

The draft vaccine mandate policy developed after the 16 October 2022¹ Council in-principle decision to introduce a vaccine mandate policy that in “2022, all staff and students must – as a condition to perform their duties or to be registered – provide proof that they have been vaccinated against the SARS COVID-19 virus (COVID-19)” was consulted with the public and the UCT Community between 20 December 2021 and the beginning of March 2022. The consultation included email and online MS Teams events with the UCT community with a moderated Q&A. All comments including questions asked at consultation events were sent to an outsourced to an external service provider that managed and analyzed the data to derive common themes from the submissions. Vaccine Panel Members had online access to all inputs from respondents.

1.1 Summary Findings

The panel received 481 unique comments from the public via the designated email address, 1092 comments from the online UCT Community engagements, and 1762 unique comments from the “Dear SA” website. More than 2700 people participated in the various engagements with the panel. The results should however be read with caution as this process was not established to elicit a spectrum of views that were representative of the entire UCT community. Due to the way in which the process was constructed and communicated, it was far more likely to elicit views of those opposed to the mandate or critical of aspects of the draft policy. Those who held a positive or neutral view on the mandate may not have felt a need to comment because the policy reflected their position. Supportive comments were generally short and largely homogenous. On the other hand, the negative comments were often long and extensive, sharply worded, and much more heterogenous. The key concerns raised were ethical and legal concerns, science based concerns, particularly the changing epidemiology and vaccine effectiveness profile and health concerns of side effects. The logistical implementation of the vaccine mandate and labour law implications were also raised as concerns.

1.2 Panel responses to responded concerns

Ethical and Legal concerns

On ethical and legal concerns, the legal question is whether the vaccine mandate policy would be justifiable and thus constitutionally compliant in terms of section 36 of the Constitution. Unfortunately, the panel did not receive any substantive submissions in support of the argument that such a limitation would be unjustifiable and thus unconstitutional, which makes it difficult to assess these claims. The vaccine mandate panel is further of the view that the UCT vaccine mandate policy would not unfairly discriminate against unvaccinated individuals as UCT has taken extraordinary measures to ensure that every member of staff and every student has easy access to vaccine sites. Although the dominant view among labour lawyers (based on the Directions and Guidelines issued) currently is that carefully crafted vaccine mandates comply with labour laws, the ethical and legal objections to this policy may become legally significant if the national disaster is allowed to lapse and the Directions and Guidelines on vaccine mandates in the workplace issued in terms of the Disaster Management Act fall away. Furthermore, a 1 February 2022 amendment to regulations dealing with measures to reduce the transmission of COVID-19 now states that a person with a confirmed laboratory positive COVID-19 case who is asymptomatic is no longer required to isolate, further weakening the legal argument and justification for imposing limitations on Constitutional rights.

Science based and health concerns

The concerns raised about reducing vaccine effectiveness to limit COVID-19 transmission and the changing epidemiology of increased hybrid immunity resulting in less hospitalization and death are valid. Most adults have immunity against COVID-19 either from vaccination and or prior infection. o the fourth wave. Furthermore, the effectiveness of vaccination for protection from the Omicron (the current COVID-19 variant) infection has declined substantially. In 2020, the two dose Pfizer vaccines were found to have 95% efficacy in protecting against infection subsequently, there was moderate decline in vaccine effectiveness against infection when the Delta variant (the previous COVID-19 variant) was circulating. However, during the Omicron wave vaccine effectiveness against infection of two Pfizer doses declined far more substantially to 9-33% in studies conducted in South Africa and the UK. Similar trends were observed for the Johnson and Johnson vaccine.

By contrast, ***vaccine effectiveness for protection against severe disease, hospitalization and death remains high***. These epidemic trends and new findings have resulted in a paradigm shift that the role of vaccination should primarily be viewed as a robust protection against severe disease and death for the vaccinated individual. Secondly, vaccination may play a role in reducing transmission and thereby protecting others, but the effect in this regard is far less substantial as other immune escape variants emerge and circulate. It is less clear that vaccination will prevent transmission in congregate settings during epidemic waves when there are large numbers of people infected. This applies to the Omicron variant and is very likely the case for future variants capable of causing epidemic waves. For a future variant to cause a substantial epidemic wave in our communities (given the levels of pre-existing immunity now existing) this would also need to be an immune escape variant that is not responsive to current vaccines.

Health concerns about side effects from COVID-19 vaccines have not considered that the negative health consequences of COVID-19 infection are often more severe than the side effects due to COVID-19 vaccination.

Changing circumstances and constitutionality of a vaccine mandate

Current evidence suggests that reducing the rate of transmission of COVID-19 between students, staff and others has become less attainable. This therefore may weaken the argument that any limitation of rights is justifiable in terms of section 36. Furthermore, South African courts have not yet had the opportunity to consider the constitutionality of vaccine mandate policies, either in workplaces or elsewhere. When such cases come before the court, the facts of that case, including the specific provisions of the policy, might be decisive. It is therefore not easy to predict how a court will view any such policy adopted by UCT. What is certain is that the argument for the constitutionality of a vaccine mandate policy at UCT is weakened by evidence that vaccines are not as effective in achieving one of the main purposes of such a policy as it was before the emergence of Omicron.

1.3 Recommended Policy Options

The panel believes that policy formulation should be informed by the best available scientific and other evidence. The panel considered the fact that the new evidence weakens the legal arguments to justify the constitutionality of vaccine mandate policies as the vaccines are not as effective at reducing infection and transmission of COVID-19 as they were before the emergence of the Omicron variant. The panel also took note of the arguments that the monitoring, adherence and enforcement of the

policy will be difficult as UCT is largely an open campus and as the academic year is already well on its way. In the light of these factors, the panel is putting forward the following policy options.

Policy option 1: Vaccine Mandate

This option entails **implementing the vaccine mandate policy presented to Council in December 2021** with amendments received from consultations. Targeted vaccine mandates for high-risk settings such as health sciences faculties, field workers etc. can also be considered. In the light of current evidence and implications thereof and the likely challenges of monitoring, adherence and enforcement of this policy option; **the panel does not recommend implementing the vaccine mandate policy** as developed by the panel.

Policy option 2: Declaration and Support Mandate (recommended by panel)

The panel notes that COVID-19 vaccines remain highly effective at reducing an individual's risk of severe illness or death. It also notes the public health benefits of encouraging individuals to get vaccinated. The panel recognises the fast changing nature of the COVID-19 pandemic, and the fact that UCT would be better able to respond to any such changes to ensure a healthy and safe environment if it had more information about the vaccine coverage of staff and students at UCT. In the light of the above, the majority of the panel therefore recommends that all members of the UCT Community be mandated to **declare their vaccination status and to receive support, information and counselling to promote voluntary vaccination**. The panel is of the view that the vaccine mandate policy it developed (attached as Appendix 1), provides a comprehensive blueprint for the implementation of a vaccine mandate at UCT but could be held in abeyance for now. **The panel recommends that Council approves this policy in advance for implementation if scientifically justified, without needing further consultation.**

Policy option 3: No mandate

The last potential option is **not to implement any mandate**. The argument in favour of this is that vaccine effectiveness for preventing infection and transmission has declined to such an extent that individual vaccination no longer provides significant benefits to others, and thus that there remains little benefit to the UCT community as a whole by broadening vaccination coverage across the UCT community. This option is **not recommended by the panel**. The University needs to continue to take reasonable steps to promote vaccination among staff and students to ensure broad vaccination coverage of members of the UCT community. The University further needs to maintain the option of quickly implementing a mandate for vaccination if the data in favor of mandating vaccination to prevent transmission of a variant causing severe disease justifies this in the future. The aggregate data obtained through a declaration and counselling mandate will assist the University in planning and preparing for such a potential scenario.

Communication

It is essential that the University continues communication strategies that promote vaccination uptake. The shift from a vaccine mandate to a declaration and support mandate in no way calls into question the public health message that the health benefits of vaccination at an individual and community level far outweigh any potential side effects. The current shift is in recognition that the benefits of the vaccines currently available are predominantly at an individual level (for the vaccinated individual).

1.4 A dissenting view

A dissenting view raised within the panel is that the University should continue with implementation of a vaccine mandate from April 2022. The reasons advanced for this approach are that there remains a degree of effectiveness against infection from vaccination (currently between 9-33%) and that it is not possible to predict how future waves will manifest. An argument was also made for mandating booster vaccination since this will increase vaccine effectiveness against infection and transmission (although this wanes with time since taking the booster). The argument was also made that for staff to return to campus for work there needed to be guarantees of a safe work environment. The majority of the panel is of the view that the most effective measure to protect against severe and life threatening COVID-19 is for an individual themselves to be vaccinated, including a booster dose.

1.5 Conclusion

The need to ensure maximal uptake of vaccination should remain a priority for the University. Given that the University is a congregate setting with large numbers of people in daily attendance there is potential for increased risk of infection during waves and vaccination will ensure that those individuals who do become infected will experience milder symptoms and fewer complications. A vaccine declaration and support mandate will contribute to increased vaccine coverage and readiness and agility to implement the vaccine mandate if required. The panel is of the view that vaccination by individual choice including booster dose should be strongly advised because of compelling benefits for the vaccinated individual and “societal benefits”. The panel is also of the view that close monitoring of community levels of infection, the emergence of new variants, and available vaccines and vaccination strategies will be needed since there are potential future scenarios in which a vaccine mandate would be required and appropriate.