

# Covid-19 vaccinations: Key considerations for Housing Associations as employers

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# What's happening with vaccines?



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## Covid-19 vaccinations

Key considerations for Housing Associations as employers

# What vaccines are available?



**Two vaccines are currently being used in the UK:**

- Pfizer-BioNTech
- Oxford-AstraZeneca
- A third vaccine by Moderna has been approved for use, but is not yet being used

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## Covid-19 vaccinations

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# When will we get a vaccine?

Currently, no Covid-19 vaccine is available privately in the UK, and is being distributed by the NHS in each UK nation to an initial 9 high priority groups, which account for 90-99% of all Covid-19 deaths:

1. Residents in care homes for older adults and their carers
2. 80 year olds and over and frontline health and social care workers
3. 75 year olds and over
4. 70 year olds and over and clinically extremely vulnerable adults
5. 65 year olds and over
6. 16-64 year olds with serious underlying health conditions
7. 60 year olds and over
8. 55 year olds and over
9. 50 year olds and over

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# When will we get a vaccine?

Welsh Government vaccine strategy published on 11 January 2021

### Three milestones:

**By Mid-February** – all care home residents and staff, frontline health and social care staff, everyone over 70 who is clinically extremely vulnerable will be offered vaccination

**By the Spring** – vaccination offered to everyone in the 9 priority groups (i.e. everyone over 50 and everyone at risk with an underlying health condition)

**By the autumn** – vaccination offered to the rest of the adult population in Wales

# Must and Will people take the vaccine?



## Covid-19 vaccinations

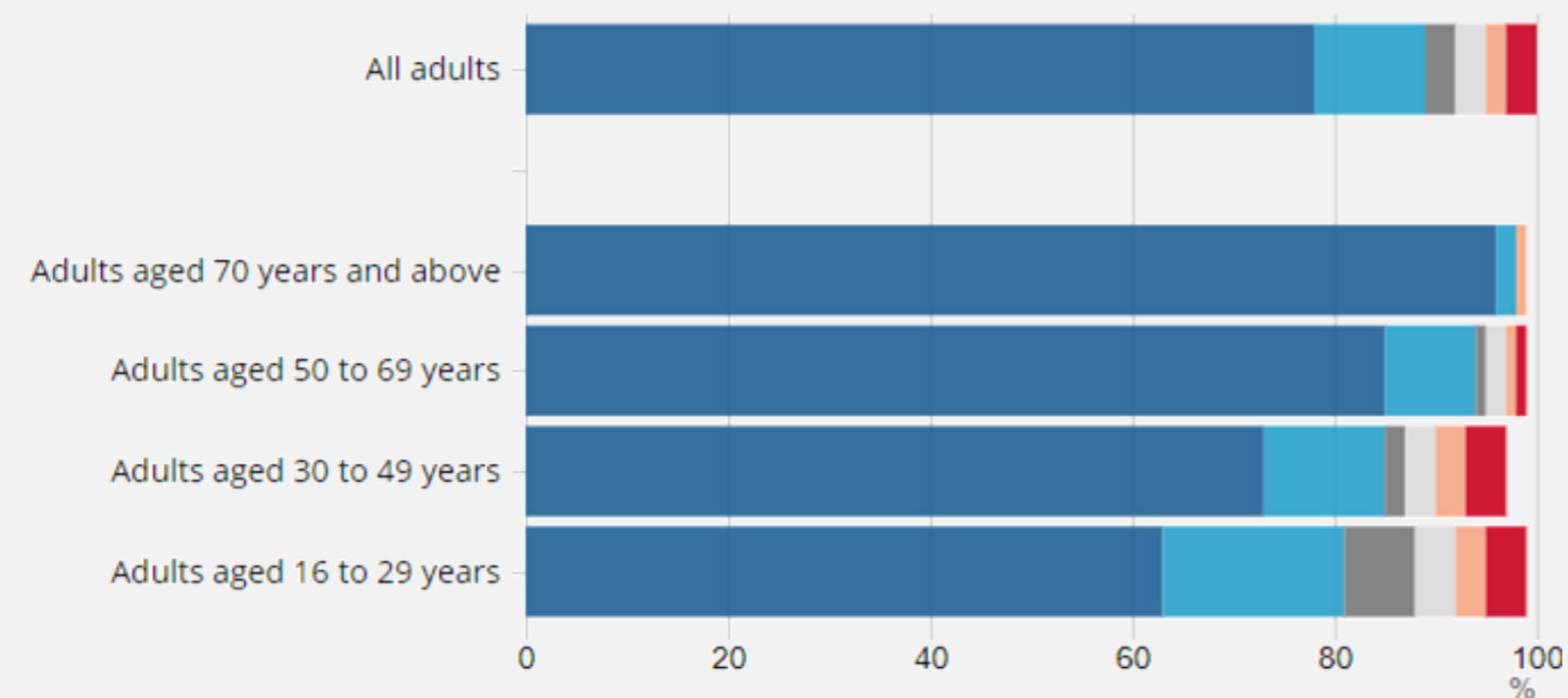
Key considerations for Housing Associations as employers

# 02 Will people take the vaccine?

Figure 4: Around 8 in 10 (81%) of adults aged 16 to 29 years compared with 98% of adults aged 70 years and above said they were very or fairly likely to accept the COVID-19 vaccine if offered

Great Britain, 13 to 17 January 2021

Very likely Fairly likely Neither likely nor unlikely Don't know Fairly unlikely Very unlikely



Source: Office for National Statistics - Opinions and Lifestyle Survey

## 02

# Will people take the vaccine?

### **ONS Survey on 13-17 January 2021**

#### **Of those unlikely to take the vaccine or have declined the vaccine, reasons given:**

- Worried about long-term health effects = 43%
- Worried about side-effects = 42%
- Waiting to see if vaccine effective = 40%
- Vaccine not safe = 26%

- Covid-19 not a risk to me = 19%
- I do not think it will work= 13%
- I am worried about the effect on a pre-existing condition = 10%
- I am against vaccines in general =10%
- I do not need it as I have already tested Covid-positive = 6%
- I do not need it as I have had Covid-19 but not tested for it = 6%
- I am worried it will give me Covid-19 = 4%
- I am worried it might be painful= 3%
- I am pregnant and worried of the effects on my baby =3%

# 02 Will people take the vaccine?

**BUT:  
Serious concerns take up amongst BAME communities will be significantly lower**

## **UK Household Longitudinal Study (November-December 2020):**

—% of vaccine hesitancy (i.e., unlikely/very unlikely):

—Black or Black British – 71.8%

—Asian or Asian British – Pakistani or Bangladeshi – 42.3%

—Asian or Asian British – Indian – 20.6%

—White British or Irish – 15.6%

Main reason for hesitancy – worries about unknown future effects of the vaccine – 42.7%

6.5% stated they would not take the vaccine and could not be persuaded to take it

Main factor to persuade to take vaccine – it is proven to be safe and effective

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# 02 Mandatory vaccinations in the news



**Growing signs of “vaccine passports” needed to access services, work, hospitality**

—**“Vaccine passports for travellers ‘unavoidable’**

(Telegraph, 21/01/2021)

—**“Saga Cruise Company says People Must Get Covid Vaccine before Journey”**

(Independent, 21/01/2021)

—**“Pimlico Plumbers to make workers get vaccinations”**

(BBC News, 15/01/2021)

—**“UK bosses set up IT systems to track Covid vaccine status of staff”**

(Guardian, 23/01/2021)

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Capital

# The Law



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## Covid-19 vaccinations

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# 03 The Law...

## **Public Health (Control of Disease) Act 1984**

- Confers extraordinarily broad powers on UK and devolved Governments
- All regulations regarding Covid made under powers of 1984 Act
- Section 45E:** any regulations made under the 1984 Act “may not include provision requiring a person to undergo medical treatment”
- “Medical treatment” – “includes vaccination...”

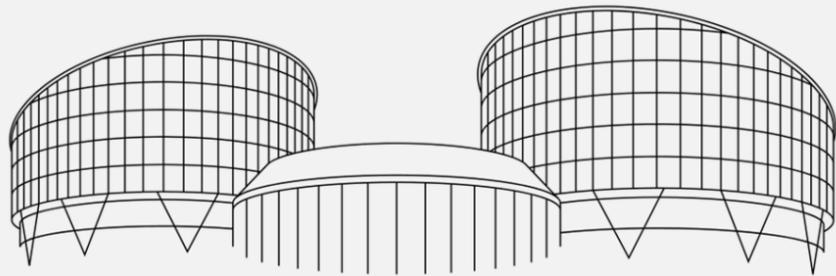
**Currently, any Covid regulations cannot legally compel individuals to have the vaccine – individuals have the right to refuse**

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# 03 The Law...



EUROPEAN COURT OF HUMAN RIGHTS

### Human Rights Act 1998

- Incorporates the European Convention on Human Rights into UK law
- Unaffected by Brexit
- All law must be interpreted in a way to give effect to Convention Rights as far as possible
- Public authorities (includes housing associations carrying out functions of a social landlord) must act in accordance with Convention Rights – direct claim if failure to comply

### Article 8

1. Everyone has the right to respect for his private and family life, his home and his correspondence
2. There shall be no interference by a public authority with the exercise of this right except as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety...for the protection of health...or for the protection of the rights and freedoms of others

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# 03 The Law...

### **If employee dismissed for refusing to take vaccine:**

Must be for a permissible reason = **failure to follow reasonable instruction?** = dismissal for **conduct**

Must be fair and reasonable in the circumstances

Fairness will be interpreted in light of Article 8

Dismissal will have to be a **proportionate interference with Art 8**

### **Factors:**

Level of risk posed by employee not being vaccinated to colleagues and service users

Amount risk of transmission is reduced by being vaccinated

Level of protection provided by physical Covid-19 safety measures

Availability of alternative action as alternatives to dismissal (e.g. mediation, education, change in duties, change role)

Has employee been previously warned/disciplined for refusal?

Level of take up by colleagues

BUT – no unfair dismissal claim if no dismissal or employee has less than 2 years service

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# 03 The Law...

### If employer has policy requiring vaccination

- No **direct discrimination** as applied equally to all employees
- **Could be indirect discrimination under the Equality Act 2010 if policy:**
  1. puts persons who share a particular protected characteristic at a particular disadvantage compared to persons who do not share that characteristic
  2. The employer cannot show the policy is a “**proportionate means of achieving a legitimate aim**” = similar principles as proportionality of dismissal

Relevant protected characteristics:

- An individual’s **religious beliefs** – is the vaccine and its ingredients compatible with a particular religion?
- An individual’s **philosophical beliefs** – beliefs must be worthy of respect in a democratic society to be protected, and have sufficient levels of cogency, seriousness and importance; **not simply an opinion on issues**
- **Disability** – must make reasonable adjustments to policies

No service requirement for discrimination claim = **short service employees and job applicants can bring claims; job adverts will need to be careful**

# 03 The Law... Information Commissioner's office

**Data whether employee has taken the vaccine  
= private medical record**

- **Governed by the Data Protection Act 2018 and ICO guidance**
- Data collection engages Article 8 rights of employees
- “Processing” data must be necessary in carrying out obligations
- Employer must “provide appropriate safeguards” for the fundamental rights of the employee
- ICO recommends employers to undertake a Data Protection Impact Assessment (DPIA) before gathering vaccine data

# 03 The Law... Information Commissioner's office

## **Key questions to consider in DPIA:**

- How will collecting extra personal information keep your workplace safe?
- Do you really need the information?
- Will the vaccine help you provide a safe environment?
- Can you achieve a same result without collecting personal information?
- DPIA needed to ensure policy and processing of data is proportionate**
- Fair reasons for processing data = (1) health and safety; (2) necessary in the interests of public health**
- Data needs held no longer than necessary to fulfil purposes of (1) and (2)**

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# 04 Next Steps

- Which roles need to be vaccinated and why? Is this really necessary?
- Are alternative physical safety measures available and are sufficient?
- What if the vaccine doesn't reduce transmission, and only protects the individual from becoming unwell?
- How will you plan your DPIA to collect vaccine data?
- How will you communicate to your policy to employees?
- How will you manage non-vaccinated employees? Disciplinary, persuasion or change of duties?
- Will you educate/inform your workforce first? Will you survey their views and likely take up of the vaccine?
- Is a policy needed if the voluntary take up levels are high?
- Reliable online sources of facts about the vaccine (links to be shared later):
  - Public Health Wales**
  - Welsh Government**
  - Joint Committee on Vaccination and Immunisation**
  - Common sense will prevail!**

**Thank you.**  
**Any questions?**