

Written evidence from the South England Conference (COV0174)

UK COVID-19 Vaccination – Human Rights Compliance: Compulsory Or Consensual?

Introduction

The purpose of this article is to address the human rights implications of the Government's response to COVID-19, particularly regarding the issue of any purported mandatory vaccination. In the face of another coronavirus outbreak,¹ must vaccination in the UK be compulsory or consensual? This question will not go away, and the answer is not a simple one, for this issue has remained contentious. A delicate balance needs to be struck between compulsion and consent for the common good of the whole society, and an action plan will need to be taken now if it is not to be done later in haste. I will seek in this call to use evidence-based arguments drawn from international law – specifically the Siracusa Principles, the European Convention on Human Rights and the UK Human Rights Act 1998 – to provide the reasonable steps which need to be taken to ensure that interventions by the Government to address the COVID-19 pandemic are compliant with human rights.

Setting

On the 3rd of March 2020 the UK Government published its coronavirus action plan setting out its four key stages: namely, Contain; Delay; Research; and Mitigate. On the 17th of March it indicated that measures were needed to manage the evolving COVID-19 pandemic. It noted that the 'interventions should be evidence-based and proportionate. The aim(s) of interventions being implemented, and the science, values and judgements (human rights principles) underpinning those interventions, should be clearly communicated to the public.'² On the 23rd of March 2020 the UK went into lockdown under the slogan, 'Stay Home – Protect the NHS – Save Lives', and on the 25th of March the Coronavirus Act 2020 received Royal Assent to legalise the implementation of the lockdown (*opinio juris sive necessitatis*).

COVID-19 vaccination issue emerges

As the coronavirus surged, so did expressions of frustration, anger, resentment, anxiety and worry about an unprecedented piece of legislation that had been passed in the UK, allegedly to mandate vaccination by force. One such expression was:

'It's very troubling to think one will be forced against one's will. I don't think having this vaccination will do anyone any good, as vaccinations take years to develop; and when one is found, if that's the case, we don't know the repercussions of having it . . .'

¹ <https://news.sky.com/story/second-coronavirus-spike-this-winter-could-be-more-serious-than-the-first-top-scientists-warn-12027912>

² <https://www.nuffieldbioethics.org/assets/pdfs/Ethical-considerations-in-responding-to-the-COVID-19-pandemic.pdf>

A number of posts on Facebook and videos on social media³ suggested that changes had been made to the Public Health (Control of Infectious Diseases) Act 1984 which had the effect, on the 27th of April 2020, of making any future vaccination for coronavirus mandatory. A section of the community took this to be true without question. The UK Government's response to the issue of mandatory vaccination was inconclusive. On the 4th of May 2020, at a No. 10 Downing Street press briefing, under the slogan: 'Stay Home – Protect the NHS – Save Lives', the Honourable Matt Hancock MP, Secretary of State for Health and Social Care, stated that no such step would be taken. He stated: 'I think the extent of the public's reaction to following the lockdown shows we will be able to achieve very high levels of vaccination without taking that step.'⁴ However, on the 21st of May, a member of the public (Finlay from Ardrossan) asked: 'If a vaccine is developed, will it be mandatory? If not, how will you bridge the difference in opinion between those who believe it necessary and those who do not?' Hancock replied, 'The question of whether it's mandatory is not one we have addressed yet'⁵ – thus indicating a change from his previous response on compulsory vaccination. James Morris of Yahoo News noted, 'It's a contrast to comments Hancock made on the 4th of May, when he suggested a vaccine would not be mandatory.'⁶ At the same press briefing, Mr Hancock did not follow on from the comments of either of the Government's medical and scientific advisers, who stressed the importance of consent in such matters: particularly Professor John Newton, who stated: 'Vaccine programmes are more successful by consent.'⁷ With the public deeply divided on this matter, it was unclear how Mr Matt Hancock would handle it. Counterintuitively, the two advisers highlighted not compulsory vaccination, but vaccination by consent.

It is interesting to note that a legal expert, Barrister Louise Hopper of Garden Court Chambers, in her article entitled 'Coronavirus Act 2020 – Does it Permit Mandatory Vaccination?'⁸ attempted to dispel social media concerns about this issue. She said that rumours that 'changes to the law mean that the Government has the power to force vaccines or other medication on you are wrong and unfounded'. However, she also added: 'There are multiple human rights and civil liberties implications both globally and domestically arising from the response to COVID-19 and the current crisis. Some of them are very real and concerning. Others are scaremongering and simply not true.' It is to this 'domestic' UK aspect that I now turn to address the steps required to meet COVID-19 human rights compliance.

Steps needed for UK COVID-19 pandemic human rights compliance

³ <https://www.youtube.com/watch?v=HzJpRvSUbI4&feature=youtu.be&fbclid=IwAR2wnzhq7ScPrEhkDa20EHLsYdRukCYwrz29VLZohRB3wxf1Cf-Mk5mqpx8>

⁴ <https://www.youtube.com/watch?v=4CJQYD5qCNk>

⁵ <https://www.youtube.com/watch?v=WE6aDXWUy7s>

⁶ James Morris, Senior News Reporter, Yahoo News UK, 21 May 2020

⁷ <https://www.youtube.com/watch?v=WE6aDXWUy7s>

⁸ <https://www.gardencourtchambers.co.uk/coronavirus-legal-news-views/coronavirus-act-2020-does-it-permit-mandatory-vaccinations>

An essential step for the Government's response to the COVID-19 pandemic to meet human rights compliance is to appoint a designated legal expert in human rights. During the press briefing at No. 10 Downing Street the public has become familiar with the faces of policy makers flanked by medical and scientific advisers. I am recommending that human rights lawyers be considered as a step forward for the future. Following such a recommendation may somehow restore public confidence and counteract the speculative notions and theories seen thus far during this pandemic.

Another vital step is that the Government should fully adopt the Siracusa Principles. Although under international law the principles are non-binding, they are persuasive enough for the Government to take into consideration, for the principles have provided a good basis for any human rights-compliant public health response to the COVID-19 pandemic. They detail criteria firmly enshrined in international human rights law, and standards to determine the lawfulness of state measures restrictive of human rights. 'The Siracusa Principles reaffirm the obligation of states to ensure that any public health response to such an emergency be rooted in and compatible with human rights law and standards. Importantly, the principles provide further interpretive guidance to states, proclaiming that restrictions on human rights may be justifiable only when they are:

- Provided for and carried out in accordance with the law;
- Based on scientific evidence;
- Directed towards a legitimate objective;
- Strictly necessary in a democratic society;
- The least intrusive and restrictive means available;
- Neither arbitrary nor discriminatory in application;
- Of limited duration; and
- Subject to review.⁹

The European Convention on Human Rights,¹⁰ incorporated in the UK Human Rights Act 1998¹¹ (Articles 8 to 10), ensures the need for interventions taken by the Government during the public health coronavirus crisis to remain 'evidence-based and proportionate'. For example, a public health policy restriction can pose human rights limitations on the enjoyment of privacy and respect for family life (Article 8). 'Proportionate' means balancing the competing issues with 'evidence-based' facts: in this case, to determine whether UK COVID-19 vaccination should be mandatory or consensual. It is argued that 'coercion and intrusion into people's lives should be the minimum possible consistent with achieving the aim sought'.¹² Also, Karen May, an experienced solicitor working for Bindmans, states, 'There are implications under the Human Rights Act 1998, with mandatory vaccination leading to potential claims under Article 8 of the European Convention on Human Rights.

⁹ <https://opiniojuris.org/2020/04/06/covid-19-human-rights-in-the-time-of-covid-19-front-and-centre/>

¹⁰ Alastair Mowbray PhD and Davis Harris PhD, *Cases and Materials on the European Convention on Human Rights*, Oxford University Press, 2001

¹¹ Rambert de Mello (Ed.) *Human Rights Act 1998: A Practical Guide*

¹² <https://www.nuffieldbioethics.org/assets/pdfs/Ethical-considerations-in-responding-to-the-COVID-19-pandemic.pdf>

Inevitably there are tensions between the right to respect for private and family life and an argument that compulsory vaccination of school children constitutes legitimate interference by a public body for the protection of public health – two apparently contradictory positions within this article.¹³

Conclusion

The Government's response to the COVID-19 pandemic crisis, in the main, should be to safeguard the health and safety of individuals and communities, while not restricting personal freedoms more than strictly necessary to fulfil public health objectives. There's no easy answer concerning whether to opt for consensual or mandatory vaccination in the UK, with public opinion deeply divided on this matter; neither has the indecisiveness by policy-makers been helpful. The direct inclusion and involvement of legal experts in human rights standards and compliance may provide a necessary step to ensure that any measures taken by the Government in addressing the COVID-19 pandemic remain compliant with human rights.

Human rights compliance can play a pivotal role when well communicated to individuals, communities and the wider society in matters related to public health standards. I suggest and strongly recommend, on the unresolved issue of 'mandatory or consensual' UK COVID-19 vaccination, that scientific and medical professionals work together with human rights lawyers to educate the public on the pros and cons of COVID-19 vaccination in anticipation of when that time does come.

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¹³ <https://www.bindmans.com/news/is-compulsory-vaccination-of-schoolchildren-a-viable-policy-option-in-the-uk>