



Mandatory vaccination for all frontline health and care staff in England – policy brief consultation response

Alex McKeown, James Wilson, John Coggon

Joint response from the UK Pandemic Ethics Accelerator Data use and Public health and health inequalities workstreams to the Department of Health and Social Care consultation on mandatory vaccination in the NHS – 22 October 2021.

The Department of Health and Social Care has launched a consultation into making covid-19 vaccination a condition of deployment in care homes with older adult residents. Whilst some providers have already implemented similar policies, the consultation is intended to inform decision-making about how such a policy could be implemented, whether it would be beneficial and to whom. This response to the consultation is from the UK Pandemic Ethics Accelerator's Data use and Public values, transparency and governance workstreams.

Summary

The briefing covers **five** areas of relevance: **ethical and human rights considerations; comparative legal regimes in other nations; how the law is to be made; the view from healthcare unions; and the UK government's justification for mandating the wider rollout of the policy across healthcare staff only after it had been rolled out in care homes.**

This briefing responds to the policy outlined in the consultation, but we submit ethical reflections that are beyond the scope of the specific questions asked in the survey, which is the standard format offered for submissions. The question of whether vaccination across all frontline health and care staff should or should not be mandatory admits only a binary choice. Consequently, we might assume that the ethical case is straightforwardly persuasive in one direction rather than the other.

However, our submission indicates how the ethical consequences of the proposed policy turn on a number of competing considerations which must be held in balance. As such the submission aims to complement debates on the necessity or proportionality of the policy by highlighting these considerations, and how they come to bear on the ethical status of the policy.

1) Ethical and human rights considerations

Compulsory vaccination may be contrary to the ECHR and UDHR

Both the [European Convention on Human Rights](#) and the [Universal Declaration of Human Rights](#) uphold the right to bodily integrity, which, at least appears, to conflict with a policy of compulsory vaccination, other relevant considerations notwithstanding. The right to bodily integrity is a constituent of the right to private life, and mandating receipt of a vaccine undermines this entitlement. Mandatory vaccination across the NHS may therefore invite legal challenges by employees, and to the extent that the UDHR and ECHR are grounded by and enforce appropriate moral norms, the policy may also be vulnerable to the challenge that it is unethical.

Importantly, however, these rules are not absolute. They may be, and have been, [successfully challenged](#) if the balance of risks and benefits weighs in favour of mandating vaccination. The European Court of Human Rights has judged overriding the rule to be [justified](#) if it is necessary for preventing the spread of infection. Moreover, contravening the principles of the ECHR may be [argued to be justifiable](#) on the basis that since everyone has the right to be protected from the spread of disease, so mandatory vaccination may be an effective way of upholding this right.

Nevertheless, the existence of precedents in which these rules may be overridden do not make any and all challenges to it straightforward, or obviously ethical or legal. For instance, [two salient reasons](#) are: i) there are several ways of interpreting 'compulsory', which may range from physically restraining individuals to imposing fines for refusal, via imprisonment for refusal or, in the case of medical professionals, the revocation of a licence to practice; and ii) since even compulsory vaccination policies should have exceptions or opt-outs for certain groups, for example on religious grounds, it is unclear that it would be possible to impose the policy on all medical professionals in any case.

Compulsory vaccination may be unnecessary

Central to the justifiability of a policy of mandatory vaccination is whether or not it is a proportionate response to the circumstances. In the case of mandating Covid-19 vaccination across the NHS it is unclear that this would be proportionate, since it is likely to be unnecessary, given the rate of voluntary vaccine uptake so far. As far back as [March 2021](#), over 90% of eligible NHS frontline staff had taken up the offer of vaccination. As such, at the time of writing it is likely that only a small minority of NHS employees remain unvaccinated, and consequently it is unclear that mandating vaccination is a necessary or proportionate response.

The principle that all health and care staff should have the right to choose whether or not to be vaccinated is defended by the [Academy of Medical Royal Colleges](#). The General Medical Council stipulates in its [Duties of a Doctor guidelines](#) that it is in the interests of both patients and other doctors that protecting oneself against communicable diseases is good and ethical practice; and this appears to be guidance so far voluntarily complied with by a significant majority of doctors.

Of course, not all NHS staff are doctors, so it is important to ensure that there are similarly high rates of uptake across NHS professions; and there have been [reports](#) of lower rates of uptake by black and south Asian staff than among white staff. Nevertheless, it does not follow that mandating vaccination to increase rates in these groups is a rational or ethically acceptable solution. For reasons explained in the next section, such a policy may be harmfully coercive; but it may also be [counter-productive](#), since it may lead to attrition if healthcare staff either decide to leave or are dismissed from service for refusing to comply, and this is likely to have a negative impact on patient care. As such, weighing the harms and benefits does not clearly yield the conclusion that the best approach to vaccination in the NHS is to make it mandatory.

Compulsory vaccination may be harmfully coercive

Coercion of a harmful kind is a risk of a mandatory vaccination policy in the NHS. This should be distinguished from situations that are arguably coercive but in which the balance of harms and benefits is starker, such as, for example, mandating parents under pain of prosecution to ensure that their children receive education. While this could be construed as coercive, since it is possible that parents may prefer not to have their children educated, the harm to children from not doing so and the benefit to them from doing so far outweighs parents' preference in this case.

In the case of mandatory Covid-19 vaccination in the NHS, the balance is more equivocal, for several reasons. First, there is evidence to indicate that vaccine hesitancy in healthcare staff tends to be higher in [ethnic minority groups](#), who are also more likely to work in [lower paid](#) and more precarious healthcare roles. Given this marginalisation, the [Royal College of Nursing](#) has voiced concerns that mandatory vaccination may further entrench marginalisation by forcing people out of employment, either by dismissal or because they refuse to comply with the policy, citing evidence of unvaccinated care home staff already at risk of redundancy due to the mandatory vaccination policy as it applies in those settings. Coercion either to receive a vaccination because it is a condition of employment or to be faced with no option but to leave because of the policy must be taken seriously as a risk and ethically problematic outcome of making mandatory vaccination more widespread across the NHS.

A likely consequence of a policy that is coercive is that it will undermine trust between NHS employers and staff. Moreover, as [Liberty](#) has pointed out, this may also be counterproductive in

terms of public health if it leads to attrition in the NHS workforce having a negative impact on care. The organisation goes on to note that NHS staff may be forced to choose between protecting their employment on one hand and their right to bodily autonomy on the other. As such, it is unclear why legal obligation to be vaccinated should be the strategy employed, rather than education and outreach, which has been used in the vaccination programme more generally across the population.

2) Comparative legal regimes

A policy like this will have implications for the human rights of NHS staff, who will have to agree to be vaccinated to continue their work. Similar policies were introduced in [other European countries](#). The US policy of mandatory vaccination targets federal employees, so it is not unlikely that these policies will be spread beyond medical professionals.

The policy of mandatory vaccination in the health and social care sectors is under consideration in other parts of Europe too, though, as experts from some of Pinsent Masons' European offices explain, the position is [different in each jurisdiction](#):

3) Method of law-making

The proposal to introduce mandated vaccination by means of secondary legislation is of significant procedural and democratic concern. Throughout the pandemic the Government has demonstrated a degree of reliance on delegated law-making that has raised concern about the marginalisation of Parliament and the legitimacy of the mechanisms of pandemic response. While secondary legislation is an important regulatory resource, in principle significant policy decisions that have complex and perhaps unclear implications for rights, including the right to private life and potentially employment-related rights, should be subject to full and robust scrutiny in Parliament. This is best achieved by proposing any legal mandate for vaccination in primary legislation, subjecting it to appropriate pre legislative scrutiny and full legislative scrutiny in Parliament. The legislation should also include a robust review mechanism, such as evidence-based review and reporting requirements, by which the impact of the policy on both public health and individual rights can be assessed in six months, with the possibility for the legislative scheme to be amended or expired by Parliament should the evidence base suggest that it is not effective, is not proportionate, or cannot be justified by reference to its effects.

4) The view from healthcare unions

There is notable consistency across healthcare unions against a policy of mandatory vaccination more widely throughout the NHS. [Unite has stated](#) that it opposes implementing a policy which would force staff to risk their employment for refusal to be vaccinated. The union has allied itself with the World Health Organisation's position on Covid-19 vaccination, which is that the NHS should pursue a strategy of 'encouragement, not compulsion', on the basis that this has been demonstrably effective, at least in the UK, so far. Again, implicit in this position is that a mandatory vaccination policy would be unnecessary for what is required to protect public health, and as such disproportionate.

In relation to the issue of disparities between vaccination rates in different ethnic backgrounds, the [British Medical Association](#) has insisted that any policy on mandatory vaccination is not discriminatory. Their position is consistent with NHS guidance, emphasising education about vaccination rather than compulsion, and establishing mitigations against transmission for doctors who do not take up an offer of vaccination. Again, coercion is raised by the BMA as an ethical risk, in that it would be unreasonable for doctors to be facing losing their jobs for refusing a vaccine, given the strain that has been put on those and other healthcare staff already during the pandemic.

Similarly, the question of necessity has been noted by healthcare unions as well. The [NHS Confederation](#), which represents frontline healthcare staff in England, Wales and Northern Ireland, has disputed that a policy of mandatory vaccination is necessary. Since the vast majority of NHS staff have voluntarily been vaccinated, the emphasis should be on providing education about and easy access to vaccination for people as yet unvaccinated, rather than compulsion. The Confederation pointed out that, clearly, if vaccination rates were an issue, they would be considering what strategies might increase them to an adequate level, but since they are already high, they have identified that it is unclear why mandating vaccination is required.

5) Government justification for the policy after its implementation in care homes

Mandating vaccination should be considered only if it is a necessary and proportionate means of attaining a rate of vaccine coverage that is high enough. Vaccination is highly effective in both reducing severe symptoms and deaths from Covid, and also in reducing transmission. However, Covid vaccination does not by itself completely prevent disease transmission or morbidity. It would be incorrect to assume that vaccinated staff are unable to transmit the disease. Vaccination thus can currently realistically reduce, rather than eliminate transmission.

Even a 100% coverage of staff with vaccination would not ensure that no NHS staff will either transmit or get Covid. So one crucial question is what level of vaccine coverage among staff is high enough. This is not a purely technical question: rather it involves integrating the results scientific modelling with a set of ethical assumptions about risk, responsibility and the duties of health professionals.

The government position on these ethical questions has not been articulated very explicitly, but it seems to have shifted significantly in the past months. In May, the government consulted on mandatory vaccination for registered persons of all Care Quality Commission (CQC) registered care homes. The rationale for mandating vaccination in care homes was advice from the [SAGE Social Care Working group](#) that “people living in care homes have been particularly impacted by the COVID-19 pandemic, due to a combination of a heightened risk of severe outcomes following COVID-19 infection and the risk of outbreaks in closed settings.”

In May 2021, the consultation document reported that the SAGE Social Care Working Group had advised that “at least 80% of staff and 90% of residents in a care home should have had a first vaccination dose to provide a minimum level of protection against outbreaks of COVID-19... the dual 80% or 90% threshold provides only a minimum level of protection; higher coverage and both doses would increase that level of protection.” However, the [consultation document](#) noted that “current or emergent variants may require even higher levels of coverage and/or new vaccines to sustain levels of protection.”

The rationale given in the consultation for mandating vaccination for care home workers was that while at 84.1%, average rates of vaccine uptake for staff in fact exceeded the 80% recommended by SAGE, rates remained low in some areas (and in particular London), and at there were many areas where the combination of both 80% vaccination for staff, and 90% for residents remained low.

However, despite these fears the vaccination rate is now much higher than initially set as a baseline. The [guidance](#) which is intended to accompany the mandatory vaccination policy that comes into force in November explicitly acknowledges that “The rollout of the COVID-19 vaccination to care homes has been phenomenal, thanks to effective leadership and collaboration across the social care sector and the NHS, in partnership with local authorities, as well as the dedication of care home managers in supporting and encouraging staff.” [As of 24 August 2021](#), “96.0% of residents and 89.8% of older adult care home staff have been reported to have received their first dose” and “94.0% of residents and 80.9% of older adult care home staff have also been reported to have received their second dose.”

While the delta variant is significantly more transmissible than earlier variants, it seems that there may also be an unacknowledged shift in *ethical* values as well, from a position in May where it was deemed important to ensure a minimum of vaccination coverage in care settings where clients are particularly vulnerable to infections, to one in which it is now deemed essential to have 100% vaccine coverage for *all* NHS staff regardless of whether they work with particularly vulnerable patient groups.

It is important to note that vaccination rates are already very high within the NHS. The [consultation document states](#) that as of the end of August, "The percentage of NHS trust staff who have received at least 1 dose (overall) is around 92% nationally, with 88% of staff having received both doses. The percentage of staff receiving a first dose is above 90% in all regions, bar London, which is at 86%."

Concluding remarks

In this submission we have shown that the question of whether the policy of mandatory vaccination across all frontline health and social care staff in England does not yield a straightforward answer. The ethical status of a decision to implement the policy turns on several competing considerations and a finely balanced judgement which negotiates these considerations is required.

Mandatory vaccination may have troubling human rights implications, it may be practically unnecessary, and it may be harmfully coercive, for the reasons provided here. The proposed route of secondary law-making for implementation of the policy is also of concern insofar as it may prevent parliament from having the proper oversight of a piece of legislation with significant, and possibly complex, privacy and employment implications. Finally, the views of healthcare unions should be taken into account when considering when to move forward with the policy, not least because, as we have stated and they have indicated, vaccination rates are already so high that it cannot be assumed to be necessary, all things considered.

By submitting this briefing beyond the standard questionnaire format offered online we have also highlighted a potential limitation in the way that the government's consultation has been framed. The direct question format has its advantages in focusing submission responses towards the most pertinent questions, but it necessarily excludes other formats, and makes it harder for respondents to present alternative futures as viable options.

Given the complexity of the topic and the importance of careful and comprehensive scrutiny of the ethical and legal considerations, as outlined by the content of this briefing, the standard questionnaire format offered limits the scope of the enquiry required for the government to make

fully informed policy choices. The submission we make here, therefore, stands in mitigation of these limitations.

About this evidence submission

This submission was supported by the UK Pandemic Ethics Accelerator, grant number AH/V013947/1. The submission was compiled by Dr Alex McKeown (University of Oxford), Prof James Wilson (University College London) and Prof John Coggon (University of Bristol). For further details contact Alex McKeown at the Department of Psychiatry and Wellcome Centre for Ethics and Humanities, University of Oxford, OX3 7JX. Email: alexander.mckeown@psych.ox.ac.uk

The *UK Pandemic Ethics Accelerator* is a UKRI/AHRC-funded initiative that aims to bring UK ethics research expertise to bear on the multiple, ongoing ethical challenges arising during pandemics. We provide rapid evidence, guidance, and critical analysis to decision-makers across science, medicine, government and public health. We also support public debate on key ethical challenges. See <https://ukpandemicethics.org>.

October 2021.

References

Adult social care monthly statistics, England: September 2021 - GOV.UK . Available at: <https://www.gov.uk/government/statistics/adult-social-care-in-england-monthly-statistics-september-2021/adult-social-care-monthly-statistics-england-september-2021>

Are COVID-19 vaccine mandates human rights violations? | World Economic Forum . Available at: <https://www.weforum.org/agenda/2021/08/are-covid-19-vaccine-mandates-a-human-rights-violation/>

Cedh, E. 'European Convention on Human Rights'. Available at: www.conventions.coe.int

Compulsory vaccination: what does human rights law say? . Available at: <https://theconversation.com/compulsory-vaccination-what-does-human-rights-law-say-167735>

Compulsory vaccination: what does human rights law say? . Available at: <https://theconversation.com/compulsory-vaccination-what-does-human-rights-law-say-167735>

Coronavirus (COVID-19) vaccination of people working or deployed in care homes: operational guidance - GOV.UK . Available at: <https://www.gov.uk/government/publications/vaccination-of-people-working-or-deployed-in-care-homes-operational-guidance/coronavirus-covid-19-vaccination-of-people-working-or-deployed-in-care-homes-operational-guidance>

Coronavirus (COVID-19) vaccination of people working or deployed in care homes: operational guidance - GOV.UK . Available at: <https://www.gov.uk/government/publications/vaccination-of-people-working-or-deployed-in-care-homes-operational-guidance/coronavirus-covid-19-vaccination-of-people-working-or-deployed-in-care-homes-operational-guidance>

Covid vaccine take-up lower among health workers, says Hancock | Health | The Guardian . Available at: <https://www.theguardian.com/world/2021/feb/15/covid-vaccine-take-up-in-england-lower-among-health-workers-says-hancock>

Covid-19: Vaccinated NHS staff numbers vary across England - BBC News . Available at: <https://www.bbc.co.uk/news/health-56291564>

Covid:19: Ethnic minority health staff are less likely to take up vaccine, early data show | The BMJ . Available at: <https://www.bmj.com/content/372/bmj.n460> .*Universal Declaration of Human Rights | United Nations* . Available at: <https://www.un.org/en/about-us/universal-declaration-of-human-rights>

COVID-19: Forcing all NHS staff to have coronavirus jab 'not necessary', says leading health group | Politics News | Sky News . Available at: <https://news.sky.com/story/covid-19-forcing-all-nhs-staff-to-have-coronavirus-jab-not-necessary-says-major-health-group-12399759>

Domain 2 - Safety and quality - GMC . Available at: <https://www.gmc-uk.org/ethical-guidance/ethical-guidance-for-doctors/good-medical-practice/domain-2---safety-and-quality#paragraph-29>

Iacobucci, G. (2021) 'Covid-19: GPs could get extra funding to boost vaccine uptake in hard-to-reach groups', *BMJ (Clinical research ed.)*. NLM (Medline), 372, p. n548. doi: 10.1136/BMJ.N548.

Iacobucci, G. (2021) 'Covid:19: Ethnic minority health staff are less likely to take up vaccine, early data show', *BMJ*, 372.

Iacobucci, G. (2021) 'Covid-19: No evidence that vaccines can affect fertility, says new guidance', *BMJ (Clinical research ed.)*. NLM (Medline), 372, p. n509. doi: 10.1136/BMJ.N509.

Is Mandatory Vaccination Against COVID-19 Justifiable Under the European Convention on Human Rights? - *Global Campus of Human Rights* . Available at: <https://gchumanrights.org/preparedness/article-on/is-mandatory-vaccination-against-covid-19-justifiable-under-the-european-convention-on-human-rights.html>

Liberty responds to reports of mandatory vaccines for care workers - *Liberty* . Available at: <https://www.libertyhumanrights.org.uk/issue/liberty-responds-to-reports-of-mandatory-vaccines-for-care-workers/>

Making vaccination a condition of deployment in older adult care homes - GOV.UK . Available at: <https://www.gov.uk/government/consultations/making-vaccination-a-condition-of-deployment-in-older-adult-care-homes>

Mandatory vaccination for NHS staff is incredibly complex issue, says BMA - BMA media centre - BMA . Available at: <https://www.bma.org.uk/bma-media-centre/mandatory-vaccination-for-nhs-staff-is-incredibly-complex-issue-says-bma>

Mandatory Covid-19 vaccinations in the health sector: the position across Europe . Available at: <https://www.pinsentmasons.com/out-law/analysis/mandatory-covid19-vaccinations-health-sector-position-across-europe>

Mandatory Vaccination of NHS Staff - Academy of Medical Royal Colleges . Available at: <https://www.aomrc.org.uk/news-and-views/mandatory-vaccination-of-nhs-staff/>

RCN position on whether staff must have the COVID-19 vaccine | Royal College of Nursing . Available at: <https://www.rcn.org.uk/about-us/our-influencing-work/position-statements/rcn-position-on-mandating-vaccination-for-health-and-social-care-staff>

Shemtob, L. *et al.* 'Vaccinating healthcare workers against covid-19'. doi: 10.1136/bmj.n1975.

SOLOMAKHIN v. UKRAINE . Available at: <https://hudoc.echr.coe.int/eng#%7B%22docname%22>

The ethnicity pay gap in the English NHS | The Nuffield Trust . Available at: <https://www.nuffieldtrust.org.uk/research/the-ethnicity-pay-gap-in-the-english-nhs#key-findings>

Unite repeats its opposition to the mandatory Covid vaccinations for NHS and social care staff . Available at: <https://www.unitetheunion.org/news-events/news/2021/september/unite-repeats-its-opposition-to-the-mandatory-covid-vaccinations-for-nhs-and-social-care-staff/>

About this evidence submission

This submission was supported by the UK Pandemic Ethics Accelerator, grant number AH/V013947/1. The submission was compiled by Dr Dr Alex McKeown (University of Oxford), Prof James Wilson (University College London), and Prof John Coggon (University of Bristol). For further details contact Alex McKeown at the Department of Psychiatry and Wellcome Centre for Ethics and Humanities at University of Oxford, OX3 7JX. Email: alexander.mckeown@psych.ox.ac.uk

The *UK Pandemic Ethics Accelerator* is a UKRI/AHRC-funded initiative that aims to bring UK ethics research expertise to bear on the multiple, ongoing ethical challenges arising during pandemics. We provide rapid evidence, guidance, and critical analysis to decision-makers across science, medicine, government and public health. We also support public debate on key ethical challenges. See <https://ukpandemicethics.org>.

October 2021.