

IN TIMES OF EMERGENCY

WHEREAS, the ECHR, Article 15 - "**Derogation in time of emergency**" - states:

- "1. In time of war or other public health emergency threatening the life of the nation, any High Contracting Party may take measures derogating from its obligations under this Convention to the extent strictly required by the exigencies of the situation, **provided that** such measures are not inconsistent with its other obligations under international law.
2. No derogation from Article 2 [the "Right to Life"], except in respect of deaths resulting from lawful acts of war, or from Articles 3 ["Prohibition of torture or inhumane or degrading treatment", 4 (paragraph 1) and 7 shall be made under this provision."

This means that **the right to life [Article 2 of the ECHR, Article 3 of the UDHR], cannot be derogated from in a so-called public health emergency**. Even in times of war, the right to derogate is limited to "lawful acts of war", not unlawful ones.

This also means that **the right to "Prohibition of torture or inhumane or degrading treatment" [Article 3 of the ECHR, Article 5 of the UDHR], cannot be derogated from under a public health emergency - even if it is threatening the life of a nation**.

In respect of other rights listed in the ECHR, the right to derogate is limited to **those measures that are STRICTLY required**. However, the measures taken must not be inconsistent with other obligations under international [and European and UK] law. Any act/omission by you, the school, its employees, agents, or others which derogates from the child/child's, parent/s, grandparent/s, or others right to life, is a prima facie breach of Article 2 of the ECHR, in addition to Article 3 of the UDHR; and

NON-DEROGABLE

Human Rights - the Right not to have Rights and Freedoms destroyed by any activity or act by a State, group or persons.

WHEREAS, Article 30 of the UDHR states:

"Nothing in this Declaration may be interpreted as implying for any State, group or persons any right to engage in any activity or to perform any act aimed at the destruction of any of the rights and freedoms set forth herein."

This enshrines the statutory interpretation that should be applied to the UDHR when considering the right to derogate/limit/restrict any of the human rights set out therein. ; and

WHEREAS, Article 17 - Limitations on use and restrictions of rights, states:

"The restrictions permitted under this Convention to the said rights and freedoms shall not be applied for any purpose other than those for which they have been prescribed."; and

WHEREAS, Article 15 - "Derogation in time of emergency" - ECHR states:

- "1. In time of war or other public health emergency threatening the life of the nation, any High Contracting Party may take measures derogating from its obligations under this Convention to the extent strictly required by the exigencies of the situation, **provided that** such measures are not inconsistent with its other obligations under international law.
2. No derogation from Article 2 [the "Right to Life"], except in respect of deaths resulting from lawful acts of war, or from Articles 3 ["Prohibition of torture or inhumane or degrading treatment", 4 (paragraph 1) and 7 shall be made under this provision.
3. Any High Contracting Party availing itself of this right of derogation shall keep the Secretary General of the Council of Europe fully informed of the measures which it has taken and the reasons therefore.

It shall also inform the Secretary General of the Council of Europe when such measures have ceased to operate and the provisions of the Convention are again being fully executed."

Given that you, the school, its employees and others are availing yourselves of the right to derogate from Article 2 and Article 3 and other Articles of the ECHR, and the requirement to **keep the Secretary General of the Council of Europe "fully informed"** of the measures which it has taken and the reasons therefore, **you are required to provide evidence to the person whose rights you seek to derogate from**. The evidence sought is listed in this Notice ; and

Acts of Parliament and the Common Law cannot be changed by the executive.

WHEREAS, the ECHR has been incorporated into UK domestic law in the Human Rights Act 1998. **There are no emergency derogations to the Human Rights Act for any purpose relating to an emergency in the UK and the right at common law to valid consent has no emergency derogations.** You, the school, its employees and others, including the courts, cannot therefore lawfully use the pandemic to claim that any of the human rights engaged should be derogated for the purposes of the pandemic emergency.

"The executive (government) cannot change law made by Act of Parliament, nor the common law"

- R Miller v DExEU [2017] UKSC 5.

<https://www.supremecourt.uk/cases/uksc-2016-0196.html>; and

WHEREAS, the ECHR ensures the need for interventions taken by the Government and State to remain "evidence-based" as well as "necessary" and "proportionate". "Proportionate" means balancing the competing interests with "evidence-based" facts: in this case, to determine whether the UK has a "Public Health Emergency" under which the Government and the State, you, the School and others are claiming their right to derogate from their obligations to uphold human rights; whether the implementation of both Non-Pharmaceutical Interventions (such as Lockdowns, Social distancing, "bubbles", quarantining of healthy individuals) and Pharmaceutical Interventions (such as the so-called "COVID-19 vaccines", the face masks, the PCR or lateral flow tests) are strictly "necessary" in a democratic society in the interests of public safety, for the maintenance of public order, for the protection of health or morals, or for the protection of the rights and freedoms of others; and

Allegation of infringement of inalienable, fundamental human rights.

WHEREAS, infringements and violations of living men, women and children's inalienable, fundamental rights, civil liberties and freedoms by so-called "pandemic" laws are unnecessary, unfounded, disproportionate, unreasonable, irrational, unethical, immoral, unconstitutional, undemocratic, unlawful, illegal under domestic, European and International civil law and criminal law;

United Nations Office for the High Commissioner for Human Rights for introducing COVID public health response measures.

WHEREAS, In an article published by Monash University's Castan Centre for Human Rights Law, the author, Professor the Hon Ken Bell AM QC, considered the COVID guidance issued by the United Nations Office for the High Commissioner for Human Rights for introducing COVID response measures consistent with human rights. He provided the following summary:

[Requirement for emergency measures that restrict human rights to be "**proportionate**", "**necessary**" and "**non-discriminatory**"]:

- International law allows emergency measures in response to significant threats - but measures that restrict human rights should be **proportionate** to the evaluated risk, **necessary** and applied in a **non-discriminatory** way. This means having a specific focus and duration, and taking the least intrusive approach possible to protect public health.

[Requirement for emergency powers to only be used for "**legitimate**" public health goals]:

- With regard to COVID-19, emergency powers must only be used for legitimate public health goals, not used as a basis to quash dissent, silence the work of human rights defenders or journalists, deny other human rights or take any other steps that are not strictly necessary to address the health situation.

[Requirement for Governments to **inform the public** of what the emergency measures are, where they apply, for how long and provide updated information, widely available]:

- Governments should inform the affected population of what the emergency measures are, where they apply and for how long they are intended to remain in effect, and should update this information regularly and make it widely available.

[Requirement for Governments to **ensure a return to life "as normal"** and NOT use emergency powers to "indefinitely" regulate day-to-day life]:

- As soon as feasible, it will be important for Governments to ensure a return to life as normal and not use emergency powers to indefinitely regulate day-to-day life, recognising that the response must match the needs of different phases of the crisis." https://www.ohchr.org/Documents/HRBodies/SP/COVID/Academics/Castan_Centre_and_Prof_Joe.pdf; and

Legal opinion re unlawfulness of Public Health Orders and re right to suspend human rights during states of emergency or disaster.

WHEREAS, in the case of Kimber, the court held that, inter alia:

*"[173] In summary, the powers to make Public Health Orders (PHOs) cannot lawfully be used in a way that is punitive, and **human rights are not suspended during states of emergency or disaster.***

PHOs, by their nature, are designed and intended for short term use in the event of an emergency or crisis. They are not intended to be an ongoing vehicle to enforce significant deprivations of our civil liberties.

The COVID pandemic started over 20 months ago. The time is fast approaching here the reliance on PHO's will no longer be justified on public health grounds, particularly where there is such a significant intrusion on civil liberties"

- Kimber v Sapphire Coast Community Aged Care Ltd (C2021/2672) Australian Fair Work Commission, Sydney, 27th September 2021.

Legal opinion re the "necessity" and "reasonableness" of the denial or restrictions on basic liberties

WHEREAS, in the case of Kimber, the court stated that, inter alia:

"[160].. the necessity and reasonableness of the denial or restrictions on basic liberties must be weighed against a variety of other serious flow on consequences such as the significant increase in mental health issues and domestic violence, and against the serious economic damage that has been caused and will continue to be caused by the existing measures found in the Public Health Orders."

- Kimber v Sapphire Coast Community Aged Care Ltd (C2021/2672) Australian Fair Work Commission, Sydney, 27th September 2021.

Legal opinion re "far less restrictive" and "less intrusive" ways to ensure public health.

WHEREAS, in the case of Kimber, the court stated that, inter alia:

"[164] It should be abundantly clear that there are other, far less restrictive and less intrusive ways in which we can ensure public health and appropriately address the risk of COVID without resorting to the extreme measures currently in place."

- Kimber v Sapphire Coast Community Aged Care Ltd (C2021/2672) Australian Fair Work Commission, Sydney, 27th September 2021.; and

Legal opinion re "proportionality" of COVID-19 public health measure.

WHEREAS, in the case of Kimber, the court stated that:

"[172] The initial predictions of a 60% infection rate from COVID with a 1% death rate thankfully did not materialise."

It is now time to ask whether the "cure" is proportionate to the risk, and the answer should be a resounding no.

When deciding now what is reasonable, necessary and proportionate in terms of any response to COVID, governments and employers should actively avoid the hysteria and fear-mongering that is now so prevalent in the public discourse, and which will cloud rational, fact- based decision making."

[173] The current PHOs have moved well past the minimum necessary to achieve public health aims, and into the realm of depravation.

It is not proportionate, reasonable or necessary to "lock out" those who are

unvaccinated and remove their ability to work or otherwise contribute to society."; and

- Kimber v Sapphire Coast Community Aged Care Ltd (C2021/2672) Australian Fair Work Commission, Sydney, 27th September 2021.; and

Legal opinion that mandating or blanket rules regarding vaccines for everyone FAILS the test of "proportionality", "necessity" and "reasonableness"

WHEREAS, in the case of Kimber, the court stated, held that, inter alia:

"[181] Blanket rules, such as mandating vaccinations for everyone across a whole profession or industry, regardless of the actual risk, fail the test of proportionality, necessity and reasonableness.

It is more than the absolute minimum necessary to combat the crisis and cannot be justified on health grounds.

It is a lazy and fundamentally flawed approach to risk management and should be soundly rejected by courts when challenged."

- Kimber v Sapphire Coast Community Aged Care Ltd (C2021/2676) Australian Fair Work Commission, Sydney, 27th September 2021; and

WHEREAS, in the case of Kimber, the court held that, inter alia:

"[146] Finally, it should be clearly understood that employers who mandate vaccinations will be liable for any adverse reactions their workers may experience, given this is a foreseeable outcome for some people,";

- Kimber v Sapphire Coast Community Aged Care Ltd (C2021/2672) Australian Fair Work Commission, Sydney, 27th September 2021. ; and

Expert legal opinion on requirement to be "particularly vigilant to protect civil liberties and human rights"

WHEREAS, in an article recently published by two Senior Lecturers from the Faculty of Law at Monash University entitled "Wars, Pandemics and Emergencies What can history tell us about executive power and surveillance in times of Crisis", the authors concluded that *"in an emergency, we must be particularly vigilant to protect civil liberties and human rights against incursions that are more than the absolute minimum necessary to combat the crisis..."*; <https://www.unswlawjournal.unsw.edu.au/wp-content/uploads/2021/04/07-Ng-Gray.pdf>; and

Human Rights - the Right to an Effective Remedy.

WHEREAS, the European Convention on Human Rights ("the ECHR"), contains the following human rights, inter alia:

Article 13. the "Right to an effective remedy":

"Everyone whose rights and freedoms set forth in this Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity."
(emphasis added).

https://www.echr.coe.int/Documents/Convention_ENG.pdf; and

WHEREAS, you are therefore required to provide evidence that the measures you have employed are "necessary" "legitimate" "reasonable" and "proportionate", "evidence-based" and "least restrictive" as weighed against the harm that is being caused by these measures such as:

- a. the increase in mental health issues ;
- b. the increase in domestic violence issues ;
- c. the increase in financial and economic loss;
- d. the increase in suicides - "deaths of despair";
- e. the increase in learning and other difficulties;

and issues of the child/children, the family of the child/children, employees and others affected by your measures; and

WHEREAS, infringement of human rights may incur liabilities on the enforcers, promoters and/or administrators of such infringements for harm, loss, suffering, injury and/or death caused by actions and/or omissions;

Sanctions for breach of Human Rights - the Global Human Rights Sanctions Regulations 2020 No.680

WHEREAS, the Explanatory Memorandum to the Global Human Rights Sanctions Regulations 2020 No. 680, states, inter alia:

- "6.2. The Sanctions Act establishes a legal framework which enables Her Majesty's Government (HMG) to continue to give effect to those sanction regimes and to introduce other new sanctions regimes. Section 1 of the Sanctions Act enables sanctions regulations to be made for the purposes of compliance with United Nations obligations and other international obligations, as well as for a number of other purposes which include:
- promoting compliance with international human rights law and respect for human rights...or promoting respect for democracy, the rule of law and good governance."**

"What is being done and why?"

- 7.1. **HMG seeks to champion human rights, good governance and the rule of law. Serious human rights violations by State actors, and similar conduct by**

non-State actors, leads to unstable and less prosperous societies. Such conduct perpetuates violent conflict, creates a world where terrorism flourishes and where democratic institutions are weakened. It has a devastating impact on individuals and places the safety of individuals and societies at risk.

Successfully deterring such conduct would help create fairer and more just societies, which support the long-term global conditions most conducive to security, economic growth and the safety of all.

- 7.2 This instrument will enable HMG to designate persons who are involved in certain activities which, had they been carried out by or on behalf of a State within the territory of that State, would amount to a serious violation by that State of certain human rights.

These are:

an individual's right to life;

an individual's right not to be subjected to torture or cruel, inhuman or degrading treatment or punishment; and

an individual's right to be free from slavery, not to be held in servitude or required to perform forced or compulsory labour.

Such persons are able to be designated for the purpose of a travel ban or an asset freeze. The designation of such persons is intended to deter, and provide accountability for, such activities. The activities could be carried out by a State or a non-State actor. "

(emphasis added)

https://www.legislation.gov.uk/uksi/2020/680/pdfs/ukxiem_20200680_en.pdf; and

