



Unite submission to the Department of Health and Social Care Making vaccination a condition of deployment in older adult care homes

- 1. How do you feel about the proposed requirement for workers in older adult care homes to have a COVID-19 vaccination?**

Not supportive

Please provide details to support your answer.

This evidence is submitted by Unite the union - the largest trade union in Britain and Ireland. Unite is the third largest trade union in the NHS and also has thousands of members working in social care with the not for profit and private sectors as well as local authorities.

Unite is strongly in favour of the UK vaccination program and has actively promoted the idea of Unite members taking up the offer of COVID-19 vaccinations. This has been through a major campaign of written communications, posters, video and social media, as well as peer to peer education.

Unite has also supported workplace related testing schemes, with a strong inclination towards PCR (polymerase chain reaction) testing carried out by health professionals. Although we see the value in Lateral Flow Testing (LFT) for detection of asymptomatic cases, as long as the accuracy limitations when self-administered are recognised.

A good example of Unite's work to support the vaccine comes from a lead care worker rep: "As a trade unionist I addressed 'vaccine hesitancy' of my colleagues by reaching out to excellent comrades in the BMA and arranging sessions where care workers could ask questions with a qualified GP. Our organisation went from 55% of staff taking the

vaccine to over 70%. I've had both vaccinations and have encouraged my peers to do the same. Saying this I oppose forced vaccinations.”

Unite believes all COVID-19 vaccination and COVID-19 testing regimes in the UK should be voluntary and not mandatory. Compulsion is a very bad way to achieve a high level response, will lead to increased resistance, a worsening staffing crisis and is embroiled with issues such as equalities, human rights, privacy, and ethical breaches.

Social care workers are some of the most exploited and vulnerable in the economy, with many working on precarious contracts such as through agencies or zero hours arrangements that mean many have no access to basic workplace health protects such as sick pay or sufficient PPE.

Care workers have little trust in the Government, following their experience of the pandemic. Many experienced being sent into unsafe workplaces with insufficient protection. They experienced the decision to discharge 'patients' from hospitals back into care homes leading to thousands of avoidable deaths. Care workers went into workplaces thinking of others before themselves and as a result hundreds of care workers died of COVID-19.

Social care is a demoralised workforce with substantial underfunding and a staffing crisis of around 122,000 FTE vacancies.

Unite therefore has considerable reservations about the implementation of mandatory vaccinations, not just in Social Care but in all scenarios and industries.

We also have reservations about reliance on the vaccine to prevent infection. Not enough is known about this or other aspects of the vaccines such as duration of protection, timing of boosters and how vaccines will fare against variants that are constantly evolving.

Until all these factors are known, reliance on vaccines alone would not be appropriate. Other control measures need to continue alongside vaccines, such as testing (an alternative to vaccination if professionally administered), social distancing, hygiene controls, and PPE.

2. Do you agree with using this definition to determine which care homes this regulation would apply to?

No

3. What concerns do you have about this definition?

Unite does not support mandatory vaccination.

4. Do you have any concerns about the proposal to limit this policy to older adult care homes?

Yes

Please explain your answer.

Unite does not support mandatory vaccination.

5. Which people working or visiting in an older adult care home should be covered by the scope of the policy?

a) Staff working for the care home provider who work in a separate building but may visit the care home occasionally (for example staff working in an off-site office)

No

b) Health professionals who visit the care home regularly and provide close personal care to people living in the care home

No

c) Other professionals who provide close personal care to people living in the care home, for example, hairdressers

No

d) All professionals who enter a care home regardless of their role, for example, electrician, plumber, art therapist, music therapist

No

e) Friends or family members designated as 'essential carers' who visit regularly and provide close personal care

No

f) All friends and family who may visit

No

g) Volunteers

No

6. Do you agree or disagree with the groups of people who would be exempt from this requirement?

Neither agree or disagree

Who else should be exempt from this requirement?

While Unite continues to support the vaccination programme on a voluntary basis, Unite believes that nobody should be obliged to be vaccinated. Such a policy will undermine the vaccination effort, be potentially discriminatory and could further exacerbate recruitment and staffing problems in the sector.

7. Your staff would need to be able to show that they had been vaccinated. How would you prefer that they do this?

Not applicable

8. How easy will this policy be for managers in older adult care homes to implement?

Very difficult

Please provide details to support your answer.

This policy would likely cause huge problems for care home managers including exacerbating existing serious issues around staffing and recruitment.

Mandatory vaccination may also lead to discrimination across the array of protected characteristics set out in the Equality Act 2010 (discussed later).

Should a requirement of proof of COVID-19 vaccination be introduced then the recording of proof needs certain considerations:

- Protection against fraud
- Protection of privacy
- Accessible to all

- Equitable
- Flexible and sustainable.

Digital formats may be preferred, but paper certificates would also need to be supported as many may not have a smart phone or be concerned about smart cards. There are concerns around privacy and fraud in particular, and these concerns lean to the fact that there is little confidence in the ability of government to produce a robust system. Before the introduction of any type of platform trade unions should be consulted and convinced that all the above criteria has been accommodated.

Understanding that the social care sector has a high proportion of migrant workers, consideration must also be given to international vaccine certification as workers may be vaccinated in their countries of origin.

9. Are there particular groups of people, such as those with protected characteristics, who would be particularly negatively affected by this policy?

Yes

10. Which particular groups might be negatively impacted and why?

Mandatory vaccination may lead to discrimination across the array of protected characteristics set out in the Equality Act 2010.

The Social Care sector is overwhelmingly staff by women in low paid jobs. Women would likely suffer detriment such as lack of adequate sick pay, pay for self-isolating and child care.

Women are far more likely to take time off to look after relatives and children who have a positive test. A certification scheme connected to testing would have less of a discriminatory impact if full financial compensation and rights to employment protection were made available for those who test positive. Unite strongly believes that unless safe guards are in place the policy will inevitably lead to unequal treatment for women.

There are also significant unknowns around vaccine safety for pregnant, breastfeeding women, and women and men who are who are undergoing or planning to undergo fertility treatment.

Similarly there is a clear danger that disabled persons will face detriment when applying for jobs and discrimination in a current roles. Disabled people may have very good medical reasons not to be vaccinated, reasons which also renders those people disabled under the Act. In addition, having to produce a certificate, may give rise to a disabled person having to explain their disability in order to enter or be turned away.

Vaccine hesitancy is likely to be high among people with mental illnesses, historically the uptake of similar vaccines such as the influenza vaccine in those with mental illness has been be as low as 25% (specifically those with severe mental illness)¹. There is currently little formal guidance and strategies to support those with mental health issues to access clear and reliable information and practical and easy access to vaccination².

Black and ethnic minorities (BAEM) and those with varying religious beliefs may object to the vaccine for various reasons with BAEM suffering additional health burdens that prevent vaccination. Whilst it was established the Astra Zeneca, Pfizer and Moderna vaccines did not use pork gelatine in their formulas, perception or the fact other companies have not yet released a list of ingredients is an important consideration.

The take up of the vaccine within this group is lower, therefore certification of this type will lead to a whole community being treated differently. Again alternative options such as additional controls, testing backed by financial support is essential.

Migrants and foreign nationals working in social care may not be registered with GPs and therefore may not have been offered vaccines. This group will be concerned about mandatory vaccines which may lead to difficulties both at work and accessing services.

¹ Lorenz RA , Norris MM , Norton LC , et al . Factors associated with influenza vaccination decisions among patients with mental illness. *Int J Psychiatry Med* 2013;46:1–13. pmid:<http://www.ncbi.nlm.nih.gov/pubmed/24547606>

² Smith et al. COVID-19 vaccines, hesitancy and mental health. *Evidence based mental health*: first published as 10.1136/ebmental-2021-300266 on 13 April 2021. Downloaded from <http://ebmh.bmj.com/>

11. What could we do to make sure they are not negatively impacted?

Unite believes that the best way to increase uptake of the vaccine is through education and encouragement.

There is a medical/legal framework about patients refusing a medical treatment and how it's dealt with. It would be unethical for care providers to go against the system that's used for patients by forcing staff to be vaccinated.

Unite encourages as many people as possible to be vaccinated but forcing them is completely wrong.

A certification scheme connected to testing would have less of a discriminatory impact if full financial compensation and rights to employment protection were made available for those who test positive.

Not only should financial support be made available but there should be a clear duty on the employer to undertake a personal risk assessment to ensure reasonable adjustments are in place for those with protected characteristics.

This is in addition to freely available testing regimes, in order to adequately provide an alternative to vaccination.

As stated earlier we have reservations about reliance on the vaccine to prevent infection. Not enough is known about this or other aspects of the vaccines such as duration of protection, timing of boosters and how vaccines will fare against variants that are constantly evolving.

Until all these factors are known, reliance on vaccines alone would not be appropriate. Other control measures need to continue alongside vaccines, such as testing (an alternative to vaccination if professionally administered), social distancing, hygiene controls, and PPE.

12. Do you have any concerns about the impact of the policy on the ability of older adult care homes to maintain a safe service?

Yes

13. Which of the following are concerns that you have about the impact of the policy on the ability of older adult care homes to maintain a safe service? (tick all that apply)

- Some staff may refuse the vaccine and leave their current job
- Some staff may leave in protest at the policy, if this conflicts with their personal beliefs
- Remaining staff may resent the requirement, reducing morale
- Staff may seek to challenge care homes in court

- The impact it could have on other measures affecting staff, such as reducing movement between health and care settings
- The supply of alternative trained staffing available
- The cost of short-term staff cover
- The cost of recruiting new permanent staff
- The time it will take to recruit new permanent staff

14. Please share any evidence and your sense of the scale of these impacts here:

Please provide details to support your answer.

Social care already has an acute staffing crisis and many workers who have continued to work throughout the pandemic are at breaking point. Mandatory vaccination could push the system over the edge.

15. How do you think we can minimise the impact of this new policy on the workforce? (tick all that apply)

- Ease of access to vaccination
- Specific funding to cover any costs associated with vaccination for example travel, time, costs of side effects
- Access to up to date and translated information
- Support from local authority vaccination champions
- Support from clinical leads linked to care home

16. Do you think this new policy could cause any conflict with other statutory requirements that care homes must meet?

- Yes
- No

17. Please give further detail on other statutory requirements that this new policy could conflict with.

There are major human rights and privacy implications from mandatory vaccination.

There will be human rights concerns and the right to respect private and family life in terms of having to demonstrate that the vaccine has been administered.

There are then privacy issues around how someone would demonstrate that they have been vaccinated and whether one or both vaccinations have been given. Questions arise around whether this information in any form be held by the service provider and how would privacy/personal data be protected? Given the information is medically related it would be placed in a special category, persons have the right to have medical information kept confidential.

There are also equalities considerations, for example the inability to have the vaccine linked to a protected characteristic would give rise to potential discrimination issues around any potential exclusion from care settings, even if these can be largely objectively justified in law.

There will be issues in respect of the other protected characteristics/discrimination and the ability to have the vaccine whether pregnancy or disability related, and how that affects the ability to access goods and services.

These mean that there would be potential challenges around equalities, privacy, human rights and employment rights.

In a workplace environment there will be an overriding requirement for employers to treat such information around vaccinations in line with General Data Protection Regulation (GDPR) and special category data. The 'no jab, no job' perspective has been widely trailed, the same issues arise around availability of the vaccine and the potentially age discriminatory nature of such a policy, notwithstanding the ability or otherwise for employers to introduce a policy on an existing workforce.

The potential introduction of compulsory vaccinations will also affect third parties such as patient transport, or delivery drivers and could lead to conflict with workforces and potential claims in the event of dismissals.

As described throughout this response, there will be those that are unable to have the vaccine for genuine, underlying reasons. There may be a compelling argument that workers can continue to work as they have been throughout the pandemic, but without the vaccine and observing good hand hygiene, social distancing and the use of PPE, where employers have been advising them that it has been safe to do so before the vaccine roll out.

Exclusions from the workplace or even dismissals will have to the potential to give rise to discrimination claims, therefore it is not obvious what alternative plans will be in place for those that are unable to have the vaccine and then there are considerations around having to advise employers of the inability to have the vaccine, for example having to advise an employer of pregnancy earlier than normally required or a disability not previously disclosed.

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This evidence was submitted on behalf of Unite the Union by:

Gail Cartmail
Assistant General Secretary, Unite the Union

For further information, please contact:

Rob Miguel
Health and Safety Officer, Unite the Union
Rob.Miguel@unitetheunion.org

James Lazou
Research Officer, Unite the Union,
James.Lazou@unitetheunion.org

Unite House, 128 Theobalds Road, Holborn, London, WC1X 8TN