

Reasons for allowing or refusing permission to appeal (including referral to the Court of Appeal (Civil Division)), and information concerning routes of appeal

The judge must complete this form on allowing or refusing an application for permission to appeal at a hearing or trial

Title of case/claim	The King on the application of (1) Anaesthetists United Limited (2) Marion Chesterton (3) Brendan Chesterton v General Medical Council
Case/claim no	AC-2024-LON-003354

Heard/tried before (<i>insert name of Judge</i>)	Date of hearing/trial
Mrs Justice Lambert DBE	14.05.25 - 15.05.25 ; 09.06.25

Nature of hearing/trial	Judicial Review - substantive hearing.
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Result of hearing/trial	Claim dismissed.
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☒ An appeal lies from this judgment order to the

Court of Appeal

 Court

Claimant’s/defendant’s application for permission to appeal

☐ Allowed ☒ Refused

☐ Refused as being totally without merit

(There is no right to renew this application at an oral hearing.)

Brief reasons for decision to allow or refuse permission to appeal
(to be completed by the Judge):

Permission to appeal is refused. The test in CPR 52.6(1) is not met. None of the grounds advanced has any real prospect of success and there is no other compelling reason for an appeal.

Ground One - Wrong approach to scrutiny.

1. No submissions were made on the approach to scrutiny save for those concerning the importation of the EU law precautionary principle. The principle has no application to the case and adds nothing to the *Wednesbury* standard of review.

Ground Two – process rationality

2. The arguments advanced repeat those made at the hearing (and which were rejected). The following short points are made.
3. The Court accepted the evidence of Professor Melville who set out in detail (across three statements) the defendant's approach to the regulation and supervision of associates. The judgment sets out a summary of the approach in paragraph 71 and the various stages of the reasoning process in paragraphs 72 – 93. The Court found that the defendant had considered the imposition of limits of practice and determined that those limits were best imposed locally (by employers and supervising doctors, taking into account the skills and experience of the associate) in conjunction with local clinical governance arrangements (and see paragraph 128 of judgment) and that such an approach was not irrational.
4. The Court considered the "type differences" between doctors and associates. The Melville evidence was that registration required associates to demonstrate their ability to comply with professional standards and recognise the limits of their competence. The Court accepted this evidence – see paragraph 124 of judgment. The Court did not make the findings alleged concerning the approach of the GDC or DHSC to limits of practice. See paragraph 123 of judgment.
5. The Court found that the evidence of risk was not qualitatively different. The defendant's own COI survey had identified concerns by doctors and patients concerning the scope of practice and supervision of associates. The later evidence, including the coronial reports, raised similar concerns. The coronial PFD reports were considered by the defendant (Pollitt and Marking – see paragraph 126 of the judgment) and the Chesterton concerns were raised directly with the defendant in April and July 2024. The Court found that the response to the evidence, including the coronial reports, was not irrational given the matters summarised in paragraph 71 of the judgment. Following registration, working within limits of competence was to be an enforceable standard. Having met the educational and training requirements of registration, the defendant expected individual associates to understand the limits of their competence.
6. As to paragraph 11 of the grounds, the case was not advanced on the basis that there was procedural irrationality in relation to informed consent. The way in which the case was advanced is set out in paragraph 146 of the judgment.

Ground 3 – outcome rationality

7. Again the arguments advanced repeat those made at the hearing and which were rejected.
8. In summary, there are pros and cons to the imposition of limits, see paragraphs 131 – 136 of judgment.
9. Professor Leng did not recommend that there should be an absolute limit on PAs seeing undifferentiated patients and did not recommend that the defendant impose such limits.
10. As to paragraph 15 of the grounds, the First Claimant (and BMA and Royal Academy) have all expressed the view that the defendant was not best placed to define limits. See paragraph 137(a) of judgment. The reasoning underpinning the defendant's decision on the imposition of limits is summarised in paragraph 71 of the judgment.

Ground 4 – s.31(2A).

11. The Court is obliged to consider whether to refuse relief if the "highly likely" test is satisfied.

Ground 5

12. The claimant and interested party made a number of criticisms of the Supervision Practice Advice. But they went to matters of detail only. They are rightly characterised as "scattergun" by the defendant. See paragraph 140 of judgment.

Ground 6

13. There were two strands to the claimants' oral argument concerning informed consent. The first concerned the statutory objectives of patient safety and confidence and the second concerned the law on informed consent. The issue between the parties is set out in paragraphs 155 to 158 of the judgment. The Court's conclusions are set out at paragraph 159. The second strand is dealt with at paragraph 162 of the judgment.

If refused

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The application for permission to appeal may be renewed in the appeal court

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There is no further right of appeal (see s.54(4) of the Access to Justice Act 1999)

Judge's Signature

Mrs Justice Lambert

Note: The appellant must file a copy of this completed form at the appeal court with the appellant's notice when issuing the appeal.

Do you consider the appeal should be referred to the Court of Appeal (Civil Division)?

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Yes

☒

No

If Yes, please indicate which of the following criteria apply

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There appear to be conflicting authorities

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There is a point of practice and procedure of significant importance

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There is a point of general principle and importance in the development of the substantive law

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A number of appeals on similar points suggest that a theme, or trend, is developing which the Court of Appeal needs to consider

Additional reasons