

## Department of Health and Social Care consultation on making vaccination a condition of deployment in the health and wider social care sector

### Nuffield Council on Bioethics response

October 2021

#### Key points

- We support the Government's objective to increase COVID-19 and flu vaccine uptake among health and social care workers as a means to protect patients, service users and co-workers from harm.
- To increase vaccine uptake, a range of public health interventions are possible. From an ethical point of view, interventions that are most intrusive or restrictive, such as making vaccination a condition of deployment, require a strong justification and clear evidence that less intrusive measures are less effective.
- The consultation document does not provide adequate information and evidence on: the level of vaccine uptake that the policy is aiming to achieve and why; the likely effectiveness of the policy in increasing vaccine uptake and in protecting patients and workers from harm; and the potential unintended consequences of the policy, including those related to staffing and functioning of health and social care services.
- Before moving to a policy of mandating vaccination, the Government should evaluate more thoroughly the reasons why some health and social care workers are not taking up the offer of a vaccine, and the effectiveness and impact of less intrusive interventions to increase vaccine uptake.
- If evidence to this effect emerges as a result of the consultation, it will be important for the Government to set this out clearly, alongside the ethical considerations that have informed its judgements on this matter.
- If the evidence base remains weak, the Government should consider allowing more time to monitor the effects of making vaccination a condition of deployment in care homes before extending it to all health and care workers.

#### Introduction

- 1 The Nuffield Council on Bioethics welcomes the opportunity to respond to [this Government consultation on making vaccination a condition of deployment in the](#)

[health and wider social care sector in England](#). Our response draws on our previously published work on [vaccine access and uptake](#); our in-depth inquiry into [public health ethics](#); and a workshop held on 18 May 2021 focusing on the proposal to make vaccination a condition of deployment for care home workers which informed the [Council's response](#) to the Government's consultation on this topic.

- 2 Below is a summary of the main themes that have emerged from our inquiries and discussions, which we hope will be helpful to the Department of Health and Social Care as it develops policy in this area.

### **The state as a steward of public health**

- 3 The state has a responsibility to protect its citizens and ensure that people can live healthy lives if they wish. This includes promoting public health and minimising risks of harms to others, particularly vulnerable groups, and reducing health inequalities. In this context, we support the overall aim of the Government's response to COVID-19 in health and social care settings to protect and promote the health of patients, service users, and workers.
- 4 However, there are other important factors that should be taken into consideration when developing public health policy, which can sometimes come into tension. These include the importance of not attempting to coerce adults to lead healthy lives, minimising interventions that are perceived as unduly intrusive and in conflict with important personal values, and minimising interventions that are introduced without the individual consent of those affected, or without procedural justice arrangements.<sup>1</sup>
- 5 From an ethical point of view, public health interventions that are most intrusive or restrictive require a strong justification and clear evidence that less intrusive measures would be or have been less effective.<sup>2</sup>
- 6 The Government's own ethical framework for responding to COVID-19 in adult social care states that, in order to be reasonable, decisions need to be rational, fair, practical, and grounded in appropriate processes, available evidence, and a clear justification.<sup>3</sup>

### **The ethics of mandatory vaccination**

- 7 There is broad agreement that ensuring a high level of vaccination among health and social workers is important in order to protect patients and members of the staff. By reducing the risk of both symptomatic and asymptomatic infection, a high level of vaccination can help reduce transmission of COVID-19 within health and social care premises, thereby protecting the most vulnerable from harm.

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<sup>1</sup> See: Nuffield Council on Bioethics (2007) [Public health: ethical issues](#) for a description of the Nuffield Council on Bioethics stewardship model.

<sup>2</sup> See: Nuffield Council on Bioethics (2007) [Public health: ethical issues](#) for a description of the Nuffield Council on Bioethics intervention ladder.

<sup>3</sup> Department of Health and Social Care (28 April 2021) *Responding to COVID-19: the ethical framework for adult social care*, available at: <https://www.gov.uk/government/publications/covid-19-ethical-framework-for-adult-social-care/responding-to-covid-19-the-ethical-framework-for-adult-social-care>

- 8 Increasing vaccination levels by making vaccination a condition of deployment for health and social care workers would be a highly restrictive intervention that would appear near the top of the Nuffield Council on Bioethics' public health intervention ladder.<sup>4</sup> The intervention ladder suggests a way of thinking about the acceptability and justification of different public health policies. The least intrusive step on the ladder is to not intervene or simply monitor a given situation. The most intrusive is to legislate in such a way as to restrict the liberties of individuals and populations. In the context of vaccination policies, restrictive and intrusive measures are those that go further than simply providing information and encouragement to take-up the offer of a vaccine, for example by adopting mandatory or quasi-mandatory interventions.<sup>5</sup>
- 9 Given the state's role and responsibilities, policies to mandate vaccination might be justified. However, whether this is a proportionate intervention would depend on the risks associated with the vaccine; the seriousness of the threat of disease; and whether there is evidence that a mandate would be more effective than other measures to encourage voluntary vaccination.

The Nuffield Council on Bioethics' Intervention ladder



### Objective of the policy

- 10 We support the Government's objective to increase COVID-19 and flu vaccine uptake among health and social care workers as a means to protect patients,

<sup>4</sup> See: Nuffield Council on Bioethics (2007) [Public health: ethical issues](#) for a description of the Nuffield Council on Bioethics intervention ladder.

<sup>5</sup> The Nuffield Council on Bioethics has identified three broad approaches to vaccination policies with different levels of intrusiveness: voluntary, incentivised and quasi-mandatory. See: Nuffield Council on Bioethics (2007) [Public health: ethical issues](#) for a description of the different approaches to vaccination policies.

service users and co-workers from harm, including those who may have a suboptimal response to immunisation.

- 11 To achieve this, the Government proposes to make COVID-19 and flu vaccination a condition of deployment in health and social care settings. It would be helpful to understand the level of vaccine uptake that this policy proposal would be aiming to achieve and why. Uptake levels are already high. As stated in the consultation document, for NHS trusts, uptake rates vary from around 83% to 97% for first dose (78% to 94% for both doses). In social care, 81% of domiciliary care staff and 75% of staff in other settings had received 1 dose of the vaccine as of 19 August. The consultation document implies that the intention is for all those deployed in providing direct care to be vaccinated. It will be important for stakeholders, not least health and social care staff themselves, to understand the justification for this objective and why the Government has opted for national-level interventions rather than targeted or regional approaches.

### **Evidence on effectiveness and risks of the vaccines**

- 12 The level of effectiveness of the vaccines in protecting against infection, serious ill health, and transmission need to be considered. There is high confidence in the effectiveness of both the Oxford-AstraZeneca and Pfizer-BioNTech vaccines in reducing the risk of ill health with the COVID-19 Delta variant (around 70% and 85%, respectively).<sup>6</sup> This is also the case for the risks of death and hospitalisations.<sup>7</sup> With regard to flu vaccines, the consultation document reports an effectiveness of around 30 to 70% in healthy adults, depending on the composition of the vaccine, the circulating strains, the type of vaccine and the age of the individual being vaccinated.
- 13 There is still uncertainty, however, around how effectively the vaccines can protect against infection and, importantly, transmission and whether they will continue to do so with new variants emerging. Available data suggests that both vaccines are effective in reducing the risk of symptomatic and asymptomatic infection with the Delta variant (with the Oxford-AstraZeneca vaccine being around 65% effective and the Pfizer-BioNTech being around 80% effective). As uninfected individuals cannot transmit the virus, such evidence implies that vaccines are also effective in reducing transmission. A recent household transmission study also suggests that the Oxford-AstraZeneca and Pfizer-BioNTech vaccines could reduce the risk of transmission from those who have already been infected with COVID-19.<sup>8</sup> As stated in the COVID-19 vaccine surveillance report however, data available on effectiveness against infection and transmission is still limited and results are inconclusive.<sup>9</sup> It is important to note that, as initial data suggests, the effectiveness of both vaccines in reducing the risk of infections might be diminished with the Delta

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<sup>6</sup> Public Health England (September 2021) COVID-19 vaccine surveillance report: 23 September 2021 (week 38), available at: <https://www.gov.uk/government/publications/covid-19-vaccine-surveillance-report>

<sup>7</sup> Ibid.

<sup>8</sup> Ibid. It must be noted that this study relates to a period where the Alpha variant dominated.

<sup>9</sup> Ibid.

variant, as compared to previous variants.<sup>10</sup> In addition, evidence has also emerged on possible risks of the vaccines including serious, although very rare, side effects.<sup>11</sup>

### **Effectiveness of mandatory vaccination**

14 The likely effectiveness of the policy in achieving its goal, as compared to other less intrusive policies, should be central to a decision about whether mandatory vaccination is a proportionate measure in this context. The consultation document does not provide adequate evidence on the likely effectiveness of the policy, or any other supporting information, to justify the proposed policy.

15 The risk that the policy might result in an embedding or worsening of vaccine hesitancy and loss of trust needs consideration. A recent study examining COVID-19 vaccine attitudes and behaviours among health and social care workers in the UK found that those who experienced employer pressure to get vaccinated felt this exacerbated their vaccine concerns and increased distrust.<sup>12</sup> Distrust in COVID-19 vaccination, healthcare providers, and policymakers were found to be important factors influencing vaccine uptake.<sup>13</sup>

### **Unintended consequences**

16 As well as affecting vaccine uptake, the policy may have other consequences that require consideration. For example, following the new regulation on mandatory vaccination for care home staff which will come into force from 11 November 2021, it is estimated that around the 7% of the care home workforce will choose to remain unvaccinated, potentially causing significant disruptions to services.<sup>14</sup> The costs to the care home sector of replacing those workers would be £100 million. The current consultation document does not include a similar Statement of Impact but acknowledges that some health and social care workers may continue to decide not to be vaccinated, and therefore will no longer meet the requirements to be deployed. As such, it is important to reflect on the potential staffing and cost implications of the proposed policy. A reduction in staffing levels might lead to significant disruptions to care and this could affect patients in many ways. It would be important, for example, to consider how suddenly changing or losing a carer may impact patients and service users. Given the current shortage of both health<sup>15</sup>

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<sup>10</sup> Pouwel KB *et al.* (2021) Impact of Delta on viral burden and vaccine effectiveness against new SARS-CoV-2 infections in the UK *MedRxiv*

<sup>11</sup> Public Health England (16 September 2021) *COVID-19: the green book, chapter 14a*, available at: <https://www.gov.uk/government/publications/covid-19-the-green-book-chapter-14a>

<sup>12</sup> Bell S *et al.* (2021) COVID-19 vaccination beliefs, attitudes, and behaviours among health and social care workers in the UK: a mixed-methods study *MedRxiv*

<sup>13</sup> *Ibid.*

<sup>14</sup> Department of Health and Social Care (11 July 2021) Statement of impact – The Health and Social Care Act 2008 (Regulated Activities) (Amendment) (Coronavirus) Regulations 2021, available at: <https://www.gov.uk/government/consultations/making-vaccination-a-condition-of-deployment-in-older-adult-care-homes/outcome/statement-of-impact-the-health-and-social-care-act-2008-regulated-activities-amendment-coronavirus-regulations-2021>

<sup>15</sup> BMA (13 September) NHS short of 50,000 doctors heading into winter, BMA research finds, available at: <https://www.bma.org.uk/bma-media-centre/nhs-short-of-50-000-doctors-heading-into-winter-bma-research->

and social care<sup>16</sup> workers, the possible effects of a further reduction in the workforce need to be considered, particularly in light of the current backlog of non-COVID care.<sup>17</sup>

17 This policy is likely to affect certain people more than others, raising concerns about unequal impacts. The Equality Impacts assessment included in the consultation document acknowledges that Black health and social care workers and those who hold certain beliefs – religious and non-religious – may be more likely to feel compelled to have a vaccine they do not want, or feel unable to satisfy a statutory requirement which may ultimately result in them losing their job.

18 In summary, it is currently unclear whether the proposed policy will be successful in its aim of protecting the most vulnerable from harm and what the unintended consequences might be. If evidence to this effect emerges as a result of this consultation, it will be important for the Government to set this out clearly, alongside the ethical considerations that have informed its judgements on this matter.<sup>18</sup>

### Consent and coercion

19 Making vaccination a condition of deployment for health and social care workers has implications for individual consent and civic liberty. As set out in the Greenbook Immunisation against infectious diseases, consent to immunisation is valid when given freely, voluntarily, and without coercion by an appropriately informed person.<sup>19</sup> This is in line with the principles set out by the General Medical Council in their guidance on decision-making and consent.<sup>20</sup> On a public health level, for a public health programme to be carried out ethically by a stewardship guided state, it is fundamental to minimise interventions that are perceived as unduly intrusive, in conflict with important personal values, and introduced without the individual consent of those affected.<sup>21</sup> These and other core characteristics of ethical public health programmes are discussed in the Nuffield Council on Bioethics' 2007 report *Public health: ethical issues*.<sup>22</sup>

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finds; Nursing Times (28 April 2021) *The UK nursing crisis*, available at: <https://www.nursingtimes.net/clinical-archive/healthcare-it/the-uk-nursing-crisis-2021-and-beyond-28-04-2021/>

<sup>16</sup> Sky News (30 August 2021) Social care facing 'unprecedented crisis' over staff shortages, say officials, available at: <https://news.sky.com/story/social-care-facing-unprecedented-crisis-over-staff-shortages-say-officials-12395264>

<sup>17</sup> BMA (16 September 2021) *Pressure points in the NHS*, available at: <https://www.bma.org.uk/advice-and-support/nhs-delivery-and-workforce/pressures/pressure-points-in-the-nhs>

<sup>18</sup> See Nuffield Council on Bioethics (2020) Statement: COVID-19 and the basics of democratic governance, available at: <https://www.nuffieldbioethics.org/news/statement-covid-19-and-the-basics-of-democratic-governance>

<sup>19</sup> Public Health England (17 December 2013) Immunisation against infectious disease, available at: <https://www.gov.uk/government/collections/immunisation-against-infectious-disease-the-green-book#the-green-book>

<sup>20</sup> General Medical Council (9 November 2020) Decision making and consent, available at: <https://www.gmc-uk.org/ethical-guidance/ethical-guidance-for-doctors/decision-making-and-consent>

<sup>21</sup> See: Nuffield Council on Bioethics (2007) [Public health: ethical issues](#) for a description of the Nuffield Council on Bioethics stewardship model.

<sup>22</sup> Nuffield Council on Bioethics (2007) [Public health: ethical issues](#)



20 If vaccination becomes a condition of deployment for all those undertaking direct treatment and personal care in the health and social care sector, individual consent and choice would depend on available redeployment alternatives. Arguably, lack of available alternatives would make this intervention a form of coercion.

### **Professional and organisational responsibilities**

21 All those working in health and social care with vulnerable people should accept a primary responsibility to avoid preventable harm to the people whom they are there to care for. Such moral duty, however, does not necessarily justify a legal obligation to have a vaccination. Current Government guidance already recommends that all staff who have regular contact with patients should be up to date with their routine vaccinations, and some vaccines, such as BCG, hepatitis B, and influenza, are recommended for specific workers.<sup>23</sup> Organisations such as the British Medical Association and the Royal College of Nursing are strongly encouraging their members to be vaccinated against COVID-19 and other diseases, but do not support mandatory vaccination.<sup>24</sup>

22 The safety and psychological wellbeing of staff should be of equal priority to that of patients. We would like to emphasise that, beyond vaccination, there are other factors that are important in order to ensure protection and the physical and psychological wellbeing of staff. A recent study highlighted that personal and organisational support, sufficient information and proper protection were among the factors associated with less distress among healthcare workers related to COVID-19. Major causes of concerns for staff included worries about contracting the disease and transmitting to family and colleagues, and inadequate PPE.<sup>25</sup>

23 Recently, a coalition of health and care organisations came together to ask their employing organisations for tangible actions to address the physical and emotional wellbeing of staff. They emphasise that health and care workers need to feel that their wellbeing is valued by their employers. Members of the coalition stressed that this has not always been the case in the past and that their wellbeing has not always been of equal priority to that of patients.<sup>26</sup>

### **The importance of monitoring public health interventions**

24 Monitoring of public health interventions is crucial, particularly where the evidence is weak. If the required evidence does not emerge as a result of this consultation,

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<sup>23</sup> Public Health England (2020) Immunisation of healthcare and laboratory staff: the green book, chapter 12, available at: <https://www.gov.uk/government/publications/immunisation-of-healthcare-and-laboratory-staff-the-green-book-chapter-12>

<sup>24</sup> See Pulse Today (13 September 2021) BMA backs motion calling for all doctors to have Covid jab, available at: <https://www.pulsetoday.co.uk/news/clinical-areas/immunology-and-vaccines/bma-backs-motion-calling-for-all-doctors-to-have-covid-jab/> and Royal College of Nursing (22 September 2021) RCN position on mandating vaccination for health and social care staff, 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>

<sup>25</sup> Murray E, Kaufman K, and Williams R (2021) Let us do better: Learning lessons for recovery of healthcare professionals during and after COVID-19 BJPsych Open **Published online:** 19 August 2021

<sup>26</sup> The King's Fund (9 June 2021) *Health and care organisations say more action is needed on staff health and wellbeing*, available at: <https://www.kingsfund.org.uk/publications/health-care-action-needed-staff-health-wellbeing>

the Government should consider allowing more time to monitor the effects of making vaccination a condition of deployment in care homes before extending it to all health and care workers. This would inform new policies and allow mitigation measures to be put in place to avoid unintended consequences.

### **Increasing vaccine uptake in other ways**

- 25 To increase vaccine uptake, a range of public health interventions are possible, with different degrees of likely effectiveness and different levels of coerciveness and intrusiveness imposed on individuals and institutions.
- 26 A number of measures have been put in place by the Government to encourage uptake of both COVID-19 and flu vaccines among health and social care workers, including interventions to facilitate access to vaccination and to address the concerns of those who are hesitant about receiving the vaccines. The consultation document does not include an evaluation of the effectiveness of these measures.
- 27 To inform the policy response, more evidence is needed about the reasons why some health and social care workers are not taking up the offer of a vaccine and why there is variation in vaccine uptake across health and care settings, and across regions. A recent study suggests that organisational factors, alongside concerns about vaccine effectiveness and safety and distrust in the provider and the policymaker, are among the main factors influencing vaccine uptake among health and social care workers. A lack of dialogue around vaccine effectiveness and safety<sup>27</sup> and feeling under pressure to vaccinate also play a role in decisions to decline the offer of the vaccine, sometimes increasing the intention to decline the offer.<sup>28</sup>

### **Conclusions**

- 28 We support the Government's objective to increase COVID-19 and flu vaccine uptake among health and social care workers as a means to protect patients, service users and co-workers from harm.
- 29 Increasing vaccination levels by making vaccination a condition of deployment for health and social care workers is a highly restrictive intervention and requires a strong justification. Whether this is a proportionate intervention would depend on a number of factors, including the risks associated with the vaccine; the seriousness of the threat of disease; and whether there is evidence that a mandate would be more effective than other measures to encourage voluntary vaccination. Before moving to a policy of mandating vaccination, we believe that there should be a rigorous approach to:
- exploring the reasons why some healthcare workers, or people more generally, are not taking up the offer of a vaccine; and
  - evaluating more thoroughly the effectiveness and impact of less intrusive interventions.

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<sup>27</sup> Nuffield Council on Bioethics (2021) *Vaccine access and uptake*, available at: <https://www.nuffieldbioethics.org/publications/vaccine-access-and-uptake>

<sup>28</sup> Bell S *et al.* (2021) COVID-19 vaccination beliefs, attitudes, and behaviours among health and social care workers in the UK: a mixed-methods study *MedRxiv*



30 If the evidence base remains weak, the Government should consider allowing more time to monitor the effects of making vaccination a condition of deployment in care homes before extending it to all health and care workers.