

## Question 1:

**I am going to lose a registered manager who has had the first vaccine, which has already exacerbated her existing health conditions leading to her decision not to have the second vaccination. Her GP is dismissive about whether she qualifies for a medical exemption. I am extremely concerned that we will lose an experienced and highly motivated manager and cannot do anything about it.**

### **Answer:**

The Regulations are very clear that members of staff who have not completed the full course of vaccination cannot enter the care home after 11<sup>th</sup> November. If this Registered Manager believes that she should be exempt and her GP is being dismissive then she still has some time to seek a second opinion and obtain a medical exemption before 11<sup>th</sup> November.

## Question 2:

**We have some care home workers paying for private medical exemptions from 'workers unions'. Where do we stand with these please?**

### **Answer:**

Only a medical certification under the certification scheme which is currently being developed (and guidance is expected imminently). The current guidance states that the medical exemption must be a clinically approved exemption and that there will be a clear process for staff to follow if they believe they are medically exempt. The guidance does not currently state what form the medical exemption evidence will take and we should expect further guidance on this soon.

## Question 3:

**Has guidance gone out to those supporting health and wellbeing practitioners to inform them of the requirements under the Regulations?**

### **Answer:**

The current guidance states NHS England and Improvement will be issuing specific guidance to those who are likely to fall within the definition of "Third Party Providers" being those who don't directly work for the care home but provide personal services to service users. The current guidance suggests that care homes may want to consider introducing a contractual requirement for the Third Party Provider to provide evidence of vaccination or medical exemption as part of the contract for services between the care home and Third Party Provider.

## Question 4:

**When do you think this will be a requirement for Wales?**

**Answer:**

At this point there are currently no plans to make vaccination mandatory in Wales or Scotland. If however a member of staff or Third Party Providers lives in Wales or Scotland but works in England, they will need to comply with the Regulations.

## Question 5:

**What is an essential care giver?**

**Answer:**

Whilst it is not clear in the guidance, the definition of essential care giver that appears to be being applied to the Regulations is that contained in the government's "Guidance on Care Home Visiting" (link [here](#)). An essential care giver is effectively one individual nominated by a service user to attend to essential care needs. It would be prudent to document decisions on who is nominated and why - it has to be essential for the resident's care (mental or physical).

They are still subject to any Infection Prevention Control and testing measures put in place by the care home but there is no requirement for them to be vaccinated.

## Question 6:

**Are residents who live in a registered care home going to be able to attend day centres where staff and other attendees haven't been vaccinated?**

**Answer:**

The Regulations currently only apply to those entering CQC-Registered Care Homes in England. There is no mandatory requirement to be vaccinated outside of this. However, if you have concerns about risk to service users and staff then it would be worthwhile asking the Day Centre to provide you with a copy of their health & safety risk assessment and Covid-secure/Infection Prevention Control measures so you can assess whether the risk is being adequately managed. There is no obligation for the Day Centre and they won't be able to provide you with details of who has been double-vaccinated there as it would be a serious breach of Data Protection but they should be able to provide you with sufficient detail about the risk management measures they have put in place to determine whether the level of risk is low enough to allow service users to attend the Day Centre.

## Question 7:

**What about when a client is being supported in their own home/ supported living setting (CQC/Non CQC regulated)/ Domiciliary workers/Independent living etc**

### Answer:

This only applies to staff and Third Party Providers who work in a CQC-registered Care Home in England which provides accommodation for persons who require nursing and personal care. There is currently no obligation where a service user is supported in their own home or for any care provided outside of a CQC-regulated care home. However, consultations are being launched to expand this so that does not mean that these obligations won't be extended in the near future.

## Question 8:

**How do you get proof if you have had the vaccine?**

### Answer:

The guidance confirms that proof can be obtained only in three ways:

1. The NHS App;
2. The NHS website; or
3. An NHS COVID Pass letter.

The COVID Pass letter can be obtained online or by calling 119 if the individual doesn't have access to the internet.

## Question 9:

**When do you think other care staff will need the vaccine i.e. domiciliary care/ day services/ outreach etc?**

### Answer:

A consultation has been launched within the last week to make it a mandatory requirement for health and social care and NHS staff so it is possible that this could be extended to other care staff in the future.

## Question 10:

**My concern is that we have such stringent criteria for staff and yet the essential care giver and visitors will pose a significant risk as they are not captured in these criteria. How as a manager can I say this is equality and then mitigate this risk?**

### Answer:

This is a difficult conversation to have as it very much appears on the face of it to be one rule for staff and Third Party Providers and another for everyone else. In terms of having these conversations, you should be clear that this is an obligation that is being imposed on the care home by the Regulations and not a decision that the care home has made themselves. You are therefore legally obliged to comply and, whilst it may seem unequal, that is what the Regulations say. Open constructive dialogue with affected staff as early as possible is going to be the key to managing this process. You should then continue to assess the risk posed by those who do not have to be vaccinated and put in place any Infection Prevention Control measures you feel are reasonable to mitigate that risk.

## Question 11:

**We have an older employee who doesn't have access to the internet. Where can they obtain the NHS covid pass letter?**

### Answer:

It is possible to obtain a COVID Pass letter by calling 119 and following the instructions. The member of staff may also want to contact their GP and seek their advice.

## Question 12:

**What if you are supporting an individual who chooses not to be vaccinated, obviously that is their choice, but how will this impact on other staff?**

### Answer:

Unless a member of staff is vaccinated or medically exempt by 11th November they will not be able to enter the care home and need to either be redeployed or dismissed. This is likely to lead to staffing issues in the short and medium term dependant on the number of staff this affects. The government guidance states that it believes it to be unlikely that care homes would be significantly affected but, if a care home does have staffing concerns, it should raise these with the local authority and the Care Quality Commission.

## Question 13:

**Are trainers included in the third party provider category?**

### Answer:

Yes trainers would be classed as Third Party Providers.

## Question 14:

**If a Third Party Provider attends the care home and provides evidence of vaccination or exemption within the care home i.e. at reception, is this still technically a breach of the Regulations?**

### Answer:

Yes, the Regulations confirm that a Registered Manager should not allow entry to the care home of any member of staff or Third Party Provider until they are reasonably satisfied that they are vaccinated or medically exempt. It would be advisable to have conversations with Third Party Providers now to confirm that the care home will need advanced evidence of vaccination or medical exemption for anyone who attends to care home otherwise they will not be allowed access. It is for the Registered Manager to decide the best way of managing this.

## Question 15:

**Does this include child-based care homes?**

### Answer:

There is no specific reference to child-based care homes but the guidance is also not specifically limited to adult care. All CQC-registered Care Homes in England who provide accommodation for persons who required nursing and personal care are captured. Care Homes are those as defined by the Care Standards Act 2000 i.e. accommodation, together with nursing and personal care, for persons who are or have been ill, have mental disorders, are disabled or infirm or dependant on alcohol - so this can apply to CQC registered homes which provide personal and health care to children

## Question 16:

**If we have to dismiss and the staff member's contract says have to give 12 weeks, do we need to pay them during this notice period?**

### Answer:

The government guidance confirms that they would expect care homes to pay notice to any staff member who is dismissed as a result of the Regulations. However, if a member of staff has indicated now that they do not intend to be vaccinated by 11th November and do not qualify for a medical exemption, it may be possible to go through a formal process ending in dismissal once all alternatives have been considered now with a condition in the termination letter that, should they change their mind and provide evidence of being fully vaccinated by 11th November, you will re-engage them. You should take specific legal advice on this however as it is not straight forward.

## Question 17:

**I have staff members who are currently on maternity leave or on long-term sick leave. Is there still a requirement for those people to be vaccinated by 11<sup>th</sup> November?**

### **Answer:**

You should still engage these staff members in discussions around the requirement to get vaccinated and what it means for them. However, so long as they are vaccinated (including the two week period after the second vaccination) or have obtained a medical exemption by the time they return to work, they will be permitted to continue to work.

## Question 18:

**I have staff members who have recently had Covid in the last couple of weeks, so can't get their first vaccination as I believe they need a 28-day gap after having Covid. Does the guidance provide for this?**

### **Answer:**

On 15<sup>th</sup> September the government released further guidance on medical exemptions and it appears that these may be extended beyond only those contained in the Green Book. Some non-exhaustive examples of further exemptions are set out within the new [guidance here](#). However, in-depth guidance will be required to establish exactly how these exemptions work as it may be the case that these are temporary exemptions only to take account of short-term reasons for a staff member or Third Party Provider not being vaccinated by 11<sup>th</sup> November. The government has confirmed that the operational guidance will be updated within the next few days so we suggest that you continue to monitor the operational [guidance here](#).

## Question 19:

**My employer is not a regulated CQC care home but still wants to impose double vaccination status on the employees. Is this lawful?**

### **Answer:**

This can be done but the employer will not have the protection of the Regulations to fall back on to justify this. The No Jab, No Job webinar will help you to understand the considerations that they will need to take into account before imposing this. This is available from QCS.