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## **Making vaccination a condition of deployment in older adult care homes**

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Submission to the Department of Health and Social Care

**Chartered Institute of Personnel and Development (CIPD)**

**May 2021**



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## **Background**

The CIPD is the professional body for HR and people development. The not-for-profit organisation champions better work and working lives and has been setting the benchmark for excellence in people and organisation development for more than 100 years. It has 155,000 members across the world, provides thought leadership through independent research on the world of work, and offers professional training and accreditation for those working in HR and learning and development.

Public policy at the CIPD draws on our extensive research and thought leadership, practical advice and guidance, along with the experience and expertise of our diverse membership, to inform and shape debate, government policy and legislation for the benefit of employees and employers, to improve best practice in the workplace, to promote high standards of work and to represent the interests of our members at the highest level.

## Our response

The CIPD is very supportive of the Government and NHS's successful rollout of the COVID-19 vaccination programme in the UK. We continue to actively promote the importance of organisations encouraging employees to take up their offer of a vaccination in a number of ways, including our messaging in the [media](#), [guidance](#) and [FAQs](#) for our community of HR professionals, and [webinars](#) on the topic.

Like many others, we are greatly saddened by the tragic loss of life experienced in many adult social care homes because of this virus. We share the Government's concern that the vaccination take-up rate in a high number of older adult care homes is below the 80% uptake level advised by the Social Care Working Group of SAGE has advised. We therefore understand the intent that has prompted the proposals in this consultation, to reduce the risk of outbreak in this setting of the most people most vulnerable to serious illness and/or death from the virus.

### **Proposed legislative change**

However, we have concerns about the potential implications of mandatory vaccination on the employment rights of those working in older adult care homes. We are therefore **unsupportive of the proposed legislative change**.

The consultation repeatedly uses the term 'deployed' to describe the activities of those working in this setting but for the most part these individuals are employed. Although the intention is to make vaccination a condition of 'deployment' and not 'employment' it's not clear how that differentiation would work in practice. The proposed change would be through an amendment to the Health and Social Care Act 2008 (Regulated Activities) Amended Regulations 2014, but there is little consideration of the impact on their employment and associated rights including protection against discrimination, their human rights and data protection law.

### **Implementation**

We note the proposals would place responsibility on care home managers for the safety of people living in their care, and that under the proposed change to regulations, it would be their responsibility to check evidence that workers deployed in the home are vaccinated, or medically exempt from vaccination. However, we are concerned that it could be **difficult** for managers to implement this policy.

If vaccination data is gathered, it will count as a 'special category' under data protection law because it is medical information and must be processed fairly and lawfully. Data protection law is widely misunderstood, and so if such a policy is introduced, those managers who are responsible would need guidance and training on its lawful and careful handling. For example, care homes should have a policy document and data risk

assessment covering the processing to ensure compliance with key data protection principles including transparency, data minimisation and security requirements. Only necessary data should be kept.

## **Implications for inclusion, human rights and employment relations**

The document rightly notes '*the adult social care workforce has a high proportion of women and people from black, Asian and minority ethnic communities*' and the evidence that these groups may be more hesitant about vaccination more generally. This is a real concern and in practice the implementation of a mandatory policy could be divisive and lead to discriminatory attitudes and practices even where these are unintentional.

We are concerned that mandatory vaccination could potentially lead to indirect discrimination, especially with vaccine hesitancy higher among some minority groups. Aside from an exemption on medical grounds, there's no consideration of individuals who refuse the vaccination on the basis of their religious beliefs. An anti-vaccination belief could be held by some people of a certain faith and potentially be protected under the Equality Act. Compulsory vaccination also has implications for human rights issues as Article 8 of the European Convention on Human Rights protects people from being interfered with physically or psychologically (which includes mandatory vaccination).

Other workers may have an anti-vaccination belief. They could argue this is a protected philosophical belief under the Equality Act 2010. For example, an employee who believes in natural medicine only could try to establish that this belief is genuinely held and worthy of respect, which could lead to a claim that would need to be evaluated by a tribunal if progressed. Whilst there are legal subtleties surrounding whether the 'anti-vax' movement would attract Equality Act protection there is at the very least a risk that this type of belief could be protected and lead to compensation.

With recognised trade union [Unison](#) and the [TUC](#) opposed to a mandatory policy, we are also concerned about wider possible implications for employment relations. Introducing a mandatory vaccination policy could damage trust in the employment relationship and lead to unhealthy conflict. A mandatory policy could increase the potential for stigma and/or disadvantage among workers and between them and their employer, even if someone has a medical exemption. There is already increased potential for divisiveness and discord in workplaces given the challenging year many people have had. This includes the possibility of some people developing symptoms of common medical health conditions like anxiety and depression, which could also affect a minority of individuals' fears and anxiety about vaccination.

## **Encouraging vaccine take up**

In our view it is therefore preferable that a proactive policy of encouragement, engagement and education, rather than a compulsory one, should continue to be used to boost vaccine

take up in older adult social care settings. We welcome the steps already taken by the relevant authorities on this front but still think there is more scope to make concerted efforts focused in the pockets where take up needs to improve.

Our guidance encourages every employer to be proactive and run an awareness campaign, drawing on NHS information, for example:

- Offer employees consistent, accessible and factual safety data which promotes the genuine achievement of science in producing an effective vaccine.
- Make it easy for people to get the vaccine by being flexible about working hours or offering paid time-off. This will encourage take up and reinforce the message that vaccination is important and supported by the employer
- Ensure line managers are aware of policy and organisational approach.
- Consider counteracting misinformation and conspiracy theory spread through social media. The education programme may promote the merits of vaccines in general, and the COVID vaccines specifically.
- If an employee voices concerns about being vaccinated, then individual discussions with a trusted staff member may help to allay fears and obtain their consent.
- Employers are far more likely to achieve a fully vaccinated workforce if they use open and honest two-way communication.

Our guidance is widely promoted to our community of HR professionals and employers, and also encourages every organisation to have a vaccination policy. This will help the organisation to promote its active encouragement of vaccination and explain the role of and expectations on managers, HR and employees. A policy can help explain the benefits of vaccination and how employees can contribute to wider public health by protecting themselves and other employees and wider community by being vaccinated.

External medical advisors engaged to answer any questions and provide reassurance to employees may also help. Trusted members of senior management may also be able to deliver the message as trust is a key aspect. False stories on social media need to be countered with evidenced-based messages. Social norms also influence behaviour so bringing attention to national media reports showing how many people have been vaccinated each day helps the feeling of a collective effort.

Employers should listen to any concerns employees have around vaccination with empathy and understanding, as with the many issues that people have been facing due to the pandemic (like illness, fear and anxiety, childcare issues and so on) – this is a period that needs very careful and sensitive management.

Line managers will likely be the first port of call for most employee concerns – hopefully the relationship they have with their team will be based on trust and the kind of environment that enables honest conversation. Managers also need to be briefed on the organisation's vaccination policy and any awareness campaign around vaccinations, possible questions and concerns they could face from employees about the vaccine, and how to deal with them/refer to HR if necessary.

## **Potential impact on resourcing in the sector**

The consultation document states that ‘a skilled, compassionate and caring workforce...and making working in adult social care an attractive career choice’ is one of the proposed policy’s key aims. However, we are concerned that it could also have the opposite impact. The dedication and sacrifice of the social care workforce over the past year of this pandemic has been rightly recognised across the nation. But before COVID-19 this was not an employment sector associated with high status and attractive pay and conditions.

Therefore, it’s not surprising that this sector already experiences significant recruitment and retention issues, which is one of the major challenges facing care providers. [Skills for Care](#) (one of four partners of the sector skills council for people working in social work and social care for adults) says around 430,000 care workers leave their job every year and a [7.3% vacancy rate](#) and 112,000 vacancies at any one time. Care workers had the highest turnover rate of direct care-providing roles, at 38.1%. The [Health Foundation](#) highlights the high staff turnover rate compared with the 15% average across other sectors, and points to the perceived low status of the work as well as low pay, training and levels of in-work support.

We are concerned that the introduction of a mandatory vaccination policy could undermine trust and employee morale, and affect the retention of both those individuals who are advised against having the vaccine for medical reasons as well as those who are hesitant for other reasons. In respect of the former, even though there is an exemption here, it’s not clear what the employment security would be of those who wouldn’t be ‘deployed’, especially if redeployment isn’t possible given their role and the likely requirement that all individuals deployed in a care setting would require vaccination. Others may be hesitant or refuse vaccination for a variety of reasons (for example, because of religious or spiritual belief, general anxiety or fear about vaccination, and a phobia of needles).

We therefore believe that all of the potential concerns about the impact of the policy listed in paragraph 40 could play out in terms of adverse reputational risks to employers, but will be interested to see the responses of older adult care home providers and organisations representing the sector in relation to the potential effect on staff morale, recruitment and retention.