



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

CO/2772/2023

In the matter of an application for judicial review

THE KING

on the application of

APRICOT UMBRELLA LTD

Claimant

-and-

HM REVENUE AND CUSTOMS

Defendant

On an application dated 25 July 2023 by the claimant for urgent consideration and interim relief

Following consideration of the documents lodged by the claimant and the response of the defendant dated 26 July 2023

ORDER by the Honourable Mr Justice Chamberlain

1. The application for interim relief is refused.
2. The application discloses possible abuses of the court's procedures and the papers are accordingly referred to the *Hamid* judge pursuant to para. 18.1.3 of the Administrative Court Judicial Review Guide ("the Guide").
3. Any application by the defendant for the costs of responding to the application may be filed on paper within 7 days of the service of this Order.

Reasons

This application is made in the context of a claim which challenges a decision of the defendant communicated by letter of 13 July 2023 and said to have been received on 17 July 2023. That letter gave reasons for the decision to publish the claimant's name and address and the name of its former director as persons suspected of promoting or being a person connected with a tax avoidance scheme. The letter said that the information would be published "no earlier than 14 days from the date of this letter", i.e. no earlier than 28 July 2023.

The power to publish information about tax avoidance schemes derives from s. 86 of the Finance Act 2022 ("s. 86"). The defendant's intention to publish the information had been indicated in a letter dated 15 February 2023, to which the claimant responded on 30 March 2023 and again on 7 July 2023.

The claim form is dated 25 July 2023 and is supported by grounds settled by counsel (Setu Kamal) dated 7 July 2023 (this appears to be a mistake, since it refers to the letter of 13 July 2023 being received on 17 July 2023). The grounds advance challenges to s. 86 based on the free movement of capital, which is said to apply as a directly effective EU Treaty right (ground 1); the EU and UK GDPR (ground 2); and Article 1 of Protocol 1 and Article 6 ECHR. They also contend that the defendant has no power to publish the name of the claimant because it is acting as agent for a Cypriot company, ADYE Ltd (ground 4).

The application for urgent consideration was filed on 25 July 2023. On form N463, under “Reasons for Urgency”, it is said that if publication occurs, “then the Claimant’s business is likely to be lost”. The claimant sought consideration of the form within 24 hours and consideration of interim relief within 7 days.

There are three aspects of this application which are sufficient on their own to justify the refusal of relief.

First, when the claimant received the 17 July 2023 letter, it was clear that publication might occur at any time from 28 July 2023. No reason at all is given why the claimant waited until the evening of 25 July 2023 before making this application – and then sought urgent consideration within 24 hours.

Second, the Grounds make prominent reference (see para. 3) to “a legal challenge to section 86 publishing” which is said to be “underway in the case of Veqta Limited (an unconnected party, though represented by the same counsel”. They do not mention that, in that case, permission was refused on paper and then in a judgment dated 3 July 2023 after an oral hearing before Ritchie J on 28 June 2023, at which the claimant’s counsel appeared: see [2023] EWHC 1659 (Admin). The grounds in that case appear to have overlapped substantially (if not completely) with those advanced here. Those grounds were either withdrawn (in the case of the ground relying on the EU and UK GDPR) or held to be unarguable. This omission appears, *prima facie*, to constitute a breach of counsel’s duty to the court and a breach of the claimant’s duty to make full and frank disclosure of relevant matters.

Third, the submissions made in support of interim relief do not refer to the relevant test for injunctive relief to prevent a public authority from publishing information which it is obliged or empowered to publish. This is set out in the Guide at para. 16.6.3. The authorities cited at fn 280 establish that interim relief will be granted only “for the most compelling reasons” or in “exceptional circumstances”. Any application for such interim relief should set out that test and explain why it is met. Nothing under the heading “Balance of convenience” in the Grounds, or elsewhere, does either of these things. In particular, there is nothing which explains the cryptic comment in form N463 that “the Claimant’s business is likely to be lost”. Para. 37 amounts to a series of assertions, which are not properly explained.

At first sight, the matters described above appear to amount to abuses of the urgent consideration procedure, and of the court’s procedures more generally, which ought to be investigated further. The papers should therefore be referred to the *Hamid* judge pursuant to para. 18.1.3 of the Guide.

Signed: Mr Justice Chamberlain

Dated: 26 July 2023

The date of service of this order is calculated from the date in the section below

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: 26/07/2023

Solicitors: IN PERSON
Ref No.