

21.01.19

3 Deputy J.M. Maçon of St. Saviour of H.M. Attorney General regarding the Joint Committee on Vaccination and Immunisation (OQ.2/2021):

Will Her Majesty's Attorney General advise whether there are any legal considerations involved in decisions taken to change the priority order for people to receive a COVID vaccination and what legal recourse, if any, is available to any members of the public who are adversely impacted by such decisions?

Mr. M. Jowitt, H.M. Solicitor General (*rapporteur*):

It is the Solicitor General. The decision to allocate vaccines in accordance with an order of priority has to be made in accordance with the usual principles which apply to any decision-making by any public body. That means the decision must be lawful, rational and fair. If the priority order is then changed, there should also be a rational basis for changing the order of priorities. If a member of the public is adversely affected, either by the initial order of priorities or by a decision to change the order of priority, that decision may be the subject of challenge by that person or class of people in the Royal Court by way of an application for judicial review. I should, I think, add that the present order was, as I understand it, determined in accordance with decisions made by the Joint Committee on Vaccination and Immunisation in the United Kingdom. It is a medical decision first and foremost that was endorsed by our competent authorities' Ministers and the medical officer of health. I mention that simply to make this point, that that being the case any challenge by way of judicial review on the grounds that the ordering at the moment is irrational or unreasonable would probably face something of an uphill struggle.

10.3.1 Deputy J.M. Maçon:

That has partly helped in my understanding. As we know, the Minister for Health and Social Services will be under very many points of pressure to change the priority order. I, myself, have obviously expressed a position on behalf of the C.Y.P.E.S. (Children, Young People, Education and Skills) Department. Is the Solicitor General saying that to move away from the medical recommendations would expose the States of Jersey to a form of legal recourse should anything adversely happen to an individual?

The Solicitor General:

The answer is that any movement on policy in this area would have to withstand a challenge that it was unreasonable or irrational. One way of ensuring that it is watertight and rational is that it is based on sound medical advice. Sound medical advice alone may not exhaust the reasonable considerations that the decision-maker should have regard to. I note that in the United Kingdom the Joint Committee on Vaccination and Immunisation approach has included not only scientific and epidemiological breakthroughs but it has also had regard to ethical considerations, the primary aims being the prevention of mortality and to maintain not only health but social care systems. It does not automatically follow that moving away from one priority would expose one to legal action. But any decision, as I say, has to be based in what is reasonable and rational.

10.3.2 Deputy R.J. Ward:

I doubt that the Solicitor General can answer this but would there be any risk on the Health and Safety Law if people felt that they were being put at risk without the vaccine being put into a workplace where they are at high risk of contracting it without appropriate measures being taken?

The Solicitor General:

Under the Health and Safety Law employers have a general duty to take reasonable steps to ensure the health and safety of those who work for them. Looking at it with the principles, if it is reasonably foreseeable in a given workplace that there is a higher risk of contagion or infection from COVID-19, then it is arguable at least that that employer might wish to take the necessary steps to ensure that a reasonable level of protection is given to its employees.

The Bailiff:

Final supplementary then, Deputy Maçon. I have called final supplementary, I am afraid, Deputy Morel, and we are very tight on time.

10.3.3 Deputy J.M. Maçon:

I was trying to pause for the Deputy there. I thank the Solicitor General for that. Would it be the Solicitor General's view that the priority order for the vaccination, therefore, cannot be just a political decision?

The Solicitor General:

It can be a political decision if that is what politicians desire. The question is: what would withstand legal challenge? Purely political decisions will not necessarily withstand a legal challenge if those decisions are not inherently reasonable and rational, which is where the need for decisions to be based in some firm medical foundation is important.

Deputy J.M. Maçon:

May I thank the Solicitor General?