Unite submission to the Cabinet Office: COVID-Status Certification Review

This submission is made by Unite, Britain and Ireland's largest union with over 1 million members across all sectors of the economy including manufacturing, financial services, transport, food and agriculture, construction, energy and utilities, information technology, service industries, health, local government and the not for profit sector. Unite also organises in the community, enabling those who are not in employment to be part of our union.

Introduction

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 campaign of written communications, posters, video and social media.

Unite has also supported workplace related testing schemes, with a strong inclination towards PCR (polymerase chain reaction) testing carried out by health professionals, as opposed to self-administered Lateral Flow Testing (LFT). However, we have seen the value of the Lateral Flow Test in identifying COVID-19 positive individuals, even though it may not be an accurate way of identifying COVID-19 infection free individuals. We would not support, however, the implementation of serial testing as a substitute for self-isolation.

Unite believes all COVID-19 vaccination and COVID-19 testing regimes in the UK should be voluntary and not mandatory in the belief that compulsion is a very bad way to achieve a high level response. Compulsion is embroiled with issues such as equalities, human rights, privacy, and ethical breaches. Therefore, Unite has considerable reservations about the implementation of a COVID-19 Certification scheme in all scenarios and industries.

For example, we recognise that there is valid use for this scheme in the transport sector, particularly aviation and other modes of international travel.

We would also caution on not having various options available, for example if a person cannot have the vaccine for various reasons, employers should have in place free of charge optional provision of COVID-19 testing, temperature tests or additional controls and measures. This is also true of any certification scheme being adopted for community use.

Unite has real concerns around use of the scheme in the workplace, with community use having many pros and cons, details of which we set out within our submission.

Scientific and medical considerations

We have already set out our issues on testing around reliability. We also have reservations around whether the vaccine can be relied on 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 and certification would offer a false sense of security. All other control measures need to continue alongside vaccines, such as social distancing, hygiene controls, PPE (personal protective equipment) for the time being.

Equalities

Unite feels that having to substantiate whether a person has been vaccinated, or indeed be expected to have been vaccinated, may lead to discrimination across the array of protected characteristics set out in the Equality Act 2010.

Many women will be in low paid jobs and suffer detriment such as lack of adequate sick pay, pay for self-isolating and child care. Women will have particular reasons not to have the vaccine such as pregnancy. Women have a difficult choice whether to have the vaccine as it has not been tested on pregnant women so are less likely to have it.

There are unknowns around vaccine safety for pregnant, breastfeeding women, and women and men who are who are undergoing or planning to undergo fertility treatment (see Appendix 1).

If testing is an alternative for COVID-19 status, then tests have to be made available readily and free by the employer in work situations and the state for communal use. It would be useful to know the gender break down of vaccine uptake, in order to assess how many women have had the vaccines.

For women PCR or LAMP (loop-mediated isothermal amplification) tests would prove more effective in workplaces than self-administered LFTs. The latter would prove a major disincentive to undertake the test properly unless there is adequate financial support if the result proved positive.

Women are far more likely to be called upon 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 these safe guards are in place certification will inevitably lead to unequal treatment for women.

Disabled workers and disabled persons in the community 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 to enter a venue, for example, may give rise to a disabled person having to explain their disability in order to enter or be turned away.

There is also a clear danger that disabled persons in the workplace will face detriment when applying for jobs and discrimination in a current roles.

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.

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

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.

Choices for this group such as additional controls, testing backed by financial support is essential.

The issue of access to the vaccination/timescales in respect of those that are willing to be vaccinated, but have not yet had the opportunity and whether that gives rise to any issues around the protected characteristic of **age**. The vaccine priority programme within the UK is based on vulnerability, particularly age, with younger people having to wait some time before vaccination.

Migrants and foreign nationals working in various sectors such as construction, food and agriculture, and hospitality may not be registered with GPs and therefore may not have been offered vaccines. This group will be concerned about a certification programme which may lead to difficulties both at work and accessing services.

Ethical

The certificate would verify those that have been vaccinated and those who have been tested or both. The premise is that those who have been vaccinated or produce a negative test within a certain time frame will be able to travel and access services.

That would mean more freedom associated with this, and ideally eventually lead to a reduction of other controls.

However, where people are not vaccinated for the reasons we have already set out, or cannot readily access regular free testing (which is the case at present), that freedom is curtailed. This is not ethically acceptable or humane. Choices need to be made available to everyone and not just the privileged. If testing is one of the alternatives then a very comprehensive testing system needs to be made freely available.

We would hope that, at some point in the future, vaccination (variant protection updated) combined with naturally acquired immunity will protect communities, even though vaccination uptake is not 100%, reducing the cost and burden of regular testing.

Certification based on vaccination and testing for international travel will result in travellers from high income countries enjoying privileges that low income countries will not have. Ensuring vaccines are available at low/no cost to these countries is imperative to avoid that ethical dilemma.

There will be workers that will not take the vaccine because they are unsure and fear health consequences. The difficulty with COVID-Status Certification is that it leads down a path of compulsion for workers and service users. This is unethical and given the position of the World Health Organisation (WHO), which Unite agrees with, that compulsion is not the answer to a vaccination programme.

Legal

Legal considerations will cut across a number of aspects set out in the paper, for example privacy considerations in terms of GDPR, human rights, equalities and responsibilities of employers. In addition, there are two different areas to consider:

1. The users of facilities, transport, venues etc.
2. All workplaces including those that work to provide services.

There will of course be overlaps across these areas, and similar concerns may arise on various topics.

In relation to customers and services users, 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 and how a service user/customer 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 service users, 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 services, establishments, transport or venues, 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.

For those that **work across all sectors** including within the delivery of services, the same potential challenges around equalities, privacy, human rights and employment rights will play a major part in the feasibility of a COVID-status certificated process.

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 COVID-Status Certification in certain sectors and on groups of workers will attract the same issues, affect third parties such as 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 is 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.

Technological considerations

There will be many platforms open for use for this system, i.e. smart cards, apps, paper certificates. Should a requirement of proof of COVID-19 vaccination/testing be introduced in the future, even in limited scenarios such as international travel, 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 should also 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.

International Travel: Aviation/ Maritime

This sector is where COVID-19 Status Certificates will be welcome. Unite airline personnel representatives (reps) are saying they would want a protocol that is simple to use, respects privacy of personal information and, in so far as possible; reduces any travel restrictions and promotes the aviation sector recovery.

A system that can assess travellers' necessary entry and return requirements of any particular destination, and verify them to the appropriate bodies has the potential to encourage international travel.

- The system requires little intervention by employees of airlines and service providers.
- That full training be given to those that may have to interact with the results of the verification and the traveller.
- That airline sector personnel in the course of their duties are not subject to ordinary travellers' protocols post duty.
- That airline sector personnel in the course of their duties that are required to have regular testing and other procedures may include these in the course of their personal travel whilst using the proposed protocols.
- That accountability of any travel protocols are not met by ordinary airline personnel.
- That no clinical procedures are made mandatory.

Consultation needed/ WHO Position

An effective robust system needs to be implemented following consultation with stake holders. It is essential the UK engages with international dialogue with all stakeholders on this issue without delay.

We understand that the **International Health Regulation (IHR) Emergency Committee** has advised the World Health Organisation (WHO) to rapidly develop and disseminate a policy position paper on the legal, ethical, scientific, and technological considerations related to requirements for proof of COVID-19 vaccination for international travellers.
https://www.who.int/groups/smart-vaccination-certificate-working-group

It is imperative **to coordinate with relevant stakeholders the development of standards for digital documentation of COVID-19 travel-related risk reduction measures**, including vaccination status in preparation for widespread vaccine access.

Related to a connected issue see Joint Statement on prioritization of COVID-19 vaccination for seafarers and aircrew which is the view from ICAO, ILO, IMO, IOM, WHO on this subject.

Unite is currently consulting with aviation and maritime bodies, and would expect an urgent Government led consultation in order to facilitate a certification programme for this sector.

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Appendix 1

The **European Society of Human Reproduction and Embryology (ESHRE)** states that:

- For women and men attempting conception, due to the limiting data on the possible effect of the vaccine on a future pregnancy, ESHRE cannot make any recommendations on with the vaccine should be performed. Vaccination could be considered in women that the benefits could outweigh any potential risks.
- Women that have received the vaccine it is advisable to postpone conception to allow time for immunization.
- For pregnant women vaccination should be performed after evaluating the risk and the benefits of performing the vaccine.

A joint **IFFS (International Federation of Fertility Societies) and ESHRE statement**, states that women planning to conceive have different options to women that are already pregnant:

- **Women that are planning to conceive**:

1. Either postpone pregnancy until effective measures to reduce the risk of contracting the virus have been implemented, such as lower infection rates or vaccination availability.
2. To not postpone conception, follow the safety guidelines and seek vaccination. Postponing many not be an optimal solution for women of older reproductive age or shorter reproductive horizon (age equality concerns).

- **Women that are pregnant:**

1. Follow all safety guidelines for COVID and postpone vaccination until after pregnancy
2. Proceed with vaccination as soon as possible while continuing to follow the already imposed safety guidelines.
3. The discussion to proceed with the vaccination should be made after evaluation of each individual case and confirmation that this would be the most beneficial route.

The **Centre for Disease Control and Prevention (CDC)** states;

- That women that are pregnant and lactating belong to the population eligible to receive the vaccine. **Receiving the vaccine for each individual is a personal choice.**
- What women who are planning to get pregnant, are pregnant or lactating need to consider the vaccines' potential risks

The Joint Committee on Vaccination and Immunisation (JCVI) and the Royal College of Obstetricians and Gynaecologists (RCOG) states:

- That even though there are no known associated risks to the already approved vaccines, **routine vaccination should be avoided during pregnancy.** Vaccination should be considered in patients that belong in high-risk groups and situations where the benefits of the vaccine outweigh any potential risks.
- Women in preparation for pregnancy do not need to avoid pregnancy following vaccination.
- The JCVI confirms that although the available data does not indicate any safety concerns or harm to pregnancy, there **is insufficient evidence to recommend routine use of COVID-19 vaccines during pregnancy**.
- JCVI suggest that lactating women can be offered vaccination with the Pfizer-BioNTech or AstraZeneca COVID-19 vaccines.

The **British Fertility Society and Association of Reproductive and Clinical Scientists** (link) have produced a document in response to questions that patients have been asking about Covid-19 vaccines and fertility, which advises:

Women can have the vaccine during IVF treatment but it advises:

- To consider the timing of having a Covid-19 vaccine during your fertility treatment, taking into account that some people *may get bothersome side effects in the few days after vaccination* that they do not want to have during treatment. These include for example, tenderness at the injection site, fever, headache, muscle ache or feeling tired.
- It may be sensible to separate the date of vaccination *by a few days from some treatment procedures*, so that any symptoms, such as fever, might be attributed correctly to the vaccine or the treatment procedure.
- The only reason to consider delaying fertility treatment until after being vaccinated would be if you wanted to be protected against Covid-19 before you were pregnant. The chance of successful treatment is unlikely to be affected by a short delay, for example of up to 6 months, particularly if you are 37 years of age or younger. However, **delays of several months may affect your chance of success once you are over 37 and especially if you are 40 years of age or older.**