Revoking vaccination as a condition of deployment across all health and social care

DHSC consultation – NHS Providers response

Question 1

It is a statutory requirement that CQC-registered persons only permit those individuals who are vaccinated against COVID-19, unless otherwise exempt:

1. to be deployed for the provision of a CQC-regulated activity in health and/or social care and;
2. to enter CQC-registered care home premises

Which of the following best describes your preference for this requirement?

- I feel strongly that the requirement should be revoked
- I would prefer that the requirement is revoked
- I don't mind either way
- I would prefer that the requirement is not revoked
- I feel strongly that the requirement should not be revoked
- I don't know

Please note: answers to questions requiring a selection are denoted throughout this document with a yellow highlight (as above).

We agree that the government must, at this stage, proceed with its intention to revoke the requirement for NHS staff to be vaccinated as a condition of deployment (VCOD), having made public its intention to do so. Our reasoning for this position is based solely on the fact that another change in approach – or additional 'U-turn' – from political leaders would create frustration and disillusionment towards the government and local NHS leadership alike, and could risk damaging both the working relationship between trust leaders and the centre (DHSC and NHSE/I), the working relationship between NHS frontline staff and their employers, and trust between the public and patients and the NHS.

Trust leaders have been acting as custodians of the government's approach to mandating vaccination since proposals for a requirement were first made in the summer of 2021. They have always worked to maximise uptake – irrespective of varying viewpoints on the viability of mandation – and have been under no illusions as to their responsibilities to uphold the law as it has stood.

Below we set out an updated position on the government's decision to revoke the legal mandate based on feedback from trust leaders on the timing and communication of this change and the level of support for the legal position in the days leading up to 3 February (the previous deadline for first doses). It is worth reiterating that NHS Providers' response to the original consultation on VCOD in October 2021 highlighted[1]:

- that our survey of trust leaders showed a slight majority in support of a vaccine mandate for NHS staff, with 58% of trust leaders in favour of the policy and 32% opposed, according to a survey of 172 directors in 114 trusts
- that trust leaders held a series of reservations around the potential impact of the policy, underlined by the near unanimous concern among trust leaders (94%) about the potential for it to exacerbate staffing gaps in the NHS at a time of unprecedented operational pressure.

Despite our support for revoking VCOD at this time for the reasons outlined above, we continue, as do our members, to be clear that supporting and encouraging staff to receive the vaccine is the right approach to protect their colleagues, their patients and themselves, and trust leaders will continue to do so. However, our members have told us of their frustration and concern at the communication of this change in policy at the 11th hour, which risks undermining the trust they have sought to build as a result of the complex and sensitive conversations they have been working at pace to have with vaccine hesitant staff ahead of the initial implementation deadline[2]. At a time when trust leaders are working to support better integration of services, there is also concern at the impact this decision will have on social care colleagues who left their roles when VCOD became law in the social care sector last autumn. More broadly, there is significant concern that the reversal of the policy will have implications beyond the NHS, undermining public messaging around the efficacy and safety of COVID-19 vaccines for the wider public.

In the weeks immediately leading up to the initial implementation deadline, trust leaders told us they were – in the majority – supportive of the mandate at that point despite concerns regarding staffing gaps. Central to their continued support was a recognition of the effect a decision to revoke the mandate would have on hesitant staff who had received their vaccination, in part due to the risk to

[1] NHS Providers, consultation response, "Mandatory staff vaccination in health and social care": https://nhsproviders.org/resource-library/submissions/mandatory-staff-vaccinations-in-health-and-social-care-nhs-providers-response-to-dhsc-consultation

[2] NHS Providers, press release, "11th hour policy change on mandatory vaccination will cause frustration": https://nhsproviders.org/news-blogs/news/11th-hour-policy-change-on-mandatory-vaccination-will-cause-frustration

their job, since the mandate was announced. Conversely, frontline leaders also expressed concern that staff frustrated at colleagues who remained unvaccinated despite the mandate, would be upset at a last-minute change in policy – demonstrating the delicate balance of these sensitive conversations for trust leaders and their staff.

Despite majority support for mandatory vaccination from our members, no trust leader was ever under the illusion that this policy would not present significant risk, specifically with regard to losing dedicated, skilled members of their workforce, who had worked tirelessly throughout the pandemic and beyond. Redeployment opportunities were, and remain, limited and as the initial implementation deadline approached, staff vaccination rates varied significantly across trusts and geographies.

Leaders were also greatly concerned at the disproportionate impact the mandatory vaccination policy would have on minority ethnic staff and consequently on existing health inequalities, particularly as vaccine hesitancy is higher among ethnic minority communities nationally. Data is clear that minority ethnic staff are underrepresented in the highest Agenda for Change pay bands, face higher levels of bullying and harassment and increased levels of disciplinary action[3].

We are eager to work closely with officials in DHSC and NHSE/I to avoid the harshest potential effects of this sudden change of approach from government on trust leaders and NHS staff. Further work following the completion of this consultation period should focus primarily on ensuring trust leaders receive clear and consistent guidance to progress conversations with staff and adapt organisational policies around vaccination status. While an updated 'frequently asked questions' document issued by NHSE/I to HR directors on 7 February offered assistance, some key questions around the approach towards the recruitment, deployment and regulation of unvaccinated staff remain unanswered at this stage pending a formal, final decision and the issuing of updated guidance thereafter[4]. Communications from the centre on these matters must also be consistent with comments made by ministers in parliament and in messages shared through the media.

Additionally, we feel it is vitally important for the sector to reflect on the policy process undertaken to get to this point, including the impact the specific approach taken by ministers to increase vaccination rates has had on the NHS frontline over the past nine months. We wonder, for example, if legal

[3] NHS England, Workforce Race Equality Standard 2020: https://www.england.nhs.uk/publication/workforce-race-equality-standard-2020-supporting-data/

[4] NHS England, Update - Vaccination as a condition of deployment (VCOD) for all healthcare workers: https://www.england.nhs.uk/coronavirus/publication/update-vcod-for-all-healthcare-workers-feb-22/

mandation (with all the associated risks) was the most effective route to pursue to support vaccine uptake. We will take forward further conversations with officials on this point and offer our support as the voice for trust leaders, in the spirit of ensuring continuous learning and improvement in the NHS.

Question 2

Thinking about yourself, your colleagues, your staff or care providers who are hesitant to get vaccinated, do you believe there are other steps (other than those set out in the original consultation) the government and the health and care sector could take to increase vaccine uptake?

- yes
- no
- I don't know

If yes, what specific actions do you believe government and the health and social care sector should be taking to further increase vaccine uptake?

As outlined in our initial consultation response and in our conversations with decision makers to date, trust leaders have told us of a number of voluntary initiatives, including sensitive one to one conversations, that have been effective in increasing vaccine uptake among hesitant staff. Other successful approaches include team workshops and briefings, the use of onsite vaccination hubs, the deployment of diverse 'vaccination champions,' focused educational campaigns, the use of staff networks, and using experts and trusted community leaders to tackle misinformation. Trust leaders have been clear that culturally sensitive and voluntary approaches are key to supporting hesitant staff to receive their vaccine and should be built into continued efforts[5].

Question 3

Are there particular groups of people, such as those with protected characteristics, who would be particularly negatively affected by a COVID-19 vaccination not being a condition of deployment in healthcare and social care?

- yes
- no
- not sure

If, yes, which particular groups might be negatively impacted and why?

As outlined in our initial consultation response, vulnerable staff and patients would be negatively affected by the removal of VCOD – this includes older people and those with pre-existing comorbidities, as well as staff with certain protected characteristics. Data from the Office for National

[5] NHS Providers, consultation response, "Mandatory staff vaccination in health and social care": https://nhsproviders.org/resource-library/submissions/mandatory-staff-vaccinations-in-health-and-social-care-nhs-providers-response-to-dhsc-consultation

Statistics (ONS) has shown people from all ethnic minority groups, except Chinese women, have suffered an elevated risk of mortality from COVID-19 in the first and second waves of the pandemic. Disabled people have also been affected by negative outcomes as a result of the pandemic, including higher rates of concern for their mental health and of long COVID[6]. Whether or not mandation is the best policy lever to promote inoculation, we agree that vaccination is the best way for NHS staff to protect themselves, their colleagues and patients.

Question 4

Are there particular groups of people, such as those with protected characteristics, who would particularly benefit from a COVID-19 vaccination not being a condition of deployment in healthcare and social care?

- yes
- no
- not sure

If yes, which particular groups might be positively impacted and why?

As outlined in our initial consultation response, trust leaders are concerned about the impact VCOD would have on employment opportunities for minority ethnic staff due to concerning levels of vaccine hesitancy among some ethnic minority staff groups. VCOD always risked exacerbating inequalities more broadly across society and, in turn, undermining the work of trust leaders to actively promote equity, diversity and inclusion within their workforce and to tackle race disparity[7]. DHSC colleagues may wish to reflect on whether these risks were fully identified, assessed and mitigated ahead of implementation of the policy.

Question 5

What actions can the government and the health and social care sectors take to protect those with protected characteristics, or the groups you've identified, if COVID-19 vaccination is not a condition of deployment?

To protect staff and patients from COVID-19, the health and social care sector will continue to offer access to and training in the use of appropriate personal protective equipment (PPE), and ensure distancing measures are in place where appropriate and possible. We know that a number of trusts have made changes to their local recruitment policies and practices in order to encourage vaccine uptake, and we remain in close contact with colleagues in the professional regulators regarding their

[6] Ibid.

[7] Ibid.

plans on the same. Trusts will continue to use one to one conversations and support mechanisms to encourage staff to take up the offer of vaccination.

The NHS England People Plan 2020/21 outlines the continued importance of infection risk and prevention measures alongside the use of risk assessments for all staff, but particularly for those with protected characteristics and who are vulnerable[8]. We therefore welcomed the recent government announcement on the continuation of free PPE supplies until March next year[9], and would encourage the government's continued consideration of infection prevention and control (IPC) measures when setting NHS performance targets[10].

As we move into the next phase of our response to the pandemic, it is crucial that health and social care continue to have access to free COVID-19 testing in the form of rapid lateral flow devices (LFDs) and polymerase chain reaction (PCR) tests.

[8] NHS England, People Plan 2020/21: https://www.england.nhs.uk/publication/we-are-the-nhs-people-plan-for-2020-21-action-for-us-all/

[9] NHS Providers, press release, "Trust leaders will welcome extension of free PPE for frontline": https://nhsproviders.org/news-blogs/news/trust-leaders-will-welcome-extension-of-free-ppe-for-frontline

[10] NHS Providers, briefing, "Delivery plan for tackling the backlog of elective care": https://nhsproviders.org/resource-library/briefings/on-the-day-briefing-delivery-plan-for-tackling-the-backlog-of-elective-care