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Covid-19: Woman whose father died in care home launches legal review over government's "litany of failures"

Clare Dyer

A woman whose father died in a care home has launched a judicial review case in the High Court over the government's "litany of failures" in protecting the vulnerable elderly residents who were most at risk from covid-19.

Cathy Gardner accuses England's health and social care secretary, Matt Hancock, NHS England, and Public Health England of acting unlawfully in breaching statutory duties to safeguard health and obligations under the European Convention on Human Rights, including the right to life.

Her father, Michael Gibson, who had Alzheimer's disease, died aged 88 of probable covid-19 related causes on 3 April at Cherwood House Care Centre, near Bicester, Oxfordshire. She claims that before his death the care home had been pressured into taking a hospital patient who had tested positive for the virus but had not had a raised temperature for about 72 hours.

"I am appalled that Matt Hancock can give the impression that the government has sought to cast a protective ring over elderly residents of care homes, and right from the start," Gardner said. "The truth is that there has been at best a casual approach to protecting the residents of care homes. At worst the government has adopted a policy that has caused the death of the most vulnerable in our society."

The case was filed at the High Court on 12 June, the day the National Audit Office published a report confirming that around 25 000 patients were discharged from hospitals to care homes at the height of the pandemic before testing became routine.¹

The NAO, the watchdog on government spending, also reported that officials had failed to stockpile protective gowns and visors, despite warnings to do so.

The application for judicial review accuses Hancock, NHS England, and PHE of failure to take into account the vulnerability of care home residents and staff to infection and death and the inadequacy of testing and personal protective equipment availability at the time. It contends that there was a "disproportionate, discriminatory, and irrational" focus on freeing hospital capacity at the expense of risking the lives of care home residents and staff.

In a letter before action on 2 June, Gardner asked Hancock and the two bodies to provide details of what policies and arrangements were currently in place, specifying when each policy or arrangement was first implemented.

The claim was issued before the government's time for reply had expired. Gardner's solicitor, Paul Conrathe, said this was necessary to make sure that

the three month time limit for judicial review was met. Some of the guidance challenged was issued in March, including instructions to discharge urgently from hospital all patients who were medically fit to leave, whether or not they had been tested for covid-19.

Conrathe said, "The state is under a duty to protect its citizens from harm. It is also under a duty to act fairly and not discriminate against the elderly and those with disabilities. The actions of the secretary of state, NHS England, and Public Health England in putting residents of care homes and care workers at risk of covid-19 infection seriously violated the human rights of the most vulnerable in our society."

Gardner is crowdfunding to help cover legal fees and had raised more than £26 000 by 12 June.

The Department for Health and Social Care said it could not comment on ongoing legal proceedings.

¹ Iacobucci G. Covid-19: Lack of testing led to patients being discharged to care homes with virus, say auditors. *BMJ* 2020;369:m2375. doi: 10.1136/bmj.m2375 pmid: 32532803

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