NUFFIELD COUNCIL ON BIOETHICS

Response to HM Government COVID-Status Certification Review

March 2021

Q1) Which of the following best describes the capacity in which you are responding to this call for evidence?

F) A social enterprise or charity

Q2) In your view, what are the key considerations, including opportunities and risks, associated with a potential COVID-status certification scheme?

The Nuffield Council on Bioethics is an independent body that informs policy and public debate about the ethical questions raised by biological and medical research. In June 2020, we published a Covid-19 antibody testing and immunity certification briefing. We engaged with the Chief Medical Officer and the Chief Scientific Advisor who confirmed Government were not considering it at that time because the science around immunity was still unclear. At that time, the only source of immunity was prior infection, although the issues also apply to vaccine-acquired immunity.

The Nuffield Council on Bioethics response focuses on ethical, equalities and privacy considerations. The idea of COVID-status certification raises many ethical questions concerning; respect for individual rights and interests; public health responsibilities of government, industry, institutions, individuals; and of social justice. There is a need to give anticipatory ethical consideration to the development of testing and immunity certification and to the potential for innovation that takes place in circumstances of national emergency to inadvertently embed approaches such as; data use for surveillance, data shared with different agencies, or for the routine carrying of app-based certification of health status.

In normal circumstances, taking a biomedical test or vaccine is a voluntary act. Having a meaningful choice, however, depends on there being a range of options with tolerable consequences available. The context in which certification is offered may, for example, put pressure on individuals to conform or lead to stigmatisation or exclusion. 'Vaccine passporting' or certification could be used to make decisions about people's employment, or their access to goods and services. These applications could exacerbate disadvantage already experienced by groups in society throughout this pandemic. Governments have a responsibility to identify the likely adverse impacts of any COVID-19 certification proposals and put appropriate measures in place, engaging with and supporting those in positions of vulnerability and disadvantage.

Building such infrastructures around vaccination programmes could exacerbate distrust by marginalised groups and increase vaccine hesitancy, particularly if this is seen as

introducing mandatory vaccination by the back door, or building surveillance apparatus for communities that are already disproportionately monitored. The move towards a system of individualised risk scoring could also undermine public health by treating a collective problem as an individual one. This could inadvertently encourage certified individuals to reduced compliance of non-pharmaceutical measures such as social distancing, hand hygiene and masks.

Embedding surveillance technologies creates both commercial and political opportunities that would need to be carefully examined. Technologies, such as smartphone apps, that have advantages of resistance to fraud also have the potential for expanded functionality, for example collecting data for disease surveillance and epidemiological research. They also have the potential to be used for identity verification, more sophisticated risk profiling (rather than simply inscribing the result of a single test/result) and generalised surveillance. Once available for one purpose (for example, public health surveillance), incentives to use it for additional purposes are likely to emerge.

If access to goods and other benefits are attached to the use of a particular form of technology, the technology is more likely to be adopted voluntarily by those who have access. This can easily lead to widespread diffusion and embedding of proprietary technologies, especially if they are endorsed by Government. Access to and acceptance of technology are not, however, equally distributed and the choice of technology may exclude or deter individuals and groups from obtaining the potential benefits available. The questions of protecting freedoms and avoiding inequalities must, therefore, be addressed at the level of policy (i.e. the uses to which vaccination/test results or other biomarkers may be put) rather than simply at the level of individual choice (i.e. ensuring that tests are taken and results shared voluntarily). Regulatory measures may be needed to secure the benefits while defending against morally unacceptable and socially undesirable consequences.

Tension between individual rights and public interest are likely to arise and cause social disruption: for example, a preference for those who can provide proof of COVID-19 status and a loss of opportunity for those who cannot; the creation of a system which puts a premium on biological markers and risk; and an incentive to fake, manipulate, or misreport vaccination/test status. The negative effects of any certification system are likely to fall disproportionately on the already socially marginalised and disadvantaged. Again, these impacts need to be identified and monitored by engaging with and supporting those in positions of vulnerability and disadvantage.

Covid-status certification could undoubtedly offer benefits to some (but not all) in terms of facilitating an earlier opportunity to be released from some (but not all) liberty-restricting measures. However, the likelihood of adverse impacts may be sufficient to warrant the use of regulatory measures specifically to control the private use of testing and certification technologies and/or to avert or redress their effects. There is, similarly, a need for public debate about how well the proposed infrastructures and the possible involvement of private actors promote the public good, taking into account the diversity of generations, genders, localities, and socio-cultural groupings, and how these approaches compare with possible alternatives, before they become the default model for the future expansion of testing, profiling and surveillance.

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