

# SKYPOINTER E-BULLETIN

March 2021



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# FROM THE CHAIRMAN

Luke Morgan

Welcome to the March Skypointer. Come on, be honest: How many of you have driven at 75 mph on the motorway without a shred of guilt? Driving beyond the speed limit is a conscious legal violation, but most of us rationalise that it's ok.

So now we're in the cockpit. Would you feel as comfortable committing a violation operating an aircraft?

My feeling is, definitely not. But in our car, we have subconsciously conducted our own mini risk assessment and concluded it's acceptable.

These thoughts were on my mind when I was recently asked to provide a presentation on Threat and Error Management.

Aviation Threat and Error Management (TEM) proposes that threats, errors and Undesirable Aircraft State (UAS) are everyday events that flight crews must manage to maintain safety margins. It's what some of us may have previously referred to as 'Airmanship'.

A threat is something beyond the influence of the flight crew, for example, bad weather or high terrain. An error is an action, or inactions by the flight crew, such as dialling up an incorrect radio frequency or forgetting to report at four miles as requested by ATC. Both scenarios, if mismanaged, can lead to a UAS.

Aviation related errors are interesting – we all make them – but equally we generally manage them provided they are detected. We may have slips, lapses and mistakes – we're human and sometimes make errors, but we detect and manage them.

There have been several Helicopter accidents involving the rich and famous, many of which have a contributory root cause attributed to inadequate TEM. Customer expectations can be high on the threat count, coupled with the sometimes-misplaced desire to impress. Many self-made people admit to breaking the law along the way to making their fortune, because they are natural risk-takers. If they have paid a lot of money for the use of a helicopter, their thinking may not align with aviation threats.

I like TEM and think it can be applied to all aspects of our life. Most of the time our brain does it naturally, but there are also times when it might be useful to stop and conduct a more conscious application of TEM to a situation or event. If you are on the threshold of a return to flying for example good TEM will give you that extra safety layer that is probably required. Food for thought.

Keep safe  
Best wishes,

*Luke Morgan*  
Chairman

# NO VACCINE, NO JOB?

By Phil Flower



**W**e have been contacted by some members seeking advice as to whether they must have a COVID 19 vaccine if their employer requires them to. Like all things employment law related the answer is far from straight forward.

In the UK no one can be compelled to have a vaccine, and we have no reason to believe that will change. However, employers can have policies that are relevant and necessary for the health, safety and efficiency of the job, other employees and members of the public. So where does that leave the pilot who does not want to have a vaccine?

**Like all things employment law related the answer is far from straight forward.**

After the initial vaccine rollout there was much media and legal coverage around this issue. It is important to distinguish between those individuals who are vaccine hesitant, and those who would be considered anti vaxxers. Those who are vaccine hesitant do not state that will not have the vaccine, rather they are cautious around possible side effects, both short and long term, and are perhaps questioning the speed at which a 'new' vaccine was approved for wider public vaccination. They may prefer to wait and see if there are common complications, or if not having the

vaccine starts to impact on their 'normal' life they may consider it at that point. Anti vaxxers are opposed to vaccination without exceptions.

If a pilot does not have a legitimate reason for refusing the vaccine, they could be dismissed for their failure to comply with a reasonable request of their employer after opportunities have been given to have the vaccine, and after a fair process has been followed. Even if the reason is legitimate it might still be trumped by the employers needs to deliver his business in a manner that ensures the health and safety of others. Each case then will need to be assessed on its own merits.

### Anti vaxxers are opposed to vaccination without exceptions.

If a pilot cannot have the vaccine because it poses a greater danger to them, perhaps because they may have an allergic reaction, or it may compromise their health due

to a pre-existing and known medical condition, it may be legitimate to decline. But if the employer determines that the operation that the pilot is employed on carries a higher level of risk so it is essential to have the vaccine,

they may still be able to insist on it as a condition of employment. Such an example may be a pilot who flies an air ambulance that may carry people particularly vulnerable to the dangers of COVID19.



As vaccine rollout continues globally, it may become a requirement that anyone entering other countries are vaccinated. Whilst in the short to medium term an employer might be able to deploy someone who has declined the vaccine on routes that do not have such a requirement, it may reach a point where the pilot simply cannot perform the role they are contracted to carry out as there is nowhere they can fly to without the vaccination. If a refusal continues in such a situation, a dismissal on grounds of capability is a possibility.

Again, whilst there is much discussion in the media about the possibility of vaccine passports, or

some kind of vaccine certificate, it would not, in our opinion be a reasonable step to take until such time as every eligible UK citizen has been offered the vaccination and both doses have been administered.

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If you have difficulties that mean you may not be able to have the vaccine, the first thing to do is to discuss it with your employer to see if reasonable adjustments can be

made to enable you to continue to operate. Discussion in such circumstances often leads to a fair and sensible solution for everyone.

If you are facing such a situation, we urge you to contact us and discuss it with us so that we can take a view as to how best to approach the issue. ❖



# RETURNING TO FLYING

By Claire Pickford



Aviation will be the last industry to recover from the covid 19 pandemic. The Coronavirus Job Retention Scheme (CJRS or Furlough Scheme) has protected jobs within the sector some degree, and pilots themselves have also agreed to covid mitigation measures to keep their own jobs, along with those of their colleagues who might otherwise have been made redundant. The extension of the scheme until September 2021 gives further breathing space, however decisions are unlikely to be made at short notice due to the nature of the industry, and possible legal requirements and timescales that might be imposed upon any

employer wanting to make changes. The extension is only likely to provide limited relief going forward.

Whilst we remain of the view that there is an absence of specific targeted support for the sector, particularly in relation to getting the skies open, there are some measures that may help.

The Aviation Skills Retention Platform has been established, to boost employment and upskill candidates in the industry. Feedback is welcomed from any member who has used the site as to whether they found it helpful. The platform is publicized as an online skills and recruitment centre, with a number of companies and organisations working



with it. Its purpose (taken from the gov.uk website) is to preserve essential expertise, and support those who are currently not working, and nurturing existing skills to lay the foundations for future growth when international travel restarts.

Which ties in nicely with the next initiative – the Global Travel Taskforce. After its initial report which set out 14 recommendations, the taskforce is next set to present its report on 12th April 2021. Many within the industry are saying that even if the report sets out a ‘roadmap’ for global travel over the summer and beyond, operators may simply not be able to meet demand in terms of booking demand from the public and any timescales set in the next report. Our criticism of the first report was the lack of detail

around timings. Now we are starting to get indications from other countries as to their entry requirements for foreign travellers and dates from which visitors might be welcomed, a defined way forward for the UK aviation sector is imperative.

The extension of the 80/20 slot waiver from the Secretary of State for Transport for the summer 2021 season has been met with a mixed reaction. This very much depends on the operator as to whether this is considered a help or a hindrance to summer flight planning.

Going back to the issue of timing, we may see further restructuring and changes to employment within the UK aviation sector. It is possible that the extension of the CJRS comes too late for some employers who have



already made a business case for redundancies, or covid mitigation arrangements, which will have directly affected the pilot workforce. Whilst you can be offered work back with your employer after you have been made redundant, there is no automatic right to return, and no recourse in law if you are not re-employed. For those employed, but who have been furloughed, some pilots may not have been in the cockpit for approaching a year.

There have been media reports about pilots being 'rusty', and the risk of air travel safety as a consequence. What we are hearing from our members is that they are keen to get back into the cockpit, albeit there is likely to be some degree

of anxiety in a few cases. We are already aware that employers are working with pilots who feel that they are 'rusty' and giving further support and training to ensure flight safety going forward.

Should anyone be concerned about their return to the cockpit, this should be discussed with their employer in the first instance. If any concerns are not addressed, then please do contact the office to discuss.

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On a daily basis, we deal with diverse and often complex issues within the industry. Where contracts are tendered for and won (or lost) we advise members on the provisions of the Transfer of Undertakings Protection of Employment Regulations (TUPE). If employers are looking to restructure, we advise on the fairness and legitimacy of the plans proposed. Where employers are in the situation of having commence a redundancy

process, we can have oversight to ensure that correct procedures are followed, including any relevant timescales, and that a fair and transparent process is applied. We often challenge companies where

there is a requirement to have a selection matrix. We find that these may include a subjective element, which makes it difficult for the pilot at risk of redundancy to challenge. Or, there might be particular category and weighting that favours certain individuals within a company. Any selection matrix must not fall foul of the provisions of the Equality Act 2010.

We also continue to consult and negotiate at a collective level where



the IPA is the recognised union. In the current climate, this can be particularly challenging, but we urge employers to work with us to find a way forward where there are issues that need to be resolved. No recognised union will want to bring an employer to its knees and risk their members being out of jobs. In most situations, there will be a way forward, but employers need to work with the union, not against it. This will preserve the working relationship between employer and employees and allow the union to act as a conduit when there are difficult conversations to be had.

We continue to arrange airline/operator specific forums on virtual platforms as these have been welcomed over the last year and have now also offered 1-2-1s to full members which have proven popular.

The legal team continue to undertake a variety of case work, whether individual cases or on behalf of a group of pilots. We have recently successfully obtained a protective award for our members who are former Thomas Cook pilots, with the judge awarding the full 90 days for failure to consult in a redundancy situation.

Our administration team are responsible for putting together and issuing communications to members, and first point of contact should you call us, so please ensure that we hold up to date details for you on our database. This is particularly

important when we wish to send airline specific communications. Additionally, please ensure that we hold a current email address, as this is the most efficient way of contacting you. If we are dealing with large numbers, it is simply not feasible to have communications being sent via different methods.

As a final point, if you are affected by an employment issue, please contact us. In most employment tribunal cases, you only have three months less one day from the date that the cause of action arises to lodge a claim on your behalf. If you think you are affected, but have not heard from us, please call within that three-month timescale, as otherwise we will not be able to help you.

This article has covered a number of issues. Please contact us **01444 441149**, or **office@ipapilot.com** should you have any queries. ➡

