

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35
36

IN THE HIGH COURT OF JUSTICE - QUEEN'S BENCH DIVISION

Courtroom No. 37

The Royal Courts of Justice
Strand
London
WC2A 2LL

Wednesday, 10th April 2019

before

THE HONOURABLE MR JUSTICE DAVIS

ALLMAN

- v -

THE PRIME MINISTER

THE CLAIMANT appeared IN PERSON
NO APPEARANCE by or on behalf of the DEFENDANT

WHOLE HEARING

This Transcript is Crown Copyright. It may not be reproduced in whole or in part, other than in accordance with relevant licence or with the express consent of the Authority. All rights are reserved.

WARNING: reporting restrictions may apply to the contents transcribed in this document, particularly if the case concerned a sexual offence or involved a child. Reporting restrictions prohibit the publication of the applicable information to the public or any section of the public, in writing, in a broadcast or by means of the internet, including social media. Anyone who receives a copy of this transcript is responsible in law for making sure that applicable restrictions are not breached. A person who breaches a reporting restriction is liable to a fine and/or imprisonment. For guidance on whether reporting restrictions apply, and to what information, ask at the court office or take legal advice.

1 **Case called.**

2 MR JUSTICE DAVIS: Now, Mr Allman, I have read the witness statement you have
3 provided. I understand that you did attend the administrative court office, and they
4 told you to come here, is that right?

5 MR ALLMAN: They told me that as... in their capacity as the administrative court they
6 could only deal with the judicial review application.

7 MR JUSTICE DAVIS: Yes.

8 MR ALLMAN: The particular circumstances that I'm in, My Lord, are that I believe that
9 the Prime Minister may be intending to act illegally, and the balance of
10 convenience requires that that is prevented rather than allowed to happen, followed
11 by a judicial review, which would be found to be constitutionally messy.

12 MR JUSTICE DAVIS: Right. I am sorry to interrupt. What is your cause of action
13 against the Prime Minister?

14 MR ALLMAN: Right. I haven't made a claim against the Prime Minister.

15 MR JUSTICE DAVIS: No?

16 MR ALLMAN: But I find myself in the situation, My Lord, where I have reason to believe
17 from media reports that the Prime Minister is intending to revoke the Article 50
18 notice that has been given to the European Union of the United Kingdom's
19 intention to leave the European Union –

20 MR JUSTICE DAVIS: Yes.

21 MR ALLMAN: And that she may well intend to do that purporting to be able to do that
22 under the Royal Prerogative. I say that the authority in *R (Miller) v Secretary of*
23 *State for Exiting the European Union* [2017] UKSC 5 in which 20,000 pages were
24 taken, and the judgment extended to 297 pages, in the Supreme Court alone, which
25 was also judged in the first instance at the Court of Appeal, that that *Miller*
26 precedent, that this type of thing, such as giving an Article 50 notice, or revoking it,
27 requires an Act of Parliament to enable the executive, in other words the
28 Prime Minister, to do that. It cannot be done under the Royal Prerogative.

29 MR JUSTICE DAVIS: Yes –

30 MR ALLMAN: Now I cannot argue that in full. This is an interim, *ex parte* hearing, and I
31 am saying that if Mrs May does not get her deal, today, from the council of
32 ministers because one attending minister vetoes it, then there are two possibilities:
33 the UK will leave the European Union at 11pm on Friday. That's two days from
34 now.

1 The other possibility is that it won't, because the Article 50 notice is revoked.
2 Those are the only two possible outcomes and the correspondence of which I have
3 become aware since drafting those papers, in connection with the judicial review
4 that the political party English Democrats is conducting, the pre-action
5 correspondence in that makes it clear that the government position is non-
6 committal as to whether the government believes that it has the right to revoke
7 Article 50 using the Royal Prerogative without enabling legislation in the form of
8 an Act of Parliament.

9 MR JUSTICE DAVIS: Right.

10 MR ALLMAN: I believe that there is substantial, significant risk that this will happen if
11 Mrs May does not get her deal, or at any later time, and, therefore, I am asking you,
12 because this is a matter of the utmost gravity, that you issue an interim injunction
13 prohibiting the Prime Minister from revoking Article 50 notice, unless this is with
14 the authority of primary legislation. I'm saying that the trouble that you will cause
15 by not giving that is a lot less... sorry, a lot more than the trouble that you would
16 cause if you gave that injunction.

17 In the alternative, My Lord, because I am not a lawyer, I'm just a litigant in person,
18 and I had no idea on Sunday that I was going to be doing this today because things
19 that I have heard on the news that have shocked me, I never anticipated. But here
20 we are, in this situation, and it may be that you can suggest that an adequate remedy
21 would be a declaration, which a higher judge may overturn, I understand that
22 My Lord, that without statutory authority, just as you cannot give Article 50 notice
23 without statutory authority, so without statutory authority, you cannot revoke it, no
24 matter that things didn't go well today on the mainland of Europe.

25 MR JUSTICE DAVIS: I am sorry to go back to what I asked a few minutes ago. What is
26 your cause of action against the Prime Minister?

27 MR ALLMAN: Okay, well if you look at the final paragraph I mentioned, Section 37 of
28 the Senior Courts Act, protection of my legitimate interests. I'm going to get my
29 papers out.

30 When somebody applies for an injunction that is the statutory criterion for whether
31 you give it or not.

32 MR JUSTICE DAVIS: Yes, but the point is this: this is the Queen's Bench Division, and I
33 can grant injunctive relief. Sometimes proceedings will already have been begun,
34 sometimes it's on the basis that it is very urgent and there is an undertaking that

1 proceedings will be begun, but either way, I have got to have in mind that there is
2 some cause of action, some kind of proceedings that could be taken by the
3 individual in this case against the other side. I do not see that you have got an
4 ordinary cause of action against the Prime Minister.

5 MR ALLMAN: Well, it's not a very ordinary situation, My Lord, but, if you look at the
6 case *Miller*, I haven't read the pleadings in that case, I've only read the judgment,
7 but in that –

8 MR JUSTICE DAVIS: Yes, I am sorry to interrupt. *Miller* was in the administrative
9 court, it was a divisional court that heard the original application, albeit that it was
10 three judges, senior judges, but it was a divisional court because it was an
11 application for judicial review.

12 MR ALLMAN: But it was an application judicial review for a decision that had not yet
13 been taken. A purported decision to give notice under Article 50 by virtue of the
14 authority of the Royal Prerogative, and the court said you can't do that.

15 MR JUSTICE DAVIS: Yes, I follow that, but what I am saying is that the nature of the
16 proceedings was judicial review, that is, in the administrative court. You have
17 come to me as the duty Queen's Bench judge, so people have been coming in
18 during the day, who want to overturn the decision of a lower court judge, or who
19 are taking proceedings against somebody and they want their interests protected
20 pending the final decision, and so on and so forth.

21 You have got no... you could not go off to the court office now and start
22 proceedings against the Prime Minister, because there is nothing to take
23 proceedings about.

24 MR ALLMAN: So, what did *Miller* do, My Lord? Because that was a hypothetical
25 situation, and the court ruled if the government purported to give Article 50 notice
26 under the Royal Prerogative it was exceeding its power, and I am saying that if the
27 government seeks to revoke Article 50 under the Royal Prerogative it will be
28 exceeding its powers.

29 MR JUSTICE DAVIS: Well –

30 MR ALLMAN: And shall we wait till Friday when they've done that, My Lord?

31 MR JUSTICE DAVIS: Well, I am sorry, I am sure it is me not making myself plain.
32 Mrs Miller or Ms Miller, whatever she is, took her proceedings as in the divisional
33 court, the administrative court, for judicial review, of what was understood to be
34 the position, namely that the Prime Minister asserted, I mean, there was no doubt

1 about it, she asserted that she was entitled to proceed without any parliamentary
2 authority, per se. It was an executive decision, and, therefore, Gina Miller sought
3 declaratory relief, and she got it, both in the divisional court, and in due course, the
4 Supreme Court.

5 You come here to me as the Queen's Bench duty judge, and I am asking, if I were
6 to ask you, require you to go and file your particulars of claim against the
7 Prime Minister, well, you have not got a claim against the Prime Minister, you,
8 personally. This is an issue of whether there is the power of the court to review the
9 position.

10 MR ALLMAN: Well, My Lord, if I may point out that, although I didn't know this when I
11 drafted this witness statement and the application for the injunction, I have since
12 learned that the government asked the direct question as to whether a statute was
13 sufficient to revoke the Article 50 notice, or whether the Royal Prerogative would
14 be adequate, that which used to be called the treasury solicitor in other proceedings
15 gave an unclear answer, certainly raising the suspicion that the government is trying
16 to keep open the option of revoking the Article 50 notice between now and
17 11.00pm on Friday night.

18 MR JUSTICE DAVIS: Well –

19 MR ALLMAN: I am saying that must be stopped if the courts are capable of taking a
20 robust enough approach, because it would be illegal.

21 MR JUSTICE DAVIS: Well, I am offering no... at the moment I am not going to offer
22 any view. If there is a court that is capable of doing that, it is not this one. You are
23 in the wrong place. As I was saying, I am the duty Queen's Bench judge, and I am
24 here to engage in judgments about proceedings by entities be they individuals or
25 corporations, against other individuals or corporations, in order to protect private
26 rights.

27 Now what you are seeking to do is to establish a constitutional position, and I am
28 not decrying that aim, but you are in the wrong place. You need to apply for
29 judicial review and apply for interim relief as part of your application for judicial
30 review.

31 MR ALLMAN: Thank you.

32 MR JUSTICE DAVIS: I mean, I do not know what Mrs Miller, I do not suppose she
33 needed to apply for interim relief, I think the government undertook not to take any
34 steps until the conclusion of the proceedings.

1 I will say this: my understanding of Mrs Miller's litigation is that the court, both the
2 administrative court and the Supreme Court, came to the conclusion that because
3 invoking Article 50 would have the, as it was then believed, inevitable consequence
4 that the treaty rights of people in this country would be affected, and the rights
5 under European legislation would be affected, that had to be done by parliamentary
6 bill, rather than executive action.

7 It rather seems to me the opposite would apply if Mrs May was seeking to restore
8 the status quo ante. That is just my personal opinion, I may be wrong about that,
9 but what I am sure about is the only way you can pursue this is by applying for
10 judicial review, and within that application, applying for interim relief, and that is
11 something you do at the administrative court office.

12 I mean, here, you see, you have got, this is the right form, you will probably need to
13 start again with it. You need to set out, by reference to your statement, what
14 decision it is, or potential decision it is, you want reviewed, and why, and then the
15 interim relief is to prevent the Prime Minister from doing what you say she is going
16 to do before the court has had a chance to rule.

17 MR ALLMAN: Can I say there's a very significant risk of it, My Lord, and that it would
18 be illegal.

19 MR JUSTICE DAVIS: Well, then, you –

20 MR ALLMAN: I take your point and, in your situation, I would probably want to do
21 exactly as you've done, and to suggest that I should take the steps I'm trying to step
22 via the means, and I don't require you to make a formal judgment...

23 MR JUSTICE DAVIS: All right, well that is very kind. It is now 2.45pm. If you want to
24 get this thing underway today, you need to get back to the administrative court
25 office pretty smart-ish.

26 MR ALLMAN: I think it's probably not likely to be possible to draft it adequately in that
27 time. I'll probably have to do it first thing in the morning.

28 MR JUSTICE DAVIS: Well, if you do it first thing in the morning, and you log it with the
29 administrative court office, they have a duty judge, who is obliged, if it is made
30 clear that it is something of extreme urgency, to consider any application for
31 interim relief, literally on the same day.

32 MR ALLMAN: Okay. Might I ask you to make an order that I had applied to the wrong
33 court but that you ruled that when I applied to the right court, this ought to be
34 considered as a matter of urgency. That would seem a fair thing to ask of you

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34

My Lord.

MR JUSTICE DAVIS: Well, I am very sorry, it is... I am not going to make that order because it would be pointless. I am telling you, if you go to the administrative court office, and say, this is a matter of extreme urgency, I require this to be dealt with, and they have little stickers they put on the case depending on how urgent it is, and the most urgent is within two hours. If you say this is urgent, it will certainly be dealt with tomorrow by the duty judge.

MR ALLMAN: Thank you, thank you, My Lord. There was one last request.

MR JUSTICE DAVIS: Yes?

MR ALLMAN: Would it be possible for me to obtain a transcript of this hearing at public expense?

MR JUSTICE DAVIS: No.

MR ALLMAN: Thank you, My Lord.

MR JUSTICE DAVIS: All right. Thank you very much. Thank you.

Court rises.

1
2
3
4
5

Transcript from a recording by Ubiquis
291-299 Borough High Street, London SE1 1JG
Tel: 020 7269 0370
legal@ubiquis.com