

Mandatory vaccination will not make care home residents safe from covid, it is unnecessary, and data underpinning the Government’s case is unreliable. Briefing note 19th July 2021 in advance of Lords Debate on regulatory amendment to Health and Social Act 2008 (Regulated Activities) Regulations 2014.

Professor Lydia Hayes, Kent Law School. Professor Allyson Pollock, Newcastle University. Authors of British Medical Journal editorial 8th July 2021, [Mandatory covid-19 vaccination for care home workers. Unnecessary, disproportionate, and misguided](#) ⁱ

Vaccination is not a panacea for safety in care homes. Regulatory law demands safe care through sufficient staff, adequate training, cleanliness, correct equipment, PPE, staff and resident consultation, openness and transparency.ⁱⁱ Vaccination does not prevent vaccinated people from spreading the disease, it reduces transmission by approx. 50%.ⁱⁱⁱ Vaccination reduces the risk of hospitalisations and death. In over 80s risk of death reduces from 13% to 7% with a single dose of vaccine.^{iv} Vaccination cannot transform care homes into safe havens. It is dangerous to suggest otherwise. Vaccination is just one piece of the safety jigsaw. [Scotland](#) and [Wales](#) will not make vaccination mandatory for care workers, arguing this is ‘not needed’ and citing high uptake rates.

There is very high and rising vaccine uptake among care staff in England and it is unnecessary for the state to force medical treatment (vaccination) on the care workforce. SAGE advice is that 90% first dose for residents and 80% first dose for care workers is the threshold for vaccine uptake in care homes to contribute effectively to care home safety.^v The table below shows [NHS England data](#) of over 96% of residents having a first dose and over 87% of care staff having a first dose. Every English region exceeds the SAGE threshold, and second dose vaccination is also very high (over 93% and 76% respectively).^{vi}

Data from every English Region exceeds SAGE recommendations for necessary density of covid-19 Vaccinations of Residents and Staff in Older Adult Care Homes: from covid-19-weekly-announced-vaccinations-15-July-2021				
8th December 2020 to 11th July 2021				
	% of eligible residents reported to be vaccinated with at least one dose	% of eligible residents reported to be vaccinated with a 2nd dose	% of eligible staff reported to be vaccinated with at least one dose	% of eligible staff reported to be vaccinated with a 2nd dose
England	96.0%	93.3%	87.0%	76.3%
East Of England	96.5%	94.1%	86.3%	75.4%
London	94.6%	91.5%	83.4%	72.3%
Midlands	95.7%	92.7%	85.9%	74.9%
North East And Yorkshire	96.1%	93.9%	88.9%	78.8%
North West	96.4%	93.4%	86.8%	76.2%
South East	96.4%	93.6%	87.4%	76.3%
South West	95.9%	93.4%	88.3%	79.0%

Within existing law, employers can require proof of vaccination as a condition of hiring new care workers at a local level, they can also introduce vaccine policies that are non-discriminatory for existing staff.^{vii} To apply national state force to mandate vaccination is to take a crude sledgehammer approach that is unnecessary.

Vaccination is not the only route to a degree of covid immunity. Many care workers have natural immunity from occupational or community exposure to the virus and natural immunity is as effective as immunity by vaccination.^{viii} This

Professor Hayes is Head of Kent Law School. She was appointed to report on Professionalisation of the Care Workforce by the All Party Parliamentary Group on Adult Social Care. She is funded by Wellcome Trust to research how regulation of care providers in England, Scotland and Wales impacts on the work of care workers, the conditions of care and the quality of care jobs. Her research on lack of occupational sick pay for care workers and regulatory breaches in care settings during the pandemic has been widely cited in Commons debates and press reports. She is author of the multi-award winning monograph *Stories of Care: A Labour of Law (2017)*.

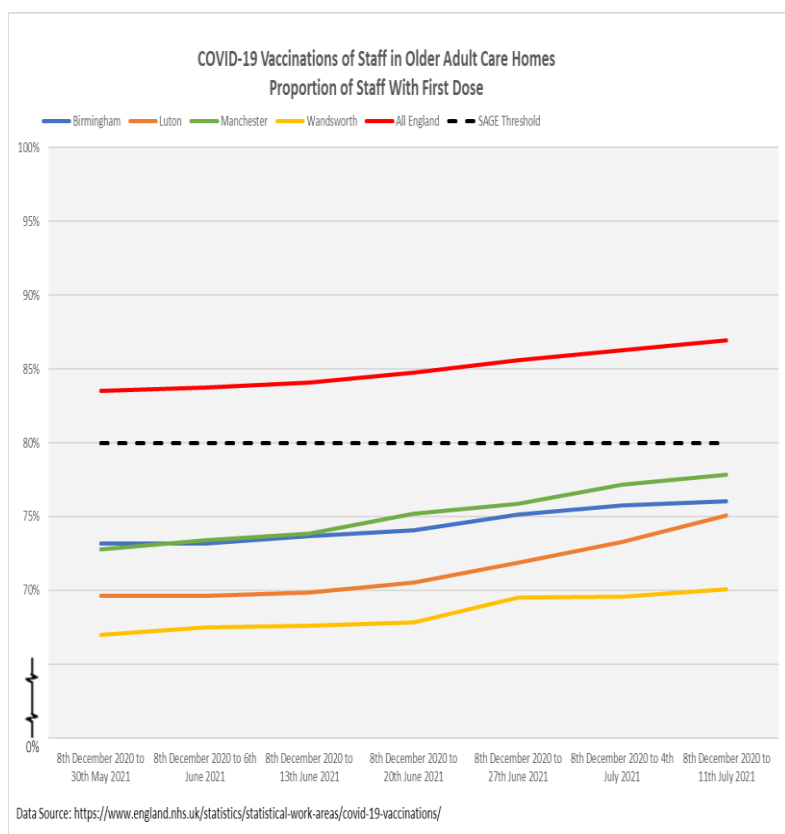
Professor Allyson Pollock is professor of public health. Recently she has been a member of the Independent SAGE, advising on covid-19 in the UK and was director of the Newcastle University Institute for Health and Society at the Medical school. Allyson’s research interests are in access to medicines and appropriate medicines use, and pharmaceutical regulation and regulatory science; the epidemiology of child and sports injury; public private partnerships and health systems; and long-term care.

is especially relevant in care homes, where infection rates (and therefore natural immunity rates) have been much higher than in the wider community.^{ix} The Government has not acted on the advice of the Equality and Human Rights Commission to ensure the rights to just and favourable conditions of work.^x As a consequence, some care workers have not been vaccinated because they will be without pay if they have side effects, many are working very long hours and need more help to get to vaccination centres during working time. Some have genuine fears such as effects on fertility or have religious objections and have not had access to advice and education. Threatening workers with dismissal will strengthen their fears and will not inspire trust and confidence in vaccination.^{xi} ACAS advise employers in all sectors to provide paid time for vaccination appointments and to pay the usual rate of pay if staff are off sick with vaccine side-effects.^{xii} As the Equality and Human Rights Commission has [argued](#), many care workers have English as a second language and need accurate information provided in their first language, yet to date, culturally and linguistically appropriate materials about the COVID19 vaccine have not been routinely available in social care settings.^{xiii}

The data being used to justify mandatory vaccination are unreliable and underestimate vaccination uptake in individual homes and local authority areas. Government has used data at the level of individual care homes to argue there are pockets of alarmingly low vaccine uptake in some care homes.^{xiv} But the data are unreliable and, by the Department of Health’s own assessment, cannot identify the number of non-vaccinated care workers at the level of individual homes.^{xv} The data are distorted by the inclusion of those for whom vaccination status is unknown and those who have not been vaccinated for medical reasons. The data about vaccination uptake derives from individual care homes based on what providers *are satisfied they know* about who has had the vaccine from among their workforce. That data provides an incomplete picture: some providers returns are out-of-date and, even when returns are made, the care provider can only report on the number of workers it believes are vaccinated. **The number of care workers who are unvaccinated in any one care home is unknown from this data. Data are especially unreliable for care homes with high staff turnover, those relying on agency workers, those with unfilled vacancies.** Further,

the use of percentages to compare vaccine uptake between areas gives a false impression if we are not also told of the size of the care home sector in those areas. For example, Wandsworth is frequently cited as having a low vaccine uptake in percentage terms. The numbers of care workers in these areas is very small and therefore gaps in reporting, or information gaps due to agency workers or staff shortages have a disproportionate impact when data are presented in percentage terms.

Table left shows there are only 4 local authority areas in which the data, unreliable as they are, shows fewer than 80% of care workers having a first dose. The rates of uptake in all these areas are rising steadily. Forcing vaccination as a matter of law is unnecessary. As a Dept. of Health and Social Care spokesperson said to [Channel 4 Fact Check, 9th July](#): **“It is completely wrong to suggest that because a care home has not reported its vaccine figures the staff have not been vaccinated”**. Yet this is precisely how the Government is [using data](#) in this debate.



Safety in care homes requires sufficient numbers of adequately trained staff. Care workers are the most important factor for safety in any care home. Existing regulatory law requires sufficient numbers of staff for safety and for those staff to be adequately trained. For stronger care home safety, we need more staff and better training. Mandatory vaccination will make some care homes far less safe because the new law will [frighten care workers into quitting](#). What we need instead is information, advice and training for care workers about covid, its symptoms, transmission, caring for someone with covid and about the vaccine. To make care homes safer, nationally co-ordinated covid training for care

workers should have been put in place long ago. It is still not too late and could be provided by local authorities with expert knowledge of their communities and their care homes at local level. Training would communicate respect for care workers and make care homes safer. Mandatory vaccination is an insult to care workers and will not make care homes safe.

Mandatory vaccination is an anathema to public health and civil liberty. Forcing a medical treatment on a section of the population is anathema to public health in the U.K. [It overturns 120 years of legislation where effective vaccination policy has been based on consent, education and information.](#) Vaccination by brute force is not the right way, it risks increasing vaccine hesitancy in the wider population by giving succour to the conspiracy theorists. Medical treatment must remain an informed choice.

Mandatory vaccination will create discriminatory law – according to Dept of Health and Social Care own lawyers. The [public sector equality duty impact assessment](#) published by Department of Health and Social Care lawyers advises that the disproportionate impact of mandatory vaccination on black and ethnic minority workers cannot be mitigated. With mandatory vaccination, a disproportionate number of black and ethnic minority care workers will lose their jobs. The risk of job losses is also a significantly disproportionate for women and on the basis of religious beliefs. These job losses are unnecessary because vaccination does not create safe havens from covid and vaccination rates could be increased by better strategies, such as training, education, provision of accessible information, occupational sick pay, paid time and support to access vaccination. These better strategies would include rather than exclude; they would inspire confidence and trust rather than fear; they would drive up vaccination rates, rather than drive workers away from the care sector.

ⁱ Lydia Hayes and Allyson Pollock, Mandatory Covid-19 vaccination is unnecessary, disproportionate and misguided. BMJ 2021;374:n1684 <https://www.bmj.com/content/bmj/374/bmj.n1684.full.pdf>

ⁱⁱ Health and Social Care Act 2008 (Regulated Activities) Regulations (2014).

ⁱⁱⁱ Ross J. Harris, Jennifer A. Hall et al, Effect of Vaccination on Household Transmission of SARS-CoV-2 in England, New England Journal of Medicine, <https://www.nejm.org/doi/full/10.1056/NEJMc2107717>

^{iv} Public Health England, Vaccine Effectiveness Report, March 2021

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/989360/PHE_covid-19_vaccine_effectiveness_report_March_2021_v2.pdf

^v UK Government. Commission: What are the appropriate layers of mitigation to deploy for care homes in the context of post vaccination risk landscape? 2021.

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/994620/S1257_SCWG_Post_Vaccination_Mitigations.pdf

^{vi} <https://www.england.nhs.uk/statistics/statistical-work-areas/covid-19-vaccinations/>

^{vii} ACAS guidance <https://www.acas.org.uk/working-safely-coronavirus/getting-the-coronavirus-vaccine-for-work>

^{viii} Turner JS, Kim W, Kalaidina E, et al. SARS-CoV-2 infection induces long-lived bone marrow plasma cells in humans. Nature 2021. doi:10.1038/s41586-021-03647-4 pmid:34030176

^{ix} Office of National Statistics, Vivaldi Study results, Impact of coronavirus in care homes in England: 26 May to 19 June 2020 <https://www.ons.gov.uk/peoplepopulationandcommunity/healthandsocialcare/conditionsanddiseases/articles/impactofcoronavirusincarehomesinenglandvivaldi/26mayto19june2020>

^x Equality and Human Rights Commission, Our response to the consultation on making vaccination a condition of deployment in older adult care homes, 21st May 2021.

^{xi} Unison. Care staff more likely to decline job if threatened by employers, says UNISON survey. 2021.

<https://www.unison.org.uk/news/press-release/2021/05/care-staff-more-likely-to-decline-jab-if-threatened-by-employers-says-unison-survey>; GMB. Care worker mandatory vaccinations “incredibly bad idea.” 2021. <https://www.gmb.org.uk/news/care-worker-mandatory-vaccinations>.

^{xii} ACAS (2021) Getting the Coronavirus Vaccine for Work <https://www.acas.org.uk/working-safely-coronavirus/getting-the-coronavirus-vaccine-for-work>

^{xiii} Department of Health and Social Care, Public Sector Equality Duty Impact Assessment, 16th June 2021

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1001051/vaccination-as-a-condition-of-deployment_public-sector-equality-duty2.pdf

^{xiv} House of Commons Library, Coronavirus: Adult Social Care Key Issue, 5th July 2021,

<https://researchbriefings.files.parliament.uk/documents/CBP-9019/CBP-9019.pdf>

^{xv} Department of Health and Social Care. Adult social care monthly statistics, England: methodology.

<https://www.gov.uk/government/publications/adult-social-care-in-england-statistics-england-methodology/adult-social-care-monthly-statistics-england-methodology>