

Your address

Your contact details

Date of letter

Your employer's address

Dear (The Responsible Person) and (The organisation)

Re: Civil Procedure Rules: ¹ Covid-19 Vaccine Mandate Pre-Action letter of claim

I write to you in connection with your proposed termination of my employment contract.

I understand that you are proposing to terminate my contract of employment in purported compliance with the Health and Social Care Act 2008 (Regulated Activities) (Amendment) (Coronavirus) Regulations 2021² [hereinafter called the Regulations].

For the reasons set out below as my employer you are making a negligent mistake in law in interpreting the Regulations. That negligent mistake is causing me to be put in fear of an unlawful termination of employment or a coerced and invalid vaccination. Additionally you are not respecting my rights to medical privacy and are coercing me to forego my right to privacy.

The Regulations are complied with by my oral statement to you that I have not given informed consent to vaccination. A failure to give informed consent is a clinical reason not to be vaccinated. That oral statement confirmed here in writing amounts to satisfactory evidence which discharges your obligations under regulation 5 (2).

I require that you by 5.00 pm on 17 September 2021 sign and return by way of undertakings at the end of this letter which will confirm that:

¹ Royal Courts of Justice Practice Direction – Pre-Action Conduct And Protocols
https://www.justice.gov.uk/courts/procedure-rules/civil/rules/pd_pre-action_conduct

² s.5 of The Health and Social Care Act 2008 (Regulated Activities) (Amendment) (Coronavirus) Regulations 2021 <https://www.legislation.gov.uk/uksi/2021/891/regulation/5/made>

1. You will accept that satisfactory evidence absence of valid informed consent is a self-certified clinical reason why you should not and indeed cannot be lawfully vaccinated.

The negligent mistake in law that you are making is interpreting Regulation 5 (2) of the Regulations incorrectly. Regulation 5 (2) requires the CQC registered person to obtain satisfactory evidence of either:

- a) That I have been vaccinated with the complete course of doses of an authorised vaccine; or
- b) that for clinical reasons I should not be vaccinated with any authorised vaccine;

If satisfactory evidence is not obtained the registered person is required to secure that I do not enter the premises.

Regulation 5 (2) (b) must be interpreted in a way that is consistent with the language used. The word “satisfies” means satisfies in a lawful way. The words “for clinical reasons should not be vaccinated” must therefore be interpreted in accordance with the rule of law and established and recognised case law.

Your negligent mistake of law is in not recognising my statutory and common law right to medical privacy that is expressly recognised by s.5(5) of the statute. That right expressly refers to rights under data protection laws. Data protection laws recognise medical data as requiring consent from the data subject, me, before being processed to a third party, you. The data protection laws are based on consent of the data subject and entitle the data subject not to give consent to have their medical data processed to third parties.

You have made negligent mistake in law in not recognising that the absence of valid informed consent is a self-certified clinical reason at common law why I should not and indeed cannot be lawfully vaccinated.

Proposing to dismiss me for failing either to be vaccinated or for failing to accept that a clinical reason for non-vaccination is not consenting to vaccination is an unlawful

proposal as it amounts to coercion to medical treatment, an unlawful attempt to coerce me to consent to give up data protection rights and an assault.

Should you fail to sign and return the undertakings I will consider that you have caused the civil tort and summary criminal offence of assault by intentionally, recklessly or negligently causing me to apprehend unlawful violence in the form of seeking to induce medical treatment without valid informed consent by putting my employment at risk.

The purpose of this letter is for you to cease and desist from this tort and potential criminal offence and satisfactory evidence of ceasing and desisting is returning the signed undertaking by no later than close of business on 17 September 2021.

This is because medical treatment and testing without valid informed consent causes the civil tort and summary criminal offence of battery. The indictable offences of actual or grievous bodily harm, civil tort of wrongful death or indictable offence of manslaughter could also occur if vaccine injury can be proven. You can be held responsible for these torts and offences by inducing them to occur.

Additionally and incidentally you may also have committed the either summary or indictable offences under s.1 of the Bribery Act (2010) ³ ⁴ and you appear to have attempted to induce me to commit an offence under s.2 by encouraging me to accept a bribe, continued employment if I either accept a vaccination or give up my data protection rights.

Additionally and incidentally you may also have committed the indictable offence of blackmail pursuant to s.21 of the Theft Act (1968) ⁵ if the courts find that you, with intent to cause loss, in this case trespass against the person, made unwarranted demand with menaces. The nature of the act or omission demanded is immaterial, and it is also immaterial whether the menaces relate to action to be taken by the person making the demand. ⁶ You need to take legal advice on these issues.

³ Bribery Act (2010) <https://www.legislation.gov.uk/ukpga/2010/23/contents>

⁴ General Medical Council “Anti-bribery policy”

<https://www.gmc-uk.org/registration-and-licensing/join-the-register/plab/plab-2-guide/anti-bribery-policy>

⁵ Theft Act 1968 <https://www.legislation.gov.uk/ukpga/1968/60/section/21>

⁶ Theft Act 1968 <https://www.legislation.gov.uk/ukpga/1968/60/section/21>

Any action may also be taken against the organisation under vicarious liability.

Other employees who may not be aware of their rights regarding medical privacy and trespass against the person may nonetheless take similar action within the six-year statute of limitation, with negligence claims having a three-year limitation. I am not aware of Parliament providing any indemnity for Care Home providers regarding the vaccine mandate.

I enclose the following:

1. Undertaking.
2. A statement summarising the claim.

Should you fail to return the signed undertaking by close of business on 17 September 2021 I reserve the right to apply to the court with or without notice for an injunction prohibiting your unlawful acts and asking the Court for a declaration that section 5 (2) is satisfied by an oral statement that I have clinical reasons for not consenting.

Further and in the alternative I reserve the right to bring claims under the Equality Act 2010, the Employment Rights Act 1996 as well as claims in the civil courts for the Torts referred to above.

I have sent a copy of this letter to the CQC and requested that the CQC accepts the undertaking as meeting your obligations under Regulation 5 (2) to have satisfactory evidence of a clinical reason not to be vaccinated.

Yours sincerely,

[Your name]

Undertaking:

I, [insert name] the Registered Manager of [insert name of Registered Care Home] undertake to [insert name of care home worker] as follows:

1. I will accept the absence of valid informed consent as satisfactory evidence of a self-certified clinical reason why you should not and indeed cannot be lawfully vaccinated

pursuant to Regulation 12(3)(b)(ii) of The Health and Social Care Act 2008 (Regulated Activities) Regulations 2014, ⁷

as amended by s.5 of The Health and Social Care Act 2008 (Regulated Activities) (Amendment) (Coronavirus) Regulations 2021. ⁸

I sign this undertaking on behalf of your employer and as registered manager

.....

Dated

.....

⁷ Regulation 12, The Health and Social Care Act 2008 (Regulated Activities) Regulations 2014
<https://www.legislation.gov.uk/ukdsi/2014/9780111117613/regulation/12>

⁸ Section 5, The Health and Social Care Act 2008 (Regulated Activities) (Amendment) (Coronavirus) Regulations 2021 <https://www.legislation.gov.uk/uksi/2021/891/regulation/5/made>

Summary of claim:

I claim losses arising out of your threat of terminating my employment relying on your negligent mistake in law in interpreting the Regulations. If you fail to return to the undertaking I claim all and any losses arising out of the termination of employment.

It is understandable that you as a responsible person and / or employer are concerned about the possibility of being prosecuted by CQC for the summary offence under s.22 of “The Health and Social Care Act 2008 (Regulated Activities) Regulations 2014”⁹ if you fail to comply with a requirement of regulation 12 such as the vaccine mandate. You can also be prosecuted under s.33 of the Health and Safety at Work Act (1974)¹⁰ for failing your s.4 general duty with regards persons other than employees.

However, s.22(4) of the 2014 Regulations provides a defence for a registered person¹¹ if they can prove that they took all reasonable steps and exercised all due diligence to prevent the breach of any of those regulations that has occurred. s.4 of the Health and Safety at Work Act also only requires steps to be taken insofar as they are reasonable for a person in that position to take and, where they are reasonably practicable.

s.5(5) of the Regulations expressly states that nothing in the regulation authorises the processing of personal data in a manner inconsistent with any provision of data protection legislation. The Regulations do not affect common law, particular as the common law relied on amounts to a human right.

Opportunities for due diligence are therefore almost entirely removed by s.3 of Access to Medical Reports Act (1998)¹² which provides a statutory civil right to withhold consent to any application for medical reports for employment or insurance purposes,

⁹ The Health and Social Care Act 2008 (Regulated Activities) Regulations 2014
<https://www.legislation.gov.uk/uksi/2014/2936/regulation/22>

¹⁰ Health and Safety at Work Act (1974)
<https://www.legislation.gov.uk/ukpga/1974/37/part/I/crossheading/provisions-as-to-offences>

¹¹ A “registered person” means, in respect of a regulated activity, a person who is the service provider or registered manager in respect of that activity <https://www.legislation.gov.uk/uksi/2014/2936/regulation/2>

¹² Access to Medical Reports Act 1988 <https://www.legislation.gov.uk/ukpga/1988/28/contents>

the breach of which causes a suable tort. If information is obtained through coercion, offences under s.170 of the Data Protection Act (2018) ¹³ may also be committed.

Human Rights are also engaged. In *Z v Finland* (1998) 25 EHRR 371 ¹⁴, the European Court of Human Rights held that respecting confidentiality of health data engages Art.8 (right to respect for one's "private and family life, his home and his correspondence") and that this "is a "vital principle in the legal systems of all the Contracting Parties to the Convention".

A similar issue was recently considered by the High Court of England and Wales in *Neale v DPP* EWHC 658.¹⁵ In that case the High Court held that despite the 2020 Welsh Coronavirus Restrictions requiring Constables to ask for the name and address of people suspected of breaching the regulations, for the purpose of issuing a fixed penalty notice, that suspects nonetheless retained the right at common law to remain silent and not assist or accompany a constable, set out in *Rice V Connolly* [1966] 2 QB 414.¹⁶ Police therefore wrongfully arrested Keith Neale for failing to provide his name and address. In this case the statutory instrument expressly fails to effect data protection legislation that provides a similar right to remain silent with regards to private medical information. It would therefore be wrong to dismiss an employee for exercising that right when the absence of valid informed consent is a self-certified clinical reason why a person cannot be vaccinated.

I therefore hereby declare that I reserve my statutory and common law right to not divulge my vaccination status or provide information about any specific clinical reasons why I should not be vaccinated. Data protection laws mean that you cannot take any further steps, therefore engaging your due diligence and all reasonable steps defences against prosecution by the CQC. This letter and summary of claim stands as satisfactory evidence.

¹³ Data Protection Act 2018

<https://www.legislation.gov.uk/ukpga/2018/12/part/6/crossheading/offences-relating-to-personal-data/enacted>

¹⁴ *Z v Finland* (1998) 25 EHRR 371 <https://www.bailii.org/eu/cases/ECHR/1997/10.html>

¹⁵ *Neale v DPP* [2021] EWHC 658 (Admin) <https://www.bailii.org/ew/cases/EWHC/Admin/2021/658.html>

¹⁶ *Rice v Connolly* [1966] 2 QB 414 http://www.hrcr.org/safrica/arrested_rights/Rice_Connolly.htm

These lawful omissions means that you have no evidence that valid informed consent has been provided for me to be vaccinated. This is evidence at law of a clinical reason why I should not and indeed cannot be lawfully vaccinated. This is because vaccination, masking, testing or any other medical intervention are only lawful with valid informed consent.

You should also consider competing Regulation 12 requirements to maintain adequate staffing levels when dismissing otherwise competent staff. For example, Derbyshire County Council was prosecuted and fined £500k for Regulation 12 failures in 2019 regarding the case of care home resident Audrey Allen.¹⁷

In this case inadequate staffing levels contributed towards this policy failure, the fine could have been £1.5m had Derbyshire not pleaded guilty because a 1/3 sentencing reduction is recommended for a guilty plea. Unlike the vaccine mandate, you will unlikely have any all-reasonable steps or due diligence defence if inadequate staffing levels cause negligent outcomes. The civil tort of negligence can also be sued privately by residents and their families.

Should you not agree with this assessment, the regulations and its primary legislation nonetheless provide no enforcement powers to secure that I do not enter the premises. You can therefore only secure that I do not enter the premises through other lawful means. It would however be unlawful and or discriminatory to cite the exercise of my right to medical privacy and valid informed consent as a basis for dismissal or disciplinary proceedings, including redeployment.¹⁸ That there is no lawful means to secure that I do not enter the premises again engages your due diligence and all reasonable steps defences against prosecution.

If you secure by unlawful means that I do not enter my place of work, this would cause the suable civil tort of inducing a breach of contract, if on the balance of probability you

¹⁷ Council fined £500k after first prosecution by CQC over failure to provide safe care and treatment <https://www.publiclawtoday.co.uk/litigation-and-enforcement/400-litigation-news/42113-council-fined-500k-after-first-prosecution-by-cqc-over-failure-to-provide-safe-care-and-treatment>

¹⁸ Hogg v Dover College [1990] ICR 39, EAT <https://swarb.co.uk/hogg-v-dover-college-eat-1990/>

knowingly and intentionally induced or procured the breach without reasonable justification.¹⁹ It could also form grounds for unlawful or constructive dismissal.

DHSC and NHS support this interpretation of the law, albeit in relation to their own application, the covid pass. Guidance states:

*“If you have a medical reason which means you cannot be vaccinated or tested, you may be asked to self-declare this medical exemption.”*²⁰

and that individuals who have a medical reasons why they cannot vaccinated or tested

*“will need to self-declare their medical exemption directly with you” and “If your customer confirms that they have a self-declared exemption, but is unable to show any evidence, you should allow them access to your venue or event. You must not ask for proof of their medical exemption and it is not essential they show any form of exemption card at any point.”*²¹

The Department of Health and Social Care provides guidance on informed consent.²² The NHS also state on their website that valid informed consent comprises the following elements²³ that are also found in Chapter 2 of Public Health England’s Green Book on Vaccination.²⁴

- **Voluntary** – *the decision to either consent or not to consent to treatment must be made by the person, and must not be influenced by pressure from medical staff, friends or family (or employer)*

¹⁹ Allen v Dodd & Co Ltd [2020] EWCA Civ 258 <https://www.bailii.org/ew/cases/EWCA/Civ/2020/258.html>

²⁰ Department of Health and Social Care “NHS COVID Pass Guidance”
<https://www.gov.uk/guidance/nhs-covid-pass>

²¹ NHS “Using the NHS COVID Pass” <https://www.nhs.uk/covid-19-response/using-the-nhs-covid-pass/>

²² DHSC “Reference guide to consent for examination or treatment (second edition)”
<https://www.gov.uk/government/publications/reference-guide-to-consent-for-examination-or-treatment-second-edition>

²³ NHS UK “Consent to treatment” <https://www.nhs.uk/conditions/consent-to-treatment/>

²⁴ Public Health England’s Green Book on Vaccination. Chapter 2
<https://www.gov.uk/government/publications/consent-the-green-book-chapter-2>

- **Informed** – *the person must be given all of the information about what the treatment involves, including the benefits and risks, whether there are reasonable alternative treatments, and what will happen if treatment does not go ahead*
- **Capacity** – *the person must be capable of giving consent, which means they understand the information given to them and can use it to make an informed decision*

The mandate itself vitiates valid informed consent because "Duress, whatever form it takes, is a coercion of the will so as to vitiate consent." *Hirani v Hirani* [1982] EWCA Civ 1 ²⁵ .

The leading case on the nature of informed consent is *Montgomery v Lanarkshire Health Board* [2015] UKSC 11, ²⁶, where the Supreme Court confirmed that material risk should be disclosed and understood if a reasonable person in the patient's position would be likely to attach significance to the risk, or if the doctor is or should reasonably be aware that the particular patient would be likely to attach significance to it.

A more exacting test of informed consent is also required in this case due to the vaccines having emergency authorisation, with clinical trials remaining incomplete. This engages the standards set out in The Medicines for Human Use (Clinical Trials) Regulations 2004 [the Trial Regulations].

s.1 of Part 1 of Schedule 2 of the Trial Regulations confirms that a person like me who has capacity can only, as with any medical treatment, participate in a trial if they have given informed consent. Conditions and principles specified in Part 3 apply to competent people such as myself, as follows:

1. The subject has had an interview with the investigator, or another member of the investigating team, in which he has been given the opportunity to

²⁵ *Hirani v Hirani*: [1982] EWCA Civ 1 <https://www.bailii.org/ew/cases/EWCA/Civ/1982/1.html>

²⁶ *Montgomery v Lanarkshire Health Board* [2015] UKSC 11
<https://www.supremecourt.uk/cases/docs/uksc-2013-0136-judgment.pdf>

understand the objectives, risks and inconveniences of the trial and the conditions under which it is to be conducted.

2. The subject has been informed of his right to withdraw from the trial at any time.
3. The subject has given his informed consent to taking part in the trial.
4. The subject may, without being subject to any resulting detriment, withdraw from the clinical trial at any time by revoking his informed consent.
5. The subject has been provided with a contact point where he may obtain further information about the trial.

Part 2 applies to all clinical trials. It requires amongst other things that any clinical trial be conducted in accordance with the ethical principles that have their origin in the Declaration of Helsinki.²⁷ ²⁸This followed the UK adopting EU Directive 2001/20/EC that acknowledges the Declaration of Helsinki as the accepted basis for the conduct of clinical trials in humans to protect human rights and the dignity of the human being and with regards to data protection.²⁹ This requirement is also found in EU Directive 2005/28³⁰.

The declaration requires amongst other things that each potential subject must be adequately informed of the aims, methods, sources of funding, any possible conflicts of interest, institutional affiliations of the researcher, the anticipated benefits and potential risks of the study and the discomfort it may entail, post-study provisions and any other relevant aspects of the study. s.16 requires that provision has been made for insurance or indemnity to cover the liability of the investigator and sponsor which may arise in relation to the clinical trial.

²⁷ World Medical Association “Declaration of Helsinki – Ethical Principles for Medical Research Involving Human Subjects” <https://www.wma.net/policies-post/wma-declaration-of-helsinki-ethical-principles-for-medical-research-involving-human-subjects/>

²⁸ “Declaration of Helsinki” means the Declaration of Helsinki adopted by the World Medical Assembly in June 1964, as amended by the General Assembly of the Association in October 1975, October 1983, September 1989 and October 1996.

²⁹ https://ec.europa.eu/health/sites/default/files/files/eudralex/vol-1/dir_2001_20/dir_2001_20_en.pdf

³⁰ <https://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2005:091:0013:0019:en:PDF>

Failure to comply with the conditions and principles in Schedule 1 of the 2004 Act cause a person involved in conducting a trial to commit the summary or indictable offence set out in s.48. Sentencing can include an unlimited fine, imprisonment for a term not exceeding two years or both. Whereas this may not apply directly in the case of emergency use of the experimental treatment outside of a clinical trial, the standards within the 2004 regulations will nonetheless assist the courts when applying the Bolam Test,³¹ regarding whether valid informed consent has been obtained and with regards to sentencing.

The Council of Europe, who are responsible for the European Convention and Court of Human Rights, have confirmed that human rights are engaged regarding COVID-19 vaccinations. In Resolution 2361 (2021),³² the Council “urged member States to”:

7.3.1 ensure that citizens are informed that the vaccination is not mandatory and that no one is under political, social or other pressure to be vaccinated if they do not wish to do so;”

7.3.2 “ensure that no one is discriminated against for not having been vaccinated, due to possible health risks or not wanting to be vaccinated”

Section 6(1) of the Human Rights Act (1998)³³ provides that “It is unlawful for a public authority to act in a way which is incompatible with a Convention right”. The articles which are engaged are 2, 3, 8, 9, 12 and 14. There are also no derogations or reservations for any emergency in the UK because Article 15 ECHR was not incorporated into the 1998 Human Rights Act³⁴ .

³¹ Bolam v Friern Hospital Management Committee [1957] 1 WLR 582

<https://swarb.co.uk/bolam-v-friern-hospital-management-committee-qbd-1957/>

³² Council of Europe Resolution 2361 (2021) “Covid-19 vaccines: ethical, legal and practical considerations”
<https://pace.coe.int/en/files/29004/html>

³³ Human Rights Act (1998) <https://www.legislation.gov.uk/ukpga/1998/42/section/6>

³⁴ Human Rights Act (1998), Schedule 3 “Derogation and Reservation”
<https://www.legislation.gov.uk/ukpga/1998/42/schedule/3>

The Regulations has been created using powers that include s.161(4)(b) of Health and Social Care Act 2008.³⁵ This empowers the Secretary of State when making regulations “to provide for a person to exercise a discretion in dealing with any matter.” In this respect, your consideration of vaccine status and exemption is a discretionary administrative function.

The courts normally have limited ability to challenge discretionary administrative decisions that are “Wednesbury Reasonable” as follows:

*“He must call his own attention to the matters which he is bound to consider. He must exclude from his consideration matters which are irrelevant to what he has to consider. If he does not obey those rules, he may truly be said, and often is said, to be acting “unreasonably.” Similarly, there may be something so absurd that no sensible person could ever dream that it lay within the powers of the authority.”*³⁶

*“A decision cannot be so unreasonable that it might almost be described as being done in bad faith”*³⁷

However, where an individual’s civil rights are engaged by an administrative decision, the standard of review is more exacting; more is required from the decision-maker “by way of justification”, known as the “sub-Wednesbury” standard

This principle was established in *R Bugdaycay v Secretary of State* [1987] AC 514³⁸ and *R v Secretary of State ex parte Brind* [1991] 1 AC 696³⁹ with Mr David Pannick QC distilling the principles in *R v Ministry of Defence Ex p. Smith*⁴⁰ as follows:

“The court may not interfere with the exercise of an administrative discretion on substantive grounds save where the court is satisfied that the decision is unreasonable

³⁵ s.161 “Health and Soci Dear (The Responsible Person) and (The organisation) al Care Act” 2008 <https://www.legislation.gov.uk/ukpga/2008/14/section/161>

³⁶ (*Associated Provincial Picture Houses Ltd v Wednesbury Corporation* (1948) 1 KB 223) <https://www.bailii.org/ew/cases/EWCA/Civ/1947/1.html>

³⁷ *Short v. Poole Corporation* [1926] Ch 66, 90, 91

³⁸ *R Bugdaycay v Secretary of State* [1987] AC 514 <https://www.bailii.org/uk/cases/UKHL/1986/3.html>

³⁹ *R v Secretary of State ex parte Brind* [1991] 1 AC 696 <https://www.bailii.org/uk/cases/UKHL/1991/4.html>

⁴⁰ *R v Ministry of Defence Ex p. Smith* <https://www.bailii.org/ew/cases/EWCA/Civ/1995/22.html>

in the sense that it is beyond the range of responses open to a reasonable decision-maker. But in judging whether the decision-maker has exceeded this margin of appreciation the human rights context is important. The more substantial the interference with human rights, the more the court will require by way of justification before it is satisfied that the decision is reasonable in the sense outlined above.”

For a person to be capable of providing informed consent, they would need to understand the vaccine’s mode of action, its experimental nature, its known effects and potential known and unknown risks.

UK Government’s Vaccine Green Book,⁴¹ Chapter 14a states that:

“The Pfizer BioNTech and Moderna COVID-19, vaccines are nucleoside-modified messenger RNA (mRNA) vaccines. mRNA vaccines use the pathogen’s genetic code as the vaccine; this then exploits the host cells to translate the code and then make the target spike protein. The protein then acts as an intracellular antigen to stimulate the immune response.”

These vaccines are therefore complex experimental gene therapies that many employers, let alone employees, will struggle to understand. The complex interactions that occur in such technology alongside the effects of diverse ingredients and the potential toxicity of the spike protein could explain the volume and severity of adverse events presently being reported to MHRA’s Yellow Card reporting system.⁴² Employees should also be made aware of the side effects being reported by the Yellow Card system. They should also understand that not all risks can be known at this stage of the clinical trials, in particular long-term effects.

⁴¹ UK Government “Green Book; Immunisation against infectious disease”

<https://www.gov.uk/government/collections/immunisation-against-infectious-disease-the-green-book>

⁴² UK Government “A weekly report covering adverse reactions to approved COVID-19 vaccines”

<https://www.gov.uk/government/publications/coronavirus-covid-19-vaccine-adverse-reactions>

Alternative treatments must be discussed. For example, lifestyle changes related to obesity ⁴³ and vitamin D status ⁴⁴ as alternatives to vaccination in at risk groups. Other prophylactic and therapeutic treatments should also be discussed along with evaluation of all of the vaccines that are available.

A person must be advised of what happens if the treatment does not go ahead. This requires discussion of the very low risk of COVID-19 for anyone under the age of 65 who are not in one of the at-risk groups in table 3 of the Green Book and the zero percent case fatality rate for under 44's in table 1.

The guide states that "outcomes from COVID-19 infection increases dramatically with age in both healthy adults and in adults with underlying health conditions. Those over the age of 65 years have by far the highest risk, and the risk increases with age." There is also only "increasing evidence that vaccines prevent infection and transmission." according to Public Health England ⁴⁵ and so employees should not be misinformed that vaccination guarantees protection for care home residents.

Employees also ought to be made aware that COVID-19 has been downgraded from High Consequence Infection Disease (HCID) status since 19/03/20 by the 4 nations public health HCID group. They determined that several features had changed; in particular, more information being available about mortality rates (low overall), and that there is now greater clinical awareness and a specific and sensitive laboratory test, the availability of which continues to increase. ⁴⁶ The Advisory Committee on

⁴³ UK PHE "Excess weight and COVID-19: insights from new evidence"

<https://www.gov.uk/government/publications/excess-weight-and-covid-19-insights-from-new-evidence>

⁴⁴ UK DHSE "Vitamin D and clinically extremely vulnerable (CEV) guidance"

<https://www.gov.uk/government/publications/vitamin-d-for-vulnerable-groups/vitamin-d-and-clinically-extremely-vulnerable-cev-guidance>

⁴⁵ Public Health England (09/09/21) "COVID-19 vaccine surveillance report Week 36"

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1016465/Vaccine_surveillance_report_-_week_36.pdf

⁴⁶ Public Health England "Status of COVID-19"

<https://www.gov.uk/guidance/high-consequence-infectious-diseases-hcid#status-of-covid-19>

Dangerous Pathogens (ACDP) ⁴⁷ was also of the unanimous opinion that COVID-19 should no longer be classified as an HCID. ⁴⁸

Violating bodily integrity and valid informed consent with trespass to the person has consequences. In *R Wilkinson v Broadmoor* [2001] EWCA Civ 1545, ⁴⁹ Lady Justice Hale stated with regards to medical intervention, in this case forcibly injecting the sectioned plaintiff with anti-psychotic drugs, that:

“The people who carry out such assaults, and in particular the responsible medical officer who requires it to be done, may be sued in the ordinary way for the tort of battery. The fact that those response are exercising statutory powers makes no difference”.

Lord Keith of Kinkel stated in *Airedale N.H.S. Trust v Bland* [1993] AC 789, ⁵⁰ citing *F. (Mental Patient: Sterilisation)* [1990] 2 AC 1 ⁵¹ that:

“it is unlawful, so as to constitute both a tort and the crime of battery, to administer medical treatment to an adult, who is conscious and sound of mind, without his consent. Such a person is completely at liberty to decline to undergo treatment, even if the result of doing so will cause death “.”

In *Sidaway vs Bethlem* [1985] AC 871 ⁵² the Court of Appeal held that:

“A mentally competent patient has an absolute right to refuse to consent to medical treatment for any reason, rational or irrational, or for no reason at all, even where that decision may lead to his or her own death.”

The right to valid informed consent can also survive the loss of capacity.

⁴⁷ UK Government “Advisory Committee on Dangerous Pathogens”

<https://www.gov.uk/government/groups/advisory-committee-on-dangerous-pathogens>

⁴⁸ACDP meeting minutes 13/03/20

<https://www.whatdotheyknow.com/request/677059/response/1616791/attach/html/5/ACDP%20COVID%2019%20M02.pdf.html>

⁴⁹ *R Wilkinson v Broadmoor* : [2001] EWCA Civ 1545

<https://www.bailii.org/ew/cases/EWCA/Civ/2001/1545.html>

⁵⁰ *Airedale N.H.S. Trust v Bland* <https://www.bailii.org/uk/cases/UKHL/1993/17.html>

⁵¹ *F. (Mental Patient: Sterilisation)* [1990] 2 AC 1 <https://www.bailii.org/uk/cases/UKHL/1991/1.html>

⁵² *Sidaway vs Bethlem* [1985] AC 871 <https://bailii.org/uk/cases/UKHL/1985/1.html>

In a recent ruling by the Court of Protection, *SS v Richmond* [2021] EWCOP 31,⁵³ it was found that a dementia patient who lacked capacity but who previously objected to vaccination could not be forcibly treated with a COVID-19 vaccine.

In *Chester v Afshar* [2004] UKHL 41⁵⁴ the House of Lords decided that a doctor's failure to fully inform a patient of all surgery risks vitiated the need to show that harm would have been caused by the failure to inform. Battery is actionable without physical harm being shown.

The principle of valid informed consent and bodily integrity is found in all common law jurisdictions due to it originating from ancient fundamental rights relating to trespass to the person. This can be tracked all the way back to the earliest known written English laws, the 7th century Kentish laws of King Æthelberht⁵⁵ that amongst other things classified and recommended civil penalties for various types of battery to provide an alternative to feuds.

In *Cardozo J in Schloendorff v Society of New York Hospital* 105 NE 92 (NY, 1914)⁵⁶, Justice Benjamin Cardozo, subsequently an influential Associated Justice of the US Supreme Court wrote the following opinion in the New York Court of Appeals that:

"Every human being of adult years and sound mind has a right to determine what shall be done with his own body; and a surgeon who performs an operation without his patient's consent commits an assault for which he is liable in damages. This is true except in cases of emergency where the patient is unconscious and where it is necessary to operate before consent can be obtained."

In *Reibl v. Hughes*, [1980] 2 S.C.R. 880, the Canadian Supreme Court upheld a trial decision to award John Reibl civil damages in both battery and negligence from an

⁵³ *SS v Richmond* [2021] EWCOP 31 <https://www.bailii.org/ew/cases/EWCOP/2021/31.html>

⁵⁴ *Chester v Afshar* [2004] UKHL 41 <https://www.bailii.org/uk/cases/UKHL/2004/41.html>

⁵⁵ Law of Æthelberht https://en.wikipedia.org/wiki/Law_of_Æthelberht

⁵⁶ *Schloendorff v Society of New York Hospital* 105 NE 92 (NY, 1914) <https://biotech.law.lsu.edu/cases/consent/schoendorff.htm>

operation that left him paralysed on the grounds of informed consent not being obtained.⁵⁷

In *Rogers v Whitaker* (1992) the High Court of Australia upheld a trial decision to award Christopher Rogers damages for negligence where eye surgery caused blindness without informed consent being obtained.⁵⁸

Similar rulings can be found from courts of record in all common law jurisdictions.

Referencing *Richardson v LCC* (1957)⁵⁹ in the *Wilkinson* case, Lady Justice Hale warned of negligent mistake of law as to the extent of the legal authority conferred by a Statute.

It would therefore be a negligent mistake of law to consider that the Regulations, emergency authorisation or any government guidance overrides statutory and common law rights to medical privacy valid informed consent. An employee, such as me, in a low paid, low unionised employment is vulnerable to coercion out of economic necessity. An employer should not interpret the Regulations in such a manner that breaches my long established common law right to withhold consent to any medical intervention. Withholding consent to a medical intervention cannot be penalised by a third party. You are attempting to penalise me by coercion.

In this case the Regulations must be subservient to the enabling legislation,⁶⁰ none of which expressly affected any of these fundamental rights and “the executive (government) cannot change law made by Act of Parliament, nor the common law”.⁶¹

⁵⁷ *Reibl v. Hughes*, [1980] 2 S.C.R. 880 <https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/2563/index.do>

⁵⁸ *Rogers v Whitaker* [1992] HCA 58; (1992) 175 CLR 479 (19 November 1992)
http://www.paci.com.au/downloads_public/court/12_Rogers_v_Whitaker.pdf

⁵⁹ *Richardson v London County Council* [1957] 1 WLR 751

⁶⁰ Statutory Instruments Act (1946) [s.1 Definition of “Statutory Instrument”]
<https://www.legislation.gov.uk/ukpga/Geo6/9-10/36/section/1>

⁶¹ *R Miller v DExEU* [2017] UKSC 5 <https://www.supremecourt.uk/cases/docs/uksc-2016-0196-judgment.pdf>

Also, a liberty *“is only as real as the laws and by-laws, which negate or limit it. A right, by contrast, can be asserted in the face of such restrictions and must be respected, subject to lawful and proper reservations, by the courts.”*⁶²

A claimant also has a right to raise the illegality of a certain byelaw as a defence in a magistrates' court trial, where public law right is available as a defence⁶³.

This is no recent judicial innovation, in *Kruse v Johnson* [1898] 2 QB 91⁶⁴ Lord Russell CJ stated that if a by-law:

“were manifestly unjust, if they disclosed bad faith, if they involved such oppressive or gratuitous interference with the rights of those subject to them as could find no justification in the minds of reasonable men, the court might well say Parliament never intended to give authority to make such rules; they are unreasonable and ultra vires.”

Also *“Roman Law has the Doctrine of Desuetude, English common law does not”*⁶⁵, civil rights cannot therefore fall away out of disuse or passing of time and *“we will not deny or defer to any man either Justice or Right.”*⁶⁶ For these reasons I require you to sign the enclosed undertaking.

Signed

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⁶² *Redmond-Bate V. Director Of Public Prosecutions* [1999] EWHC⁶²
<https://www.bailii.org/ew/cases/EWHC/Admin/1999/733.html>

⁶³ *Boddington v British Transport Police* [1998] UKHL 13 <https://www.bailii.org/uk/cases/UKHL/1998/13.html>

⁶⁴ *Kruse v Johnson* [1898] 2 QB
https://learninglink.oup.com/static/5c0e79ef50eddf00160f35ad/casebook_80.htm

⁶⁵ *Ashford v Thornton* (1818) 106 ER 149 <http://www.commonlii.org/uk/cases/EngR/1818/3.pdf>

⁶⁶ Art.29 Magna Carta (1297) <https://www.legislation.gov.uk/aep/Edw1cc1929/25/9/section/XXIX>