



Dear Sir/Madam

30 January 2021

**OPEN LETTER re VACCINATION MANDATES BY EMPLOYERS FOR EMPLOYEES
OR POTENTIAL EMPLOYEES**

1. We have seen reports in the media that some employers are considering mandating vaccines for Covid-19 for existing employees and job seekers. We have also been contacted by several worried and distressed individuals who are being told by their employers that they are required to have the vaccine as a condition of their existing employment.
2. We are most concerned by these reports and the potential inequitable treatment of employees or job seekers by employers. As such, we feel compelled to write this open letter to assist individuals who are affected by any such inequitable treatment.
3. This letter is not intended to give, nor should it be taken as giving, any legal advice or medical advice. Anyone reading this letter who has any concerns or queries should take their own legal advice and seek any medical assistance as appropriate or necessary.

PRELIMINARY

4. It is an established principle in English Law that an individual with the capacity to consent cannot and should not be compelled to have any medical treatment against their wishes. This is further explained below in the section dealing with Informed Consent.
5. The Public Health (Control of Disease) Act 1984 (section 45E) provides that Regulations made under certain sections of that Act “*may not include provision requiring a person to undergo medical treatment “Medical treatment” includes vaccinations and other prophylactic treatment*”.
6. Furthermore, the Parliamentary Assembly of the Council of Europe passed Resolution number 2361 of 2021 on 27 January 2021ⁱ, in which it was stated that:
 - 6.1 Paragraph 7.3.1 - *ensure that citizens are informed that the vaccination is NOT mandatory and that no one is politically, socially, or otherwise pressured to get themselves vaccinated, if they do not wish to do so themselves;*
 - 6.2 Paragraph 7.3.2 - *ensure that no one is discriminated against for not having been vaccinated, due to possible health risks or not wanting to be vaccinated;*
7. We would argue that this principle, enshrined in our domestic law, would make it inequitable and potentially unlawful for any employer to seek to mandate the vaccine.

CONTRACT OF EMPLOYMENT

8. An individual's employment is governed by a Contract of Employment ("the Contract"). This contains the terms and conditions regulating the working relationship between the employer and the employee. Any material changes to this Contract can normally only be made with the agreement of both parties.
9. Consequently, if the Contract does not contain a specific clause to require a vaccine for Covid-19, then the employer is, in most cases, unable to unilaterally change the Contract and insist on a vaccine being a condition of the employment. Likewise, any attempt by an employer to circumvent this by dismissing and then re-hiring an employee on new contractual terms may also be considered unlawful.
10. If the employer nevertheless continues to unilaterally change the Contract, such a change is likely to be a breach of the Contract. The employer would have to demonstrate that the mandating of the vaccine was a "reasonable instruction" in all the circumstances to avoid being in breach of Contract. "Reasonable instruction" would have to be considered in light of the contents of this letter and each case would have to be decided upon its own facts. If the employer was unable to demonstrate the change was a "reasonable instruction", and provided the employee has the requisite length of service, the employee may be able to resign and pursue a damages claim for constructive unfair dismissal against the employer in the civil courts. This damages claim (including all associated costs) could be substantial and this financial exposure may not be covered by an employer's insurance policy.

ADDITIONAL CONSIDERATIONS FOR EMPLOYERS

11. Some employers are now reported as stating that they will make the vaccine a condition of employment being granted to new employees. Again, we have grave concerns over mandating vaccinations for the following reasons, expanded upon further in this letter, which would apply equally to existing employees and job seekers (including apprentices and work experience and similar classes of workers):
 - 11.1 The questionable efficacy of the vaccine;
 - 11.2 The potential for psychological and physical harm caused by the vaccine and/or the vaccine mandate to the employee;
 - 11.3 The potential that such a mandate may be considered indirect discrimination, as many people may be unable to have the vaccine due to "protected characteristics" under the Equality Act 2010;
 - 11.4 The issue of informed consent which applies to all medical interventions.
12. Whilst there may not be an existing Contract governing the employment, this does not mean an employer is free to mandate a vaccine as a condition of an offer of employment. Doing so may leave the employer open to a potential claim for damages as set out below.

Questionable efficacy of the vaccine

13. The UK Medical Freedom Alliance have previously sent an Open Letter to the Government and vaccine regulators, dated 23 November 2020, setting out our concerns in relation to the proposed vaccinesⁱⁱ. This letter explored in detail the medical and legal issues around the vaccines at that time and should be read in full. We rely on the contents of that letter. We also wish to draw attention to the following matters which should be taken into consideration when considering mandating a vaccine.
14. Claims of up to 95% effectiveness of the vaccines were based on evidence of effectiveness in preventing mild symptomsⁱⁱⁱ. The concerns caused by this pandemic and the justification for all imposed measures and restrictions have never about been mild symptoms. Outcomes of concern, such as severe disease, hospitalisation and death were not assessed in the trials^{iv} ^v. Therefore, we are unaware of any evidence that any vaccine against Covid-19 will benefit public or individual health in terms of reducing serious illness or deaths.
15. Published claims of effectiveness were based on interim analyses of trial data, assessing an extremely small number of trial participants. This numbered only 94 out of 40,000 participants in the Pfizer trial (0.2% of the total cohort) who were the first participants to develop mild symptoms and who tested PCR positive for SARS-CoV-2. The efficacy claim is based on the fact that 95% of this small group were in the placebo arm. Due to the small numbers, we consider that this has limited statistical significance and , in any case, is only a measure of Relative Risk Reduction. Closer scrutiny of the figures reveals that the Absolute Risk Reduction to an individual inferred by the vaccine is only about 0.4%^{vi}. In addition, the full raw trial data is yet to be published and multiple cases of clinical disease, including two cases of serious disease in the vaccine group, were not included in the analysis, as they were not confirmed with a positive test^{vii}, ^{viii}.
16. There is no evidence of the long-term safety of Covid-19 vaccines as the existing Phase 3 trials have only been running for about 6 months. Indeed, only about 2 months of short-term safety data is available. It is therefore unknown whether there will be serious late-onset side effects resulting from the vaccines e.g., cancers, autoimmune diseases, infertility, neurological disease etc. These conditions can take months or years to become apparent.
17. For a disease that has an infection fatality rate of <0.1% for most of the population (aged <70 years), the usefulness of mass vaccination programmes is currently questionable, especially in the absence of robust safety data. Even in the elderly, aged >70 years, the recovery rate from Covid-19 is in the range of the claimed effectiveness of the currently approved vaccines^{ix} ^x.
18. There is currently no evidence that the vaccine prevents transmission of the virus, so the recipient is likely to still be able to spread the virus to others^{xi}. This means that there is no wider public health benefit of having or indeed mandating a Covid-19 vaccine. The current guidance from the government is that vaccinated individuals will still need to socially distance and wear masks.^{xii} In these circumstances, and completely without prejudice to

what is said in this letter, there is simply no rational or justification to mandate a vaccine for the safety of others.

Potential harm from the vaccine

19. Employees may find the requirement to have a vaccine, as a condition of either their continuing employment or their potential employment, an extremely distressing situation. There are very real questions over the safety of Covid-19 vaccines, set out in detail below and in our letter dated 23 November 2020. Furthermore, many employees will be worried about their financial position if they refuse the vaccine and lose their job or chance of employment as a result. Employees faced with this situation may suffer from stress and anxiety, which will adversely affect their mental health.
20. Furthermore, it is particularly important to emphasize that there are multiple causes for concern regarding vaccine safety for Covid-19. Our concerns over the vaccine safety are set out below.
21. Vaccines against SARS-CoV-2 are based on a completely new biotechnology^{xiii}. mRNA and DNA-vector vaccines have never previously received full regulatory approval for mass public use and are more akin to genetic manipulation/modification than traditional vaccination. Current trials have only been in progress for a few months and therefore do not allow any conclusions regarding possible medium and long-term effects of this novel approach. Multiple concerns have been raised by scientists regarding possible adverse effects, which at this stage remain unrefuted owing to lack of data. It is important to be aware that all the Covid-19 vaccine trials are ongoing and not due to finish until the end of 2022/beginning of 2023. In the circumstances, it is our opinion that the vaccines remain experimental, and anyone vaccinated is effectively taking part in the trials looking at long term effects, despite the emergency approval.
22. mRNA and DNA vaccines are designed to induce an immune response against a protein that the body has been prompted to produce itself, by incorporation of the synthetic viral gene present in the vaccine (in the form of mRNA or DNA) into the cell internal machinery or genome. It is currently hypothesised that this immune response will be limited to the target protein and not be directed to any innate human proteins, but there is no current data that can rule out the possibility that this technology may trigger autoimmune diseases^{xiv}, which could take several months or years to manifest.
23. Attempts at developing a vaccine against coronavirus have been in progress for almost 20 years at least since the emergence of SARS-CoV-2 in 2002. These have been unsuccessful, mainly due to serious safety concerns in the animal trials^{xv xvi}. Specifically, an effect of immune enhancement or antibody-dependent immune enhancement (ADIE) was observed, which caused animals to develop more severe disease when exposed to the wild virus after immunisation^{xvii}. Instead of being protected, the animals got very sick, and some died. It is completely unknown at this stage, whether the currently administered vaccines will trigger this devastating effect, as animal trials were limited or skipped and

the reaction to subsequent exposure to SARS-CoV-2 virus in humans has not been specifically tested. The possibility of triggering ADEI remains a significant concern^{xviii xix}.

24. The Pfizer and Moderna vaccines contain polyethylene glycol (PEG). PEG is a known allergen which carries a risk of serious, potentially fatal allergic reactions^{xx}. Even within the short space of time of the vaccine being rolled out, there have been several reports of serious allergic reactions and anaphylaxis, which appear to be occurring at a higher rate than normally expected for vaccines^{xxi xxii}. In response to these reports, the US Centre for Disease Control (CDC) issued advice that anyone allergic to PEG or its close relative, Polysorbate, should not receive either of the currently available mRNA vaccines^{xxiii}.
25. A leaked CDC PowerPoint presentation showed a high level (1 in 36 doses) of reported significant adverse events (leaving people unable to perform normal daily activities or to work and requiring medical attention) over the first 5 days of the US Pfizer vaccine rollout^{xxiv}. As of 22 January 2021, 9845 adverse events and 329 deaths relating to Covid-19 vaccines had been reported to the US Government Vaccine Adverse Events Reporting System (VAERS)^{xxv}.
26. Neurological damage and complications have previously been reported following vaccinations. Worryingly, in the Covid-19 vaccine trials, cases of transverse myelitis, which affects the spinal cord, have been reported^{xxvi xxvii} as well as other neurological adverse events, such as Bell's palsy (paralysis of the facial nerve) reported in the Pfizer trial data^{xxviii} and Moderna trial data^{xxix}. There have also been reports of encephalomyelitis following Covid-19 vaccination^{xxx}.
27. Potential concerns have also been raised regarding the effects of the vaccines on fertility and on the risk of HIV acquisition. Concerns about fertility are based on homology between the SARS-CoV-2 spike protein and Syncytin-1, which is essential for placental development^{xxxi}. Due to this homology, it is plausible that antibodies produced by the Covid-19 vaccine could cross react with the placental proteins which could negatively impact fertility. It is possible that such concerns will be refuted by evidence in due course, but currently there are no data to rule out this side-effect.
28. Concerns regarding increased vulnerability to HIV infection have been noted in relation to vaccines using an adenovirus vector (used in the Oxford/Astra-Zeneca vaccine)^{xxxii}. More recent observations have led to renewed warnings regarding this potential effect with the Covid-19 vaccines^{xxxiii}.
29. Sadly, there have already been reports of deaths following administration of a vaccine against SARS-Cov-2 to healthy recipients^{xxxiv xxxv}. There is currently widespread administration to the general population, and specifically to the frail and elderly, who commonly have multiple comorbidities - a group which was largely excluded from the vaccine trials. Due to the lack of safety data for this group, it needs to be emphasized that administering the vaccine specifically to this group of the elderly with co-morbidities is, in our view, entirely experimental at this stage. Following the deaths of 23 elderly people following Covid-19 vaccines, Norwegian regulators have updated their advice, urging

doctors to proceed with caution in administering vaccines to the very frail^{xxxvi}. The HSE in Ireland has also recently issued advice cautioning giving the vaccines to the very frail^{xxxvii}.

30. There is an awareness of potential harms that will occur amongst policymakers and the pharmaceutical companies. The UK's Medicines and Healthcare products Regulatory Agency (MHRA) recently updated their software to be able to capture adequately the "expected high number of adverse events", that their legacy system would otherwise have been unable to cope with^{xxxviii}. Covid-19 vaccine manufacturers demanded and have been granted exemption from any liability for adverse effects caused by their products as they could not "take the [financial] risk of liability"^{xxxix xl}. There is therefore no recourse for compensation from the manufacturers and only limited compensation (£120,000 lump sum) will be available from the Government Vaccine Damage Payment scheme^{xli} in the event of serious disability or death resulting from a Covid-19 vaccine. It is worth noting that between the inception of the scheme in 1979 until December 2014 only 931 vaccine damages payment awards were made out of total of 6,026 claims submitted^{xlii}.
31. This letter is providing you (the employer) with the evidence of the potential risks of harm from the Covid-19 vaccine novel biotechnology. If an employer makes any recommendations or mandates in relation to the vaccine, those must be considered against the backdrop of Health and Safety legislation and must take account of any health risks associated with the vaccine itself for certain groups and preferably (from a risk perspective) for individual employees.
32. Mandating the vaccine could give rise to claims from employees who suffer an adverse reaction to the vaccine. In the event of an employee dying or suffering serious injury after receiving the vaccine and a link being established (i.e. it being proven on a balance of probabilities that the vaccine caused the employee's death or serious injury and but for the employer mandating the vaccine, the employee would not have taken it), a claim may be brought by the deceased employee's family or the injured employee against the employer.

Discrimination

33. Many employees or job seekers may be unable to have the vaccine due to "protected characteristics" such as disability, age, sex, race, pregnancy or certain medical conditions falling under the Equality Act 2010. Discrimination under the Equality Act 2010 applies equally to existing employees and to job seekers. We also repeat the contents of Paragraph 7.3.2 of the Resolution passed by the Council of Europe (set out above at paragraph 6) that states *"no one is [to be] discriminated against for not having been vaccinated, due to possible health risks or not wanting to be vaccinated"*
34. Mandating a vaccine may be considered discrimination, which may allow the employee or job seeker to bring a claim for damages. Discrimination can take the form of direct or indirect discrimination, harassment or victimisation; all of which could be relevant in this situation and are matters which any employer should be alert to.

35. Furthermore, any differentiation in treatment between those who have or haven't been vaccinated may amount to indirect discrimination. Potential situations where a claim for indirect discrimination may be made by an employee include:
- 35.1 where an employee cannot return to their place of work without vaccination;
 - 35.2 an employer declines to pay sick pay to an employee who has refused the vaccine and subsequently has a Covid-19 related absence (e.g. is unwell or is otherwise required to self-isolate); or
 - 35.3 in the context of performance of their role (and associated impact on performance reviews/bonuses/promotion) they are unable to undertake business travel to countries which impose vaccination as an entry requirement.
36. Damages would be uncapped and include loss of earnings (or potential earnings), as well as injury to feelings and interest. In some situations, there can be aggravated damages if the court finds that the employer behaved in a malicious or heavy-handed way.
37. We would again highlight that some insurers may refuse to cover claims where there are very real concerns over the vaccines and where the employer is clearly on notice, or should be on notice, of such concerns, but the employer proceeded to mandate the vaccine in any event in a manner contrary to the Equality Act 2010.
38. Employers also need to be aware that even if the Contract allows for the vaccine, if they continue to mandate this requirement and fail to take into consideration the personal circumstances of the employee and any protected characteristics, they could face a claim for indirect discrimination in the terms set out above.

Requirement for Fully Informed Consent

39. The administration of any vaccine may only occur with the fully informed consent of the individual. The law in relation to informed consent is summarised below and is set out in more detail in the referenced leaflet that the UK Medical Freedom Alliance have produced^{xliii}. We urge you to read this document carefully as it sets out laws protecting bodily autonomy and the legal right of an individual to refuse any medical treatment or intervention without punishment. We also re-iterate the contents of paragraphs 5 and 6 above.
40. The employee must be free to accept or refuse any treatment^{xliv}.
41. The employee's decision should be voluntary and must not be influenced by pressure from medical staff, friends or family. We would argue that an employer would also be caught by this provision^{xlv}.

42. The Universal Declaration on Bioethics and Human Rights states that any preventive, diagnostic and therapeutic medical intervention must only to be carried out with the prior, free and informed consent of the person concerned, based on adequate information. The consent should, where appropriate, be express and may be withdrawn by the person concerned at any time and for any reason without disadvantage or prejudice^{xlvi}.
43. If an employer still wishes to proceed with mandating the vaccine, despite what is stated above, they must ensure that the employee is given the opportunity to consent to or refuse the vaccine and that this consent must be “free” and “voluntary”. To threaten the employee with dismissal, or to refuse a job offer based on refusal to have the vaccine, or to apply any other restrictions or penalties, may be considered to amount to coercion on the part of the employer and may allow the employee or job seeker to bring potential legal action.

DATA PROTECTION AND PRIVACY

44. If an employer requests evidence of vaccination from its employees, this in itself gives rise to significant data protection issues and privacy law concerns, opening up an employer to even further legal risks. Further explanation is beyond the scope of this letter but this issue should be considered by employers.

SUMMARY

45. We understand there is a natural desire for many employers to protect their workforce and customers. However, in the context of Covid-19 vaccines, this desire should be weighed against the wider legal and ethical issues surrounding a policy of vaccine mandate as well as the state of the existing evidence on Covid-19 vaccine safety and efficacy. It is important to fully acknowledge the current available scientific evidence regarding the efficacy and safety of this vaccine. Employers should be alive to the pitfalls of a misguided or misjudged approach to these issues and should seek legal advice if in any doubt.
46. Employers must appreciate that the employee and job seeker have certain legal rights and that ultimately the employee’s decision must be respected and upheld, without penalty.
47. Finally, regard must be had to an employee’s and job seeker’s right not to be subject to any inhumane or degrading treatment, which is a protected right under Article 3 of the Human Rights Act 1998. This is an absolute right and cannot be derogated from.

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