

# **LIBERTY**

## **LIBERTY'S RESPONSE TO THE DEPARTMENT OF HEALTH AND SOCIAL CARE (DHSC) PROPOSAL FOR MAKING VACCINATION A CONDITION OF DEPLOYMENT IN THE HEALTH AND WIDER SOCIAL CARE SECTOR**

**OCTOBER 2021**

## **ABOUT LIBERTY**

Liberty is an independent membership organisation. We challenge injustice, defend freedom and campaign to make sure everyone in the UK is treated fairly. We are campaigners, lawyers and policy experts who work together to protect rights and hold the powerful to account.

Liberty provides policy responses to Government consultations on all issues which have implications for human rights and civil liberties. We also submit evidence to Select Committees, inquiries and other policy fora, and undertake independent, funded research.

Liberty's policy papers are available at <https://www.libertyhumanrights.org.uk/policy>.

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## **INTRODUCTION**

Liberty welcomes the opportunity to respond to the Department of Health and Social Care (DHSC) proposal for making vaccination a condition of deployment in the health and wider social care sector.

## **PROTECTED CHARACTERISTICS**

### **QUESTION**

Are there particular groups of people, such as those with protected characteristics, who would be particularly negatively affected by COVID-19 and flu vaccination being a condition of deployment in healthcare and social care?

Yes.

### **QUESTION**

Which particular groups might be negatively impacted and why?

1. Section 60 of the Equality Act 2010 states that employers must not discriminate, either directly or indirectly, because of a protected characteristic when recruiting employees.<sup>1</sup> It merits noting that the Department's own initial Public Sector Equality Duty (PSED) analysis indicates that making COVID-19 vaccination a condition of work in healthcare and social care settings will disproportionately impact certain groups over others.<sup>2</sup> Liberty believes that policies that make mandatory vaccination a condition of deployment in healthcare and social care settings will disproportionately impact communities of colour. To tackle the structural inequalities underpinning vaccine hesitancy and increase vaccine uptake, The Government must prioritise education-based alternatives that build trust between healthcare professionals and marginalised communities, as well as addressing the working conditions across the healthcare and social care settings that place Black, Asian and minority ethnic staff at an increased risk.
2. Recent data from the Office for National Statistics shows that vaccine hesitancy is highest amongst communities of colour.<sup>3</sup> The most common reasons for hesitancy surround concerns about vaccine side effects, long-term health implications

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<sup>1</sup> Equality and Human Rights Commission (EHRC), *Pre-employment health questions: guidance for employers on Section 60 of the Equality Act 2010*, 1 June 2014, available at: <https://www.equalityhumanrights.com/en/publication-download/pre-employment-health-questions-guidance-employers-section-60-equality-act-2010>

<sup>2</sup> Department of Health & Social Care, *Making vaccination a condition of deployment in the health and wider social care sector*, 9 September 2021, available at: <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>

<sup>3</sup> Office for National Statistics (ONS), *Coronavirus (COVID-19) latest insights*, 18 October 2021, available at: <https://www.ons.gov.uk/peoplepopulationandcommunity/healthandsocialcare/conditionsanddiseases/articles/coronaviruscovid19/latestinsights#vaccinations>

stemming from vaccination and general feelings of mistrust of health bodies.<sup>4</sup> This stems from historical concerns regarding unethical medical treatment<sup>5,6,7</sup> and migrants who have legitimate fears over data-sharing.<sup>8</sup> The Joint Committee on Human Rights (JCHR) reported in November 2020 that more than 60% of Black people do not believe that their health is protected by the NHS to the same extent as white people<sup>9</sup>

3. The negative impact of policies of mandatory vaccination on communities of colour is underlined by the significant role such communities play in our health and social care systems. It is well known that Black, Asian and minority ethnic people make up a significant proportion of the healthcare and social care workforce.<sup>10</sup> The Health and Social Care and Science and Technology Committees reported that Black, Asian and minority ethnic staff disproportionately faced difficulty in accessing appropriate and useable Personal Protective Equipment (PPE), meaning they were at greater risk when carrying out their work.<sup>11</sup>

## FURTHER COMMENTS

### QUESTION

We welcome any further comments you may have relating to this consultation.

1. Liberty opposes mandatory vaccination as a condition of deployment in healthcare and social care settings. We are concerned about the implications mandatory vaccination has in creating a two-tier system where some can access employment and essential services and others cannot. Such implications will be felt most sharply by communities of colour and disabled people.
2. Proposals to make mandatory vaccination a condition of deployment in healthcare and social care settings raise grave concerns about the right to bodily autonomy. Article 8 of the European Convention on Human Rights (ECHR), as enshrined in the Human Rights Act 1998, is interpreted to include a right to physical and mental integrity.<sup>12</sup> The right to bodily autonomy is an established human right and is usually

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<sup>4</sup> Razai, M. 2021. *Covid-19 vaccine hesitancy among ethnic minority groups*, 26 February, available at: <https://www.bmj.com/content/372/bmj.n513>

<sup>5</sup> Morgan, W., *Poor vaccine take-up in BAME communities is not just down to hesitancy*, The Conversation, 1 March 2021, available at: <https://theconversation.com/poor-vaccine-take-up-in-bame-communities-is-not-just-down-to-hesitancy-155691>

<sup>6</sup> Gamble, V.N., *Under the shadow of Tuskegee: African Americans and health care*, November 1997 87(11), available at: <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC1381160/>

<sup>7</sup> Scientific Advisory Group for Emergencies, *Factors influencing COVID-19 vaccine uptake among minority ethnic groups*, 15 January 2021, available at: <https://www.gov.uk/government/publications/factors-influencing-covid-19-vaccine-uptake-among-minority-ethnic-groups-17-december-2020>

<sup>8</sup> Liberty, *Care Don't Share*, 3 December 2018, available at: <https://www.libertyhumanrights.org.uk/issue/care-dont-share/>

<sup>9</sup> Joint Committee on Human Rights, *Black people, racism and human rights*, 4 November 2020, available at: <https://committees.parliament.uk/publications/3376/documents/32359/default/>

<sup>10</sup> Health and Social Care, and Science and Technology Committees, *Coronavirus: lessons learned to date*, 12 October 2021, available at: <https://committees.parliament.uk/publications/7496/documents/78687/default/>

<sup>11</sup> *ibid*

<sup>12</sup> [Guide on Article 8 of the European Convention on Human Rights](#), European Court of Human Rights, (31 December 2020)

understood as the right to make decisions concerning one's own body and to be free from unwanted physical intrusion. As outlined previously, the proposed policy creates a distinct possibility of some people, particularly communities of colour, being unable to access employment and essential services on the basis of not receiving the vaccine. Even if refusal to receive the vaccine would not result in criminal or civil sanctions, a requirement to undergo medical treatment under the threat of losing employment, income or access to basic services could be understood as a form of coercion, undermining the idea that medical treatment should only take place with 'free and informed consent'.

3. This proposal is likely to have severe consequences for a health system already in crisis. A recent Unison survey of over 4000 care workers found that forcing employees to get vaccinated is likely to backfire.<sup>13</sup> Further, Age UK have raised concerns that mandatory vaccinations could lead to resignations across the sector where there are already severe staff retention and recruitment issues.<sup>14</sup> Research by the London School of Hygiene and Tropical Medicine and Public Health England suggested that policies of coercion towards health and social care workers have damaging implications, leading to an erosion of trust and hardened stances on declining vaccination.<sup>15</sup> The likely staffing crisis caused by policies of mandatory vaccination would have a tangible negative impact on disabled people, with services accessed by disabled people already on the brink of closure due to the Government's existing policy of mandatory vaccination for care home staff.<sup>16</sup> We acknowledge calls made by disabled activists for roll out of mandatory vaccination for health and social care professionals as much needed protection for disabled people who have been badly let down by the Government's pandemic response. Liberty's view is that such protection is best achieved through education-based measures that build trust and informed consent among health professionals.
4. Trust stands at the centre of effective vaccine roll-out. The British Medical Association (BMA) warned in response to the Government's plan to require care home workers to be vaccinated – which has since become law after minimal parliamentary scrutiny – that such a scheme might result in erosion of trust and hardened stances on declining vaccination.<sup>17</sup> It merits noting that NHS Guidance to support vaccine uptake among frontline staff showed a 60-70% conversion from initial decline to taking the vaccine following a one-to-one conversation<sup>18</sup>, demonstrating the effectiveness of measures that centre trust-building and dialogue. Additionally, the World Health Organisation (WHO) have cautioned against vaccine mandates on the

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<sup>13</sup> 'Care staff more likely to decline job if threatened by employers, says UNISON survey' (24 May 2021)

<sup>14</sup> Abrahams, C. *Forcing Covid jabs on England's exhausted care home staff won't work*. 29 June 2021, available at: <https://www.theguardian.com/commentisfree/2021/jun/29/covid-jab-england-care-home-staff-vaccinations>

<sup>15</sup> Bell, S et al. *COVID-19 vaccination beliefs, attitudes and behaviours among health and social care workers in the UK: a mixed-methods study*. April 2021, available at: <https://www.medrxiv.org/content/10.1101/2021.04.23.21255971v1>

<sup>16</sup> Halliday, J. *Holiday homes for disabled people face closure due to England's vaccines mandate*, 21 September 2021, available at: <https://www.theguardian.com/society/2021/sep/21/holiday-homes-disabled-closure-england-vaccine-mandate-covid>

<sup>17</sup> BMA, *Mandatory vaccination for NHS staff is incredibly complex issue, say BMA*, 16 June 2021, available at: <https://www.bma.org.uk/bma-media-centre/mandatory-vaccination-for-nhs-staff-is-incredibly-complex-issue-says-bma>

<sup>18</sup> NHS England, *Guidance to support COVID-19 vaccine uptake in frontline staff*, 12 March 2021, available at: <https://www.england.nhs.uk/coronavirus/wp-content/uploads/sites/52/2021/03/C1195-guidance-on-supporting-covid-19-vaccine-uptake-in-staff-v2.pdf>

basis that they may undermine public trust, affecting future vaccine uptake and adherence to other public health measures which would have long-lasting effects.<sup>19</sup>

5. Evidence in favour of mandatory vaccination is minimal. Rather, research shows that mandatory vaccination programmes are likely to be counterproductive and risk increasing vaccine hesitancy.<sup>20</sup> Similarly, data on vaccine uptake from numerous European countries suggests that countries adopting policies of mandatory vaccination do not achieve a higher rate of vaccine uptake than neighbouring or similar countries who do not adopt such a policy.<sup>21</sup> Indeed, it is important to note that vaccine uptake across the UK is already high. The DHSC recently reported that over 90% of care home staff have received their first dose of the Covid-19 vaccine<sup>22</sup> which is in line with SAGE advice that a minimum uptake rate of 80% is needed to provide protection against outbreaks of COVID-19 in social care settings.<sup>23</sup>
6. These proposals must be viewed as part of a wider trend of policies of coercion from the Government as seen through their response to the pandemic thus far as well as plans to further roll out mandatory Covid certification. Such policies must also be viewed in the context of widespread inequality, particularly as October 2021 marked the end of the few vital protections introduced by the Government such as the furlough scheme and the Universal Credit uplift. Liberty is concerned that the rolling out of mandatory vaccination in healthcare and social care settings would entrench, rather than address, discrimination and in doing so, actually exacerbate health inequalities.
7. Liberty has always backed necessary and proportionate measures to protect public health. We believe that the Government's focus should be on removing barriers to vaccination and building trust through education-based measures. The continued pursual of criminalising and coercive measures such as those seen under the Coronavirus Act 2020 may further damage public trust, particularly among communities of colour. We strongly urge DHSC to reconsider its proposal to make mandatory vaccination a condition of deployment in healthcare and social care settings and instead devise strategies that will effectively protect everyone.

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<sup>19</sup> World Health Organization, *COVID-19 and mandatory vaccination: ethical considerations and caveats*, 13 April 2021, available at: <https://apps.who.int/iris/rest/bitstreams/1342697/retrieve>

<sup>20</sup> Betsch, C., and Bohm, R., *Detrimental effects of introducing partial compulsory vaccination: experimental evidence*, *European Journal of Public Health*, 21 August 2015 26(3), available at: <https://academic.oup.com/eurpub/article/26/3/378/2467110>

<sup>21</sup> ASSET, *Compulsory vaccination and rates of coverage immunisation in Europe*, 2017, available at: [http://www.asset-scienceinsociety.eu/reports/pdf/asset\\_dataviz\\_1.pdf](http://www.asset-scienceinsociety.eu/reports/pdf/asset_dataviz_1.pdf)

<sup>22</sup> Halliday, J. *Holiday homes for disabled people face closure due to England's vaccines mandate*, 21 September 2021, available at: <https://www.theguardian.com/society/2021/sep/21/holiday-homes-disabled-closure-england-vaccine-mandate-covid>

<sup>23</sup> Department of Health and Social Care (DHSC), *Everyone working in care homes to be fully vaccinated under new law to protect residents*, 16 June 2021, available at: <https://www.gov.uk/government/news/everyone-working-in-care-homes-to-be-fully-vaccinated-under-new-law-to-protect-residents>