

LIBERTY

9 September 2019

Dear Prime Minister

Please find enclosed a copy of our urgent application for Judicial Review together with a cover letter of today's date sent to the Administrative Court.

This is an application that we lodge in the expectation that it will be rendered wholly unnecessary, and in the hope that it can be withdrawn at the earliest opportunity, without the need for either party to incur wholly unnecessary legal costs.

Liberty is a cross-party, non-party membership organisation which is at the heart of the movement for fundamental rights and freedoms in England and Wales. Since Liberty was founded in 1934, it has held governments of all colours and persuasions to account. We challenge injustice, defend freedom and campaign to make sure everyone in the UK is treated fairly. We are campaigners, lawyers and policy experts who work together to protect rights and hold the powerful to account. The objective of Liberty's litigation is always to ensure that the United Kingdom government respects and upholds human rights and civil liberties. Liberty is neutral on the issue of Brexit. This case is nothing to do with whether or how the UK leaves the European Union.

As you are well aware the European Union (Withdrawal) (No. 6) Bill 2019 (the "Act") is due to receive Royal Assent imminently. The Act requires you to seek an extension from the European Union in the event that you are unable to secure an agreement with them pursuant to Article 50(2) of the Treaty on European Union. We are gravely concerned by reports in the media suggesting that it is your intention to ignore your obligations under the Act. We consider that a decision by any Minister of the Crown – let alone the Prime Minister – to deliberately evade obligations under primary legislation would be a grave affront to the rule of law and the UK's constitutional settlement and would have a profoundly detrimental impact on the whole fabric of our legal system and constitutional order. It would plainly be unlawful. We consider that such an unprecedented step would represent a

fundamental threat to the civil liberties and human rights enjoyed by those in this country and which our mandate requires us to defend.

Notwithstanding the credibility of the multiple sources reporting your intent to disregard your lawful obligations, we hope that our concerns are misplaced. To that end, in the event that you make clear that you will comply with your obligations under the Act we will immediately withdraw our application for judicial review. We would urge you to make this statement immediately. A statement from the Prime Minister that he will comply with the law should be no more than a statement of the obvious – a failure to provide such an unequivocal clarification is capable of profoundly undermining respect for the rule of law.

In this regard, in light of comments made by the Foreign Secretary on 8 September 2019 suggesting that the Government may contest the meaning and effect of the clear terms of the Act, we invite you to affirm that the Act requires you to take the steps set out in sections 1(4) and 3(2)-(3) in the relevant circumstances. Given the urgency of this matter, we would request that you respond to this letter within 2 days, ie by no later than 4pm on 11 September 2019.

In light of this unprecedented situation, this letter should be taken as discharge of our obligations under the Pre-Action Protocol even though due to the urgency of this matter we have issued the claim. This is a matter that will hardly have taken you by surprise and no doubt you have already received comprehensive advice from the Attorney General on the operation of the Act and your obligations under it. This case will benefit from being brought by an independent party that is wholly neutral to ensure that the public understands that this is not a party political or Brexit issue. It is far more fundamental than that.

Yours sincerely

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Contact:

ClareC@libertyhumanrights.org.uk

EmmaN@libertyhumanrights.org.uk

0207 378 3655