

BIG BROTHER WATCH

**Submission to the Department
of Health and Social Care's
'Making vaccination a
condition of deployment in
the health and wider social
care sector' consultation**

October 2021

About Big Brother Watch

Big Brother Watch is a civil liberties and privacy campaigning organisation, fighting for a free future. We're determined to reclaim our privacy and defend freedoms at this time of enormous technological change.

We're a fiercely independent, non-partisan and non-profit group who work to roll back the surveillance state and protect rights in parliament, the media or the courts if we have to. We publish unique investigations and pursue powerful public campaigns. We work relentlessly to inform, amplify and empower the public voice so we can collectively reclaim our privacy, defend our civil liberties and protect freedoms for the future.

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Summary

Big Brother Watch wholly opposes proposals for mandatory vaccinations in any setting in the UK. Mandatory vaccine policies displace fundamental modern British values: individual autonomy, dignity, privacy and equality are subsumed by coercion, state control, monitoring and discrimination. This serious damage to British freedoms provides no public health benefit and damages trust in public health authorities among the groups where trust matters most.

Mandatory vaccines were abandoned in Victorian Britain after sparking an anti-vaccination movement, mass protests and social discord. With opposition to mandatory vaccines from the unions, civil liberties groups, and hundreds of thousands of members of the public, mandatory vaccine policies, particularly in relation to vaccinations that are new and on emergency approval, are destined to reignite distrust at a time when distrust could cost lives.

Similarly, we opposed the introduction of a vaccine mandate for those working in care homes – along with 57% of all respondents to the Government’s consultation on their introduction. As we and unions warned, the mandate has contributed to an exodus of care workers. It is likely that extending this mandate to other sectors will see staff shortages in other key areas of health and social care.

We strongly recommend that the Government rejects mandatory vaccines for all settings and adopts a strategy of support rather than coercion.

Background

The Government has proposed a legal change that would require that “all those that are deployed to undertake direct treatment or personal care as part of a Care Quality Commission (CQC) regulated activity are vaccinated against Covid-19 and flu”.¹ The CQC regulates services that provide health and social care, including:

- Ambulances, both NHS and independent ambulance services
- Care homes
- Health services provided to children, such as Special Educational Needs and Disability inspections
- Clinics, such as family planning and slimming clinics
- Community-based services, including services for people with learning disabilities and substance misuse services
- Dentists

¹ Making vaccination a condition of deployment in the health and wider social care sector – Department of Health and Social Care, GOV.UK, 9th September 2021: <https://www.gov.uk/government/consultations/making-vaccination-a-condition-of-deployment-in-the-health-and-wider-social-care-sector/making-vaccination-a-condition-of-deployment-in-the-health-and-wider-social-care-sector>

- GPs and family doctors
- Hospices
- Hospitals, both NHS trusts and independent hospitals
- Mental health services
- Home care services, such as home care agencies, mobile doctors and services over the phone²

The consultation notes that services not in scope would be “where in-person contact with a vulnerable person is absent, for example, triage and medical advice provided remotely.”³ However, what constitutes “direct treatment or personal care” is not defined. Given the wide scope of activities regulated by the CQC, Covid-19 and flu vaccination could become mandatory for vast swathes of the population, many of whom do not routinely come into contact with vulnerable individuals.

The Department of Health and Social Care is proposing an amendment to regulation 12(2)(h) of The Health and Social Care Act 2008 (Regulated Activities) Regulations 2014 (‘the Regulations’), which requires a service provider to provide care and treatment for service users in a safe way, including “assessing the risk of, and preventing, detecting and controlling the spread of, infections, including those that are health care associated.” It has also proposed amending the Code of Practice on Infection Prevention and Control (‘the Code of Practice’) and its associated guidance, to which providers must have regard when complying with their obligations under regulation 12 of the Regulations.

Registered providers will be required to hold a record of that evidence of vaccination, or exemption, that has been provided by workers. The record must be “kept securely” by the provider.

The CQC would have the power to suspend the registration of the service or bring criminal enforcement action against a provider or registered manager where a breach of the requirement “results in avoidable harm or a significant risk of avoidable harm to a service user”. The maximum Fixed Penalty Notice is £2,000 or £4,000, for an offence committed by a registered manager or provider respectively.

We support the new requirement within the Code of Practice for providers to ensure that “there is appropriate support and education of those deployed in relation to the vaccine” and that “those deployed are provided with the appropriate support to access vaccination.” However, we have significant concerns about mandating vaccination for any form of employment. The necessity and proportionality of such a step should be carefully considered and balanced against the rights of employees. We are also concerned by the requirement to

²Services we regulate – Care Quality Commission (accessed 15th October 2021):

<https://www.cqc.org.uk/what-we-do/services-we-regulate/services-we-regulate>

³Making vaccination a condition of deployment in the health and wider social care sector – Department of Health and Social Care, GOV.UK, 9th September 2021:

<https://www.gov.uk/government/consultations/making-vaccination-a-condition-of-deployment-in-the-health-and-wider-social-care-sector/making-vaccination-a-condition-of-deployment-in-the-health-and-wider-social-care-sector>

verify and store the vaccination status of employees, which as well as engaging data protection issues, will normalise health surveillance by employers.

Efficacy of a mandatory vaccination policy

Some individuals receiving health or social care may be at greater risk of serious illness and death from Covid-19 and flu. We fully support reasonable and evidence-based steps to ensure the protection of vulnerable individuals in these settings. However, we believe that mandatory vaccination of staff not only raises serious ethical issues but would be an unnecessary and ineffective approach to protecting service users.

The World Health Organisation has warned mandatory vaccination policies should not be used over less invasive approaches:

“If such a public health goal (e.g., herd immunity, protecting the most vulnerable, protecting the capacity of the acute health care system) can be achieved with less coercive or intrusive policy interventions (e.g., public education), a mandate would not be ethically justified, as achieving public health goals with less restriction of individual liberty and autonomy yields a more favourable risk-benefit ratio.”⁴

Academics working in healthcare, writing in the British Medical Journal, said mandatory vaccination was “unnecessary and inappropriate”:

“Compulsory vaccination is not a panacea and may harm the safety of patients and healthcare workers, as well as affecting workload and wellbeing.”⁵

The chief executive of the NHS Confederation, Matthew Taylor, has similarly argued that as the “overwhelming majority” of NHS staff are choosing to be vaccinated, there is “no necessity for compulsion, for surveillance of people at this stage, because the staff themselves are doing the right thing”.⁶

The Government’s approach to increasing vaccination uptake so far has focused on working in partnership, removing barriers to access, sharing data and information, and conversations and engagement.⁷ It has been extremely successful, with the UK having one of the highest levels of trust in vaccinations in the world.⁸ Abandoning this approach, due to the hesitancy of a small section of workers, would be misguided.

4 COVID-19 and mandatory vaccination: Ethical considerations and caveats – World Health Organisation, 21st April 2021, p. 1-2: <https://apps.who.int/iris/bitstream/handle/10665/340841/WHO-2019-nCoV-Policy-brief-Mandatory-vaccination-2021.1-eng.pdf?sequence=1&isAllowed=y>

5 Vaccinating healthcare workers against covid-19 – Lara Shemtob et al, BMJ, 11th August 2021: <https://www.bmj.com/content/374/bmj.n1975>

6 Mandatory Covid vaccines for NHS workers are unnecessary ‘surveillance’, warns NHS boss – Sophie Barns, the Telegraph, 5th September 2021: <https://www.telegraph.co.uk/news/2021/09/05/mandatory-covid-vaccines-nhs-workers-unnecessary-surveillance/>

7 Influenza vaccine effectiveness in adults and children in primary care in the UK: provisional end of season results 2015 to 2016 – Public Health England, GOV.UK, 18th July 2018: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/779476/Influenza_vaccine_effectiveness_in_primary_care_2015_2016.pdf

8 Global vaccine trust rising, but France, Japan, others sceptical – Reuters, 4th February 2021: <https://www.reuters.com/article/health-coronavirus-vaccines-confidence-idINKBN2A408J>

Covid-19 vaccine uptake

Covid-19 vaccination uptake is extremely high across England and is particularly high for NHS staff and care workers. As of 14th October, NHS England reports that 93% of NHS trust workers have been vaccinated against Covid-19 and 89% have received two doses.⁹ It is likely that the real figures are higher, as the UK Health Security Agency noted “where Trusts have an incomplete record of the vaccination status of their frontline staff, the vaccine uptake may be an underestimate.”^{10 11}

As of 14th October, across the different regions of England, all NHS trusts reported high vaccine uptake amongst workers. Every region except London reported 93% or higher uptake of vaccination, with the North East and Yorkshire, South East and South West regions all reporting 95% vaccine uptake.¹² NHS trusts in London have a slightly lower vaccine uptake rate of 87%. A targeted approach, focusing on education, encouragement and facilitating vaccination, with a focus on London-based NHS trusts, would be a less intrusive approach than mandating vaccination for all health and social care workers.

Indeed, unions have previously highlighted a range of measures that they believe would be more effective than vaccine mandates, such as allowing appointments during working hours,¹³ increasing statutory sick pay so those suffering from side-effects will not lose out,¹⁴ further education,¹⁵ opportunities to ask questions of colleagues who have been vaccinated, taking vaccinations into communities and workplaces,¹⁶ and campaigns that debunk vaccine misinformation.¹⁷

Flu uptake

As with Covid-19, we support reasonable measures to reduce the transmission of seasonal flu during what is likely to be a challenging winter for the NHS and care sector, particularly given the closure of emergency hospitals and what appears to be a lack of planning for the extra stresses widely expected. However, compared to Covid-19 vaccines, it should be noted that seasonal flu vaccines have a relatively low effectiveness. Public Health England studies have

9 COVID-19 weekly announced vaccinations 14 October 2021 – NHS England, 14th October 2021: <https://www.england.nhs.uk/statistics/wp-content/uploads/sites/2/2021/10/COVID-19-weekly-announced-vaccinations-14-October-2021.xlsx>

10 COVID-19 vaccine uptake in healthcare workers: explainer – UK Health Security Agency, GOV.UK, 7th October 2021: <https://www.gov.uk/government/publications/covid-19-vaccine-uptake-in-healthcare-workers/covid-19-vaccine-uptake-in-healthcare-workers-explainer>

11 COVID-19 weekly announced vaccinations 14 October 2021 – NHS England, 14th October 2021: <https://www.england.nhs.uk/statistics/wp-content/uploads/sites/2/2021/10/COVID-19-weekly-announced-vaccinations-14-October-2021.xlsx>

12 COVID-19 weekly announced vaccinations 14 October 2021 – NHS England, 14th October 2021: <https://www.england.nhs.uk/statistics/wp-content/uploads/sites/2/2021/10/COVID-19-weekly-announced-vaccinations-14-October-2021.xlsx>

13 Government must try harder on vaccines before leaping to the law, says UNISON – UNISON, 23rd March 2021: <https://www.unison.org.uk/news/press-release/2021/03/government-must-try-harder-vaccines-leaping-law-says-unison/>

14 Care worker mandatory vaccinations 'incredibly bad idea' – GMB, 15th April 2021: <https://www.gmb.org.uk/news/care-worker-mandatory-vaccinations>

15 Forced jabs are counterproductive, says UNISON – UNISON, 3rd March 2021: <https://www.unison.org.uk/news/2021/03/forced-jabs-counterproductive-says-unison/>

16 Less than half of companies giving staff paid time-off to get vaccinated – TUC, 22nd March 2021: <https://www.tuc.org.uk/news/less-half-companies-giving-staff-paid-time-get-vaccinated-tuc-poll>

17 Government must try harder on vaccines before leaping to the law, says UNISON – UNISON, 23rd March 2021: <https://www.unison.org.uk/news/press-release/2021/03/government-must-try-harder-vaccines-leaping-law-says-unison/>

found that seasonal flu vaccines have had varied effectiveness across different years, ranging from 15% in winter 2017/18,¹⁸ 40% in winter 2016/17¹⁹ and 52% in in winter 2015/16.²⁰ Public Health England notes in the winter 2021/22 flu vaccine guidance that “there is always a risk that the vaccine does not match the circulating virus”.²¹

The Department of Health and Social Care noted that “last season saw the most successful [flu vaccination] programme ever,” with the highest levels of uptake on record for over 65s and at-risk groups.²² 77% of all frontline healthcare workers received the seasonal flu vaccine during winter 2020/21, a significant increase from winter 2019/20 (64%), indicating that healthcare workers are conscious of the risks posed by seasonal flu combined with Covid-19.²³ Public Health England stated that this was “the highest ever recorded levels of influenza vaccine uptake” for healthcare workers.²⁴ It is likely that the “85% ambition” for vaccine uptake for health and social care workers, outlined by the Department of Health and Social Care, NHS and Public Health England in a letter²⁵ to NHS staff in July 2021, will be met, given that the Government is planning the “biggest flu programme in history”.²⁶ However, the target could be jeopardised by coercive communications and the prospect of mandated vaccination.

The National Institute for Health and Care Excellence’s guidance for increasing flu vaccine uptake recommends a range of measures to drive vaccine uptake amongst health and social care staff, including assigning dedicated staff to increase awareness and uptake, training peers to vaccinate their co-workers, extending on-site vaccination clinic hours to fit in with staff work patterns, and significantly, “a full participation vaccination strategy” whereby NHS staff are “able to opt out if they wish.”²⁷ It does not recommend mandating vaccination.

¹⁸Flu vaccine effectiveness in 2017 to 2018 season – Public Health England, GOV.UK, 18th July 2018: <https://www.gov.uk/government/news/flu-vaccine-effectiveness-in-2017-to-2018-season>

¹⁹Influenza vaccine effectiveness in adults and children in primary care in the UK: provisional end of season results 2016 to 2017 - Public Health England, GOV.UK, 18th July 2018:

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/779475/Influenza_vaccine_effectiveness_in_primary_care_2016_2017.pdf

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²¹The flu vaccination: who should have it and why – Public Health England, GOV.UK, 26th August 2021:

<https://www.gov.uk/government/publications/flu-vaccination-who-should-have-it-this-winter-and-why/the-flu-vaccination-who-should-have-it-and-why>

²²National flu immunisation programme 2021 to 2022 letter – Department of Health and Social Care, NHS, Public Health England, GOV.UK, 28th July 2021: <https://www.gov.uk/government/publications/national-flu-immunisation-programme-plan/national-flu-immunisation-programme-2021-to-2022-letter#fn:1>

²³Seasonal influenza vaccine uptake in healthcare workers (HCWs) in England: winter season 2020 to 2021 – Public Health England, GOV.UK, 24th June 2021:

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/996100/Seasonal_influenza_vaccine_uptake_HCWs_2020-21_FINAL_v2.pdf; Seasonal influenza vaccine uptake in healthcare workers (HCWs) in England: winter season 2019 to 2020 -Public Health England, GOV.UK, 25th

June 2020: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/894751/Seasonal_influenza_vaccine_uptake_in_healthcare_workers_HCWs_in_Englan....pdf

²⁴National flu immunisation programme 2021 to 2022 letter – Department of Health and Social Care, NHS, Public Health England, GOV.UK, 28th July 2021: <https://www.gov.uk/government/publications/national-flu-immunisation-programme-plan/national-flu-immunisation-programme-2021-to-2022-letter#fn:1>

²⁵National flu immunisation programme 2021 to 2022 letter – Department of Health and Social Care, NHS, Public Health England, GOV.UK, 28th July 2021: <https://www.gov.uk/government/publications/national-flu-immunisation-programme-plan/national-flu-immunisation-programme-2021-to-2022-letter#fn:1>

²⁶Biggest flu programme in history to roll out for winter 2021 - Department of Health and Social Care, GOV.UK, 17th July 2021: <https://www.gov.uk/government/news/biggest-flu-programme-in-history-to-roll-out-for-winter-2021>

²⁷Flu vaccination: increasing uptake – National Institute for Health and Care Excellence, 22nd August 2018: <https://www.nice.org.uk/guidance/ng103/chapter/Recommendations#employers-of-health-and-social-care-staff>

Staff shortages

There is very significant concern that a Covid-19 and flu vaccine mandate for all health and social care workers will lead to dangerous staffing shortages during a difficult winter for the health and social care sector.

Prior to the introduction of mandatory vaccinations for care home workers, unions, care homes and parliamentarians warned that this approach could backfire dangerously and lead to staffing shortages for an already stretched industry. This was also acknowledged by the Government in its operational guidance to care homes: “[w]herever possible, we would expect the registered person to take reasonable steps to cover the staff shortfalls themselves in the short term through the use of bank or agency staff.” However, given that the National Care Association has warned that there could be 170,000 vacancies due to the new requirement, it seems unlikely that care providers will be able to fill the gap.²⁸ Unison General Secretary Christina McAnea warned that Ministers are “sleepwalking into a disaster”:

“The government must scrap the ‘no job, no job’ rule now. Widespread care home closures could be the consequence if they ignore the warnings. This would be disastrous for elderly people and those who cannot live without care support.”²⁹

Charity Skills for Care’s annual report into the state of the care sector in England found that vacancies in the care sector had increased since Covid-19 and that employers are “struggling to recruit and retain their staff.”³⁰ It notes that if unvaccinated staff “were to leave and replacements were not found it would push the staff vacancy rate up to its highest level on record.”³¹ Widening vaccination requirements to cover all health and social care workers, and adding the seasonal flu vaccine to the mandate, would only exacerbate these serious staffing issues and endanger public health as a result.

Creating public distrust

There is also a significant risk that mandating vaccination for increasing numbers of the population will lead to decreased trust in the vaccinations, not only among those working in the health and care sectors, but amongst the wider population. Vageesh Jain, NIHR Academic Clinical Fellow in Public Health Medicine at University College London, said of mandatory vaccination policies:

²⁸Care workers in England leaving for Amazon and other better-paid jobs – Robert Booth, the Guardian, 4th September 2021: <https://www.theguardian.com/society/2021/sep/04/care-workers-in-england-leaving-for-amazon-and-other-better-paid-jobs>

²⁹‘No jab no job’ policy risks staffing crisis in care homes, union warns – Andrew Woodcock, the Independent, 4th September 2021: <https://www.independent.co.uk/news/uk/politics/coronavirus-vaccine-care-homes-unison-b1914200.html>

³⁰The state of the adult social care sector and workforce in England – Skills for Care, October 2021: <https://www.skillsforcare.org.uk/adult-social-care-workforce-data/Workforce-intelligence/documents/State-of-the-adult-social-care-sector/The-State-of-the-Adult-Social-Care-Sector-and-Workforce-2021.pdf>

³¹The state of the adult social care sector and workforce in England – Skills for Care, October 2021: <https://www.skillsforcare.org.uk/adult-social-care-workforce-data/Workforce-intelligence/documents/State-of-the-adult-social-care-sector/The-State-of-the-Adult-Social-Care-Sector-and-Workforce-2021.pdf>

“Anti-vaxxers do not trust experts, industry and especially not the government. A government mandate will not just be met with unshakeable defiance, but will also be weaponised to recruit others to the anti-vaxxer cause.”³²

The chief executive at the British Society for Immunology, Dr Doug Brown, noted that compulsory policies would not be appropriate in the UK:

“What we have seen is that in countries that have introduced mandatory programmes, that’s often off the back of there being quite a high anti-vaccine sentiment in those countries and lots of misinformation floating around.

“What we need to be doing in the UK is to be tackling the issues we face, which are not around vaccine confidence, which is very high.”³³

UNISON has similarly warned that the Government’s proposals could backfire:

“Encouragement and persuasion rather than threats and bullying are key to a successful programme, as ministers themselves have repeatedly indicated.

“Mandatory jabs are counterproductive and likely to make those who are hesitant even more so. This will do nothing to help health and care sectors that are already chronically understaffed.”³⁴

Indeed, recent research cited by the British Medical Association found that “pressurising health and social care workers can have damaging effects, leading to an erosion of trust, worsening concerns about the vaccine and hardened stances on declining vaccination.”³⁵

Using legislation to enforce vaccination for all health and care sector workers is a blunt, coercive approach to a complex, concentrated issue and could further undermine trust.

Lawfulness of a mandatory vaccination policy

Mandating vaccination for certain workers is profound shift away from legal norms in the United Kingdom. The Public Health (Control of Diseases) Act 1984 explicitly prohibits the creation of regulations under the Act which would mandate vaccination in England and Wales,³⁶ and the Coronavirus Act 2020 extends this prohibition to Scotland and Northern Ireland.³⁷ Prior to the Health and Social Care Act 2008 (Regulated Activities) (Amendment) (Coronavirus) Regulations 2021, vaccination had not been mandated in the UK since 1855,

³² Should Covid vaccines be mandatory? Two experts discuss the pros and cons – Daniel Smith, Wales Online, 26th November 2021: <https://www.walesonline.co.uk/news/uk-news/should-covid-vaccines-mandatory-two-19345538>

³³ Why The Government Is So Reluctant To Make Vaccinations Mandatory – Jasmin Gray, HuffPost, 28th July 2020: https://www.huffingtonpost.co.uk/entry/uk-coronavirus-vaccination-scheme_uk_5f1ac9eac5b6f2f6c9f4f2f8

³⁴ Forced jabs are counterproductive, says UNISON – UNISON, 3rd March 2021: <https://www.unison.org.uk/news/2021/03/forced-jabs-counterproductive-says-unison/>

³⁵ Mandatory vaccination for NHS staff is incredibly complex issue, says BMA – BMA, 16th June 2021: <https://www.bma.org.uk/bma-media-centre/mandatory-vaccination-for-nhs-staff-is-incredibly-complex-issue-says-bma>

³⁶ Section 45E

³⁷ Section 25E

when riots around the mandatory smallpox vaccine led to the creation of 'conscientious objectors,' who were permitted to decline vaccination on the basis of personal belief.

Mandatory vaccination policies engage human rights law. Indeed, a legal challenge to the Health and Social Care Act 2008 (Regulated Activities) (Amendment) (Coronavirus) Regulations 2021 has already been initiated.³⁸

The UK Government has a duty to protect the right to life, under Article 2 of the Human Rights Act, meaning that it is required to take steps to protect the lives of those particularly vulnerable to coronavirus. However, the duty involves public officials taking reasonable steps, not all possible steps. Such a policy also engages the Article 8 right to private and family life, the Article 9 right to freedom of thought, conscience and religion and the Article 14 right to be free from discrimination. Interferences with these rights are required to be necessary and proportionate. A blanket policy requiring all health and social care workers to be vaccinated may not be proportionate if there are less intrusive methods of increasing vaccination uptake.

Ethical issues

Mandating vaccination (either directly or indirectly) poses a serious threat to the principle of personal and bodily autonomy and would likely lead to discrimination and the widening of inequalities.

Personal and bodily autonomy are key rights and a principle of individual liberty. The Government's proposal would make an individual's employment contingent on a medical procedure. A choice between a mandatory medical intervention and unemployment is no choice at all for many, particularly low paid workers. Health and social care sector workers, who have been at the front line of the coronavirus pandemic, should not be made to choose between their livelihoods and their right to make decisions about their bodies.

There is a real risk of discrimination when considering such a policy, which the Prime Minister's spokesperson warned of in February: "Taking a vaccine is not mandatory and it would be discriminatory to force somebody to take one."³⁹ Many people will not receive a coronavirus vaccine, whether for health reasons, due to concerns around pregnancy (even if misplaced), or due to religious, philosophical or other personal beliefs. There is also evidence that Covid-19 vaccine hesitancy is higher in black and minority ethnic groups⁴⁰ and in more deprived areas.⁴¹ Flu vaccine uptake is also lower in black and mixed ethnic groups compared

³⁸Stop Coerced Vaccination – Crowd Justice (accessed 18th October 2021):

<https://www.crowdjustice.com/case/stop-coerced-vaccination/>

³⁹ No jab, no job policies 'discriminatory', says Downing Street – Poppy Wood, City AM, 8th February 2021:

<https://www.cityam.com/no-jab-no-job-policies-discriminatory-says-downing-street/>

⁴⁰ Covid-19 vaccine hesitancy among ethnic minority groups – Mohammed S. Razai et al, the BMJ, 26th February 2021: <https://www.bmj.com/content/372/bmj.n513>

⁴¹ Poorer areas falling behind on vaccination against coronavirus – Shaun Lintern, the Independent, 17th February 2021: <https://www.independent.co.uk/news/health/coronavirus-vaccination-deprivation-nhs-b1803021.html>

to white and Asian ethnic groups⁴² and in areas with higher social deprivation.⁴³ Penalising communities where there may already be deprivation and unemployment would lead to further marginalisation and distrust among these communities. The WHO has warned that mandatory vaccination policies could exacerbate inequalities:

“the coercive power that governments or institutions display in a programme that undermines voluntariness could have unintended negative consequences for vulnerable or marginalized populations (...) Such populations may regard mandatory vaccination as another form of inequity or oppression, making it more difficult for them to access jobs and essential services.”⁴⁴

The Department of Health and Social Care already acknowledges in its assessment of the equality impacts of mandatory vaccines for health and social care workers that certain groups will be disproportionately impacted. Certain religious groups have lower vaccination uptake, as do pregnant women:

“A number of people may be opposed to vaccination in principle due to their beliefs, either religious or nonreligious. If this policy is implemented, people who hold these beliefs may be likely to feel compelled to have a vaccine they do not want, or, by refusing to have the vaccinations, be unable to satisfy a statutory requirement which may ultimately result in them losing their job.”

“While vaccination is encouraged during breastfeeding, previously, routine vaccination during pregnancy was not advised. As a result, pregnant and breastfeeding healthcare staff may be less likely to have already been vaccinated against COVID-19.”⁴⁵

The equality assessment also notes that minority ethnic groups account for over 20% of the workforce in the NHS.⁴⁶ It also notes that vaccine hesitancy is higher amongst black adults (21%) than amongst white adults (4%).⁴⁷

It is clear that mandating vaccination will discriminate against women who are pregnant, breastfeeding or trying to conceive, those with certain religious beliefs and those from certain ethnic minorities.

⁴²Seasonal influenza vaccine uptake in GP patients: winter season 2020 to 2021 – Public Health England, GOV.UK, 24th June 2021: <https://www.gov.uk/government/statistics/seasonal-flu-vaccine-uptake-in-gp-patients-winter-2020-to-2021>

⁴³Patient and practice level factors associated with seasonal influenza vaccine uptake among at-risk adults in England, 2011 to 2016: an age-stratified retrospective cohort study – Matthew M Loiacono et al, Vaccine X, 13th January 2020: <https://pubmed.ncbi.nlm.nih.gov/32072152/>

⁴⁴COVID-19 and mandatory vaccination: Ethical considerations and caveats – World Health Organisation, 21st April 2021, p. 2: <https://apps.who.int/iris/bitstream/handle/10665/340841/WHO-2019-nCoV-Policy-brief-Mandatory-vaccination-2021.1-eng.pdf?sequence=1&isAllowed=y>

⁴⁵Making vaccination a condition of deployment in the health and wider social care sector – Department of Health and Social Care, GOV.UK, 9th September 2021: <https://www.gov.uk/government/consultations/making-vaccination-a-condition-of-deployment-in-the-health-and-wider-social-care-sector/making-vaccination-a-condition-of-deployment-in-the-health-and-wider-social-care-sector>

⁴⁶NHS Workforce Statistics – December 2020 (Including selected provisional statistics for January 2021) – NHS Digital, 25th March 2021: <https://digital.nhs.uk/data-and-information/publications/statistical/nhs-workforce-statistics/december-2020>

⁴⁷Coronavirus and vaccine hesitancy, Great Britain: 9 August 2021 – ONS, 9th August 2021: <https://www.ons.gov.uk/peoplepopulationandcommunity/healthandsocialcare/healthandwellbeing/bulletins/coronavirusandvaccinehesitancygreatbritain/9august2021>

Health surveillance concerns

The consultation information states that “workers would need to provide evidence to the registered person that they have been vaccinated” and that “the registered person would keep a record of vaccinations as part of their staff employment or occupational health records”.⁴⁸ The suggested Code of Practice states that older adult care home providers will have to demonstrate that “those deployed to undertake direct treatment or personal care (...) must provide evidence to the registered person, demonstrating that they have received the required doses of an MHRA approved COVID-19 vaccine and flu vaccine within the specified grace period” or “evidence that there are clinical reasons why they should not be vaccinated with any authorised COVID-19 and/or flu vaccine”. Providers would also be obliged to hold “a record to confirm that evidence stated above has been provided”. The guidance suggested this evidence could be displayed via the NHS Covid Pass.

We are concerned that workers will be obliged to present sensitive health information to employers, either to prove their vaccination status, or to prove a medical exemption. This could normalise invasive checks of employee health status and would likely set a precedent that would impact other sectors and other forms of health checks.

Recommendations

Mandating vaccination for health and social care workers would be a heavy-handed, invasive and discriminatory approach.

It poses unacceptable risks to rights and individual liberties and could jeopardise national trust in the safety of vaccinations. The Government should continue its successful approach of educating and explaining the benefits of the Covid-19 and flu vaccination, whilst intervening in NHS trusts with support and education where necessary.

⁴⁸Making vaccination a condition of deployment in the health and wider social care sector – Department of Health and Social Care, GOV.UK, 9th September 2021:
<https://www.gov.uk/government/consultations/making-vaccination-a-condition-of-deployment-in-the-health-and-wider-social-care-sector/making-vaccination-a-condition-of-deployment-in-the-health-and-wider-social-care-sector>