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Covid-19: Government faces legal challenge over “failure to protect care home residents”

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Two women who lost their fathers to covid-19 are legally challenging what they describe as the government’s failure to protect care home residents during the pandemic.

Cathy Gardner and Fay Harris claim that the health secretary, NHS England, and Public Health England unlawfully failed to protect care home residents from the three principal routes of covid transmission.¹ These were infection by other residents, infection by external visitors to care homes, and infection by care home staff.

Their case will be heard at the High Court over four days, starting on 19 October.

Speaking to BBC Radio 4’s *Today* programme on the day the hearing began, Gardner explained that the government had a legal duty to protect vulnerable people and to consider the effect its policies had on them.

“We know from what happened in care homes that really nothing was done to protect those people and they were discharging people from hospital,” she said. “The basis of the legal challenge is that they didn’t protect anyone in care homes, and they put them in harm’s way.”

Earlier this year the UK government admitted that its policy to have patients moved from hospitals to care homes during the early stages of the pandemic may have directly led to subsequent deaths.²

A report from Public Health England said its findings suggested that hospital associated seeding accounted for only a small proportion of all outbreaks in care homes. It said that from 30 January to 12 October 2020 it identified 43 398 care home residents (8.4%) who tested positive for covid with laboratory confirmation, and death was reported in 13 795 (34%).

A government spokesperson said that they could not comment on ongoing legal proceedings. They said, “Every death is a tragedy, and we worked tirelessly to protect the public from the threat to life and health posed by the pandemic and specifically sought to safeguard care homes and their residents.

“We have provided billions of pounds to support the sector, including on infection and prevention control, free PPE, additional testing, and priority vaccinations—with the vast majority of eligible care staff and residents now vaccinated.”

1 High Court of Justice, Queen’s Bench Division. The Queen (on the application of (1) Dr Cathy Gardner (2) Fay Harris) v (1) Secretary of State for Health and Social Care (2) NHS Commissioning Board (NHS England) (3) Public Health England. Oct 2021. https://static.crowdjustice.com/crowdjustice_document/Gardner_v_SSfH_Claimants_Skeleton_Argument.pdf

2 O’Dowd A. Covid-19: Official figures “underestimate” deaths caused by discharging patients into care homes. *BMJ* 2021;373:n1415. doi: 10.1136/bmj.n1415 pmid: 34078629

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