



The provision of PPE to Healthcare workers during the pandemic

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March/April 2020: A campaign to protect healthcare workers

My clients Dr Nishant Joshi and Dr Meenal Viz began their public campaign to raise the issue of PPE shortages and lax guidance on its use in March 2020. Here's an iconic photo of Dr Viz protesting outside Downing Street in April 2020.



A legal challenge to government guidance on PPE

We identified the fact that the government guidance on PPE:

- was not in line with the international standards set by the WHO or domestic legislation regarding health and safety at work;
- exposed healthcare workers to a greater risk of contracting COVID-19 and failed to address the greater risks faced by BAME healthcare workers;
- was unclear and has resulted in inconsistent practices across NHS Trusts;
- failed to make clear the level of risk faced by healthcare workers depending on the level of PPE they can access or that healthcare workers have a right to refuse to work without adequate PPE.



Specific concerns

1. It was erroneously claimed that the government guidance aligned with WHO guidance.
2. The government guidance did not classify CPR as an Aerosol Generating Procedure (AGP) so did not require healthcare workers to wear full PPE when conducted chest compressions – despite contrary advice from WHO and the Resuscitation Council UK - and the more general point that it should be classified as an AGP in accordance with the ‘precautionary principle’.
3. It permitted the reuse of reusable and single use PPE without requiring it to be reprocessed.



Disproportionate impact of COVID-19 on BAME healthcare workers

We also focussed on the fact that COVID-19 appeared to be having a grossly disproportionate impact on BAME healthcare workers.

That fact was highlighted in an independent report written by Cook, Kursumovic and Lennane which was published on 22 April 2020 and showed that 94% of the doctors and 70% of the nurses that had tragically died of COVID-19 by that time were from BAME backgrounds.

The government ought to have been well aware of these shocking statistics yet it seemed that it had done little if anything to examine why BAME healthcare workers had been hit so hard by COVID-19 and that it had failed to take appropriate steps to mitigate the risks they faced.



Litigation commenced

My clients issued a judicial review challenge and asked the court to declare that the government's PPE guidance was unlawful and breached their rights protected by Articles 2, 8 and 14 of the ECHR.

They also asked the court to order that the government conduct an equality impact assessment on the effect of COVID-19 on BAME healthcare workers and revised its PPE guidance to mitigate that impact, so that those on the frontline had adequate PPE which met the WHO standards and BAME healthcare workers were properly protected.

BAPIO and the BMA intervened - both organisations had previously raised concerns with the government about PPE shortages, the fact that PPE guidance fell short of the WHO guidance and did not classify CPR as an AGP and the disproportionate impact of COVID-19 on BAME healthcare workers.

Changes to guidance and settlement

In the event, the government revoked the controversial 'Acute Shortages Guidance' that encouraged the reuse of PPE such as surgical face masks, even in high-risk areas.

An [AGP](#) committee was constituted to consider the evidence and review the list of AGPs. The NHS BAME Clinical Advisory Group was formed to provide a forum for discussion and advice to NHS England.

Guidance on the need for a risk assessment was strengthened so that it is required for health and social care staff at high risk of complications from COVID-19 including clinically extremely vulnerable groups, pregnant staff and Black, Asian and Minority Ethnic (BAME) staff.

As a consequence the case settled.



Thank you

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