**[*your address*]**

**[*your email*]**

To the Head Teacher / Principal

***[School name]***

***[Address]***

***[email]***

And to:

The Head of Education

***[Local authority* *name]***

***[Address]***

***[email]***

**URGENT ACTION REQUIRED**

Dear **[*name/title*]**

Re: **[*name of your child/children and year group/class*]**

I am a [**parent/guardian**] of the above-named student.

I write to object and demand your assurance that the School will not introduce;

1. a policy encouraging or requiring children in the school to wear face-covering
2. any other Non-Pharmaceutical Interventions (NPIs) without conducting suitable and sufficient risk assessment

There is no legal obligation on the School to introduce such a policy. There is significant risk that it may cause mental and physical harm to my child and to other children in the School. Permitting that risk, putting the School’s children in danger in this way, and interfering with our children’s education in the process, is not justified and is unlawful.

It is with reluctance that I feel obliged to write so formally but you will appreciate the urgency of the situation demands I do so.

**The School and the Local Authority should consider this a pre-action protocol letter in accordance with the Court’s Civil Procedure Rules.** Unless context suggests otherwise, references below to the School should be read as referring also to the Local Authority, either or both of which as relevant be regarded as the ‘employer’ in the relevant legislation.

To avoid unnecessary and delaying correspondence, for your better understanding this letter addresses:

1. The duty to secure efficient education
2. General duty under the Health & Safety at Work Act 1974
3. Management of Health and Safety at Work Regulations 1999
4. SARS-CoV-2 and ‘covid-secure’ risk assessments
5. The requirement for and meaning of proportionality
6. Harm to mental health and responsibility to redress promoted fear
7. Children with Disability

1. **Duty to secure efficient education**

[Section 13 of the Education Act 1996](https://www.legislation.gov.uk/ukpga/1996/56/section/13) imposes the general responsibility of the Local Authority for education.  It reads:

***13. General responsibility for education***

 A local authority shall (so far as their powers enable them to do so) contribute towards the spiritual, moral, mental and physical development of the community by securing that efficient primary education, and secondary education and, in the case of a local authority in England, further education, are available to meet the needs of the population of their area.

That responsibility, to secure efficient education for children, is not diminished by policy or requests from Government which the government has not written into law.

Accordingly, and as has always been the case, the School has always retained the ability to;

* refuse to arrange, encourage or mandate testing of children or staff for SARS-Cov-2
* refuse to arrange, encourage or mandate wearing of face-covering by children or staff
* refuse to close
* refuse to arrange, encourage or mandate online or remote learning
* to provide education at the School in a traditional way
* to take only such steps to mitigate the spread of SARS-CoV-2 as are proportionate and necessary

Any and all of the NPIs being applied in the School which significantly interfere with the duty to secure efficient education are unlawful. That is unless the NPI is shown, based on evidence, not media reports, to be both proportionate and necessary in avoiding risks to the health and safety of those to whom it owes a duty of care.

The School’s primary common law duty of care, of course, is to look after the health and safety of its children as if it were the parent.

1. **Health & Safety at Work Act 1974 (“the 1974 Act”)**

The 1974 Act provides general duties on an employer, in this case the School, towards its employees (section 2), persons other than its employees (section 3) and to other persons using the school premises for a place of work (section 4) to avoid risks to their health or safety.

Of relevance to children, [section 3](https://www.legislation.gov.uk/ukpga/1974/37/section/3) provides:

***3. General duties of employers and self-employed to persons other than their employees.***

It shall be the duty of every employer to conduct his undertaking in such a way as to ensure, so far as is reasonably practicable, that persons not in his employment who may be affected thereby are not thereby exposed to risks to their health or safety.

**Scope of the 1974 Act**

The School may mistakenly believe that the 1974 Act is of wide application in imposing duties towards those outside the School. It does not.

Section 1 of the 1974 Act makes plain that these duties relate only to:

a) securing health, safety and welfare of persons *at work*

b) risks to health or safety arising out of or in connection with the *activities of persons at work*

c) explosive or highly flammable or otherwise dangerous substances

d) controlling the emission into the atmosphere of prescribed noxious or offensive substances from premises

(It should be noted that SARS-CoV-2 is not within paragraph (d) above a ‘substance’ in the meaning of the 1974 Act.)

Further, the 1974 Act does not itself place any wider statutory legal obligation on the School to have regard to or ensure the safety of the general public by reason of the risks that are not attributable to the School activities. The risks arising from the social contacts of its staff or children, with grandparents or anyone else, in their private lives are matters for the private, personal and autonomous decision making of every individual, as are the steps any individual may wish to take to protect themselves or their contacts.

In short, the 1974 Act does not make the School responsible for spread of SARS-CoV-2 by children or staff in the wider community. Nor in respect of a common law duty of care could the School be any more responsible for the spread of SARS-CoV-2 than it could for the spread of a similar coronaviruses, such as may cause cold or influenza symptoms also potentially fatal to the vulnerable.

(For completeness, even if it could be argued that there is some other legal, moral or civic duty on the School to have regard to the impact of SARS-CoV-2 on the wider community, the School would then also be required to have regard to the impact of its counter measures on the same community. This would include economic and environmental harms as well as harms to health of families of children who do not wear a face-covering.)

1. **Management of Health and Safety at Work Regulations 1999 (“the 1999 Regulations”)**

The 1999 Regulations provide more specific obligations. Regs 2 and 3 require the School, being an employer of more than 5 people, to make a “suitable and sufficient assessment of the risks to the health and safety” of;

1. its employees to which they are exposed whilst they are at work, (*this will* *include teachers*) and;
2. others not in our employment but arising out of or in connection with the conduct of our undertaking (*this will include the children and visitors*)

Regulation 3(3) also demands that the School’s risk assessment must be reviewed and required changes made if there is reason to suspect that it is no longer valid or there has been a significant change in the matters to which it relates.

In reviewing its risk assessments, the School cannot ignore the reports and evidence of mental and physical harms to children being reported widely. The School staff will also have observed or received increasing reports of concerns about the mental health of its children as a result of increased restrictions. In these circumstances the School’s risk assessments are required to be reviewed immediately and regularly.

1. **SARS-CoV-2 and ‘covid-secure’ risk assessments**

Neither the 1974 Act nor the 1999 Regulations have been amended in response to SARS-CoV-2.

Indeed, since 19 March 2020 SARS-CoV-2 has not been considered to be a High Consequence Infectious Disease (HCID) in the UK. This was the determination of the 4 nations public health HCID having regard to matters including low overall mortality rates. Agreed by the Advisory Committee on Dangerous Pathogens (ACDP), this remains the position today.

Looking back and not being a specialist clinical environment, the School has not previously had to assess risk of spreading other common types of coronavirus that cause cold or flu symptoms and which are spread in the same way as SARS-CoV-2. Nor has the School been required to take measures significantly affecting its running of the School to avoid that risk.

Neither the 1974 Act nor the 1999 Regulations have changed in any material way in 2020 or 2021. The School’s duties pursuant to that legislation are the same as they were before SARS-CoV-2.

The commonplace ‘covid-secure’ assessment to reduce the risk of spreading SARS-CoV-2, conducted at recommendation of the Government and the HSE, is an assessment with extremely narrow focus. However, there is no law requiring it to replace or be prioritised for consideration over and above risk of other dangers. An assessment which does so is fundamentally flawed and in most cases, certainly in the School, not be an assessment in accordance with Reg 3 of the 1999 Regulations.

1. **The requirement for proportionality**

The 1999 Regulations are made pursuant to obligations under European health and safety legislation. The School also exercises a public function. The importance of each of the foregoing is that the 1999 Regulations must be interpreted, and the School must act, in accordance with the European Convention on Human Rights (ECHR).

For present purposes, the relevant articles of the ECHR include:

* Article 8: Right to respect for private and family life, home and correspondence.

This embraces, for example, rights;

* not to wear a face covering ([*S.A.S. v. France*](https://hudoc.echr.coe.int/eng#%7B%22itemid%22:[%22001-145466%22]%7D) [GC], § 122).
* to bodily integrity and personal autonomy
* to establish and develop relationships with others
* Article 2 of Protocol No. 1: Right to education

This provides a right of access to education through the School existing at a given time. It must be provided equally without interference with other fundamental rights, such as Art. 8 rights).

It is fundamental principle that no act or omission of the School is permitted to interfere with those rights unless such interference is proportionate i.e. it is both appropriate and reasonably necessary so. In this respect, the following factors at least must be considered:

* will such interference in fact achieve the desired aim? (evidence of this is required)
* can the aim be achieved by other means?
* what is the effect of the interference?
* what is the balance between the effect of interference and the aim?

**Proportionality and evidence in relation to wearing of face-covering**

Assuming the aim is to achieve a significant reduction in spread of SARS-CoV-2, the Government has admitted in June 2020 that “The evidence of the benefit of using a face covering to protect others is weak and the effect is likely to be small.”  In fact, the most comprehensive studies since then provide clearer evidence that wearing of a face-covering provides no statistically significant reduction in infection.

Weighed against the effects of wearing masks, the aim cannot justify the means. The effect of the policy complained of, requiring face-covering to be worn in the School, is to present real dangers and/or risk to the health and safety of the School’s children and to their educational. Such dangers and risks include:

* potentially increased risk of self-contamination from touching face masks
* self-contamination possible if a non-medical, wet or dirty mask is not replaced, thus promoting the proliferation of microorganisms and bacteria
* deprivation of oxygen, causing short and long-term effect to the developing brain
* bronchial infection from recycling own air and contaminated face-covering
* serious lung disease through inhaling of cloth fibres
* psychological harm, short and long term, from wearing against will
* bullying and isolation of those unable or unwilling to wear a face-covering
* less efficient communication owing to lips and facial expression being hidden
* disruption to classes
* headache and / or breathing difficulties
* facial skin lesions, irritative dermatitis or worsening of acne
* feeling of discomfort and increased anxiety
* contaminated waste

**Proportionality and evidence in relation to restricting access to face-to-face teaching**

Restricting access to face to face teach because of refusal to wear a face covering (or to refuse to participate in PCR or Lateral Flow testing for SARS-CoV-2) is a breach of Article 11 because the accompanying effect of breaching of Article 8 rights is not proportionate.

The restriction of access also presents real dangers and/or risk to the health and safety of the School’s children and to their education. Such dangers and risks include:

* psychological harm, short and long term
* bullying and isolation of those unable or unwilling to wear a face-covering
* reduction in educational attainment
* interference with family life where children are required to learn from home

**Evidence in conducting risk assessments**

It is no defence in relation to a breach of its health and safety duties towards its children and staff that the School may say it is following Government, or indeed SAGE, guidance or to suggest that such guidance was evidence based.

Each of the Government’s Regulations concerning Coronavirus Restrictions has contained the statement “No impact assessment has been prepared for these Regulations.” While the Government may avoid providing any assessment of the costs or harms arising from implementation of the Coronavirus Regulations or Guidance on excuse it is emergency legislation, no such excuse is available to the School.

The School’s obligation to conduct suitable and sufficient risk assessment is absolute. The School must act taking reasonable account of all information available to it and may not bury its head or fail to exercise due diligence in conducting its risk assessments.

Having regard to the serious dangers and risks that may result from its actions, the School is required to consider, at least but not only and is put on notice of, the evidence referenced via the following link:

<https://www.researchgate.net/publication/349518677_Review_of_scientific_reports_of_harms_caused_by_face_masks_up_to_February_2021>

1. **Harm to mental health and responsibility to redress promoted fear**

Since 23rd March 2020 the Government has conducted a communications and media campaign designed to engender and maintain fear in the public. This campaign, with a spend of over £100 million, has not spared the School’s children and staff.

Less well known is the advice to the Government from its SAGE Behavioural Science sub-group, SPI-B, from March 2020 and followed ever since has been to manipulate the public by persuasion and coercion:

“The **perceived level of personal threat needs to be increased** among those who are complacent, using **hard-hitting emotional messaging**…

Messaging needs to **emphasise and explain the duty to protect others**…

Messaging about **actions need to be** **framed positively in terms of protecting oneself and the community**, and increase confidence that they will be effective…

Communication strategies should **provide social approval for desired behaviours** and promote social approval… “

Promotion of fear may be a political objective or Government choice but being subjected to an environment of fear has caused significant harm to the nation’s mental health including children. For the School to conduct its undertaking in a way to promote fear when it is not proportionate to do so is in breach of the School’s duties under the 1974 Act.

The School has a responsibility and a positive duty to consider redressing the state of fear and provide its children with proper and accurate information, in context, as to the actual level of risks of harms they face from spread of SARS-CoV-2.

1. **Children with Disability**

Many children will face particular disadvantage by reason of disability.

The Government has chosen not to include School premises as a “relevant place” under The Health Protection (Coronavirus, Wearing of Face Coverings in a Relevant Place) (England) Regulations 2020 or to impose any obligation on Schools to insist on wearing of face-covering whether in the classroom or corridor or other spaces.

In conducting its assessment, the School is required to have particular regard for any children with a ‘disability’ in the meaning of Section 6 of the Equality Act 2010 and, by Section 20, to make reasonable adjustments to avoid the disadvantage caused to its children as result of the School policies. An obvious adjustment would be to provide exemption from requirements to wear any face covering.

Further, however, by being singled out for exemption and observed as ‘different’, children not wearing a face-covering may be stigmatised and suffer, at the very least, feeling of social exclusion and loss of self-esteem. There is considerable risk many may suffer, or at least suffer fear of, bullying.

As a result, the environment created for children not wearing a face-covering is likely to be one of isolation, being intimidating, hostile, degrading and humiliating. These are risks which none of the School’s children, with or without disability, should face.

However, in particular for those with a ‘disability’, and those with special educational needs, the harm caused by a general policy for all to wear face-covering may be significant. It will therefore also be a reasonable adjustment to avoid any such policy which positively encourages the wearing of face-covering. Refusal to make such adjustment must be justified on evidence as proportionate.

**Response required**

The issues raised in this letter should not be unexpected. The School has access to specialist legal advice and should at all times have been fully aware of its duty properly to assess the risks arising from all NPIs introduced relating to SARS-CoV-2.

The School is required:

1. Immediately to desist from any current policy to encourage or require children in the School to wear face-covering.
2. Immediately to take active steps to redress the state of fear and provide children, their parents and guardians and the School’s staff with proper and accurate information, in context, as to:
3. the actual level of risks of harms they face from spread of SARS-CoV-2
4. the efficacy of wearing face-covering
5. the risk of danger arising from wearing a face-covering
6. Within 7 days to reply to confirm it will desist from introducing any policy to encourage or require children in the School to wear face-covering.
7. By return to provide by return a copy of the School’s risk assessments, current and in any versions since March 2020, as relate to:
8. wearing of face coverings; and
9. all NPIs introduced or to be introduced in response to SARS-CoV-2.
10. To confirm what steps have been taken fully to inform and train the School staff in respect of increasing awareness of and how to respond to indicators of health concerns for the School children, including but not only in respect to wearing of a face-covering.

The timescales above are short as the dangers are immediate. Further, delay cannot be tolerated having regard to the loss of education the School’s children have already suffered, the harms they continue to suffer and the strains to mental ill health for children and their families arising at the prospect of mask use in the Schools continuing or increasing.

**Warning of Issue of Proceedings**

If the School does not give the assurances as sought and in default of sufficient response, further and immediate action may be taken, without further notice to the School to instruct solicitors, or independently, to issue application to the Courts. Relief sought will include for declarations in relation to unlawfulness of your conduct of the School and for injunctive relief to prevent or impose necessary restriction on the School regarding its encouragement or requirement for wearing of face-coverings. Damages will be sought as appropriate having regard to the School’s past breaches.

It is recommended that the School takes urgent legal advice on this matter.

**And Take Further Notice**

In respect of my child named above, please take notice that I object to the School encouraging or requiring a face-covering to be worn at the School or in connection with School activities.

I expect and require the School to be supportive of my position and to show appropriate support towards my child. I have in this letter asserted the rights of children at the School who are at disadvantage in relation to any NPI or covid-secure measures because of a disability. Any detrimental conduct towards my child following this letter may be regarded as unlawful victimisation in breach of Section 27 of the Equality Act and in respect of which any individual responsible may he held personally liable by the Courts.

Please acknowledge receipt of this letter by return.

Yours sincerely

Signed: ………………………………………………………………………………………  Date:……………………………………………

Name in capital letters: ………………………………………………………………………………