health and Social Care & another* [2020] EWCA Civ 1605.

In Wales, residential visits and overnight stays which are essential for school trips remained subject to restrictions until July 2021, in contrast to England and Scotland which eased restrictions earlier in May 2021. In June 2021, whilst the ban was still in force, one such centre in Wales – the Rhos y Gwaliau Outdoor Education Centre – submitted a pre-action protocol letter and sought to challenge the decision-making which forced outdoor education centres to remain closed for groups to stay overnight.<sup>47</sup>

The hospitality industry has also been hit particularly hard by the initial enforced closure of premises, but also later in the pandemic with significant capacity restrictions and conditions governing the phased re-opening of premises. In England, the High Court recently found that the Government may have unlawfully discriminated against black and minority ethnic people under the Equality Act 2010 with its policy, introduced in December 2020, of ordering public houses to serve alcoholic drinks only with ‘substantial meals’.<sup>48</sup> A different legal challenge concerning the reopening date for indoor hospitality was recently rejected by the High Court, with Mr Justice Knowles finding the challenge merely academic given the easing of restrictions and the likely time that would pass having to wait for a hearing.<sup>49</sup> A similar challenge has been proposed in Wales, with the owners of a restaurant arguing that certainty over the timeline of easing of restrictions was needed.<sup>50</sup>

Lastly, one further specific legal challenge in England concerned the detention and legal aid arrangements for immigration detainees held in prisons, which were less favourable than those in place for people held in immigration removal centres.<sup>51</sup> Mr Justice Swift in the High Court ruled that the Government had failed to provide adequate legal advice to people held under immigration powers in jails after a man was left without a lawyer for 10 months and forced to represent himself.

## Conclusions – what next?

Whilst the worst of the crisis which necessitated the strictest lockdown measures seems to have now passed, some of the consequences of the pandemic will undoubtedly persist in the medium and long term. England’s so-called ‘freedom day’ – the lifting of most remaining restrictions – took place on 19 July 2021 after being delayed from 21 June. The other nations of the UK appear to be taking a more cautious approach however, with a slower and more gradual easing of restrictions over the coming weeks.

Looking further ahead, on 12 May 2021, the Prime Minister, Boris Johnson, announced that a public inquiry into the Government’s handling of the crisis would commence in Spring 2022.<sup>52</sup> The Prime Minister confirmed that this would be ‘an independent public inquiry on a statutory basis, with full powers under the Inquiries Act 2005, including the ability to compel the production of all relevant materials and take oral evidence in public under oath’.<sup>53</sup> Depending on its precise mandate and terms

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<sup>47</sup> Brendon Williams, ‘Covid: Outdoor education centre fights school trip ban’ *BBC News* (11 June 2021) at <https://www.bbc.co.uk/news/uk-wales-57438593> accessed 22 July 2021.

<sup>48</sup> Ewan Somerville, ‘Substantial meal policy may have discriminated against BAME customers in pubs, High Court rules’ *Daily Telegraph* (1 March 2021) <<https://www.telegraph.co.uk/news/2021/03/01/substantial-meal-policy-may-have-discriminated-against-bame/>> accessed 22 July 2021. The case did not proceed to trial as the rule was no longer in place.

<sup>49</sup> Emily Hawkins, ‘High Court rules against Lord and Osmond over indoor reopening’ *The Morning Advertiser* (4 May 2021) at <https://www.morningadvertiser.co.uk/Article/2021/05/04/Sacha-Lord-Hugh-Osmond-High-court-case-against-Government-on-indoor-pubs> accessed 22 July 2021.

<sup>50</sup> Thomas Deacon, ‘Cardiff restaurant to take legal action against Welsh Government over lockdown’ *Wales Online* (25 March 2021) at <https://www.walesonline.co.uk/whats-on/food-drink-news/sticky-fingers-cardiff-hospitality-reopening-20256331> accessed 22 July 2021.

<sup>51</sup> See Mary Bulman, ‘Lack of access to lawyers for immigration detainees being held in prison is unlawful, High Court rules’ *The Independent* (25 February 2021) <<https://www.independent.co.uk/news/uk/home-news/legal-aid-immigration-detention-high-court-b1807244.html>> accessed 22 July 2021.

<sup>52</sup> BBC News, ‘Covid inquiry: What is it and how will it work?’ (12 May 2021) at <https://www.bbc.co.uk/news/explainers-57085964> accessed 22 July 2021.

<sup>53</sup> HC Deb 12 May vol 695 Col 137.

of reference, the inquiry may have far-reaching consequences as the decision-making and legality of lockdown measures comes under deeper scrutiny, which was often lacking at the peak of the crisis with the speed at which measures were implemented.