Department
of Health &
Social Care

From the Rt Hon Matt Hancock MP
Secretary of State for Health and Social Care

39 Victoria Street
London
SW1H 0EU

020 7210 4850

POC_1222285

The Rt Hon Harriet Harman QC MP
Chair
Joint Committee on Human Rights
House of Commons
Westminster
SW1A 0AA

04 May 2020

Dear Harriet,

Thank you for your letter of 28th April 2020 regarding the Government's plans to use digital technologies, and in particular an NHS contact tracing app, to respond to the coronavirus outbreak.

We are developing an integrated test and trace programme. This will bring together a new app, expanded web and phone-based contact tracing, and swab testing for those with potential COVID-19 symptoms.

This test and trace programme will play an important role in helping to minimise the spread of the virus in the future, by ensuring that we can quickly trace and advise isolation of contacts of new or suspected cases. I have set out below some more detail, responding to the questions in your letter.

How the app will work

The contact tracing app will be one of a number of tools we use in the fight against coronavirus and it will be voluntary. People will have the choice of whether or not to download the app and they will be able to delete it whenever they like. However, the more people who use it, the better the chance we will have to reduce the spread of the virus. When the user downloads the app, they will enter their postal district. Any data collected on a user's smartphone by the app will not be shared unless the user makes a positive decision to share it via the app.

The app is undergoing testing and we are working with clinicians, scientists and other specialists to plan a safe national rollout. We intend to withdraw the app once the epidemic is over and it is no longer required. We are considering how best to evaluate the end of the epidemic and when the tools we designed to respond to COVID-19 can be withdrawn.

All data collected will be held in accordance with the law and to the standards expected of health systems.

Security, privacy, and data

Security and privacy have been prioritised in all stages of the app’s development, starting with the initial design and continuing through our implementation and testing. As part of our commitment to transparency, we will be publishing the key security and privacy designs alongside the source code so privacy experts - and others with an interest - can “look under the bonnet” and help us ensure the security is absolutely world class.

NHSX has drawn on expertise from across government and industry to review the design and help test the app. All data that app users choose to provide will be held on a secure NHS database used to support the app, with protections on access and use. As the Government’s lead technical authority on cyber security, the National Cyber Security Centre (NCSC) has supported in a significant advisory role. They have overseen our approach to security of data held in the app as well as the database that supports it. The Information Commissioner’s Office has been working with NHSX to help ensure a high level of transparency and governance. They published a statement on 24 April confirming this.

Turning to how the data is collected and stored, it is entirely possible for users to use the app without providing personally identifiable data. However, we are asking app users to submit details of their symptoms which supports one way of ordering tests. In addition, if an app user has symptoms of COVID-19 they will be asked to share their “proximity alerts” to help notify those they have been in contact with in an appropriate manner.

By choosing to submit data to the NHS, users will be helping to protect the community, the NHS and themselves. If users choose to submit their data, we will make clear that it will be used to help understand and manage the pandemic and provide reassurance that the NHS will keep their data secure and maintain their privacy. The data will be used to model our response to COVID-19 as well as improve the functionality of the COVID App. Data may be retained and used for research purposes to ensure we learn from the COVID-19 outbreak.

If users delete the app, all data stored on the phone and not shared with the NHS would be deleted. If users do not opt to share their data, it is deleted on a continuous 28-day cycle on their phone. The operating systems of phones may retain some information after the app is deleted, in line with how those operating systems work for all apps.

Oversight

We have established an independent Ethics Advisory Board to provide check and challenge - this is chaired by Professor Sir Jonathan Montgomery (UCL). It includes board members from the Centre for Data Ethics and Innovation (CDEI), including their Chair, Roger Taylor and the National Data Guardian’s panel. The CDEI is providing the secretariat as well as wider policy support to the team in NHSX. The full membership of the Board and their recommended ethical principles will be made public shortly.

Existing law and NHS standards set out a framework of protective measures to ensure the app is legally compliant and meets the standards expected to keep data secure and confidential. This includes GDPR and the Data Protection Act 2018, the Common Law

Duty of Confidentiality and Article 8 of the European Convention on Human Rights in cases where data is provided that might identify an individual. A Data Protection Impact Assessment will be completed and reviewed at each stage of the app's development. In addition to the continual monitoring, review and oversight undertaken by the NHS, we have asked the NCSC to review and supplement our processes.

Digital exclusion and vulnerable groups

You asked about the impact on groups without access to digital technology. It is important to stress that everyone will benefit from the app because - if enough people with smartphones do download it - it will help to stop the spread of the virus. The NHS app is one of many solutions to managing the COVID-19 situation and part of the development plan for the app is to address, where it can, the issues of vulnerable groups.

Public Health England's contact tracing service will run alongside the app, so that we can seek to trace all relevant contacts, whether or not the person with suspected COVID-19 symptoms is an app user and whether or not their contacts are app users. Those who are not able to use the app will have access to information and be able to book swab tests using other methods.

As with any government and NHS programme we are required to consider and address, as far as is possible, impact on equalities and we are doing this through an Equalities and Health Inequalities assessment and an ongoing plan of engagement.

Focus groups run by BritainThinks have been undertaken, split by age and socio-economic group and encompassing a mix of gender and ethnicity to reflect UK population, and a human rights roundtable has been held. An equalities roundtable is planned for May with advocacy groups representing a range of protected characteristics. These are informing ongoing development of the app to ensure it is as widely accessible as possible.

More generally, the Department for Digital, Culture, Media and Sport is supporting the DevicesDotNow campaign to get internet-enabled devices and support to vulnerable people isolated in their homes without internet access. Devices are being distributed through community organisations that are providing the support needed to enable people lacking digital skills and confidence to use the devices and access the internet and online services. The campaign is prioritising people who are digitally excluded and shielding or vulnerable due to age, disability, health conditions and social isolation.

Legislation and regulation

We do not consider that legislation is necessary in order to build and deliver the contact tracing app. It is consistent with the powers of, and duties imposed on, the Secretary of State at a time of national crisis in the interests of protecting public health.

Given that use of the app and provision of data by an app user are both voluntary, we do not consider that legislation is required to underpin the collection of data. Once data has been collected, we are bound by the strict obligations set out in the GDPR, the Human Rights Act (including the need to act compatibly with Article 8 and Article 11 of the ECHR) and the common law duty of confidence. We take our obligations to comply with each of these extremely seriously and will be taking all the necessary steps. This is supported by our duty towards transparency.

‘Immunity certificates’

Finally, you asked about ‘immunity certificates’. There is currently no widely available, validated antibody test suitable for use outside of research. At the point where there is, we are carefully considering how best a mass antibody testing programme would support our understanding of the spread of the virus, and the national response to the epidemic. Any considerations regarding privacy and data sharing in relation to this programme are continually being assessed. Any data would be handled according to the highest ethical and security standards.

I hope this letter addresses the key issues you have raised. I understand that Matthew Gould, the chief executive of NHSX, will be giving evidence to your committee on Monday, to enable a more detailed discussion of the Government’s plans in this area.

Yours ever,

Matt

MATT HANCOCK