

Johnson government acted unlawfully in policy that led to mass deaths in care homes, UK High Court rules

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27 April 2022

The High Court in London has ruled that the Conservative government acted unlawfully in the early weeks of the pandemic when it discharged thousands of untested hospital patients into care homes.

Lord Justice Bean and Mr Justice Garnham stated following a hearing in March that the policy failed to take into account the risk of asymptomatic transmission of COVID-19.

This was one of four policies at issue in the case—part of a declared herd immunity strategy that transformed care homes into killing fields in which tens of thousands of elderly and vulnerable people died preventable deaths. “About 20,000 residents of care homes in England died of COVID-19 during the first wave of the pandemic in 2020,” the ruling notes.

Over 193,000 are now dead in Britain from COVID; fatalities overseen by Prime Minister Boris Johnson who infamously declared, “No more fucking lockdowns, let the bodies pile high in their thousands.”

The ruling tears to shreds government lies that it protected care homes by surrounding them, in the words of then Health Secretary Matt Hancock, in a “ring of steel.”

The defendants in the case were the Secretary of State for Health and Social Care (Hancock), National Health Service England, and Public Health England (PHE). It was brought by Dr. Cathy Gardner and Fay Harris whose fathers, Michael Gibson and Donald Harris, died in care homes after testing positive for COVID-19.

The judgement states, “Claimants seek declarations that certain policy documents issued by the Defendants during the relevant period, and the policy decisions recorded in those documents, constituted breaches of their fathers’ rights under the European Convention on Human Rights, or alternatively were unlawful and susceptible to judicial review on common law principles.”

The High Court ruled that two government policies were unlawful: The March 2020 Discharge Policy, the basis on

which thousands of patients were sent from hospitals into care homes to free up hospital beds; and the April 2 Admissions Guidance, providing care homes with advice on the admissions of people from hospitals.

Point 5 of the summary states that “the drafters of those documents failed to take into account the risk to elderly and vulnerable residents from non-symptomatic transmission, which had been highlighted by (among others) Sir Patrick Vallance [government Chief Scientific Officer] in a radio interview as early as 13 March.”

The judges found it was “irrational for the DHSC [Department for Health and Social Care] not to have advised until mid-April 2020 that where an asymptomatic patient (other than one who had tested negative for COVID-19) was admitted to a care home, he or she should, so far as practicable, be kept apart from other residents for 14 days.”

Representing Dr. Gardner and Harris, Jason Coppel QC told the court, “The care home population was known to be uniquely vulnerable to being killed or seriously harmed by Covid-19.

“The Government’s failure to protect it, and positive steps taken by the Government which introduced Covid-19 infection into care homes, represent one of the most egregious and devastating policy failures in the modern era.

“That death toll should not and need not have happened.”

Speaking after the ruling, Dr. Gardner and Harris called for Johnson’s resignation. Dr. Gardner told Sky News, “When secretary of state Matt Hancock said that he’d thrown a protective ring around care homes right from the start—I heard him say that on television and my chin nearly hit the floor because all of us who were involved in any way with care homes at the start of the pandemic knew that was absolutely not true.

“It was a lie. It was a lie then and it is a lie now. They didn’t do anything to protect my father, there was no help given to care homes and the death toll in those first few weeks of the pandemic was catastrophic.

“I think they never imagined they were going to be found out. You only have to look at the parties [that government officials held in Downing Street] to realise they never think they’re going to be found out.”

Covid-19 Bereaved Families for Justice campaign group spokesperson Charlie Williams said, “We’ve always known that our loved ones were thrown to the wolves by the government, and the claims made by Matt Hancock that a ‘protective ring’ was made around care homes was a sickening lie. Now a court has found their decisions unlawful and it’s clear the decisions taken led to people dying who may otherwise still be with their loved ones today.”

Williams’ father Rex, aged 85, was one of 27 people who died in the same Coventry care home.

The ruling is a damning indictment of government policy, but as with every intervention by the judiciary it lets the government off the hook on the essential issues. The claimants had an “important and legitimate claim,” the judges ruled, “but we must emphasise at the outset what it is and what it is not. It is not an inquest concerning the deaths of Mr Gibson and Mr Harris alone. On the other hand, the case is not a public inquiry but a judicial review. There has been no oral evidence. Evidence of opinion about the actions and decisions of the Defendants is not admissible.”

The ruling documents in detail how from the very earliest stages of a pandemic, many weeks before thousands of NHS patients were flooded into care homes, a growing body of scientific opinion and modelling indicated that COVID could be transmitted by asymptomatic people.

But it goes on to say that whereas there was “no evidence” that Hancock “considered” the question of whether to quarantine care home arrivals from hospitals for 14 days, there was also no evidence that “he was asked to consider it”. No one can shoulder any blame since it was the “drafters of those documents [March 2020 Discharge Policy and the April Admissions Guidance] that failed to take into account the risk to elderly and vulnerable residents from non-symptomatic transmission.”

Sections of the ruling pull no punches in their opposition to the bereaved families. Point 281 states, “We regard the sustained attack on the Hospital Discharge Policy as quite unrealistic.”

It adds in Point 284, “Similarly, the suggestion that the Government should have made provision in March for the testing of each patient before discharge to a care home is hopeless.” This is explained away because “there were only 5,000 tests available each day by 18 March and only 10,000 each day by 27 March.”

The judges dismissed other parts of the case, including a claim against NHS England and claims under Articles 2 and

8 of the European Convention on Human Rights.

The government could not hide its relief. Johnson doubled down on his lies in Parliament after shedding a few crocodile tears, saying of the murderous care home policy, “I want to remind the House of what an incredibly difficult time that was and how difficult that decision was. We did not know very much about the disease... we did not know in particular was that COVID could be transmitted asymptotically in the way that it was.”

Hancock’s spokesperson said, “This court case comprehensively clears Ministers of any wrongdoing and finds Mr Hancock acted reasonably on all counts. The court also found that PHE failed to tell Ministers what they knew about asymptomatic transmission.”

Public Health England was a Department of Health and Social Care agency, disbanded in October 2021 after being made a scapegoat for the government’s disastrous pandemic policy.

The bereaved families welcomed a ruling which declared part of the government’s COVID policy unlawful, vindicating a two-year battle to establish that their loved ones died needlessly. But it would be a mistake to conclude that any true reckoning with a government *which has committed social murder on a vast scale* can emerge from the High Court.

Layla Moran, the Liberal Democrat Chair of the All-Party Parliamentary Group on Coronavirus stated, “After Partygate, the billions in public money wasted and today’s ruling, the need for a public inquiry to begin immediately is clear.”

However, the planned public inquiry will be yet another whitewash, as with every previous inquiry organised by the ruling elite after a mass loss of life at its hands. What is required is not more inquiries and appeals to the criminals in Downing Street to “learn lessons”, but the removal of a hated government by a mass movement of the working class, independent of and opposed to both the Tories and Labour and directed against the capitalist system and its state.



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