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

AC-2025-LON-002659

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In the matter of an application for judicial review

THE KING

on the application of

UNION OF MEDICAL ASSOCIATE PROFESSIONALS

Claimant

-and-

(1) NHS ENGLAND
(2) THE SECRETARY OF STATE FOR HEALTH AND SOCIAL CARE
(3) PROFESSOR GILLIAN LENG

Defendants

-and-

(1) BRITISH MEDICAL ASSOCIATION

Interested Parties

Notification of the Judge's decision on the application for permission to apply for judicial review (CPR 54.11, 54.12)

Following consideration of the documents lodged by the Claimant and the Acknowledgements of Service filed by the Defendants and the Interested Parties.

ORDER by the Honourable Mr Justice MacDonald

1. The Claimant has permission to add Grounds 12 and 13 to its Amended Statement of Facts and Grounds.

2. Permission for the page limit for the Claimant's Amended Reply to be extended from 10 pages (as permitted, by paragraph 1 of the Order of Mr Justice Coppel dated 19 January 2026) to 15 pages, pursuant to paragraph 7.1(2) of PD 54.8A.

3. The application for permission to apply for judicial review is refused.

4. The costs of preparing the Acknowledgement of Service are to be paid by the Claimant to:

   (a) The First Defendant, summarily assessed in the sum of £22,000.

   (b) The Second Defendant, summarily assessed in the sum of £11,000.

5. Paragraph 2 above is a final costs order unless within 14 days of the date of this Order the Claimant files with the Court and serves on the Defendant a notice of objection setting out the reasons why he should not be required to pay costs (either as required by the costs order, or at all). If the Claimant files and serves notice of objection, the Defendant may, within 14 days of the date it is served, file and serve submissions in response. The Claimant may, within 7 days of the date on which the Defendant's response is served, file and serve submissions in reply.

6. The directions at paragraph 3 apply whether or not the Claimant seeks reconsideration of the decision to refuse permission to apply for judicial review.

    (a) If an application for reconsideration is made, the Judge who hears that application will consider the written representations filed pursuant to paragraph 3 above together with such further oral submissions as may be permitted, and decide what costs order if any, should be made.

    (b)If no application for reconsideration is made or if an application is made but withdrawn, the written representations filed pursuant to paragraph 3 above will be referred to a Judge and what order for costs if any, should be made will be decided without further hearing.

7. The Third Defendant and the Interested Party shall file and serve any N260 Statement of Costs with respect to costs of preparing the Acknowledgement of Service within 7 days and the question of those costs will thereafter be considered on the papers.

Reasons

1. By its Amended Statement of Facts and Grounds, the Claimant challenges the decisions made by NHS England and the Secretary of State on 16 July 2025, to accept and/or implement recommendations about the role, status and scope of practice of Physician Associates and Anaesthesia Associates made by Professor Leng in her review, commissioned by the Secretary of State and published on 16 July 2025. The Claimant also challenges the decision of 16 July 2025 of Professor Leng herself to reach the conclusions she did.

2. CPR r. 54.4 requires applicants to gain permission for judicial review. Permission is granted where the applicant satisfies court that there is an arguable case that a ground for seeking judicial review exists which merits full investigation at a full oral hearing with all the parties and all the relevant evidence, see *R. Ex p. Hughes v Legal Aid Board* [1992] 5 Admin. L.R. 623. An arguable case is one which has a realistic prospect of success and where there is no discretionary bar to a remedy such as delay, an alternative remedy, the application being purely academic or hypothetical, or the applicant being unlikely to gain any benefit, see *Sharma v Brown-Antoine* [2007] 1 W.L.R. 780 at [14(4)] and *Simone v Chancellor of the Exchequer* [2019] EWHC 2609 (Admin) at [112]).

3. Statements of Facts and Grounds are meant to be drafted as clear and concise statements (*R (SSE Generation Ltd) v CMA* [2022] 4 WLR 76 at [75]). The Claimant's Amended Statement of Facts and Grounds are discursive and very loosely pleaded. The Claimant now seeks to rely on thirteen grounds of challenge against NHS England and/or the Secretary of State. The Claimant seeks to advance six grounds against Professor Leng.

4. With respect to the grounds relied on by the Claimant against NHS England and / or the Secretary of State, the Amended Statement of Facts and Grounds does not disclose any arguable ground for seeking judicial review which merits investigation at a full oral hearing with all the parties and all the relevant evidence:

   (a) By Ground 1, the Claimant asserts that the decision of NHS England and the Secretary of State to adopt the title "Assistant" subverts or contradicts the statutory scheme and definition of the term "Associate", side steps the Secretary of State's duty to consult, creates confusion, cannot be justified on grounds of clarity and was irrational. However, this ground conflates a step taken to clarify a role in the work place for patients and a statutory definition used as part of a regulatory framework. There is nothing in Art 2(1) of the Health Care and Associated Professions Professional Qualifications Order 2024 (SI 374/2024) to prohibit the use of alternative titles in the workplace merited by stakeholder feedback. If it is proposed to amend the statutory framework as to titles then the Secretary of State will be required to consult pursuant to s.60(1)(b) and (4) and paragraph 9 of Schedule 3 to the Health Act 1999. Ground 1 is not arguable.

   (b) By Ground 2, the Claimant contends that the Secretary of State had a duty to consult those whose statutory right had been sidestepped by making title changes without amending the 2024 Order. The Claimant further asserts that NHSE had a duty under the NHS Constitution to consult the Claimant as it exercised control over the terms and basis of employment of the Claimant's members. Ground 2 is not arguable. For the reasons explained at (a) the premise of Ground 2, that a statutory right had been sidestepped, is not arguable. In any event, there is no freestanding duty to consult (*R (AD) v Hackney LBC* [2019] EWHC 943 (Admin), [2019] PTSR 1947). The Claimant does not convincingly identify any specific duty to consult the Claimant before accepting the recommendations of the Review, nor the legal basis on which such a specific duty arises. Further and in any event, the Claimant was part of the core stakeholder group for the Leng Review and took the opportunity to provide feedback. The Review also consulted physician associates and anaesthetist associates directly.

   (c) By Ground 3, the Claimant contends that NHSE and the Secretary of State breached their *Tameside* duties "given the avowed and obvious paucity of the evidential foundation for Professor Leng's recommendations." Insofar as Ground 3 asserts that the contents of the Leng review did not contain the information required for the decision made by NHSE and the

Secretary of State, the court will only intervene on this basis if no reasonable authority could have been satisfied on the basis of the enquiries made that it possessed the information necessary for its decision (*R (Balajirari) v SSHD* [2019] EWCA Civ 673, [2019] 1 WLR 4647 at [70]). As Dove J concluded when considering the application for interim relief, it is clear on its face that the review was produced as the result of a sophisticated and independent exercise of judgement. It was based on a review of published research, a call for evidence, a survey open to physician associates and anaesthetist associates and other healthcare professionals, visits to Trusts and primary care settings, webinars and consultation with key stakeholders. The review recognises and addresses deficiencies in the evidence. In the circumstances, it is not arguable that NHSE and the Secretary of State acted irrationally in accepting the recommendations of the review (*R (Plantagenet Alliance Ltd) v Secretary of State for Justice* [2014] EWHC 1662 Admin at [99]-[100]). Ground 3 is not arguable.

(d) By Ground 4, the Claimant contends that the Leng review was flawed as in its methodology, absence of cost/benefit analysis, absence of comparative consideration and contrary to the NHS Mandate and Long Term Plan and that NHSE and the Secretary of State acted irrationally in accepting the recommendations of the review. Again, as Dove J concluded when considering the application for interim relief, it is clear on its face that the review was produced as the result of a sophisticated and independent exercise of judgement. It was based on a review of published research, a call for evidence, a survey open to physician associates and anaesthetist associates and other healthcare professionals, visits to Trusts and primary care settings, webinars and consultation with key stakeholders. The review recognises and addresses deficiencies in the evidence. It is not arguable that the review contained the flaws, irrationality and procedural unfairness argued for by the Claimant, and hence not arguable that NHSE and the Secretary of State acted irrationally in adopting the same. Ground 4 is not arguable.

(e) By Ground 5 is confusingly pleaded and the alleged public law error relied on is unclear. The Claimant *appears* to contend that the First, Second and Third Defendant's acted irrationally and unfairly in considering urgency as a relevant factor in deciding, adopting and implementing the recommendations of the review. Once again, the adoption of the recommendations followed a sophisticated and independent exercise of judgement. It was based on a review of published research, a call for evidence, a survey open to physician associates and anaesthetist associates and other healthcare professionals, visits to Trusts and primary care settings, webinars and consultation with key stakeholders. No particular aspect of that clearly multi-part process, and the subsequent implementation of its recommendations, is identified as irrational or unfair beyond a bare criticism of taking account of "urgency". Ground 5 is not arguable on the basis of irrationality or unfairness.

(f) By Ground 6, the Claimant claims that the decision of NHSE and

the Secretary of State to adopt the recommendations of the review was the result of a collateral purpose. Namely to appease or acede to pressure from activist Resident Doctors, address their non-safety related grievances and avoid having to address unacceptable conduct perpetrated against physician associates and anaesthetist associates. Ground 6 is unarguable. There is a complete absence of the evidence necessary argue this ground in circumstances where it amounts to an allegation of bad faith on the part of NHSE and the Secretary of State.

(g) By Ground 7 the Claimant asserts a breach of the public sector equality duty and / or failure to carry out an adequate impact assessment as to disparate impact on patients and staff. A realistic and proportionate approach to compliance with the PSED should be taken by the court in circumstances where the PSED is concerned with process not outcome. The court should not be drawn into micro-managing the exercise of the duty and the court should only interfere where the approach adopted by the Defendant to the PSED is unreasonable or perverse (see the authorities summarised in *R(SG) v SSHD* [2016] EWHC 2639 (Admin) at [313]). The evidence demonstrates that the Secretary of State adopted a 'due regard' approach to the PSED for the stage that the current process has reached. The Claimant does not demonstrate that NHSE or the Secretary of State were under a duty to carry out an impact assessment. Ground 7 is not arguable.

(h) Ground 8 is a further irrationality claim asserting that NHSE and the Secretary of State acted irrationally in relying on recommendations that redefined the core duties and permitted scope of practice of physician associates and anaesthetist associates. For the same reasons given in relation to Ground 3, it is not arguable that NHSE and the Secretary of State acted irrationally in accepting the recommendations of the review. Beyond *guideline* job descriptions for newly qualified physician associates and anaesthetist associates, the review did not determine scope of practice, but rather work place terminology. Ground 8 is not arguable.

(i) Ground 9 contends that NHSE failed to have regard, as material factors, to basic tenets of employee relations, the duty to consult on changes to terms and conditions, undermining of trust and confidence and "other potential but serious breaches of employed contracts". These are matters of employment law. The Claimant does not set out any specific provisions of employment law or practice to which NHSE or the Secretary of State failed to have regard. Any breaches of employment law are properly the subject of the relevant complaints process and, if appropriate, employment proceedings. Ground 9 is not arguable.

(j) Ground 10 asserts that the Claimant had a legitimate expectation that the number of physician associates and anaesthetist associates would expand. The ground as pleaded, that they were instead redefined, "effectively cut" and could not

practice in their role, appears to conflate the size of the workforce and nomenclature in an attempt to make the NHS Long Term Plan and the NHS Workforce Plan the basis of a legitimate expectation with respect to nomenclature. There is no identifiable basis for asserting legitimate expectation with respect to workplace naming conventions that is clear, unambiguous and devoid of relevant qualification (*In Re McQuillan* [2021] UKSC 55). Ground 10 too, is not arguable.

(k) By Ground 11, the Claimant alleges a breach of Art 11 by NHSE in that it was deprived of its "Art 11 right to advance its members' interests by depriving it of its 'right to be heard'", particularly in circumstances where the Claimant was not given sight of the review as promised by Professor Leng. Whilst the Claimant relies on *Mercer v Alternative Future Group Ltd* [2024] UKSC 12, [2024] ICR 814, that case concerned employee detriment from an employer consequent on industrial action. In any event, the decision of NHSE does not prevent the Claimant from engaging with, and being heard by, individual employers of its members in the performance of its function as a union. Ground 11 is not arguable.

(l) Ground 12 contends that there has been a "failure to support" physician associates and anaesthetist associates. It unclear what public law ground of challenge is relied on in the assertion of "failure to support". There is no evidence to support the implicit allegation of bad faith based on misconduct by "activist Resident Doctors". The "obvious breach" arising from the actions of "activist Resident Doctors" is not specified and nor is the specific manner in which the NHS Constitution has been contravened. This ground is unarguable.

(m) Ground 13 contends that NHSE and the Secretary of State failed to comply with their statutory duties as regards the disparate impact of reducing the ability of physician associates to undertake their role on underserved communities, and groups with protected characteristics. In so far as it is asserted that the decision is unlawful because it will reduce the ability of physician associates to work with individuals with protected characteristics, no legal basis for this assertion is given. No evidence of disparate impact is cited. Ground 13 is not arguable.

5. With respect to the grounds relied on by the Claimant against Professor Leng, the Amended Statement of Facts and Grounds does not disclose any arguable ground for seeking judicial review which merits investigation at a full oral hearing with all the parties and all the relevant evidence:

(a) By Ground 1, the Claimant contends that the recommendation as to the title of physician associates and anaesthetist associates was irrational in circumstances where (a) 'associates' is the title utilised in legislation and by the applicable regulator and (b) there is no evidence that the use of the term 'assistant' will lead to greater clarity. This ground is not arguable. The report sets out in detailed terms the consultation

that took place and how that consultation informed the *recommendation* as to workplace usage. The rationale for the recommended change in workplace usage is clearly set out.

(b) By Ground 2 the Claimant contends that Professor Leng's review was not a proper or legally adequate consultation. The Claimant does not specify why or the type of consultation methodology that Professor Leng was under a duty to apply. There is no freestanding duty to consult (*R (AD) v Hackney LBC* [2019] EWHC 943 (Admin), [2019] PTSR 1947). Ground 2 is not arguable.

(c) By Ground 3 the Claimant contends that the recommendation decision was irrational. Ground 3 is not arguable. The Claimant does not identify the statutory duties which it contends Professor Leng was subject. Professor Leng is not subject to duties under the National Health Service Act 2006 nor is she a public authority for the purposes of the Equalities Act 2010. The Claimant's contention that Professor Leng failed to consider the impact of her recommendations is unstainable on the face of the report. The Claimant's complaint in respect of clarity is dealt with at 5(a) above. With respect to the use of qualitative evidence, Professor Leng recognised the difficulties with the evidence base and explained in the report why she had considered other qualitative evidence. Whilst the Claimant may not agree with the relative weight attached to the evidence considered, that is not a basis for judicial review. The same applies to the Claimant's assertions regarding relevant considerations, the weight given to the evolution of the roles of physician associates and anaesthetist associates and the *status quo*. The allegation that the "real rationale" for not seeking further evidence was to appease Resident Doctors is baseless. Ground 3 is not arguable.

(d) By Ground 4 the Claimant alleges that Professor Leng pre-determined the outcome of the review. This ground is not arguable.

(e) By Ground 5 the Claimant contends that Professor Leng made her recommendations "primarily driven by, or for, the purpose of appeasing or addressing grievances of specific groups (including DoctorsVote, the BMA and/or Resident Doctors) and/or to prevent further consultation or debate on the underlying issues." Again, this is a bare allegation of bad faith that is unevidenced. Ground 5 is unarguable.

(f) By Ground 6, the Claimant alleges that Professor Leng gave inadequate reasons and failed to grapple with evidence. This ground is unarguable on the face of the report. As Dove J concluded when considering the application for interim relief, it is clear on its face that the review was produced as the result of a sophisticated and independent exercise of judgement. It was based on a review of published research, a call for evidence, a survey open to physician associates and anaesthetist associates and other healthcare professionals, visits to Trusts and primary care settings, webinars and consultation with key

stakeholders. The review recognises and addresses deficiencies in the evidence.

6. For the reasons set out, permission for judicial review is refused on all grounds.

Signed: Mr Justice MacDonald

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

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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: 16/7/26

Solicitors: Shakespeare Martineau
Ref No.

Notes for the Claimant

If you request the decision to be reconsidered at a hearing in open court under CPR 54.12, you must complete and serve the enclosed Form 86B within 7 days of the service of this order.

A fee is payable on submission of Form 86B. ***For details of the current fee please refer to the Administrative Court fees table at*** https://www.gov.uk/court-fees-what-they-are.

Failure to pay the fee or submit a certified application for fee remission may result in the claim being struck out.

The form to make an application for remission of a court fee can be obtained from the gov.uk website at https://www.gov.uk/get-help-with-court-fees