FBL 22nd June 2021 - The ethics of introducing Covid 19 vaccine passports

KAREN FOLEY: Welcome back to Student Hub Live. We are now going to be discussing the ethics of introducing COVID-19 vaccination passports. I'm joined by Ash Odedra, who is an associate lecturer in law, and has taught the subject for over 20 years. And he is going to be looking at this topic from a human rights perspective.

And we also have Charlotte Luckhurst, who is also an associate lecturer in law. She has an interest in public law and the powers and obligations of the state, and the implications that some of these temporary COVID rules or regulations may have on the relationship between citizens and the state. So we are very interested in what your views at home are on whether or not you think that having a COVID vaccine should be mandatory. So let us know in the chat.

And we've also got a widget there-- a very simple yes, no, or you're not sure. So let us know what do you think about whether or not the vaccinations should be mandatory. But while we're looking about that, I wanted to ask about the human rights and ethical issues involved with something like having a mandatory vaccination. Charlotte, what are your thoughts on this?

CHARLOTTE LUCKHURST: Well, there are quite clearly a lot of human rights concerns that are being raised in regard to mandatory COVID vaccines. So one of the very real human rights concerns is forced medical treatment. Now, clearly, the state would not want to do that. So if we're thinking about human rights themselves, that would be considered under Article 3, the right to freedom from inhuman and degrading treatment.

But there are other human rights concerns that are raised. Specifically, the right to consent to medical treatment and the right to personal autonomy, which are considered under Article 8 of the European Convention on Human Rights, right to respect for your private life. So those are the main human rights concerns surrounding compulsory COVID vaccines.

KAREN FOLEY: And I think the implications of that there may be some limitations, might there be, in terms of what freedoms we can have with these temporary regulations?

CHARLOTTE LUCKHURST: Yes, I think the temporary nature of the restrictions that have been imposed on us is something that has been largely accepted by the public. So we've had all sorts of rules and guidance that's been issued, which have imposed restrictions on our freedoms to meet other people and to go out and to leave our homes and so on. But these restrictions have been largely consented to by the public as being necessary to protect public health of the population at large.

KAREN FOLEY: And Ash, I wonder what you can add in terms of some of the legal and political, economic, and also social implications that we've seen as a result of some of these issues.

ASH ODEDRA: Well, indeed, we are living in unprecedented times. But I think we must be really mindful of the impact that some of these emergency measures may have on us. For example, we can't be forced to have treatment under Article 3, and we have a degree of autonomy and choice over whether or not we should have treatment.

The question then is, what are the legal, economic, and social impacts on citizens? And we have to be mindful of the fact that these measures have to be proportionate. And I'm really thinking about the effect this has on citizens in the longer term, in terms of employment, travel, and opening up business, and the leisure activities that people can undertake.

KAREN FOLEY: Yeah, absolutely. Now, while people are voting at home, I'm gathering the results from that poll. So if you haven't voted on it, do let us know whether or not you think the vaccine should be mandatory. But one of the topics that we've been talking about is that people who've had organ transplants can't have the vaccine. So there are some issues in terms of who can or can't have the vaccine, and therefore, perhaps what their rights are as human beings within our society. Charlotte.

CHARLOTTE LUCKHURST: Yes, that's right. I mean, if compulsory vaccines are the way forward, then we need to think about those people who might be indirectly discriminated against-- so for example, on the grounds of health or disability. We're also seeing some vaccine hesitancy with some groups in society. So if those people are denied access to employment, or access to leisure or travel, or other things that allow us to participate in society fully as citizens, then I think there are very real concerns there of the indirectly discriminatory effect of requiring compulsory vaccines.

KAREN FOLEY: We asked people at home what they thought about the mandatory vaccine. 85% of our audience watching right now think that yes, there should be a mandatory vaccine. 8% say no, and 8% are unsure. I want to think that figure is changing all the time. But the vast majority are in agreement that there should.

While people fill in the word cloud-- and remember, if you have joined us, this is one where we need three things in the box. Otherwise, the results flex a bit. If you can only think of one or two, that's fine.
But let us know what you think some of the benefits of mandatory vaccines are in that word cloud. As I say, full stop across in the box, if you can only think of one or two. So what are your responses, then, both of you, to the poll of what people think at home, agreement here that there should be a mandatory vaccine?

ASH ODEDRA: Well, I think that mandatory vaccines are a very controversial path to go down. At the moment, we've seen lots of guidance on what we can do and what can't do. But if we start legislating on this, it does bring forward so many of the issues with respect to human rights that we've addressed.

In terms of freedom of movement, are we going to be insisting. When people are planning their holidays. The guidance is not very clear at the moment on whether or not you are not supposed to travel to a red list country, but you can. And in amber countries you can travel there, but you've got to take a test before you come back, and then you've got to take another couple of tests and quarantine for 10 days. And in green-lit countries, where you don't have to quarantine, you still have to take a test on day two of arrival. And all of this is very, very confusing. And I can see why people have decided that mandatory vaccinations might seem to be a good idea. But I'm very mindful of the impact this is going to have.

KAREN FOLEY: Charlotte, what do you think?

CHARLOTTE LUCKHURST: Well, I think if you're the government or the state, you're going to argue that some sort of mandatory vaccination regime is a very proportionate response to the situation that we find ourselves in as a country. So the government and everyone, the public at large, is looking for a route or a pathway out of the pandemic. And I think that the government is going to argue, as we're going to perhaps live with COVID in the short and medium term-- perhaps it's with us for the next three to five years, that we do need some kind of legal framework that allows mandatory vaccines to be implemented. And for my part, I think that primary legislation is the way to go here. So we really need parliament to be scrutinising new law that implements a mandatory vaccine framework. We need appropriate safeguards, checks and balances. We need civil liberties groups to be consulted. The Joint Committee on Human Rights needs to be looking at this legal framework very, very closely to ensure that the measures that are implemented are proportionate to what the government's trying to achieve.

But I don't think anyone can argue that there aren't any good reasons for having mandatory vaccines in terms of opening up the economy, to promote the well-being of the country, and also to protect the rights of others. So if we're thinking about very vulnerable people, they have a right to life, which could be compromised if people are moving about freely without being vaccinated. So I think there's lots of things that need to be weighed up here.

KAREN FOLEY: Absolutely. As Mark says, COVID and its variants are here to stay, and the biggest issue is going to be around social interactions-- pubs and nightclubs, et cetera. Beverly says there should be fairness for everybody. And some very strong views here. One person says charge them with murder if they don't want to get the vaccine. Again, picking up on your point, Charlotte, about the implications of other people's by individuals' own decisions around some of this.

Let's see what some of the benefits were from our wild card that we asked people at home to fill in about some of the benefits of having a mandatory vaccine. These include things like safety, protection. So really, it's about focusing on that herd immunity and protecting other things. Stopping the disease, but also individual benefits as well, like not dying and being able to move freely, opening up the UK, et cetera. So people talked about those things. But largely, there seem to be benefits focused around protecting society, and us as a whole, from disease. So we're also looking at it in terms of some of the drawbacks. So perhaps we might look at this also, so that we can then comment on some of these strengths and weaknesses that people have identified.

The drawbacks here largely focused on the unanimous agreement that enforcement is the biggest drawback. But other things here, you've mentioned already things like human rights, but lack of choice, restrictions, state enforcement, disenfranchisement, lack of autonomy, missed opportunities, infringing beliefs, anxieties, side effects, resistance, and restrictions. So there are some key drawbacks here. I wonder if both of you would like to comment on what our audience say about both sides of this argument. Charlotte, perhaps you can share your thoughts with us.

CHARLOTTE LUCKHURST: There's very real concerns about how this could be enforced. So who's going to be making checks on people's vaccine status? Is this something that employers are going to want to or going to be required to check whether somebody has had the vaccine? What are the implications if people refuse?

People may refuse to have the vaccine for very valid reasons, as we've already discussed. It could be health concerns or perhaps some sort of very real fear about the side effects of the vaccine. So we could see some so misuse surrounding access to employment and access to all sorts of other things that we enjoy as part of our everyday lives certainly before pandemic.

KAREN FOLEY: And Ash, from an individual rights perspective, might you want to pick up on some of the drawbacks and the implications that those may have to people?

ASH ODEDRA: Yeah, what I see is that, if we go down a path of mandatory vaccinations, we're then drifting into a path of carrying vaccination passports. And for an individual, that's going to be a very tricky situation, because at the moment, individuals can't travel unless they have an app. And that app has data on it.

And there are people who are still sceptical about where their data is kept and how it's managed and how long it's managed for. Are we going to be seeing discrimination if people haven't had a vaccination? Are people going to be refused a right to work or go back to the office, which affects their economic rights? And what happens in areas where people can't get access to vaccines? There are still areas of the country where there is a shortage of that. And we've seen in the news today that there's going to be a booster in the autumn.

So are we going to also go down a path of making a third vaccine compulsory too? Where does this end? I think that's a very careful balancing act that the government will have to consider.

KAREN FOLEY: And David makes a very important point. One important point is a change in the relationship between the individual and health care professionals. Treatment is ordinarily by consent, not compulsion, unless there's serious mental health considerations or lack of mental capacity. So Charlotte, with that in mind, and in context around the discussion about rights, what would you say the rationale is for the state to extend its power to make something like a vaccine like this mandatory?

CHARLOTTE LUCKHURST: Well, as I touched on earlier, I think that the state is going to argue that we absolutely need this kind of protection. And students have made the point that vaccines aren't only about protecting us. They're about protecting other people. So I think the research has shown that if you've got the vaccine, you're less likely to transmit the virus to other people. So there's a very real public health justification, and then there's justifications in terms of the economy and the economic well-being, and the ability just to return to some kind of normality, which obviously the government wants with all of the very profound restrictions that have been in place for the last 18 months.

KAREN FOLEY: And it's that whole notion as well, I guess-- this balancing point, as you say, between the state having a right to justify things for, I guess, a better good. So here, we can see that there's a justification to limit the rights to private life, as long as those are qualified rights. So this is all about justification, and as you say, on a range of perspective economic, political, social, et cetera.

CHARLOTTE LUCKHURST: Yeah, that's right. And I think the key word to remember here is proportionality. So as long as the government can show that any kind of restrictive measures are proportionate, and they're going no further than necessary to meet the legitimate objective, and those legitimate objectives are economic and to protect the rights of others. So I think one keyword we can take away from this is proportionality of measures.

KAREN FOLEY: Now, if some of these mandatory vaccines would be introduced, we've already been talking about things like travel and employment and leisure. Are the issues around the necessity to create law? Because, I mean, new laws are difficult to create. We've seen very quick guidances created, but the whole notion of how laws are created has shifted in this pandemic. But in terms of that creation of law, is there a greater guidance needed or not?

ASH ODEDRA: Well, I would argue—

KAREN FOLEY: Yeah, sorry.

CHARLOTTE LUCKHURST: Oh, an argument.

ASH ODEDRA: Well, I would that the government has chosen a path of least resistance in issuing lots of guidance. And in doing so, it is avoiding the deeper issues in terms of human rights and the people's right to choose, which is obviously the path of most resistance, because liberties are at stake at this point. But what they've done, the byproduct of that, is that we've now got a confusing mishmash of rules and guidance.

And it's not very clear for people what the situation is. What is the difference between a rule? What is the difference between guidance? How is it policed?

Let's take for example, the amber system. People can't even understand what amber means when they're driving. Does it mean that you should quickly go or does it mean you should stop? And the guidance on

travel on amber is equally confusing for lots of people. And a lot of people have just chosen to change their plans because they don't want to get involved in a situation where it involves a huge amount of confusion, cost, and further restrictions.

KAREN FOLEY: Charlotte, before we hear your views, can I just go to Emily? Because this is prompting a lot of discussion for people at home.

EMILY YOSSARIAN: Hi, yeah, it really is. As we've seen, it's quite a contentious issue. And a just on the last point, actually, I wanted to mention that Tracy, she's put in the chat, she basically just-- so lots of people were on one side or the other. Shouldn't be mandatory, should be mandatory.

But Tracy actually preempted this conversation and said, I'd argue it's more about education, and that would be more appropriate than some kind of mandatory intervention. So that made me think-- just basically what you were talking about made me think, well, what kind of information is there out there? I've been vaccinated myself, but I know people who won't get the vaccination.

And I don't think that they're stupid people, but I think that, like you say, there's lots of confusing information. So yeah, how do we get that information out there? How do we educate people? Question for you guys.

[LAUGHS]

KAREN FOLEY: Charlotte, might you offer some thoughts on that?

CHARLOTTE LUCKHURST: Yeah, I think that there is a need for very clear messaging here from the government. And for my own part, I don't think that's necessarily been the case over the last 18 months or so. The government, of course, would argue these are unprecedented times, and they've had to be very reactive, and update their rules and guidance as more is understood about how the virus is transmitted and so on-- and the variants and everything else that we've learned over the last 18 months.
But I think in general, the UK government hasn't necessarily responded that well to the need to create rules and guidance, because there's a lot of emergency regulations that have been issued overnight throughout the course of the pandemic. People's rights have been changed at the stroke of a pen. And there's very little certainty about what your rights and obligations are as a result of the way that public health measures have been implemented. It's very difficult to find out, for example, when you're in lockdown what you're allowed to do and what you're not allowed to do, and even more uncertainty between what's actually law and what's guidance.

So I think in terms of messaging generally, the government needs to be a lot more clear. And in terms of implementing any kind of framework for mandatory vaccinations, there has to be a lot of debate about it, a lot of clarity, and a lot of transparency, really, in what the effects of these measures are and what restrictions may be necessary. So that's my thoughts on it.

KAREN FOLEY: The poll keeps changing all the time. We'll come to that a little bit later in terms of whether or not we think there should be COVID passports. But, I mean, it's one of those issues, Charlotte. As you say, the state's in a difficult position because it's all about getting out of lockdown. As you say, it's about the proportionate nature. But suppose, then, that they can prove that a vaccination is the best way of going about this. How might, then, we deal with that in terms of getting laws passed to make it so.

CHARLOTTE LUCKHURST: Well, again, I think the best place to do this is in parliament, not by ministers announcing some measures, which take effect the next day. So there needs to be a lot of deliberation about this. And I think it needs to be almost an all-party effort, and I think consensus needs to be sought as far as possible from all members of society who might be affected by this. Well, that's all of us, really. So there has to be a lot of democratic input, I think, to the making of a new piece of legislation on this.

KAREN FOLEY: So primary law, really, is the best way around achieving something like this. But as you say, lots of discussion. Let me share the results from our poll because it keeps changing. But on the whole, 48% of our audience watching now say that yes, we should make it mandatory to carry a COVID passport, 26% say no, and 26% aren't sure.

Mark says that proof that we had a vaccination and would make job security easier. But there are also other issues that are raised about the app, for example, and data, as has been previously mentioned before, and some of the alternatives for that, such as having a PDF or certificate. So issues around this concept as a whole, and also the way that it is delivered. I mean, in terms, Ash, of people getting their freedoms back and having some sort of passport, what do you think? Is this a good idea to help get some freedoms back if people are able to prove that they've had a vaccination?

ASH ODEDRA: Well, I think introducing passports is a matter of primary law, and would involve a lot of debate, et cetera. But I would argue that we're actually drifting towards that position already. We have a sort of a passport in the NHS app. Your vaccination status is demonstrated through that app. And by the way, that is a different app to the NHS COVID app. So already there are people confused. There's two different apps. They don't know which one is which. And this app generates a barcode, and then that shows your vaccination dates and shows that you're clear.

The problem with that is that not many countries accept it. So if we do legislate, it might only impact us. We might be able to leave the country. But going to another country, the acceptance of it is completely different because they have different infrastructure. And if we use this as ready as we've shown as a way of allowing people to have restrictions eased, we are now also seeing that creeping into the workplace. We've heard in the news over the last couple of weeks in care settings, for example, if someone in that environment does not have a vaccine, they will be redeployed into some other aspect of work. But some employers are very small, they have got nowhere else to redeploy workers. So if someone does have an issue with vaccination, whether it's religious or otherwise, what's going to happen to them, to that individual person? Who's going to enforce it? What kind of limitations are going to be placed on them? Are they going to be discriminated against in the workplace? Will they be refused work? And that's a form of indirect discrimination. So I think we're already drifting towards that kind of passport territory, and we're

at a crossroads here in how it's dealt with. But we need to be very mindful about the rights and liberties that we are navigating through to get to this path.

KAREN FOLEY: So I guess what you're both saying is that this whole discussion about whether this should be mandatory is based on the fact that, as guidance, there can be real discrimination and inequalities, because people can interpret things from different perspectives. And in a sense, having something as either mandatory or not would at least offer a unanimous position on this-- could then deal with things. I mean, there is a 12-point plan in terms of some of these vaccination passports that are looking, as you say, Ash, at people's rights and liberties. I wonder if either of you might want to pick up on some of those.

CHARLOTTE LUCKHURST: Yes. I mean, I can pick up on that. People do have very real concerns about their personal data being shared. So if we have apps on our phones with our vaccine status, who's going to have access to that information? What are the safeguards there? What other sorts of information might the government want to then make us upload onto this app.

So there's a creeping erosion, if you like, of our civil liberties. The more information that is made available to the government and other agencies, then the more worried we should be, I would argue. So where does it end? Once you have your vaccine status, what other health information will be stored on this app. And that obviously presents some very real concerns for a lot of people.

KAREN FOLEY: Because it's prioritising one thing specifically, but precedent is a very important concept. And as you say, Charlotte, if this precedent is set for one particular thing, what's not to stop other things that perhaps are less severe or even more severe being included within that sort of thing? So say, I mean, we've been talking about the app, and we're not quite sure what the name of the app is. And as you both say, there's lots of confusion around that.

But say this passport was there. You go to the airport, and you're able to demonstrate through the app whether you're able to access or not access particular countries. So could, then, this almost be some sort of form of ID.

And as you say, where does it stop? Where is the distinction between a passport which has your basic information on it and a passport which has perhaps your vaccination history on? Charlotte, what are your thoughts in terms of ID cards?

CHARLOTTE LUCKHURST: Well, there is a danger that this could morph or evolve, if you like, into some sort of compulsory ID card. And I think as a state or as a country, we have been quite resistant to the idea of ID carrying, ID cards. Proposals for compulsory ID cards were floated by the government about 15 years ago, for those of us who have longer memories. And they were dropped because there was so much outcry about the impact on civil liberties that they would have. So I think the government is going to be very mindful of that historical hostility, perhaps, towards carrying some sort of ID, whether it's used for

your vaccine status or for other information about you, like your social security benefits and all sorts of other personal information that might be stored on them.

KAREN FOLEY: And Ash, you mentioned the whole sort of thing that's happening right now in the news with care homes, and the way that this could either discriminate or not. But one of the aspect of making something law, making it mandatory, is of course then there's this need to police it. So this is where guidance is distinguished. So if this was made law, what are your thoughts, then, about how we might uphold the law in terms of policing, regulating? And I guess, then, there's the obvious issue of who should pay for that, particularly if it is within organisations, for example, in an employment context, like the care home workers.

ASH ODEDRA: Well, at the moment, there is a lack of clarity over this. Even employers don't know how it's going to be policed, but yet, the onus is on the employers. It's almost like the responsibility for implementation has been passed from government to employers, so they have to deal with it. So it's basically on their patch, on their territory. And a lot of them are very, very confused, and understand that these measures need to be put into place.

But there are still those concerns about that data and what's going to happen, and whether or not people will be refused interviews or refused working with certain types of clients in certain types of contexts. Someone said today data is the new air. And I think we need to be very mindful if we have that data, whether it's connected to just the vaccines, whether it's connected just to travel, we're seeing it creeping into lots of other areas.

And whether it's the employers who struggle with implementation, how much of that responsibility will be put on the police. The police have got a big job as it is dealing with crime, et cetera. If you're going to a social or leisure event, will we have bouncers or people, where you have entry to a nightclub with a ticket, would you have to use the app to get into there? Would we have two types of queues-- one queue for people who have a passport, one queue for people who object to this, but we have to have an on-the-spot test? Lots of people are going to be affected in lots of different ways, whether it's economically, whether it's to do with their work, and in that situation whether its do with leisure, or whether it's to do with travel.
KAREN FOLEY: Absolutely. Some fascinating discussions. We need to wrap up because it's all we've got time for. But while this is a very new issue, I'd just like to end with the point Joyce has made, which I remember well from my days of travelling when I was a lot younger.

You need a record for yellow fever if you're travelling to certain countries. And I remember there being some areas where you had to show a vaccination certificate, like yellow fever, and others like malaria or hepatitis, et cetera, that were recommended as guidance and that I think were beneficial. But again, there are whole issues in terms of if you don't comply with that guidance, where is the cost in terms of if things happen, and that distinction between guidance and I guess regulation in particular areas? So that's thrown up so many more questions than I think we have answers to.

Charlotte and Ash, thank you so much. It really shows issues around law and precedent, and how laws are set and the implications for then upholding those laws can have massive consequences. And it's not quite as clear-cut and simple. Every decision that is made around something like whether we should have a mandatory vaccination passport will have implications in terms of how it's policed, enforced, and also the sorts of ethical issues from a rights perspective in terms of the individual. So thank you so much for drawing up some of those wonderful discussions.

And thank you, everyone at home, for her contributing so greatly to that. I wish we had more time, but we don't. So we're going to have a short video break now.

We're going to look at dealing with isolation, a video by Siobhan Spense And then we're going to come back and around everything up with our final panel discussion and to get your final thoughts. So I'll see for that very soon.

[MUSIC PLAYING]