



Members of Parliament of the Cayman Islands  
33 Fort Street  
George Town  
Grand Cayman KY1-1103  
Cayman Islands

Cc:  
The Governor of the Cayman Islands  
Suite 101  
Government Administration Building  
133 Elgin Avenue  
Grand Cayman KY1-9000  
Cayman Islands

Cc:  
The Chief Medical Officer of the Cayman Islands  
c/o Ministry of Health, Sports, Youth and Culture  
Government Administration Building  
Grand Cayman KY1-9000  
Cayman Islands

4th Floor  
Harbour Centre  
42 North Church St.  
P.O. Box 2255  
Grand Cayman  
KY1-1107  
Cayman Islands

Tel: 1-345-949-0003  
rupertwheeler@ksglaw.ky

[www.ksglaw.ky](http://www.ksglaw.ky)

7 September 2021

Our Client: Christian Association for Civics and Political Education  
Our Ref: 02292/21

Dear Sirs,

**Re: The Cayman Islands Government's proposal to introduce a  
Mandatory Vaccination Law**

We are instructed by our client, the Christian Association for Civics and Political Education, to write to you concerning the Cayman Islands Government's proposal to introduce and pass a law that requires residents to submit to mandatory vaccination for Covid-19.

Our client has grave concerns that a law of this nature would be incompatible with the fundamental human rights of people in the Cayman Islands. Those rights are assured by the Bill of Rights, Freedoms and Responsibilities ("the Bill of Rights") contained within the Cayman Islands Constitution Order 2009 ("the Cayman Islands Constitution") and enshrined within other

international human rights treaties and charters by which the Cayman Islands are bound. It is our client's view that, based on evidence set out below from those countries with the highest vaccination rates globally, the introduction of a mandatory vaccination law would lead to significant death and injury which will far exceed any alleged benefits mandatory vaccination may achieve.

It is our client's position that the introduction of a mandatory vaccination law would threaten the rights assured by sections 2 (right to life), 3 (prohibition of inhuman treatment), 9 (right to private life), 10 (right to freedom of conscience and religion) and 16 (freedom from discrimination). We do not intend to set out exhaustive arguments in respect of each, which are beyond the scope of a letter. However, our client wishes to register its significant concerns about the proposed government action in an attempt to dissuade any further measures from being taken regarding a mandatory vaccination law.

From the outset, our client wishes to make it plain that it **does not** object to a voluntary Covid-19 vaccination scheme that is accompanied by full disclosure of all relevant information as to the nature and effects of the vaccine. However, to be clear, our client does not believe that such information has been provided to date or is capable of being provided at this point in time given the lack of animal trials or long-term safety data.

By this letter, our client puts the Cayman Islands Government on notice that if a mandatory vaccination law is passed, it will seek to challenge that law in court. Further, our client will present publicly available information regarding deaths and injuries caused by the vaccines, to hold those responsible for passing such law accountable for any death and injury to the Caymanian population.

## **The current legal position**

By way of preliminary remark, it should be remembered that the present law of the Cayman Islands does not permit mandatory vaccinations. Until a law imposing them is passed, a mandatory vaccination scheme could breach criminal law, duties arising under medical law, and the human rights described below. Given that a mandatory vaccination law would signal a departure from established criminal and medical law principles, even closer scrutiny must be applied before such a law is debated or passed by Parliament.

### **Criminal Law**

In criminal law, if Person A intentionally applies unlawful force to Person B, then Person A commits the offence of common assault under section 215 of the Penal Code (2019 Revision). If an injury results from the force, then Person A may have committed the more serious offences of assault causing actual bodily harm (section 216) or assault causing grievous bodily harm (section 204). If death resulted, then Person A could be liable for unlawful killing.

In the context of vaccinations, if Person A administers a vaccine to Person B without their agreement, then Person A commits an assault as described above. A mandatory vaccination scheme that is not supported by legislation would therefore breach the criminal law in cases where the vaccination was forcibly administered without the agreement of the person receiving it.

### **Medical Law**

Similarly, from a position of medical law, medical treatment is only lawful if it is administered with an individual's informed and voluntary consent. Informed and voluntary consent requires that (i) the consent covers the treatment in question, (ii) consent is voluntarily given, (iii) the patient was

appropriately informed before consenting, and (iv) the patient is capable of consent. As stated by the United Kingdom's Supreme Court in *Montgomery v Lanarkshire Health Board* [2015] UKSC 11:

"An adult person of sound mind is entitled to decide which, if any, of the available forms of treatment to undergo, and her consent must be obtained before treatment interfering with her bodily integrity is undertaken. The doctor is therefore under a duty to take reasonable care to ensure that the patient is aware of any material risks involved in any recommended treatment, and of any reasonable alternative or variant treatments."

A mandatory vaccination law would take away the person's right to decide whether they wish to have the vaccine. This would be in circumstances where our client asserts that there clearly is not sufficient information available about its effects, given the lack of animal testing or long-term trials, for individuals to be aware of any material risks involved and to make an informed choice. Equally, it would be in circumstances where not all vaccine ingredients have been disclosed and some may contain harmful substances. For example, our client points to the Food and Drug Agency (FDA) fact sheet for the Pfizer Biontech Covid-19 vaccine (the "Pfizer vaccine"),<sup>1</sup> the main vaccine used thus far in the Cayman Islands. This identifies 1,2-Distearoyl-*sn*-glycero-3-phosphocholine as an ingredient. A producer of this chemical, Cayman Chemicals, has stated in a 2018 Safety Data Sheet (available on its website) that the product is not for human or veterinary use and may be harmful by inhalation, ingestion or skin absorption.<sup>2</sup> Similarly, our client points to a study by Dr Robert Young which suggests that dangerous graphene oxide, which is known to be harmful to humans if consumed, is present in significant amounts in certain vaccines including the Pfizer vaccine.<sup>3</sup> Our client wholeheartedly believes that, even

---

<sup>1</sup> <https://www.fda.gov/media/144413/download>

<sup>2</sup> <https://www.caymanchem.com/msdss/15100m.pdf>

<sup>3</sup> <https://www.drrobertyoung.com/post/transmission-electron-microscopy-reveals-graphene-oxide-in-cov-19-vaccines>

in relation to the voluntary vaccination scheme, individuals who are receiving the vaccine are clearly not being made aware of this information prior to making their decision.

If the Cayman Islands was to introduce a mandatory vaccination law, then the safeguards afforded to individuals by criminal law and medical law would be further undermined. For this reason, it is extremely important that the Government reflects carefully on the implications of passing such a law, especially given the impact on human rights that is described below and, just as importantly, the death and injury that our client asserts such a law will necessarily cause.

### **Interference with the Bill of Rights & Human Rights Treaties**

Part 1 of the Cayman Islands Constitution sets out the Bill of Rights. The Bill of Rights is described as a "*cornerstone of democracy in the Cayman Islands*", recognizing the "*distinct history, culture, Christian values and socio-economic framework of the Cayman Islands [affirming] the rule of law and the democratic values of human dignity, equality and freedom*" (section 1). The status of the Constitution is such that any other law must be compatible with the Rights that it enshrines. This would include any mandatory vaccination law.

The Bill of Rights substantially mirrors many rights assured by the European Convention on Human Rights ("ECHR"). The ECHR also applies to the Cayman Islands, by virtue of it being an Overseas Territory of the United Kingdom.

In addition, the International Covenant on Civil and Political Rights ("ICCPR") was extended to the Cayman Islands following the United Kingdom's ratification of the treaty on the 20<sup>th</sup> May 1976.

Below we set out how a mandatory vaccination law, in the context of the current Covid-19 vaccinations available, will violate fundamental human rights under the Cayman Islands Bill of Rights. We refer to decisions of the European Court of Human Rights (“ECtHR”), as these are relevant to how a court would likely approach the equivalent rights under the Bill of Rights.

## **Section 2 – The Right to Life**

Section 2 of the Bill of Rights states:

“2.—(1) Everyone’s right to life shall be protected by law.

(2) No person shall intentionally be deprived of his or her life.”

Section 2 mirrors Article 2(1) of the ECHR, which states “[e]veryone’s right to life shall be protected by law. No one shall be deprived of his life intentionally [....].” Article 6 of the ICCPR also protects the Right to Life and is drafted in similar terms.

The Right to Life under the Bill of Rights is **absolute**, subject only to the qualifications stated in section 2(3), which are not applicable here (deprivation of life where absolutely necessary in (i) the defence of any person from violence, (ii) in order to effect a lawful arrest or prevent an escape, and (iii) in order to suppress a riot, insurrection or mutiny).

### Medical Danger to Life

A mandatory vaccination law will require individuals to take the vaccine whether they are willing or not (or face penalty). Where there is evidence that a vaccine may create a medical danger to life, there may be a violation of the Right to Life (see the ECtHR cases of *Boffa et al v San Marino*, App No 26536/95 27, p.33 (Commission Decision, 15 January 1998); *X v Austria*, App No 8278/78, p. 156 (13<sup>th</sup> December 1979). It is well established that

there may be an interference with the Right to Life where life is endangered by an act of the State, as well as when actual death occurs as a result.

Our client has serious concerns that Covid-19 vaccinations create a significant medical danger to life. As such, imposing mandatory vaccination interferes with the Right to Life and violates the Constitution.

Our client relies on the following figures to demonstrate the medical danger of risk to life posed by Covid-19 vaccines. These figures reflect the position in the databases below up to August 2021:

- i. The European Medicines Agency (EUdra), an official European Website, reports on its **EudraVigilance database** that **23,252 Covid-19 injection related deaths and 2.1 million injuries/adverse events** have occurred within the European Economic Area (EEA) and some non-EEA countries. This based on reports by 875,000 people.<sup>4</sup> This does not include death or injury resulting from the administration of the Sputnik V and Beijing CNBG vaccine, which are being administered in the EU but are not currently featured in the database. **It also does not include further deaths or injuries in the EU that are recorded on a WHO sponsored adverse reaction website, Vigibase.**
  
- ii. The **United States Vaccine Adverse Event Reporting System (VAERS)**, a database co-managed by the Centers for Disease Control and Prevention (CDC) and the U.S. Food and Drug Administration (FDA), reports **13,627 Covid-19 injection related deaths and 2.9 million injuries/adverse events in the United States of America**. This is based on reports by over 623,000 people. Again, **this figure does not include further U.S. reports on Vigibase.**

---

<sup>4</sup> Note that the numbers shown for EUdra fatalities represent the maximum numbers within the database. The database is structured in a way that means it is possible that deaths may be recorded more than once. The European Medicines Agency does not provide clarity on this matter despite repeated requests to do so.

There is also evidence that thousands of vaccination related deaths in the U.S. have been concealed, and that numbers reported on VAERS are understated by a factor of five.<sup>5</sup> **Similarly, a 2011 Harvard Pilgrim Healthcare study on the effectiveness of the VAERS database concluded that less than 1% of vaccine deaths and injuries are actually reported into the system.**<sup>6</sup>

- iii. **The United Kingdom’s Medicines and Healthcare products Regulatory Agency (MHRA) reports 1,609 Covid-19 injection related deaths and 1.2 million injuries/adverse events in the United Kingdom.** This is based on reports by over 351,000 people. Our client understands that **the MHRA data may not represent the true picture due to the delay in updating the system and the fact that the Janssen injection, under distribution in the U.K in private clinics, is not included on MHRA.**

It is our client’s view that, based on publicly available data in Europe, the US and the UK, the evidence regarding deaths, serious injury and lifelong disability caused by Covid-19 vaccines is indisputable and that covid vaccines pose a medical risk to life for a significant portion of the population. In those circumstances, the enforcement of a law requiring mandatory vaccination would clearly violate the Right to Life protected by section 2 of the Bill of Rights (and Article 2 ECHR; Article 6 ICCPR)

#### Duty to avoid putting lives at risk

As well as the obligation not to intentionally deprive persons of life, the Right to Life encompasses a duty to avoid putting lives at risk. The State must do all that can be required of it to prevent an individual’s life being avoidably

---

<sup>5</sup> This evidence is referred to in a Motion for Preliminary Injunction filed by the Plaintiff in the US District Court for the Northern District of Alabama (*America’s Frontline Doctors v Xavier Becerra, Secretary of the U.S. Department of Health and Human Services, et al.*, (2:21-cv-00702-CLM) – see: <https://fossaorg.files.wordpress.com/2021/07/m-for-pi-file-stamped.pdf>).

<sup>6</sup> “Electronic Support for Public Health-Vaccine Adverse Event Reporting System (ESP:VAERS)”, <https://rickjaffe.org/wp-content/uploads/2021/02/r18hs017045-lazarus-final-report-20116.pdf>, p.6



put at risk (see *LCB v the United Kingdom* App no 23413/94 (ECtHR, 9 June 1998), para 36). That exercise requires an assessment of the information available to the state regarding risk, at the time of the act (*LCB*, 41).

Our client has grave concerns that, where it is *statistically certain* on the evidence that is publicly available that some people will die or be seriously injured or disabled as a result of taking the Covid-19 vaccine, that nevertheless the Government would consider a mandatory vaccination law. Our client submits that such a law would clearly and necessarily be in breach of the duty identified above. In simple terms, forcing citizens to take a vaccine in the knowledge that some will die or be seriously injured or disabled cannot be, and is not, consistent with the Government's duty to prevent lives being avoidably put at risk. The risk here *is* avoidable. It is avoidable by simply not mandating a vaccine. Rather, the Government should be informing its citizens of the real risks and providing up to date information to enable its people to make their own fully informed decision.

In these circumstances, our client submits that the implementation of a mandatory vaccination law will place the lives of citizens at avoidable risk, and therefore amount to a violation of the Right to Life under section 2.

### **Section 3 – Inhuman Treatment**

Section 3 of the Bill of Rights states:

“3. No person shall be subjected to torture or inhuman or degrading treatment or punishment.”

Section 3 is reflected in identical terms by Article 3 of the ECHR. It is represented in similar terms in Article 7 of the ICCPR. It is our client's position that, given the evidence identified above, to impose a mandatory vaccination upon individuals in the knowledge of the risks involved, amounts to inhuman or degrading treatment. Individuals should be provided with all

necessary information and given the choice as to whether they wish to proceed with receiving a vaccination in light of such full and up to date information.

## **Section 9 – Private and Family Life**

Section 9 of the Bill of Rights states:

**“9.—(1)** Government shall respect every person’s private and family life, his or her home and his or her correspondence.

[...]

(3) Nothing in any law or done under its authority shall be held to contravene this section to the extent that it is reasonably justifiable in a democratic society—

(a) In the interests of [...] public health.”

Section 9 again mirrors Article 8 of the ECHR: “*Everyone has the right to respect for his private and family life, his home and his correspondence*”. A similar right is found in Article 17 of the ICCPR.

### Mandatory vaccinations violate Section 9

The physical and psychological integrity of a person is of vital importance to an individual’s private life. A person’s body concerns *the most intimate* aspect of private life (see *Y.F. v Turkey*, App. No. 24209/04, 33, ECHR 2003-IX).

“Private life” includes an individual’s individuality, integrity, self-determination and autonomy (*Pretty v the United Kingdom*, App. No. 42197/98 (ECtHR, 29 April 2002). Naturally, this includes an individual’s right to make decisions relating to their health and body.

It is therefore not surprising that any act that threatens that physical and psychological integrity can amount to an interference with “private life” under human rights jurisprudence.

Any compulsory medical intervention, however minor, is an interference with the Right to Private and Family Life assured by Section 9 of the Bill of Rights. This obviously includes mandatory vaccinations. In *Solomakhin v Ukraine* (App. No. 24429/03), the European Court of Human Rights stated at paragraph 33 that:

“Compulsory vaccination – as an involuntary medical treatment – amounts to an interference with the right to respect for one’s private life, which includes a person’s physical and psychological integrity, as guaranteed by Article 8 [*section 9 of the Bill of Rights*].”

There can therefore be little doubt that the enforcement of a mandatory vaccination law would amount to an interference with section 9 of the Bill of Rights.

#### Not reasonably justifiable in a democratic society

The question is whether the State could avail itself of section 9(3)(a) (see above) on the basis that the implementation of a mandatory vaccination law was “*reasonably justifiable in a democratic society*” in the interests of public health. That involves an assessment of proportionality. Ultimately, this requires striking a balance between the citizen’s personal integrity and the public interest in protecting the health of the population (*Solomakhin*, 36). In cases concerning compatibility with Section 9, it is for the State to prove that the interference is justified by providing relevant and sufficient reasons (*Vavricka v Czech Republic*, App. No. 47621/13, p.85, para 4).

It is our client's strongly held position that a mandatory vaccination law in the Cayman Islands cannot be reasonably justifiable in a democratic society because (i) the State cannot present sufficient scientific data to establish the safety and efficacy of these Covid vaccines and (ii) the State cannot establish that there are no other means of achieving the same end that would interfere less seriously with the fundamental right to Private Life.

**First,** the scientific data does not establish the safety and efficacy of the Covid-19 vaccine such that it discharges the State's burden of proof that the right is not violated. The problem was identified by Judge Wojtyczek in his dissenting opinion in the European Court of Human Right's judgment in *Vavricka*:<sup>7</sup>

"It is necessary to show, in particular, that the benefits for society as a whole and for its members outweigh the individual and social costs and justify taking the risk of suffering the side-effects of a vaccination. Given the weight of the values at stake, **such an assessment requires extremely precise and comprehensive scientific data about the diseases and vaccines under consideration. Without such data the whole exercise becomes irrational.**" (emphasis added) (p. 87, paragraph 6)

[...]

It is necessary to calculate **with the utmost precision** the risk for each and every disease separately, on the basis of comprehensive and reliable data, [...]. **The possible counterargument that the vaccines have been tested, considered as safe and approved by the competent public**

---

<sup>7</sup> Note that *Vavricka* did not concern Covid-19 vaccines. It concerned "the standard and routine vaccination of children against diseases that are well known to medical science" (paragraph 158). Our client's position is that the relative dearth of information regarding Covid-19 and the available vaccines reinforces its position when applying the principles from Judge Wojtyczek's dissenting opinion.

**bodies does not suffice to justify the obligation to vaccinate.”** (p. 91, paragraph 10)

Judge Wojtyczek goes on to state at page 90 that a “*rational assessment of whether the obligation to vaccinate complies with the Convention*” requires an assessment of the following (applying his reasoning to Covid-19):

1. The manner and speed of its transmission;
2. The risks for infected persons;
3. The average cost of individual treatment for the disease in the case of non-vaccinated patients, and the prospects of success of such treatment;
4. The precise effectiveness of the available vaccines;
5. The average cost of a vaccination;
6. The risk of side effects of vaccination;
7. The average costs of treating the undesirable effects of the vaccination;
8. The minimum percentage of vaccinated persons which would prevent the disease from spreading (if applicable) and the prospects of achieving such an objective.

Here, it is our clients’ position that the evidence establishes that the risk of taking the vaccine significantly outweighs the justification (see the evidence described in the section entitled “Medical Danger to Life” above).

However, regardless of that evidence, the reality is that the Cayman Islands Government simply does not have sufficient evidence to establish the *precise* effectiveness of the available vaccines and the risk of side effects. It has not made available the information described in the list above. It is our client’s position that it cannot be given that there have been no animal trials or long-term safety studies.

Furthermore, there is evidence to show that too little is known about the available Covid-19 vaccines to be able to establish their precise effectiveness and side effects.

In respect to effectiveness, our client presents by way of example Public Health England's report "*SARS-Cov-2 variants of concern and variants under investigation in England*", dated the 3<sup>rd</sup> September 2021.<sup>8</sup> That report demonstrates that between the 1<sup>st</sup> February 2021 and the 29<sup>th</sup> August 2021, 222,693 people with at least one dose of the vaccine contracted the Delta variant, compared to 219,716 unvaccinated people.<sup>9</sup> Similarly, 1,233 people with at least one dose of the vaccine died within 28 days of a positive specimen date, compared to 536 unvaccinated people.<sup>10</sup> Our client submits that a similar pattern can be seen in Israel, where a study has concluded that "*natural immunity confers a longer lasting and stronger protection against infection, symptomatic disease and hospitalization caused by the Delta variant of SARS-Cov-2, compared to the BNT162b2 two-dose vaccine induced immunity*".<sup>11</sup> Our client has many other examples it can provide from those countries with the highest Covid vaccinations rates that support their argument and would be happy to do so if requested.

Our client also wishes to draw attention to an article by Peter Doshi, a senior editor at the British Medical Journal and Associate Professor of Pharmaceutical Health Services at the University of Maryland School of Pharmacy. Doshi examines the claim by Pfizer and Moderna that their vaccine trials demonstrate that the vaccines are 95% effective. He notes that the 95% figure is only the relative risk reduction (a ratio comparing the risk of infection in people who got vaccinated versus people who did not), rather than an absolute risk reduction (the difference in risk for a person in the vaccinated group versus a person in the unvaccinated group). **Doshi, along with many other commentators, calculates the absolute risk reduction from taking the Covid vaccines as less than 1%.** He further

---

<sup>8</sup>[https://assets.publishing.service.gov.uk/Government/uploads/system/uploads/attachment\\_data/file/1014926/Technical\\_Briefing\\_22\\_21\\_09\\_02.pdf](https://assets.publishing.service.gov.uk/Government/uploads/system/uploads/attachment_data/file/1014926/Technical_Briefing_22_21_09_02.pdf)

<sup>9</sup> *Ibid*, p.21

<sup>10</sup> *Ibid*, p.22

<sup>11</sup> [https://www.scribd.com/document/521947447/2021-08-24-21262415v1-full#from\\_embed](https://www.scribd.com/document/521947447/2021-08-24-21262415v1-full#from_embed), p.3

notes that the figures do not refer to the vaccine's ability to save lives or prevent infection, which were not the aim of the trials.<sup>12</sup>

As to side effects, by way of example, our client points to the 23<sup>rd</sup> August 2021 letter from the U.S. Food & Drug Administration (FDA) to BioNTech Manufacturing GmbH, regarding the Pfizer COVID-19 Vaccine, mRNA, COMIRNATY. In that letter, the FDA has required Pfizer to conduct post-marketing studies to assess known serious risks of myocarditis and pericarditis and identify an unexpected serious risk of subclinical myocarditis in respect of COMIRNATY.<sup>13</sup> Furthermore, the FDA have only approved the Pfizer COMIRNATY vaccine, which is not legally the same as the EUA Pfizer vaccine currently available in Cayman, and which has not yet been manufactured. All other vaccines remain unapproved by the FDA.<sup>14</sup>

Even in respect of the FDA approved Pfizer COMIRNATY vaccine, our client asserts that drug safety advocates have voiced concerns that the approval process ignored the usual safeguards and is being based on six months' worth of data notwithstanding the fact that the clinical trials were designed for two years and are effectively on-going.<sup>15</sup> Our client firmly contends that the risks associated with these Covid vaccines, continue to remain very high based on the current information to date without even taking into account long term risks which remain unknown. On that basis, it is impossible for the proportionality exercise to be conducted in a rational way with regard to long term side effects. However, our client contends that, based on the evidence from the Covid vaccine trials, the Government fails to establish that mandating a Covid vaccine is proportional to a 1% absolute risk reduction of symptoms in those who even contract Covid-19. Without that,

---

<sup>12</sup> "Pfizer and Moderna's "95% effective" vaccines—let's be cautious and first see the full data", 26<sup>th</sup> November 2020, <https://blogs.bmj.com/bmj/2020/11/26/peter-doshi-pfizer-and-modernas-95-effective-vaccines-lets-be-cautious-and-first-see-the-full-data/>

<sup>13</sup> <https://www.fda.gov/media/151710/download>

<sup>14</sup> <https://www.fda.gov/news-events/press-announcements/fda-approves-first-Covid-19-vaccine>

<sup>15</sup> "Covid-19: FDA set to grant full approval to Pfizer vaccine without public discussion of data", BMJ 2021; 374:n2086, <https://www.bmj.com/content/374/bmj.n2086>

the Government is unable to show that the implementation of a mandatory vaccination law is reasonably justifiable in a democratic society in the interests of public health.

**Second**, the Cayman Islands Government is unable to show that *all* alternatives to a mandatory vaccine law would be less effective in combating Covid-19. In order for a measure to be considered proportionate and necessary in a democratic society, there must be no other means of achieving the same end that would interfere less seriously with the fundamental right concerned (see e.g. *Biblical Centre of the Chuvash Republic v. Russia* 33203/08, § 58, 12 June 2014; *Glor v. Switzerland*, no. 13444/04, § 94; *Association Rhino and Others v. Switzerland*, no. 48848/07, § 65, 11 October 2011).

The Cayman Islands Government has not presented evidence that proves that there is no other option that could achieve the same or a significantly better public health outcome. Evidence would be required to establish, for example, that other measures, such as non-medical intervention or a voluntary vaccination scheme, would not achieve the same aim. This is not forthcoming. Our client points, by way of example, to peer-reviewed studies demonstrating the effectiveness of Ivermectin as an alternative to vaccination.<sup>16</sup> There are also numerous other peer reviewed studies of other treatment protocols that demonstrate significant efficacy in treating Covid-19 and our client would be more than happy to provide the relevant studies and medical references.

Without demonstrable proof that there are no other solutions available that interfere with the right less seriously, a mandatory vaccination law is not proportionate and therefore not reasonably justifiable in a democratic society.

---

<sup>16</sup> <https://ivmmeta.com/#top>. Note that the FDA has not approved the use of Ivermectin to treat COVID-19 – <https://www.fda.gov/consumers/consumer-updates/why-you-should-not-use-ivermectin-treat-or-prevent-Covid-19>.



### Necessary Safeguards

Even assuming that the Government was able to discharge the burden of proof in the proportionality exercise described above, extensive safeguards would need to be put in place to protect human rights. Following the guidance of the majority opinion of the ECtHR in *Vavricka*, any mandatory vaccination scheme would have to include the following features:

1. Exemptions for those opposed to the vaccination on the basis of belief / conscientious secular objection (*Vavricka* at 292).
2. Exemptions in the case of medical contraindications (291)
3. Prohibition on forcible administration (293)
4. Enforceable only indirectly via modest sanction (i.e. minor fine) (293)
5. Availability of a compensation scheme for those negatively affected (273).

In circumstances where such safeguards would need to be put in place, especially in relation to exemptions on the basis of belief and conscientious secular objection (see below), our client submits that introducing a mandatory vaccination law would serve little practical purpose over a voluntary scheme.

In addition, it is our client's position that there is clear evidence that those who have been exposed to Covid-19 and recovered naturally have a far stronger protective shield against subsequent reinfection as a result of their natural immune systems. Our client contends that the evidence is clear that those with natural immune protection simply do not need a Covid-19 vaccine and, in fact, such a vaccine may well be detrimental to them. See, for example, the Article referenced at Footnote 12 above.

### **Section 10 – Conscience and religion**

Section 10 of the Bill of Rights states:

**“10.—**(1) No person shall be hindered by Government in the enjoyment of his or her freedom of conscience.

(2) Freedom of conscience includes **freedom of thought and of religion** or religious denomination; freedom to change his or her religion, religious denomination or belief; **and freedom**, either alone or in community with others, both in public and in private, **to manifest** and propagate **his or her religion or belief in** worship, teaching, **practice, observance** and day of worship.

[...]

(6) Nothing in any law or done under its authority shall be held to contravene this section to the extent that it is reasonably justifiable in a democratic society—

(a) in the interests of [...] public health.”

Section 10 of the Bill of Rights substantially mirrors Article 9 of the ECHR and Article 18 of the ICCPR.

An individual may object to taking a Covid-19 vaccine on the basis of religious or secular beliefs. A “belief” is a set of convictions that meet the criteria of “*cogency, seriousness, cohesion and importance*”. “Beliefs” that meet these criteria are protected under section 10 (see *Campbell & Cosans v United Kingdom*, App no. 7511/76; 7743/76, para 36).

An enforced mandatory vaccination law amounts to the State interfering with the right to manifest a belief (i.e. to object to vaccination). There can be little doubt that there now exists in society a movement of people, whether due to religious or secular belief, who hold a set of convictions opposing vaccination that are cogent, serious, cohesive and important. This is sufficient to amount to a “belief” protected by section 10.

A law that compelled vaccination would interfere with section 10, especially where non-compliance would result in punishment. In effect, the law would be punishing people for exercising their beliefs.

As to whether the interference with section 10 is reasonably justifiable in a democratic society in the interests of public health, we refer you to the discussion above relating to section 9. The same principles apply.

### **Section 16 – Non-discrimination**

Section 16 states:

**“16.—(1)** Subject to subsections (3), (4), (5) and (6), Government shall not treat any person in a discriminatory manner in respect of the rights under this Part of the Constitution.

(2) In this section, “discriminatory” means affording different and unjustifiable treatment to different persons on any ground such as [...] religion, political or other opinion [...].

(3) No law or decision of any public official shall contravene this section if it has an objective and reasonable justification and is reasonably proportionate to its aim in the interests of [...] public health.”

Article 14 of the ECHR states *“[t]he enjoyment of the rights and freedoms set forth in this Convention shall be secured without discrimination on any ground such as [...] religion, political or other opinion [...].”*

For the reasons identified above in respect of section 10, a mandatory vaccination law would interfere with the enjoyment of a religious or conscientious secular objection. It would therefore interfere with both section

10 and section 16. Once again, the reasons why the interference would not be reasonably proportionate are set out above in respect of section 9.

Our client wishes to note that there is already significant discrimination against the unvaccinated compared to the vaccinated. For instance, pursuant to Regulation 3 of the Control of Covid-19 (No.2) Regulations 2021, unvaccinated people must complete a 14-day quarantine period on arrival in the jurisdiction. In contrast, under Regulation 4 of the Control of Covid-19 (No.2) Regulations 2021,<sup>17</sup> vaccinated people must only complete a five-day quarantine. At present, the Government has not made readily available any scientific evidence to support the longer quarantine period for unvaccinated persons.

The Government's current policy, in the view of our client, amounts to discrimination under the Bill of Rights. We invite the Government to make available the scientific evidence that underlies their policies and supports the establishment of these different quarantine periods for vaccinated and unvaccinated, if it exists.

Our client fears that the Government may be seeking to impose further discriminatory provisions based on whether individuals are vaccinated or unvaccinated, for instance in relation to the grant of work permits. Likewise, our client is very concerned that the Government is pressuring local businesses to implement mandatory vaccine requirements for their staff as a proxy for the Government's own preferred vaccination policy. Clear evidence is required in order to justify such discrimination and, in our client's view, the Government has not provided it. Without that evidence, provisions of this nature may breach the Bill of Rights under this (and other) sections.

## **Conclusion**

It is our client's firm position that taking the unprecedented step of introducing a mandatory vaccination law in the Cayman Islands, thereby

---

<sup>17</sup> As amended by section 4 of the Control of Covid-10 (No.2) (Amendment) Regulations 2021

bypassing applicable principles of criminal and medical law, would lead to clear contraventions with the Bill of Rights.

**By this letter, our client puts the Government on notice that it will hold the Government liable for all future harm that follows from the imposition of a mandatory vaccination law.**

In the event that the Government does pass a law to this effect, our client gives notice that it will challenge the law through judicial process, including the seeking of a declaration of incompatibility under section 23 of the Bill of Rights.

Yours faithfully,

KSG Attorneys at law

A handwritten signature in black ink, consisting of the letters 'KSG' in a stylized, cursive font.