

# EXPLANATORY NOTES FOR CARE HOME MANAGERS & OWNERS

## Informed consent- points 1 & 6 in the enclosed letter

Consent to treatment means a person must give permission before they receive any type of medical treatment, test, or examination. Permission means that which is given after explanation of the treatment by a clinician<sup>1</sup>.

Consent from a person is needed regardless of the procedure, whether it is a physical examination, organ donation or something else.

The principle of consent is an important part of medical ethics and international human rights law.

What steps are you taking to ensure that you meet your obligations to give employees an explanation by a suitably qualified clinician about the COVID-19 vaccine, possible side effects and alternative treatments that are available?

For consent to having the COVID-19 vaccine to be valid, it must be voluntary and informed, and the person concerned must have the capacity to make the decision. The meanings of these terms are:

**VOLUNTARY** – the decision to either consent or not to consent to treatment must be made by the person alone and must not be influenced by pressure or coercion from medical staff, friends, or family (or indeed the government or employers).

If, as an employer, you are stating or intimating that someone may lose their job if they do not consent to having a COVID-19 vaccine, then pressure is being applied. The law deems you to be in a position of power over an employee as their employer as the employee does not have equal bargaining power. As such, you, as the employer will likely be deemed as using coercion, if you threaten job loss as a result of failure to have a COVID-19 vaccine.

**INFORMED** – the person must be given all the information about what the vaccine treatment involves, including the benefits and risks and whether there are reasonable alternative treatments.

If you have not provided information of suitable alternative treatments such as, but not limited to, Ivermectin, which has a large number of peer reviewed studies of effectiveness across a wide spectrum of age ranges, an employee has not been fully informed and their consent is invalid.

**CAPACITY** – The person must be capable of giving consent, which means that they understand the information given to them and can use it to make an informed decision

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<sup>1</sup> <https://www.nhs.uk/conditions/consent-to-treatment/>

The right of a person who has capacity to refuse a medical treatment is enshrined in law and cannot be overreached. Nor can consequences be imposed on anyone refusing medical treatment.

Blackmail and coercion by an employer or the government, breaches informed consent. In addition, anyone administering a COVID-19 vaccine, or who causes a COVID-19 vaccine to be administered, who has not followed the above procedure, is personally liable for any harm caused, and may also be criminally liable. Personal liability would mean damages would be payable by the party liable to the injured party. Criminal liability may result in a prison sentence.

Personal liability and full informed consent is further explained by the cases Montgomery V Lanarkshire Health Board 2015<sup>2</sup>, which imposes an obligation on a doctor to discuss the risks associated with a recommended course of treatment, and to disclose and discuss reasonable alternatives, and Jennifer McCulloch and Others v Forth Valley Health Board 2021<sup>3</sup>, where Montgomery was further considered in the context of a person's right to decide whether or not to accept a proposed course of treatment. That right could only be exercised on an informed basis, which meant that the person must, in such a situation, be advised of the risks involved in opting for a course of treatment or rejecting it. If alternative treatments were options reasonably available in the circumstances, the person was entitled to be informed of the benefits and risks of those accordingly.

It is clear from the common law enshrined in the above cited cases that you must meet your obligations as regards informed consent.

## Human Rights Violations – point 2 in the enclosed letter

There are various articles under Human Rights Law which you are breaching if you attempt to force an employee to have a COVID-19 vaccine.

### **Article 3 – the right to freedom from torture or inhuman or degrading treatment<sup>4</sup>**

The consequences of medical treatment without consent could be considered to be inhuman or degrading. This was established by the Human Rights Court in a case called Herczegfalvy v Austria<sup>5</sup>, where a man called Mr Herczegfalvy was given sedatives and other medical treatment without his consent in a psychiatric hospital. The court agreed that treatment without consent could breach Article 3. One factor to show that medical treatment breaches Article 3, is that the treatment is not medically necessary.

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<sup>2</sup> <https://www.supremecourt.uk/cases/uksc-2013-0136.html>

<sup>3</sup> <https://www.scotcourts.gov.uk/docs/default-source/cos-general-docs/pdf-docs-for-opinions/2020csoh40af80caa7898069d2b500ff0000d74aa7.pdf?sfvrsn=0>

<sup>4</sup> [Article 3: Freedom from torture and inhuman or degrading treatment | Equality and Human Rights Commission - https://www.equalityhumanrights.com/en/human-rights-act/article-3-freedom-torture-and-inhuman-or-degrading-treatment](https://www.equalityhumanrights.com/en/human-rights-act/article-3-freedom-torture-and-inhuman-or-degrading-treatment)

<sup>5</sup> <https://www.bailii.org/eu/cases/ECHR/1992/83.html>

If an employee considers themselves to be at minimal risk of dying from COVID-19, it is not medically necessary for them to have the COVID-19 vaccine medical treatment for their own benefit. As such, forcing them to do so would breach Article 3.

**Article 8** - The Human Rights Court have confirmed that Article 8 protects a person's physical, moral and psychological integrity, as well as the right to choose<sup>6</sup>. Failing to respect their competent refusal of medical treatment, and providing treatment against their will, is therefore protected against by Article 8.

To be valid, consent must be informed. So, if an employee consents to treatment on the basis of misleading information, or where information is withheld, this would also a breach of Article 8.

Given this, you are obliged to provide an employee with a full breakdown of the personal risks to them of the COVID-19 vaccine, to include a clear analysis of the yellow card reports to date, as well as an analysis of alternative treatments for COVID-19 and any risks such may carry for them.

### **Article 9 – Right to freedom of religious expression<sup>7</sup>**

Article 9 is relevant in issues of consent to treatment if a person refuses treatment on the grounds of their spiritual, religious and philosophical beliefs. Even if you judge such treatment to be life prolonging, Article 9 must be considered. As an adult, a person's right to be protected from treatment without consent, must be taken into account, including, where the treatment would lead to a sufficient level of suffering to engage Article 3, the right to be free from inhuman or degrading treatment.

An employee's spiritual, religious and philosophical beliefs may be such that they do not accept a medical intervention, for which they do not consider there to be sufficient data of harms gathered, over a sufficient time period. The phase 3 trials of the COVID-19 vaccines do not end until 2023, when more data about harms will be known. Further, your employees may believe that there have been sufficient harms recorded to date for them to have genuine fears about their life, if any were to take the COVID-19 vaccine.

The Siracusa Principles<sup>8</sup> state that restrictions on human rights must meet standards of legality, evidence-based necessity, proportionality, and gradualism. Specifically, limitations on rights must be, among other provisions, 'strictly necessary', meaning that the limitations respond to a pressing public or social need and proportionately pursue a legitimate aim, and are the least restrictive means required for achieving the purpose of the limitation.

Given the availability of alternative treatments, the death rate of COVID-19 being akin to flu and no scientific evidence of asymptomatic spread, there would be no pressing public or social need

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<sup>6</sup> [Article 8: Respect for your private and family life | Equality and Human Rights Commission - https://www.equalityhumanrights.com/en/human-rights-act/article-8-respect-your-private-and-family-life](https://www.equalityhumanrights.com/en/human-rights-act/article-8-respect-your-private-and-family-life)

<sup>7</sup> [Article 9: Freedom of thought, belief and religion | Equality and Human Rights Commission - https://www.equalityhumanrights.com/en/human-rights-act/article-9-freedom-thought-belief-and-religion](https://www.equalityhumanrights.com/en/human-rights-act/article-9-freedom-thought-belief-and-religion)

<sup>8</sup> [Siracusa Principles - https://www.icj.org/wp-content/uploads/1984/07/Siracusa-principles-ICCPR-legal-submission-1985-eng.pdf](https://www.icj.org/wp-content/uploads/1984/07/Siracusa-principles-ICCPR-legal-submission-1985-eng.pdf)

for an employee with a minimal risk of death from COVID-19, to place themselves at risk from a COVID-19 vaccine.

## UK Domestic law – point 3 in the enclosed letter

There are no statutory provisions in UK law that can force individuals to become vaccinated. The Public Health (Control of Disease) Act 1984 s45E<sup>9</sup> specifically states that members of the public should not be compelled to undergo any mandatory medical treatment, including vaccinations. The Regulations are therefore in direct contravention of this primary legislation. A statutory instrument cannot overreach primary legislation. If you threaten an employee with job loss if they refuse the COVID-19 vaccine, you are compelling them to have it. This in turn means you are in breach of UK domestic law.

As already stated above, freely given consent is required for any medical intervention. If you attempt to force an employee to be vaccinated, not only could it give rise to human rights concerns, but there could also be criminal implications. Forcing an employee to receive a vaccine injection under duress, under UK law, could constitute an unlawful injury and you could be prosecuted accordingly.

Further UK domestic law applicable to this issue is explained below.

## Genuine fears for personal safety – point 4 in the enclosed letter

Below at Annex 1 is an infographic of deaths registered for 7<sup>th</sup> March 2020 to 2<sup>nd</sup> July 2021, by age group.

You will note that average absolute risk of dying with COVID-19 is 0.23% for the entire population during this period. In age group 90+ it was 5.5%, in age group 85-89 it was 2.9%, in age group 80-84 it was 1.6%, in age group 75-79 it was 0.86%, and in age group 70-74 it was 0.44%

As at the 30<sup>th</sup> June 2021, the government yellow card scheme lists the following Adverse Events (“AE’s”) and deaths for the following vaccines administered in the UK, (these figures may now be higher):-

- Pfizer 236,555 AE’s and 450 deaths, Astra Zeneca 775,940 AE’s and 960 deaths, Moderna 22,191 AE’s and 6 deaths, and brand unspecified 2,690 AE’s and 24 deaths.
- The total deaths from the vaccines as at 30<sup>th</sup> June 2021 are therefore **1,440**, and the total AE’s to this date are **1,037,076**, many of which are life limiting.

As of 30<sup>th</sup> June 2021, the UK had fully vaccinated 33,048,199 people, (the number may now be higher).

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<sup>9</sup> [Public Health \(Control of Disease\) Act 1984 - https://www.legislation.gov.uk/ukpga/1984/22/section/45E](https://www.legislation.gov.uk/ukpga/1984/22/section/45E)

Based on all the figures above, the risk of an adverse reaction to the COVID-19 vaccine as at 30<sup>th</sup> June 2021 was 3.13807%, and the risk of death was 0.004357%.

No one can tell what sort of adverse reaction a recipient would have if they suffered one. It could be minor or major and life changing. No one can guarantee someone will not die from having a COVID-19 vaccine. As an employer, you should not be willing to place your employee at such a risk, and indeed at law you are obliged to keep them from harm. In addition, an employee should not have to take the risk of death or injury from the COVID-19 vaccine, and according to their human right to life, they are justified in making a decision to abstain from the same.

Annex 2 is an infographic of the adverse events compiled from the Medical and Healthcare products Regulatory Agency (MHRA) yellow card scheme to 7<sup>th</sup> July 2021. The MHRA estimate that only 1 in 10 adverse reactions is reported.

Annex 3 is an infographic as to deaths within 28 days of a COVID-19 vaccination to 23<sup>rd</sup> June 2021, produced by the Scottish Government. The English government do not produce this data.

## The Equality Act 2010 – point 5 in the enclosed letter

The Equality Act 2010 says a person must not be discriminated against because:

- they are (or are not) of a particular religion
- they hold (or do not hold) a particular philosophical belief
- someone thinks they are of a particular religion or hold a particular belief (this is known as discrimination by perception)
- they are connected to someone who has a religion or belief (this is known as discrimination by association)

An employee may have a genuinely held philosophical belief about experimental medical treatment. They may also prefer natural treatments to allopathic medicine and feel they have a duty to live their life in a way which limits their impact on medical services and avoids the use of conventional medical treatments. Such a belief is likely to be a cogent, serious belief and even a way of life that must be respected.

You will breach the provisions of the Equality Act if you treat a non-COVID-19 vaccinated employee differently from an employee that has been COVID-19 vaccinated. You will be personally liable for this in any employment claim, not the UK government.

## Harassment as an associated issue

Harassing an employee to take a COVID-19 vaccine is unrelated to a protected characteristic under The Equality Act but The Equality and Human Rights Commission has published guidance on harassment<sup>10</sup> in the context of students (which applies equally to employees). The commission has also produced a Code of Practice on Employment<sup>11</sup>, which whilst not legally binding, gives

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<sup>10</sup> <https://www.equalityhumanrights.com/en/advice-and-guidance/what-harassment>

<sup>11</sup> [Employment: Statutory Code of Practice | Equality and Human Rights Commission - https://www.equalityhumanrights.com/en/publication-download/employment-statutory-code-practice](https://www.equalityhumanrights.com/en/publication-download/employment-statutory-code-practice)

important guidance on good practice. Failure to follow the same may be considered by tribunals or courts.

As an Employer you are liable for harassment between employees and can also be liable for harassment from a third party (for example, a customer). Although the government has removed express protection for this third-party harassment from the Equality Act, liability can still arise from other legal duties, for example breach of contract, direct discrimination, the Protection from Harassment Act 1998 and so on. These legal duties and good practice mean that you must take steps to protect employees from harassment from anyone they encounter at work, and this of course includes yourself.

## Bullying as an associated issue

There is no single piece of legislation which deals with workplace bullying. However, bullying may be covered by:

- The Equality Act 2010, if it is linked to a protected characteristic.
- The Employment Rights Act 1996, especially the 'detriment' provisions.
- Claims for breach of an express or implied term of the employment contract - for example, breach of the implied term to take care of employees.
- Criminal or civil provisions under the Protection from Harassment Act 1998.

Bullying might also be covered by a myriad of other legal principles and laws, for example:

- The common law obligation for an employer to take care of workers' safety.
- Personal injury protection and duties to take care of workers arising out of Tort law.
- Health and Safety at work etc Act 1974.
- Criminal Justice and Public Order Act 1994.
- Whistle-blower protections.
- Human Rights Act 1998.

Any action which constitutes bullying an employee into taking a COVID-19 vaccine will be covered by at least one of the above pieces of legislation.

## Health & Safety as an associated issue

The Health and Safety at Work etc Act 1974<sup>12</sup> obliges employers to take reasonable steps to reduce any workplace risks for their employees.

Whilst you may feel this gives you justification for encouraging your employees to have a COVID-19 vaccine, the duty to reduce workplace risks applies equally in reverse. Hence you are obliged to protect employees against a vaccine injury that may occur because of your vaccine policy.

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<sup>12</sup> <https://www.legislation.gov.uk/ukpga/1974/37/contents>

As an Employer you are legally obliged to provide your employees with an impact and workplace risk assessment as regards the COVID-19 vaccine, to include your analysis of the risks inherent with the vaccine itself, applied to each employee individually.

## Criminal liability – point 6 in the enclosed letter

The Offences Against the Persons Act 1861 s20 states that an unlawful wounding would occur if a person were forced to have a vaccination against their will. A wound means 'a break of the skin'. This statute remains in force today, and personal prosecution against you may be possible as a result. Private criminal prosecutions may be brought in the absence of CPS prosecutions.

## Other liability under Tort

You may be liable in tort for damages for any injury or health issue that an employee suffers if you compel them to take a COVID-19 vaccination. At common law, you as their employer are under a duty to take reasonable care of their health and safety in all the circumstances, so as not to expose them to unnecessary risk.

This duty of care extends to their physical and mental health. This common law duty is a personal, non-delegable duty and cannot be discharged by you entrusting the employee's safety to another employee or to an independent contractor, such as a physician or nurse<sup>13</sup>, as you would in that case likely be vicariously liable for damage they suffer.

Damages may be extensive, depending on injury sustained, and payment of the same can be secured against your personal assets if necessary.

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<sup>13</sup> <https://www.supremecourt.uk/cases/docs/uksc-2014-0089-judgment.pdf>

Annex 1

Deaths Registered By Age Group, England & Wales  
07Mar20 - 02Jul21

Age Group	Population (2020 Mid Year Estimate)	Number of Deaths All Causes	Number of Deaths Involving COVID-19	% Of Population That Died All Causes	% Of Population That Died Involving COVID-19	Probability of Dying Of Any Cause During Period	Probability of Dying Involving COVID-19 During Period	Age Group
<1	631,314	3,162	2	0.50086%	0.00032%	1 in 200	1 in 315,657	<1
1-4	2,769,474	403	1	0.01455%	0.00004%	1 in 6,872	1 in 2,769,474	1-4
5-9	3,721,636	271	3	0.00728%	0.00008%	1 in 13,733	1 in 1,240,545	5-9
10-14	3,620,016	353	10	0.0098%	0.0003%	1 in 10,255	1 in 362,002	10-14
15-19	3,289,692	914	22	0.0278%	0.0007%	1 in 3,599	1 in 149,531	15-19
20-24	3,679,079	1,636	60	0.044%	0.002%	1 in 2,249	1 in 61,318	20-24
25-29	3,979,607	2,321	128	0.058%	0.003%	1 in 1,715	1 in 31,091	25-29
30-34	4,021,324	3,520	247	0.088%	0.006%	1 in 1,142	1 in 16,281	30-34
35-39	3,924,082	5,315	428	0.135%	0.011%	1 in 738	1 in 9,168	35-39
40-44	3,649,233	7,467	711	0.205%	0.019%	1 in 489	1 in 5,133	40-44
45-49	3,831,104	12,297	1,389	0.321%	0.036%	1 in 312	1 in 2,758	45-49
50-54	4,092,321	19,588	2,528	0.479%	0.062%	1 in 209	1 in 1,619	50-54
55-59	3,984,004	28,461	4,188	0.71%	0.11%	1 in 140	1 in 951	55-59
60-64	3,394,229	38,455	6,261	1.13%	0.18%	1 in 88	1 in 542	60-64
65-69	2,964,255	50,993	8,434	1.72%	0.28%	1 in 58	1 in 351	65-69
70-74	2,996,014	80,712	13,283	2.69%	0.44%	1 in 37	1 in 226	70-74
75-79	2,141,015	101,368	18,477	4.73%	0.86%	1 in 21	1 in 116	75-79
80-84	1,539,755	130,114	25,059	8.5%	1.6%	1 in 12	1 in 61	80-84
85-89	939,743	143,591	27,552	15.3%	2.9%	1 in 7	1 in 34	85-89
90+	551,827	170,688	30,076	30.9%	5.5%	1 in 3	1 in 18	90+
<b>Total</b>	<b>59,719,724</b>	<b>801,629</b>	<b>138,859</b>	<b>1.34%</b>	<b>0.23%</b>	<b>1 in 74</b>	<b>1 in 430</b>	<b>Total</b>

Source Data

<https://www.ons.gov.uk/peoplepopulationandcommunity/birthsdeathsandmarriages/deaths/datasets/weeklyprovisionalfiguresondeathregisteredinenglandandwales>

<https://www.ons.gov.uk/peoplepopulationandcommunity/populationandmigration/populationestimates/datasets/populationinatesforukenglandandwales/scotlandandnorthernireland>

Annex 2

Short Term UK Reported Adverse Reactions and Deaths from the Covid-19 injections processed to 7th July 2021												
UK (MHRA)	AstraZeneca		Pfizer		Moderna		Unspecified		Total		Fatal	
	Total	Fatal	Total	Fatal	Total	Fatal	Total	Fatal	Total	Fatal		
Blood Disorders	7,047	10	8,045	3	511	-	37	3	15,640	16		
Cardiac Disorders	8,468	142	3,357	79	210	-	26	3	12,061	224		
Congenital Disorders	75	1	41	-	2	-	-	-	118	1		
Ear Disorders	9,019	-	3,331	-	262	-	31	-	12,643	-		
Endocrine Disorders	310	-	126	-	13	-	-	-	449	-		
Eye Disorders	12,974	-	4,085	-	259	-	47	-	17,365	-		
Gastrointestinal Disorders	76,217	11	24,141	14	1,926	-	252	1	102,536	26		
General Disorders	241,920	341	63,662	163	7,115	4	779	8	313,476	516		
Hepatic Disorders	402	8	99	1	5	-	4	-	510	9		
Immune Disorders	2,779	2	1,330	2	177	-	15	-	4,301	4		
Infections	17,126	81	5,933	75	394	1	80	3	23,533	160		
Injuries	7,770	1	3,022	2	410	-	52	1	11,254	4		
Investigations	10,023	2	2,980	3	205	-	48	-	13,256	5		
Metabolic Disorders	8,345	4	1,425	1	101	-	44	-	9,915	5		
Muscle and Tissue Disorders	94,771	1	30,509	-	2,706	-	318	1	128,304	2		
Cancers / Tumors (Neoplasms)	359	4	161	2	7	-	-	-	527	6		
Nervous System Disorders	168,034	177	44,131	43	3,792	2	535	1	216,492	223		
Pregnancy Conditions (includes miscarriage)	275	5	269	6	22	-	2	-	568	11		
Psychiatric disorders	140	1	70	-	3	-	1	-	214	1		
Renal & urinary disorders	16,122	4	4,743	-	448	-	66	-	21,379	4		
Reproductive & breast disorders	2,361	5	673	5	50	-	18	-	3,102	10		
Respiratory disorders	13,866	-	10,823	-	1,335	-	76	-	26,100	-		
Skin disorders	26,145	122	10,591	45	661	-	90	3	37,487	170		
Social circumstances	48,281	1	17,699	1	4,658	-	183	-	70,821	2		
Surgical & medical procedures	321	1	115	-	12	-	3	-	451	1		
Vascular disorders	652	1	222	1	18	-	6	-	898	2		
<b>Total Adverse Reactions</b>	<b>785,519</b>	<b>983</b>	<b>245,395</b>	<b>456</b>	<b>25,627</b>	<b>7</b>	<b>2,766</b>	<b>24</b>	<b>1,059,307</b>	<b>1,470</b>		
Total Reports Made	219,374		87,789		8,935		927		317,025	-		
Average issues per person reporting:	3.6		2.8		2.9		3.0		3.3	-		

Public Health Scotland  
COVID-19 Statistical Report

As at 21 June 2021

**Table 15: Number of deaths that have occurred within 28 days following a dose 1 COVID-19 vaccination**

Number of days post 1 <sup>st</sup> dose vaccination	Age Group in Years	Observed number of deaths	Expected Number of Deaths	Observed/Expected ratio	95 % Lower Confidence Intervals	95% Upper Confidence Interval
0-27	<50	95	153	0.62	0.51	0.76
0-27	50-69	586	940	0.62	0.57	0.68
0-27	70-79	764	1,239	0.62	0.57	0.66
0-27	80+	1,830	2,598	0.70	0.67	0.74
0-27	All Ages	3,275	4,929	0.66	0.64	0.69

**Table 16: Number of deaths that have occurred within 28 days following a dose 2 COVID-19 vaccination**

Number of days post 2 <sup>nd</sup> dose vaccination	Age Group in Years	Observed number of deaths	Expected Number of Deaths	Observed/Expected ratio	95 % Lower Confidence Intervals	95% Upper Confidence Interval
0-27	<50	27	49	0.55	0.37	0.78
0-27	50-69	365	630	0.58	0.52	0.64
0-27	70-79	585	1,052	0.56	0.51	0.60
0-27	80+	1,270	2,057	0.62	0.58	0.65
0-27	All Ages	2,247	3,789	0.59	0.57	0.62

The sum of the breakdowns may not match totals due to rounding