

YOUR WEEKLY BULLETIN OF WIT AND WONDER



CUSTARD OR CREAM?

Warner Goodman Towers' sweet, sweet plan for midwinter cheer.



NEEDLING CONCERNS

It had to happen. The first Covid jab-resisting employee reaches tribunal. What's the verdict?



WHAT'S BLUE AND YELLOW AND NOT A NAME FOR YOUR BABY?!

A teen hits back at Mum's dumb choice...

BEHOLD! THE FESTIVAL OF PUDDINGS!

Be honest. You're already feeling happier. Just reading that headline has put a wistful smile on your face.

And you heard it here first.

At Warner Goodman Towers this week we have been struggling with Bleak Midwinter. A month on from Christmas, it's been almost unremittingly grey and cold and meh. We NEED something to get us through to spring. So we propose a FESTIVAL OF PUDDINGS.

Between now and the end of February, we will all be appreciating a pudding, each and every day. We may not be EATING every pudding (although some might try) but we will be enjoying just the sweet, sweet *thought* of a pudding.

We are on a mission to pair a pudding with every day, starting from today. I am PUDDING BOSS so I get to nominate Pudding Number One for January 27. And it is...

STICKY TOFFEE PUDDING

To properly celebrate the FESTIVAL OF PUDDINGS (which will henceforth always begin on January 27 - marking one month on from the day after Boxing Day), you will need to observe worship of the following puds (with custard or cream or ice cream - your choice):

- Jan 27 Sticky Toffee Pudding
- Jan 28 Baked Cheesecake
- Jan 29 Apple Crumble
- Jan 30 Banoffee Pie



- Jan 31 Creme Brûlée
- Feb 01 Lemon Meringue Pie
- Feb 02 Pavlova
- Feb 03 Profiteroles
- Feb 04 Clotted cream rice pudding with nutmeg
- Feb 05 Eton Mess
- Feb 06 Key Lime Pie
- Feb 07 Bread & Butter Pudding
- Feb 08 Warm chocolate brownie

OK... this is as far as we've got and we need your help to fill the rest of the calendar, up to and including February 28. Please email your pudding nomination at the earliest opportunity!

I *could* have added a cheeseboard (Louise Bodeker) but NO, it's NOT A PUDDING. And I could also have added VIENNETTA (Howard Robson) but I am not a HEATHEN.

We believe the FESTIVAL OF PUDDINGS could light up the deep midwinter in a wonderful way. For health and safety's sake we recommend choosing no more than two puddings per week to go out and enjoy or bake and eat at home. Puddings of the day will be brought into the workplace by the very stylish. We also champion the early evening meeting of friends, directly after work, perhaps, purely to celebrate a top pudding (ideally that day's nominated pudding) at a nearby eatery. You can have a glass of wine too, if you must.

The FESTIVAL OF PUDDINGS must end on February 28 (or Feb 29 in a Leap Year) - giving us all time to build up a yearning for Easter Eggs.

I think this could be my legacy...

What would be your pudding nomination? Let us know over on our Facebook page.

A SHOT IN THE DARK

And speaking of legacy brings me to the case of *Ms C Allette v Scarsdale Grange Nursing Home Limited* 2021 which is sure to be the first of many.

In this case the Employment Tribunal (ET) considered whether an employee in a care home was unfairly dismissed after she refused to be vaccinated against Covid-19.

Ms Allette was employed as a care assistant from December 2003 until her dismissal in February 2021. Her contract of employment did not require mandatory vaccinations, nor did the employer's policies.

The employer decided to implement a mandatory vaccination policy and arranged for vaccinations for all staff to take place in January 2021. This was before mandatory vaccination for care home workers became law. Ms Allette knew about these arrangements but only learned that vaccination would be mandatory the day before her vaccine was due to be administered. Ms Allette did not want to receive the vaccine. She explained to Mr McDonagh, a director of the home, that she felt testing had been rushed and did not trust that the vaccine was safe. She had also read stories on the internet about the vaccine being unsafe and that there was a conspiracy. Mr McDonagh explained that the vaccine was safe and why he wanted staff to have it. Ms Allette still refused to be vaccinated so she was consequently suspended and invited to a disciplinary hearing for refusing to follow a reasonable management instruction.

At the disciplinary hearing, Ms Allette alleged for the first time that she did not want to have the vaccine because she was a Rastafarian and it was against her beliefs to take non-natural medication. Mr McDonagh explained that staff needed to be vaccinated to protect residents, staff and visitors to the home. The employer's insurers would also no longer provide public liability insurance for Covid-19 related risks after March 2021, and so the employer faced increased risk of liability if Ms Allette passed the virus to a resident or staff member.

Mr McDonagh genuinely believed that Ms Allette posed a threat to the health and safety of the home's residents, staff, and visitors. She was summarily dismissed on 1 February 2021 for gross misconduct for failing to follow a reasonable management instruction to be vaccinated. Ms Allette then brought a claim for wrongful and unfair dismissal.

The ET dismissed both of her claims. It determined that in the circumstances present in the home at the time, requiring staff to be vaccinated was a reasonable management instruction. The ET was not persuaded that Ms Allette acted reasonably in refusing the vaccine, nor was it convinced that religious beliefs were part of the reason for her refusal. Ms Allette had also accepted at her disciplinary appeal hearing that having the vaccine would reduce the risk to others in the care home. Under these circumstances Judge Bright reasoned that her refusal to get the vaccine amounted to gross misconduct.

The ET also found that Ms Allette's right to respect for private life under Article 8 of the European Convention on Human rights was engaged, but that this had to be balanced against the Article 8 rights of the other people living and working in the care home. The home was a small employer with a "pressing social need" to reduce the risk to the vulnerable residents. Ms Allette's scepticism of the vaccine was unreasonable in the circumstances, and allowing her to continue to work while unvaccinated "would pose a significant and unjustified interference with the Article 8 rights of the residents and the other staff and visitors to the home." The interference with her Article 8 rights was therefore justified.

The ET then considered whether dismissal was reasonable under S.98 of the Employment Rights Act 1996. The judgment concluded that it was reasonable "for an employer to conclude that an employee who was merely sceptical of the advice and did not trust the vaccine did not have a reasonable excuse for refusing to follow the management instruction to have the vaccine". Her dismissal was therefore fair.

This is a first instance decision and while not binding on future tribunals it does indicate that employers may, in some circumstances, be justified in dismissing an employee for refusing to be vaccinated.

Employers should also note that Judge Bright was careful to state that the "decision in this case is based entirely on the facts of this case and cannot and should not be taken as a general indication that dismissal for refusing to be vaccinated against Covid-19 is fair". Future cases involving mandatory vaccination will therefore be fact specific and we will probably see more cases of this type in the future.

EVENTS SEASON 2021

FEB 2
HR Hangout -
Challenges for HR
in 2022

MAR 8
Peace of Mind
Members Seminar

MAR 22
Mental Health
Masterclass

JUL 19
Practice Makes
Perfect
Masterclass



WHEN IKEA IS A REALLY BAD IDEA



More recently, Karens all over the country have been smarting from a trend to name bossy women asking for managers 'Karens'. Harsh. And if you complain that you're in no way like this... you just come over as a bit 'Karen'. I shiver. It could so easily have been Sarah. It might be by this time next week... [#TheYouthAreComingForUs](#)

If it happens I may change my name to Phoebe. Always rather fancied being a Phoebe...

But if your mum called you Debenhams or Sainsbury or Spar you would definitely have cause to complain. And this week I have read about a girl called Ikea who has just changed her name by deed

Long term followers of this weekly offering may remember that name blight is something we've discussed before. We all know someone with an awkward name and you have to feel for anyone called Iona who marries a Mr Ramsbottom.

poll. Because at school they called her Flat Pack.

Parents. Stop. Think. DON'T call your child a name that will make them instant bully-bait.

Have you ever thought of changing your name by deed poll? If so... what to...? Do tell us over on our [Facebook](#) page.

Peace of Mind

Do you want to save your business time and money, and reduce stress?



"A true class act; every company should have them on their speed dial!"

Contact us today on

023 8071 7717 or email peaceofmind@warnergoodman.co.uk to find out how **Peace of Mind** can help you.

Are you looking for us on Facebook?

If you haven't liked us already, follow the link below...



... And after liking us on Facebook, why not follow us on Twitter?



Sarah Whitmore
Partner
023 8071 7462



Howard Robson
Partner
023 8071 7718



Emma Kemp
Associate Solicitor
023 8071 7486



Natalie Rawson
Associate Solicitor
023 8071 7403



Louise Bodeker
Solicitor
023 8071 7448

DISCLAIMER

While every effort is made to ensure that the contents of these newsletters are up-to-date and accurate, no warranty is given to that effect and Warner Goodman does not assume responsibility for their accuracy and correctness. The newsletters are provided free of charge and for information purposes only. Readers are warned that the newsletters are no substitute for legal advice given after consideration of all material facts and circumstances by an experienced employment lawyer. Therefore, reliance should not be placed upon the legal points explained in these diaries or the commentary upon them.

UNSUBSCRIBE

If you do not wish to receive future editions of this newsletter, please simply reply to the e-mail and include the word "Unsubscribe". Click [here](#) to view our Privacy Policy on how we hold and process your data.

COPYING THESE DIARIES ON TO OTHERS

While the author retains all rights in the copyright to these newsletters, we are happy for you to copy them on to others who might be interested in receiving them on a regular basis. You are also welcome to copy extracts from the newsletters and send these on to others who may be interested in the content, provided we are referenced as the author when doing so.