HEALTH STATUS CERTIFICATION IN RELATION TO COVID-19 – LEGITIMACY AND ENFORCEMENT CONSIDERATIONS

SPI-B Policing and Security sub-group

Executive summary

- Certification of negative test results could be problematic because of underlying reliability and validity issues with testing. Therefore, people are more likely to have confidence in certification of vaccination than of negative test results. [*Medium confidence*][1]
- Certification is more likely to be acceptable if it is *perceived as* enabling rather than restricting. For example, certification for entry to care-homes is likely to be acceptable; similarly, if it allows early release from isolation/quarantine, international travel, and facilitates access to non-essential and services, etc. [*High confidence*]
- Certification is likely to be unwelcome if it restricts access to goods, services and places regarded as essential or accessible as a matter of right. Any form of certification that restricts people from behaviours or access to places which they use habitually or which they regard it as their right to enter is likely to provoke resistance. [*High confidence]*
- There is currently no lawful impediment preventing private-sector organisations from imposing their own certification requirements. Government is invited to consider legislation that would limit the uses of certification in the private sector, so as to reduce the chances of discrimination and/or situations likely to disrupt public order.
- If proof of vaccination is required and the data is placed on medical records without issuing certification at point of delivery, it could possibly drive people to subsequently contact GPs for proof – those local services are unlikely to have the capacity to respond to this demand and GPs often adopt different and therefore variable approaches (e.g., some may charge). [*Low confidence*]
- Enforcement of certification is likely to place heavy burdens on public-facing staff and police and may create dynamics that amplify social tensions. [*High confidence*][2]
- To maximise the acceptability of certification, strenuous efforts should be made to reduce the risk of increasing inequality, e.g., by ensuring ease of access to testing/vaccination for marginalised communities; by limiting or preventing private vaccination until it becomes widely available.
- Rapid and effective rollout of vaccination would do much to reduce the risks outlined above and bolster the legitimacy of certification.
- Certification will inevitably present opportunities for various sorts of crime, especially fraud. [*High confidence*] Digital technologies with 2-factor ID can reduce this. However, paper certification will be needed to prevent digital discrimination and in order to reassure those who may feel uncomfortable about using mobile apps.

Context and purpose

Certification of negative tests or immunity has several policing and security implications.

These arise partly from the vehicle through which certification is delivered (paper, App based, email, post); its enforcement dimensions; the perceived legitimacy of what is being certified (e.g., the type of test or vaccine) and the domains in which certificates may be required.

[1] Confidence levels here refer to our judgment of the quality and availability of quantitative and qualitative data underlying our statement, rather than an assessment of the probability of a particular outcome.
[2] https://www.ncbi.nlm.nih.gov/pmc/articles/PMC7184412/

It is likely that where certification is intended to support permission for a specific activity flowing from the test (e.g., accessing a care home, release from self-isolation, international travel, immigration status) this will be widely seen and experienced as efficacious, acceptable and legitimate. In other words, it will be seen primarily as *enabling*.

In contrast, if a certification system is designed and implemented for more generic purposes, or if it is difficult to access or levies a charge, it is likely to be seen primarily as *restrictive*. The same applies to activities – e.g., shopping or work – in which people habitually engage. In the restrictive cases, certification is likely to become problematic, especially if there are doubts about the reliability of what is being certified or if people are prevented from doing something they consider as their right.[3]

This paper will consider a) issues relating to certification arising from testing; b) issues relating to certification of immunity (vaccination); c) issues common to both (protest, crime, private sector imposition).

Certification of testing is likely to be problematic except in a small number of limited scenarios. Certification of vaccination is likely to present fewer difficulties from a security and policing perspective but there are still several significant risks which will require mitigation.

A. CERTIFICATION RELATED TO TESTING

i. Reliability of tests

The acceptability of certification of testing will depend to a large extent on perceptions of the tests themselves. The key issues for many forms of testing relate to their sensitivity and specificity; a topic that requires the attention of other SAGE subgroups. However, any negative test result is clearly only valid for a limited period of time.

ii. Inequality

Throughout the epidemic in the UK, there has been a close correlation between economic inequality and high rates of infection and mortality from Covid-19. Geographical areas of socio-economic deprivation tend also to be those with high rates of criminality and anti-social behaviour, attract higher levels of police contact (e.g., stop and search) and have a history of poor relations with police. Such areas tend to score highly in the Deprivation Index (i.e., ranking low in educational attainment, housing, job prospects, etc).

Some of the areas in question have a high percentage of BAME residents (e.g., Harehills district in Leeds), though others are largely White British (e.g., Halton Moor in Leeds; many areas in Hull). In these contexts, the enforcement of Covid-19 restrictions is already challenging, reflecting both high crime rates and the poor long-term relations between locals and police. This is reflected in data regarding the disproportionate issuance of Fixed Penalty Notices (FPNs) for Covid violations to young BAME men. During the epidemic, these issues have resulted in significant and increasing amounts of violence aimed at the police. [4]

As the lives of many residents in the areas described are already difficult, it can be expected that fewer will avail themselves of testing, especially if test centres are located some distance away.[5] Many who live in these areas (especially young people) distrust authority and this will make testing and therefore certification unattractive. If so, across the UK, certification will be lowest among those who are already likely to be excluded or feel excluded from certain institutions and from society in general. In view of this, certification could exacerbate

[3] https://bpspsychub.onlinelibrary.wiley.com/doi/full/10.1111/bjso.12398
[4] https://www.bbc.co.uk/news/uk-england-leeds-54889005
[5] https://pubmed.ncbi.nlm.nih.gov/20334731/

discrimination and social divisions in terms of access to employment, leisure and possibly even essential goods and services.

iii. Enforcement

The key issue having a bearing on enforcement is where and under what circumstances testing certification would be required. Given the range of possible circumstances in which certification may be required, enforcement is likely to be exercised in multiple ways and through a variety of stakeholders.

Requiring certification to leave the home (as in Slovakia) would be highly problematic and place a major strain on policing. This form of Covid-passporting would also have major implications for the legitimacy of the police, who would presumably be called upon to enforce the supporting legislation.[6]

We assume, therefore, that if certification of testing is envisaged, it would mostly be at point of entry, where people would be required to show certificates in order to access an enclosed space (e.g., a workplace, shop or leisure facility) or to travel (e.g., use public transport).

As some formerly public spaces are now privately owned and controlled, it is recognised that the distinction between public and private space is now often unclear. Subjecting spaces (e.g., shopping centres, railway stations) to an entry requirement based on certification is therefore likely to be problematic and contested.

We assume that it is most likely that certification will be considered (whether by the private sector or government) as a requirement for access to:

- The workplace (e.g., delivery drivers, public-facing roles in hospitality and retail). If certification is required by employers, it could compound existing economic inequalities. It may also undermine the capacity of workplaces to function and subsequently undermine economic performance. There are also important questions to be asked about employment status. A responsible employer may require employees to have certificates before coming into the workplace, but what of people in the gig economy who are usually self-employed? A related issue is whether the employer, employee or government would be expected to cover costs of tests/certification.
- Places of healthcare and health-delivery. Whilst it is unlikely that uncertified persons would be refused access to such facilities if seeking healthcare for themselves and family members, it is conceivable that it might be required for those wishing to visit friends and relatives in hospital. If so, in the majority of cases, this is likely to be seen as an important safeguard or as enabling. However, in some cases, exclusion is likely to be challenged and may give rise to disorder.[7]
- Places of leisure, worship and community activities. Given that such activities occur primarily in private space, certification can be made a condition of entry. However, being refused access to pubs, clubs, sports stadia, non-essential retail, community centres, places of worship etc, may be deeply resented by some as these were activities that they previously enjoyed unhindered. Some may even react aggressively and staff in public facing roles (who would be expected to ask for certification) would therefore be endangered. Situations in which there are likely to be particular difficulties

[6] See COVID-19: Assessing the value of an Enforcement based approach to Covid. And Key issues that may arise regarding a technological approach to enforcement: Rapid preliminary response based on selected expert views. SPI-B Policing & Security Sub-Group.
[7] https://www.ncbi.nlm.nih.gov/pmc/articles/PMC7184412/

include queues for entry into hospitality venues such as night-clubs. People with a tendency to perceive the intentions of authorities as malevolent may be particularly likely to see certification as part of a larger schema of exclusion and persecution.

- Retail outlets. Being refused access to certain commodities (e.g., food, clothing) would create serious deprivation and is likely to increase social tension.
- Public transport: Survey data suggests that the majority of people support certification for international travel,[8] although growing use of counterfeit PCR certificates may reduce confidence in it (see below). Being refused entry to forms of public transport within the UK would have a disproportionate impact on poorer sections of the community and may therefore be extremely unpopular, especially as people on low-incomes are more likely to rely on it.

If enforcement proceeds in any of the above circumstances, the question arises as to what happens if someone who does not have a certificate refuses to go home. Presumably there would be a requirement for them to be detained; if so, the strain would not just be on police numbers/hours/vehicles, but also on prison vans, holding cells, custody suites, and further down the line the Crown Prosecution Service and courts. Moreover, many of these spaces could be accessed without certification during more restrictive periods of the pandemic (e.g., public transport).

B. CERTIFICATION OF IMMUNITY

i. Scientific basis

There is currently some uncertainty over both the duration of immunity acquired naturally and from vaccination, which raises the question of how long certification of immunity would be valid and at what point reliable data to inform this duration is likely to be available.

In the case of immunity acquired through infection, there is also the issue of whether this can be applied retrospectively and whether immunity certificates of different durations could be issued.

As far as vaccination is concerned, it is necessary to consider whether certification would be standardised for all types of vaccination regardless of different efficacy levels for both protection from disease for the individual, and prevention of transmission. There needs to be scientific clarity and clear messaging as to the risks posed by vaccinated individuals (i.e., how likely it is that they may carry infection without developing symptoms and unknowingly convey it to others).

As with certification of testing, public confidence in what is being certified and why is crucial to the perceived legitimacy of certification of vaccination, which in turn has consequences for enforcement and public order.[9]

ii. Issues related to vaccination roll-out

The perceived legitimacy of certification of vaccination is also likely to depend on the rollout of vaccination. If benefits that arise from vaccination certification begin immediately, then those who are vaccinated first will benefit first. With this in mind, we see key issues as follows:

1. The prioritisation of certain areas and groups of people for vaccination. Over the first phases of the introduction of the vaccination we may see questions and challenges about those categorised as the 'most vulnerable' and whether this takes economic circumstances and ethnicity into account as well as health/age. Similarly, there may be questions as to whether T3 areas should be prioritised over others. It is evident that

[8] https://news.sky.com/story/covid-19-britons-back-air-travel-ban-for-people-whove-not-received-coronavirus-vaccine-poll-suggests-12154203
[9] https://academic.oup.com/policing/article/14/3/569/5812788

young people will be vaccinated last but they are more likely to be mobile in seeking work and leisure opportunities. If refused opportunities or access because they are unable to obtain vaccination, they may feel aggrieved.

2. People in deprived areas may find it more difficult to access the vaccine (e.g. because of inflexible working patterns, childcare difficulties, GP registration). People living in deprived areas currently have lower levels of vaccination for other diseases because of these issues. In the case of some BAME communities, especially recent immigrants, there are also likely to be issues of mistrust.

3. People may be able to access the vaccine via private health care. If so, there is likely to be high demand for vaccine and the cost is likely to be unaffordable for those on low incomes. This would exacerbate existing inequalities and is likely to cause resentment. Private vaccinations also raise questions about who has the authority to issue certificates. There are multiple points at which fraud might be possible (i.e. the vaccination itself, the proof of vaccination if the certificate is issued by someone else, and certification itself).

4. Feelings of inequity and resentment could also arise if private-sector organisations employed doctors to deliver vaccination, perhaps as an incentive to return to work.

5. Some people may not be able to have the vaccine for sound clinical reasons. It would be necessary to ensure that certification does not further disadvantage people with these needs.

6. If Covid-19 transmission decreases substantially while vaccination rollout is occurring, people will feel less at risk and will see that the vulnerable – who will have been vaccinated first – have already been protected. They may therefore challenge the need for certification after a certain point in vaccination rollout.

Some of the difficulties identified above could be reduced if the vaccination programme can be delivered at speed and with a high rate of uptake.

iii. Enforcement

The enforcement issues in the case of certification of vaccination are similar to those for certification of testing. As with testing, the acceptability of certification will depend on perceptions of the efficacy and safety of the vaccine. For instance, if the vaccine is considered unsafe by some, they are likely to feel justified in rejecting it and may therefore resent and oppose attempts to restrict their access to certain places because they lack certification. This could make enforcement – e.g. at point of entry – problematic.

C. CONSIDERATIONS RELEVANT TO ALL FORMS OF CERTIFICATION

i. Protest

One persistent theme in anti-lockdown protests has been opposition to ‘health passports.’ This has been a key theme in anti-lockdown protests since the summer and certainly in the two large protests held in London in September (10-15,000 attended on both occasions). Unlike some other opinions which are often represented at these protests, certification has the potential to reach beyond small groups of conspiracy theorists to ordinary members of the public and some political extremist groups who can coalesce around issues such as infringements of civil liberties and the adverse and disproportionate influence of Covid-19 restrictions on the economy.

Certification is an issue that is likely to increase the numbers attending such protests after the national lockdown has been lifted in England, regardless of whether the restriction of protests to 2 people remains in force.

There are also Human Rights issues to consider. For example, if people were certified as having been vaccinated, this would make it difficult to enforce rules limiting the numbers of people permitted to take part in a protest. If people were certified as having been vaccinated, it would not be proportionate to use Art.10/11(2) (public health) to prevent peaceful assembly and expression. The key enforcement issues arising from this situation would be whether protest organisers would be required to ensure that those taking part were certified and whether police officers would conduct spot checks on people to established whether they had been certified.

The prospect of certification of testing and/or vaccination, and privileges associated with it, is likely to galvanise opposition to restrictions more than any other single measure. Certification may be seen as part of an illegitimate assertion of control by government and other powerful groups, fuelling conspiracy theories and protests. In other jurisdictions, approaches that have sought to 'separate' infected from uninfected people have been divisive; the use by police in the Philippines of the term 'Covid-suspects' has driven a wedge between groups and led to widespread victimisation.

As indicated above, certification may also highlight inequalities and contribute to an emerging discourse of ethnic/class conflict, increasingly evident in UK protests as well as elsewhere in Europe. Apart from street protests, it is possible that opposition to certification could take the form of sabotage and violence against symbolic targets. In Germany, a laboratory involved in testing has already been attacked and similar incidents should be expected in the UK if testing is associated with certification and pass-privileges. . Testing staff may also be placed at risk in other contexts.

ii. Crime

Counterfeit PCR test certificates are already in circulation. Foreign organised criminal gangs (OCGs) have produced them, sometimes for their own use (e.g., for international travel and business).[10] Within the UK, counterfeit ‘fit to travel’ certificates have been available for some time. They have been manufactured easily by photo-shopping and sold at a price of £50-150. Greatest demand has been for certificates that have enabled travel to Pakistan.[11]

If access to employment, institutions, retail, hospitality, etc. or permission to travel within the UK are made conditional on certification then it is highly likely that many more fake certificates would be produced and sold in this country. Digital passes offer a secure method of verification, but they could not be insisted upon; just as having the NHS App cannot be insisted upon for entry to hospitality. An entirely digital scheme would discriminate against those who did not have access to such technology or whose mobile phone was not working/forgotten.

Hence, paper certification would have to be relied upon to an extent and this would inevitably lead to fraud. If certification privileges for vaccination were introduced, the same issues may arise. It is unclear how the certificates would be authenticated other than through data collection at point of issue and for how long they would remain valid. It is therefore impossible to determine what security measures would surround this personal data or how a fraudulent certificate could be cross-referenced, particularly if issued in one geographical location but

[10] https://www.bbc.co.uk/news/world-europe-54839434
[11] https://www.lancashiretelegraph.co.uk/news/18816550.east-lancs-travellers-faking-negative-covid-certificates-can-board-flights/

then required in another (e.g., issued in Staffordshire but required to access services in the West Midlands).

The above risks can be mitigated by the use of good technology, i.e., by making certificates more challenging to copy, alongside an implementation that ensures that legitimate certificates are quick and convenient for all to access, meaning the financial opportunities for OCGs are limited. The challenge of delivering this rapidly should not be underestimated.

Unless opportunities are designed out (that is, unless authentication is very secure), making it clear that fakes won't work, this would also create the opportunity for scammers that offer fake test certificates that are never actually produced (or that are useless). This could be done with little effort but would yield potentially high profits.

iii. Private Sector imposition.

Legally, there is no reason why private organisations cannot make vaccine certification a requirement of entry, so long as this does not interfere with pre-existing contracts with service-users or breaches the Equality Act 2010. Government could only prevent this by changing the law to restrict the rights of property holders to decide who to allow into their premises. This would be a dramatic development of law and may raise Protocol 1(1) ECHR enjoyment of property issues. However, if the regulation had a relatively short sunset clause then it would be achievable – if somewhat controversial.

For public organisations seeking to restrict access to services, the Human Rights Act comes into play and restrictions on assembly, expression, etc., would therefore need to be established as necessary for the protection of public health. Constitutionally, the government can restrict freedoms subject to Human Rights obligations. There is no right to freedom of movement within the UK (which has not ratified Protocol 4(2) ECHR). But any restrictions on use of public transport would need to comply with ECHR Protocol 1 in terms of access to property (a.1) and education (a.2) and not be discriminatory in a manner that would engage Article 14 ECHR.

There is also the potential for security staff at shopping centres to prevent entry to those who they think may have a false certificate, or who they may assume should have one but do not. Such actions can lead to humiliating experiences of exclusion, result in low level but regular local public disorder that deepens stigmatisation and the experience of racial discrimination.