



CASE NO MC/AP/02/20

IN THE MAGISTRATE'S COURT OF THE FALKLAND ISLANDS

Courts and Tribunal Service
Town Hall
Ross Road
Stanley
Falkland Islands

Date: 27th November 2020

Before:

HHJ SARAH L WHITBY
SENIOR MAGISTRATE

BETWEEN:

DR M FRY

and

HER MAJESTY'S ATTORNEY GENERAL FOR THE FALKLAND ISLANDS

Dr Fry (for herself)

Mr S Walker (for the Respondent)

Hearing date: 27th November 2020

Approved Judgment

1. This is an appeal entirely properly brought by Dr M Fry against the Infectious Diseases Control (Coronavirus Quarantine) Regulations 2020 (the 'Regulations'). Section 9 of the Regulations says that a person may appeal against the imposition of quarantine and by implication its conditions if those conditions are neither necessary nor proportionate in the circumstances. The circumstances are those of the individual travelling.
2. The Appellant has appeared before me today by video link both visual and audio only. Dr Fry was not represented.
3. Mr Walker appeared for the Respondent
4. I make a general comment about the Regulations, which are that no one has said they were made improperly by the Legislature, they are valid laws which Dr Fry agrees cannot be criticised in introducing quarantine provisions.
5. As such it is important that I emphasise that the Falkland Islands are a democracy subject to the Rule of Law. The legislature make laws the Executive implement and the Judiciary interpret. I am not able to change law I only interpret for individual circumstances.
6. The issues to be decided are; is it proportionate for the individual person, Dr Fry, to be subject to quarantine restrictions regarding her ability to leave her accommodation and take exercise? Are her circumstances such that for her the regulation properly passed by the Legislature is not proportionate?
7. Dr Fry has explained that she is travelling to the Falklands on the Airbridge for the purpose of work and has been here to work before, and was here during the first part of the year when Covid measures were taken.
8. I am told that she has a higher risk of thrombosis due to her height weight and age. Her quarantine arrangements are that she will quarantine in the property of a colleague on her own. This property, she believes, has a small garden. Dr Fry says she can alleviate the risk of thrombosis by wearing stockings on the flight but she is not allowed to move around on the flight. Medication is not available to her. Generally she says that the restriction of exercise is a deprivation of her liberty and out of proportion to public health requirements.
9. Dr Fry asks that she be allowed out daily for limited exercise and asks for herself and other asymptomatic passengers. I make it clear that I am only able to decide on Dr Fry's appeal. The decision I make only applies to her and is particular to her and her circumstances.
10. Dr Fry refers also to her general physical and mental wellbeing being compromised by the restrictions.

11. Dr Fry tells me that New Zealand manage quarantine with people able to exercise for one hour per day, that the risk of infection in the circumstances she describes for exercising here is speculative and that if the legislation was designed to support public confidence the following of good medical guidance would be able to do that. Asymptomatic people are less likely to spread infection.
12. Mr Walker responds by emphasising the nature of Covid and the effect it can have particularly on the elderly, those infected may not show signs of illness immediately or at all, that in this community we cannot afford to allow our resources to be overwhelmed as there is limited backup. 14 days is a short period of time, and that there are now mandatory requirements in place when sharing accommodation. He emphasises that the New Zealand system is different to the Falklands as are the circumstances there generally.
13. The point is made that quarantine asks a small number of people to isolate in order to ensure the vulnerable are not restricted in their homes, which they were for a lengthy period.
14. The Government acknowledges the points made by Dr Fry but there is a balance to be struck. We have had recent positive test results, the current system is working, and to have less restrictions will undermine the quarantine system.
15. On balance I agree with the Respondent.
16. In Dr Fry's case I do think that the restriction of exercising only at the quarantine property in the house garden is a proportionate restriction. I consider that the deprivation of the ability to go outside even if masked and keeping distance, which may have risk of passing the virus however small is on balance acceptable in the light of the effect of the virus against this community especially the vulnerable and elderly. The quarantine regulations were formulated by the legislature with the needs of this community in mind and I need to have that to mind in deciding where the balance of harm lies.

27th November 2020

Sarah L Whitby
Senior Magistrate