



Covid 19: employees' individual and collective rights on health & safety issues on return to work in FE (Wales)

January 2021

Our campaigning position on Covid 19 is:

- teaching this term should be online wherever possible;
- all our sectors need emergency funding now

The individual rights of employees

In normal times the most effective way to protect the rights of individual union members to work in a healthy and safe environment is through the collective strength of union representation and through direct engagement with employers.

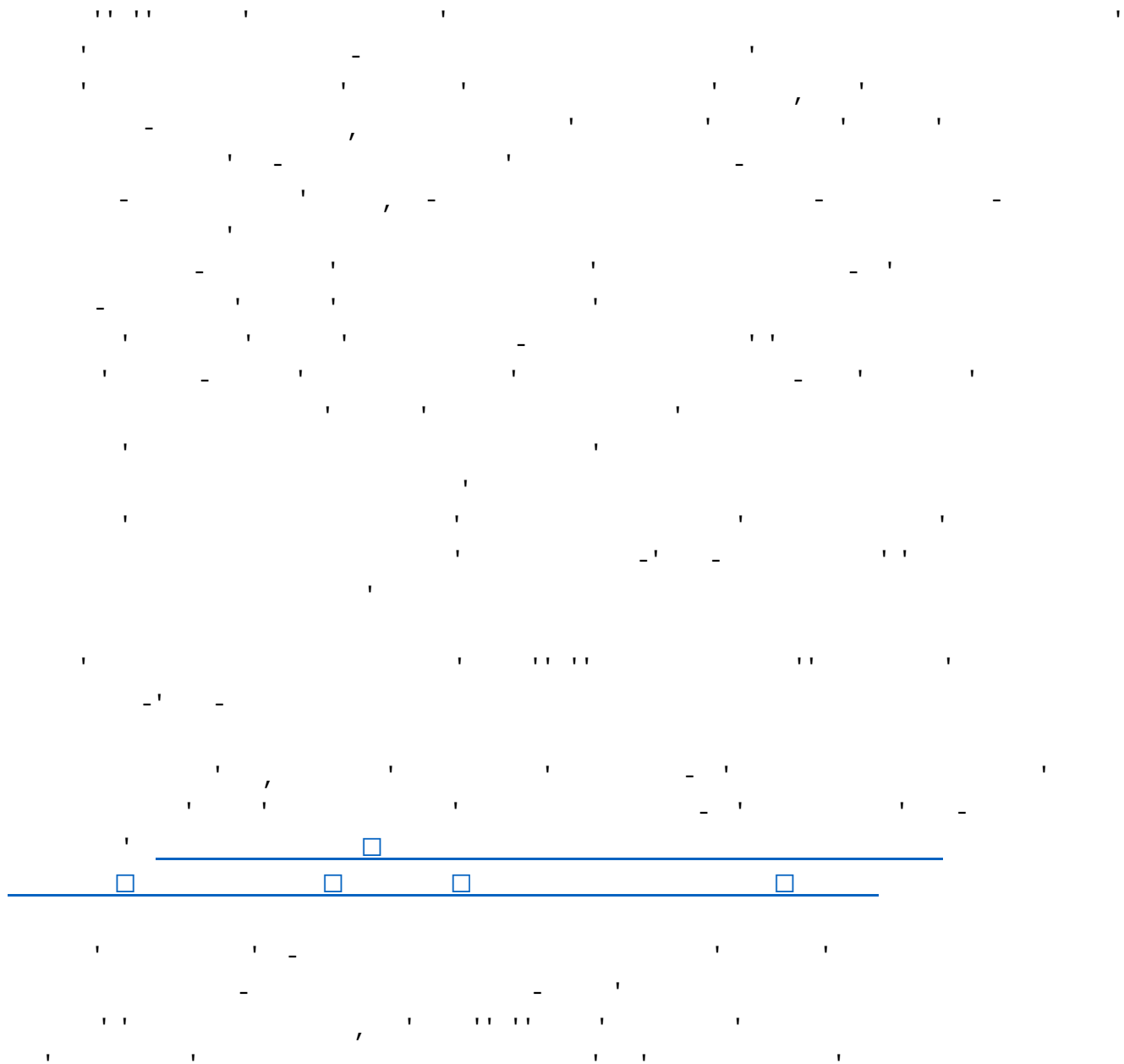
Members do have individual rights in law, and trade unions can lawfully give their members information about these.

The individual right most commonly cited is Section 44 (and the associated Section 100) of the [Employment Rights Act 1996](#) the so-

Serious and imminent danger

S.44 ERA provides, as far as is relevant:

44 Health and safety cases.



UCU continuously calls for:

All risk assessments in workplaces to be produced in consultation with union representatives and actions to guarantee safe working agreed with unions;

Union advice to members

however need to make it absolutely clear in any communication that the union is merely providing information. The union must be permitted to do, in order to protect the health and safety.

To this extent, the utility of s.44 to trade unions is limited, and from the trade union perspective does carry some serious potential exposure to legal retaliation from employers.

Employees may invoke their individual rights at any time, whether they are union members or not, and whether their union has advised them to do so or not. If they are a union member and they are disciplined by their employer for doing this, they will have the same right to representation and support as they always do.

If a union proactively advises its members to invoke their individual rights, as some education unions have done in the case of school reopenings, it exposes itself to a risk of legal action from each of the employers affected by its advice.

The decision to do this will only be taken with great care and extensive discussion, and as an absolute last resort. It will depend on a range of political, scientific and other factors: for instance, whether line managers and employers are likely to discipline members who invoke those rights; whether employers are likely to take legal action against the union; the urgency of the situation; the availability of other options for protecting members; current scientific advice about the relevant hazards; different situations in different workplaces and sectors where the union has members; and the scale of the benefits to health and safety of members and the general public that can be won by forcing any change.

The situation is constantly being kept under review and we will notify members as soon as possible if there is any change.

