

Written evidence from Liberty (COV0092)

NHSX CONTACT TRACING APP

ABOUT LIBERTY

Liberty is an independent membership organisation. We challenge injustice, defend freedom and campaign to make sure everyone in the UK is treated fairly. We are campaigners, lawyers and policy experts who work together to protect rights and hold the powerful to account.

Liberty provides policy responses to Government consultations on all issues which have implications for human rights and civil liberties. We also submit evidence to Select Committees, inquiries and other policy fora, and undertake independent, funded research.

Liberty's policy papers are available at libertyhumanrights.org.uk/policy.

Introduction

Liberty welcomes the opportunity to provide evidence to the Joint Committee on Human Rights (JCHR) as part of its inquiry into the human rights implications of the Government's response to COVID-19. This submission focusses specifically on the NHSX contact tracing app. Our full submission covering the breadth of human rights issues arising from the Government's response to COVID-19 will follow in due course.

Liberty was pleased that the JCHR took evidence from the Information Commissioner, academics and the CEO of NHSX on Monday 4 May to explore the privacy implications of the proposed NHSX contact tracing app.

Plans for the NHSX app are progressing at pace, with a version of the app currently being trialled on the Isle of Wight with hopes to roll out across England by the middle of this month.¹ It is crucial that the human rights implications of the NHSX app are raised prior to the app's roll out in order to provide the Government with the opportunity to revise its plans to better protect human rights.

While the opportunities presented by technology must be thoroughly investigated in the fight against COVID-19, we must resist the idea of a 'digital sticking plaster' in this extraordinary public health emergency. Contact tracing apps are by no means the most effective solution for combatting COVID-19. Scientific and medical evidence supports greater levels of testing, wider provision of PPE and access to treatment and vaccinations.² In fact, in the absence of widespread testing, there are serious questions around whether contact-tracing apps provide any kind of meaningful solution to the pandemic, while posing significant rights risks.

A contact tracing app could also be used in combination with the coercive powers of detention, forcible testing and quarantine without judicial involvement – powers contained in Schedule 21 of the Coronavirus Act, about which Liberty has already expressed significant concern.³

NHSX claim that it needs 80 per cent or more of people with smartphones to download and use the app for it to be an effective part of a testing, tracing, and isolation strategy.⁴ For this to happen, people need to trust that their rights and personal data will be protected and that the app is going to function properly. This submission sets out Liberty's five key asks of the Government on the NHSX contact tracing app, which we hope will be of assistance to the Committee in its ongoing scrutiny of the human rights implications of the Government's response to COVID-19.

FIVE KEY ASKS

¹ BBC News, *Coronavirus: How does contact tracing work and is my data safe?*, 5 May 2020, Available at: <https://pharmaphorum.com/news/uk-says-coronavirus-contact-tracing-app-could-be-nationwide-in-weeks/>

² The Doctors' Association UK, *DAUK Writes for the Sunday Times: Without Protection, NHS Staff are Cannon Fodder*, March 22 2020, Available at: <https://www.dauk.org/news/sundaytimeslettertoborisjohnsonppe>; Parliamentary Office of Science and Technology, *Vaccines for COVID-19*, April 22 2020, Available at: <https://post.parliament.uk/analysis/vaccines-for-covid-19/>; Rohn, *Until we have a vaccine for coronavirus, treatments like Remdesivir are our only hope*, The Guardian, 30 April 2020, Available at: <https://www.theguardian.com/commentisfree/2020/apr/30/failed-trials-covid-19-drugs-remdesivir>

³ Liberty, *Liberty's Briefing on the Coronavirus Bill*, March 2020, Available at: <https://www.libertyhumanrights.org.uk/wp-content/uploads/2020/03/Libertys-Briefing-on-the-Coronavirus-Bill.pdf>

⁴ BBC News, *Coronavirus: How does contact tracing work and is my data safe?*, 5 May 2020, Available at: <https://pharmaphorum.com/news/uk-says-coronavirus-contact-tracing-app-could-be-nationwide-in-weeks/>

Liberty urges the Government to:

1. BRING FORWARD PRIMARY LEGISLATION

Primary legislation must be brought forward to allow Parliament the opportunity to interrogate the role of NHSX's contact-tracing app in combatting COVID-19 and to debate the sufficiency of the rights protections in place. It should include a fixed sunset clause (see ask 5 below).

2. INTRODUCE A DECENTRALISED APP TO PROTECT OUR RIGHTS

NHSX has adopted a centralised data collection model for the contact-tracing app. Liberty encourages Parliamentarians to call for this model to be scrapped in favour of a rights-protecting decentralised model such as DP-3T.

The current centralised model opens the door for the Government to access enormous quantities of sensitive information and enables cross-referencing of previously unlinked data. The Government's track record for data sharing under the hostile environment⁵ and the sharing of health data with the Department for Work and Pensions in relation to people claiming benefits⁶ gives good cause to be wary. This is an unnecessary infringement of our rights given the availability of alternative models which hold data locally on users' devices. A false dichotomy between public health and civil liberties must be strongly resisted – we can and should have both.

Austria, the Czech Republic, Estonia, Iceland, Ireland, Italy, Poland and Switzerland have all adopted decentralised models – and Germany recently scrapped their centralised model to “promote the use of a consistently decentralized software architecture”.⁷

3. ENSURE TRANSPARENCY

⁵ Liberty, *Care Don't Share*, 3 December 2018, Available at: <https://www.libertyhumanrights.org.uk/issue/care-dont-share/>

⁶ Bulman, *DWP plans to obtain people's medical data will deter benefit claimants accessing healthcare, doctors warn*, 26 February 2019, Available at: <https://www.independent.co.uk/news/uk/home-news/dwp-benefit-claims-medical-data-sharing-nhs-healthcare-doctors-charities-a8797991.html>

⁷ Federal Ministry of Health (Germany), Statement by Chancellor Minister Helge Braun and Federal Health Minister Jens Spahn on the tracing app, 26 April 2020, Available at: <https://translate.google.com/translate?hl=en&sl=de&u=https://www.bundesgesundheitsministerium.de/presse/pressemitteilungen/2020/2-quartal/tracing-app.html&prev=search> [translated]

There must be far greater transparency around what data will be collected by the app, how it will be used, who will have access to it, how long it will be retained and when it will be deleted. Data must not be retained for longer than strictly necessary for the functioning of the app during the COVID-19 crisis.

Furthermore, the Government must provide detailed information to the public as to the involvement of private companies and how our data will be protected from exploitation. Liberty cautions against allowing big tech to gain a foothold on our public services. The sector is profit-driven, with many companies involved in the UK's response to COVID-19 being implicated in human rights abuses.⁸ Allowing the tech-sector to become indispensable to the public sector risks creating a lasting and dangerous link between our public health infrastructure and profit-based data gathering.

4. COMMIT TO NO COERCION OR DISCRIMINATION

The Government must commit to use of the app being entirely voluntary, with no coercive measures introduced to enforce use.

Liberty is also concerned about resulting discrimination based on COVID-19 status, exacerbated by any app use enforcement measures around – for example – accessing public transport, public places or workplaces, which would inevitably have a disproportionate impact on minoritised groups.

The Government must be mindful of how the use of our personal data to track and monitor us, make predictions about our lives and determine access to services was already deeply embedded into our society prior to the pandemic, entrenching existing socio-economic inequalities (see, for example, use of 'predictive policing' in law enforcement).⁹ These models of data surveillance lead to discriminatory outcomes, often shielded from interrogation by the 'black box' of indecipherably complex technology.

5. ENSURE NO MISSION CREEP

Over 300 scientists and researchers have signed a statement warning that "mission creep" in relation to contact-tracing apps could eventually lead to "unprecedented surveillance of

⁸ See, for example, Posner, *How Palantir Falls Short of Responsible Corporate Conduct*, Forbes, 12 September 2019, Available at: <https://www.forbes.com/sites/michaelposner/2019/09/12/what-companies-can-learn-from-palantir/#7600e83b16e0>

⁹ Liberty, *Policing by Machine*, 1 February 2019, Available at: <https://www.libertyhumanrights.org.uk/issue/policing-by-machine/>

society at large".¹⁰ There must be a commitment from the Government that this app will be used strictly in relation to contact-tracing during the COVID-19 pandemic and not for any other purposes, including law enforcement responses. This requires a fixed sunset clause to be introduced under primary legislation. The Government must also explain how it will dismantle this surveillance infrastructure, how it will decide when to do so and whether and in what circumstances the model will be resurrected.

6/05/2020

¹⁰ Joint Statement on Contact Tracing, 19 April 2020, Available at: <https://drive.google.com/file/d/1OQg2dxPu-x-RZzETlpV3lFa259Nrpk1J/view>