

COVID PASSPORTS: A NECESSARY TOOL TO RESTORE OUR LIVES?

CORE POINTS FROM THE WEBINAR, 23 FEBRUARY 2021

- The high levels of vaccine uptake in the UK. This is probably due to the high level of public trust in the NHS which is to be compared with attitudes in other countries, e.g., France.
- Patient safety and consumer pressure could probably justify compulsory vaccination for medical and care home staff. Hep.B vaccination is compulsory for medical staff in UK. But we don't want a police state like China.
- Any certificate must certify that the vaccine has been given to a particular person and it must be possible (within reason) to verify that the same person bears that certificate.
- The information that an individual has been vaccinated can only be certified from a confidential NHS source. We must preserve confidentiality. Data must not be shared by the NHS. Do not set in train a scheme which gives personal data to tech companies whether in or outside the UK jurisdiction.
- A sophisticated international scheme is likely to be untenable but paper vaccination certificates should be achievable. They exist already for yellow fever.
- It would not be possible to set up a GDPR-proof, simple and practical digital app in less than a couple of years. But a simple paper-based certificate scheme could be introduced promptly. That would be better, even if not entirely fraud-proof, than a digital app which gave rise to later issues. So – keep it simple.
- It is possible to insert vaccine and vaccine passports into the contracts of new employees and there are legal mechanisms potentially available to insert such provisions into the contracts of existing employees.
- Workers and those with less than two years' service do not have the protection of unfair dismissal legislation and so can be dismissed for failure to vaccinate or carry a vaccine passport. Those who do have unfair dismissal rights might be fairly dismissed for "Some other Substantial Reason" as a result of "third party pressure to dismiss" i.e., from customers or colleagues subject to a fair procedure being followed.
- In relation to discrimination issues, indirect discrimination may be objectively justified on the basis that the requirement to vaccinate is a proportionate response to a legitimate aim.