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NEWS ANALYSIS

Covid-19: Is the UK heading towards mandatory vaccination of healthcare workers?

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Why is mandatory vaccination in the news?

Leaders at Chelsea and Westminster Hospital Foundation Trust have been discussing making covid-19 vaccination a contractual requirement for all staff, in a leaked email published by the *Independent* newspaper.¹

The email, signed by the trust's chief executive, Lesley Watts, was sent to NHS chiefs in the North West London region and included a draft letter for staff, which other trusts were encouraged to adapt and use, stating: "We will be making Covid vaccination mandatory for all our employees and it will form part of the employment contract. This will join Flu, Hep B and other vaccinations which we ask staff to take up."

The trust did not say why the letter had been written but released a statement saying, "There is no intention to mandate vaccination of our staff, and no such communication has been sent to our staff."

What about care homes?

On 14 April the Department of Health and Social Care launched a five week consultation on requiring staff working in care homes with older adult residents to have a covid-19 vaccination to protect residents from the virus.²

Concern has arisen over the low take-up of the jab, which was highlighted when 23 cases of the South African variant were detected in a south London care home: of the 13 staff infected, only one had had a single dose of vaccine.³ In the Lambeth area where the care home is situated only 52% of staff in older adult care homes had been vaccinated, government data showed.

Experts on the Scientific Advisory Group for Emergencies' social care working group advised that 80% of staff and 90% of residents would need to be vaccinated to provide a minimum level of protection against outbreaks of covid-19, but only 53% of older adult care homes in England currently met this threshold.

But isn't vaccine uptake high among healthcare workers?

Data from NHS England show that 86% (1 187 805 of 1 378 502) of healthcare workers directly employed by the NHS received their first dose by 11 April, leaving 190 697 unvaccinated.⁴ That figure does not include agency workers or NHS bank staff. In London the vaccination levels are lower, at 77.7% with 44 000 staff unvaccinated.

Among doctors, coverage seems much higher: the BMA's surveys have shown that nearly all doctors (98% of those surveyed in March) had had at least one vaccine and that 85% had had two doses.⁵

The Department of Health and Social Care said that people may not yet have taken up the offer of a vaccine for various reasons including availability, still being within 28 days of having covid, or personal reasons. A spokesperson said, "NHS staff have a duty of care to those most vulnerable to covid-19, so we encourage all frontline staff to come forward for the jab."

On 12 March NHS England issued guidance saying that there were no plans to mandate the vaccine at present, and it published a series of mitigations for staff who had not been vaccinated.⁶

Would it be legal to mandate vaccination?

Isra Black, a law lecturer at the University of York specialising in healthcare law, told *The BMJ*, "Any public authority, whether the state or individual NHS trusts, that mandates vaccination will need to comply with human rights and equality law. Mandatory vaccination interferes with the right to private life protected by article 8 of the European Convention on Human Rights, so the relevant authorities will need to show that the interference is justified in its pursuit of a legitimate aim and its proportionality."

"Public bodies must also show that they have taken into account the public sector equality duty and that mandatory vaccination policies comply with the requirements of the Equality Act 2010."

What other vaccines do NHS staff need to have?

A number of vaccines are recommended for healthcare workers—although they are not compulsory—as outlined in *Immunisation against Infectious Disease* (the "Green Book").⁷ These include tetanus, diphtheria, polio, and MMR (measles, mumps, and rubella).

Varicella is recommended for susceptible healthcare workers and BCG for staff who may have close contact with infectious patients. All healthcare workers with direct patient contact are recommended to have the annual flu vaccine, and in 2020-21 uptake was the highest it has ever been, at 76.3%.

Hepatitis B vaccine is recommended for workers who are at risk of injury from blood contaminated sharp instruments or of being deliberately injured or bitten by patients.

Is there a precedent with the hepatitis B jab?

Yes, says England's health secretary, Matt Hancock. He confirmed that the government was considering making covid-19 vaccinations mandatory for care home staff and told Radio 4's *Today* programme on 23 March, "That sort of approach is already in place for doctors—they have to have the hepatitis B vaccine, and so there is already a clear precedent."

However, although some frontline healthcare workers are required to have the hepatitis B vaccine, this is not law but rather hospital trusts enacting workplace health and safety and occupational health policies. Isra Black told *The BMJ*, "It has been suggested that 'jab for job' hep B vaccination under the health and safety policies of some health authorities creates a precedent for mandatory covid-19 vaccination. These policies exist, but to my knowledge they have not been tested legally."

"In any event, the lawfulness of these kinds of measures is highly fact specific. The human rights and equality dimensions of mandatory vaccination cannot be avoided by the use of health and safety law."

What if staff refuse the recommended vaccines?

The rules are set out in trusts' terms and conditions—particularly in their staff immunisation policy. For example, Southern Health NHS Foundation Trust says that staff who refuse the hepatitis B jab must be restricted from performing exposure prone procedures. For all recommended vaccines, anyone refusing must sign a declaration stating why they are refusing vaccination and confirming that they are aware of the risks, such as acquiring an infection or being taken away from certain duties.

Could individual trusts make the covid jab mandatory?

In theory, individual trusts could add mandatory covid-19 vaccination to their staff terms and conditions. But Anthony Harnden, deputy chair of the Joint Committee on Vaccination and Immunisation, said that it would be hard to enforce vaccinations among staff already on contract. "It would be very difficult from an employment perspective to make vaccine compulsory to those already employed without a change of legislation," he recently told an audience at the Royal Society of Medicine.

A BMA spokesperson also said that any introduction of local NHS policies requiring doctors to have been vaccinated against covid to work in certain settings would need local engagement with staff and representatives. The spokesperson explained, "While some healthcare workers are already required to be immunised against certain conditions to work in certain areas, any specific proposal for the compulsory requirement for all staff to be vaccinated against covid-19 would raise new ethical and legal implications."

"For instance, existing requirements are based on the principle of preventing an infection being passed on by the healthcare worker to patients and colleagues, rather than protecting the individual themselves."

What's happening internationally?

Italy became the first country in Europe to make covid vaccination mandatory for healthcare workers.⁸ Serbia is also considering introducing a similar policy.⁹ In Ireland the health service watchdog, the Health Information and Quality Authority, has advised that, although mandatory vaccination of healthcare workers may be considered in future, it would be the "most intrusive step": it recommends developing a policy that follows "progressive"

interventions to encourage healthcare workers who decline to take the vaccine.¹⁰

So, is mandatory covid vaccination for healthcare workers likely?

Sally Warren, director of policy at the King's Fund, said, "Making it mandatory should absolutely be the last resort." She told *The BMJ* that it was important to understand why some groups of healthcare workers may be reluctant to get the vaccine—for example, young women may be concerned about fertility issues—and to engage with them one to one and ensure that they are getting information from trusted sources. Trusts should also ensure that it is as easy as possible for people to access the vaccine, she said.

But Warren also questioned the rationale for making vaccination mandatory in only one cohort of staff working with older people. She asked, "Why only for those working in care homes and not GPs or hospital doctors who treat elderly patients? And why make it mandatory only in care homes for older people and not in care homes with working age people?"

Layla McCay, director of policy at the NHS Confederation, said that health leaders were unlikely to welcome a move to mandating the vaccine for NHS staff and that the approach taken to date—to encourage uptake through informed consent—currently remained the preferred option. She said, "While uptake of the vaccine among NHS staff has been high overall, we do know that it is lower than it should be in some areas, and this is a concern."

She added that NHS organisations were actively working to tackle the reluctance of some staff to take up the offer of a jab, learning from locally driven solutions such as holding additional information and vaccination sessions and having one-to-one conversations so that staff could discuss any concerns.

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