

Briefing Paper on Ethics of Certification

- Certification that a person is virus-free could increase some people's freedom but is unlikely to be scientifically valid other than in very limited circumstances because those certified could contract the virus at any stage after certification. A false sense of security would risk increasing harm not minimising it.
- If there is a high degree of confidence that a person who had natural immunity could not be an asymptomatic carrier then certification could enhance freedom. However, if confidence is medium or low, certification would increase risks to public health.
- If vaccination only protects the person vaccinated and does not reduce risk of transmission, then certification might be misunderstood as suggesting a reduced risk to others and should be avoided. A high degree of confidence that those vaccinated would not be asymptomatic carriers would be required before certification, beyond a simple record of the vaccination, was considered.
- Equality impact assessments should be undertaken to ensure certification did not increase disadvantage and to identify the scope for addressing inequalities through prioritisation of those communities who have suffered most from Covid-19.

The ethical case for certification

The essence of the ethical case for the various forms of certification under consideration is that they would (a) enhance freedom by releasing those properly in possession of certificates from unnecessary restrictions, and (b) reduce the spread and impact of the virus by enhancing the ability of certified individuals to assess the risks to which they are exposed during the pandemic and behave in ways that will reduce transmission, (c) inform the judgments of institutions such as hospitals and care homes on how best to balance infection risks with the needs of patients and residents to be in contact with family and friends.

This reflects a primary ethical objective set out in the UK's Ethical Framework to minimise harm. Relevant harms may be physical, psychological, social and economic. Personal harms are not the only concern and the Framework recognises the need to minimise disruption to society. Social distancing requirements limit people's human rights to liberty, respect for private and family life, to associate as they choose, and to religious freedom. Such limitations are permissible under human rights law where they are proportionate and strictly necessary to protect the rights and freedoms of others, public safety and public health.

To be considered ethical, certification schemes must also comply with constraints required by the principle of fairness and equalities law. These ensure that everyone matters and everyone matters equally – the fundamental moral commitment from the UK Ethical Framework. It also reminds us that decisions must take into account any disproportionate impact of the decision on particular groups of people. Covid-19 has impacted some communities particularly badly and the Moral and Ethical Advisory Group strongly believes that this has given rise to a moral obligation to prioritise the needs of groups and individuals who are already disadvantaged. It would be unethical to implement certification without identifying risks that they would create unfairness and considering steps to mitigate them. Ideally, certification should be implemented so as to prioritise the needs of these people. This could be achieved through an equalities impact assessment.

The relevance of scientific uncertainty

Ethical judgements often involve balancing competing values. The balance may be tipped by scientific data, but in the context of Covid-19 there may be considerable uncertainty in relation to

crucial issues. We consider the following scenarios first on the assumption that scientific advice that certification would be reliable is offered with high confidence. We then consider how a lower degree of confidence would affect the ethical perspective. Where uncertainty arises from an absence of data, ethical analysis may be able to assist by suggesting a default position that should be presumptively taken unless and until evidence displaces it. Where there are data whose value is uncertain, it may be necessary to consider how the degree of confidence within the scientific community might affect an assessment of the ethical dimensions of decisions.

Three scenarios

(a) Certification to show that an individual is virus free, enabling them to access a range of otherwise restricted activities

The ethical case in favour of certifying that an individual is virus free is that restrictions on freedoms cease to be justified when there is no risk that they will infect others. This certificate would warrant that the individual will remain virus free for the duration that it would need to specify. However, it is unclear how a negative antigen test can lead to any conclusion about subsequent infection. The individual's risk of future infection will not have altered simply because they were not infected at some point in the past. Consequently, it is unclear that a certification of being virus free other than in relation to a specific point in the past is scientifically defensible.

It is possible that contextual information, such as a sequence of tests or a period of isolation might increase scientific confidence in the endurance of virus-free status. This will be important, for example, where the safety of hospital or care home visiting or work is being assessed. However, the validity of such assessments would not be transferable outside this specific context and are better understood as a form of health record rather than a public facing certificate.

However, if a person believes that the certificate implies that they do not present a risk to others, they may take fewer precautions, increasing their personal risk. If they do become infected the risks to others will also be greater if they have a false sense of security. In such cases, certification of virus-free status is likely to increase risks of harm and not minimise them. This concern arises even where there is high confidence in the reliability of tests. It is magnified where the tests register significant numbers of false negatives as appears to be the case with some types of test.

(b) Certification to show an individual has natural immunity

The ethical case for certification of immunity is strongest in relation to those who are asked to accept restrictions on their liberty and autonomy because of their vulnerability to Covid-19. Some of those who are shielded because they are extremely clinically vulnerable experience this as more oppressive than protective. Certification of immunity would be especially valuable to them and might reduce inequality by counteracting disadvantages. It would also be valuable to those who wish to work, or to work in particular areas or sectors, but whose employers regard them at too high risk for this to be acceptable. Scientific advice would need to determine the duration and extent of the immunity that would be certified. As the issues concern risks to the certified individual it would not be unethical to issue certificates even when the confidence in the scientific advice was only medium or low, provided that this was clear to the person in question and those with whom they interact. The function of the certificate here is to enable them to decide what degree of risk they are happy to take and to prevent paternalistic protection that they do not welcome. This could often be achieved by a letter from the patient's G P to indicate they were fit to work. However, a certificate could provide advice on the degree of scientific confidence in the person's immunity.

Certificates of natural immunity might also be used by employers to require people to return to work, arguing that it is no longer necessary to facilitate home working or provide a Covid-safe environment for them. If certificates could be used in such way, then only scientific advice about natural immunity in which there was high confidence would be sufficient. Again, it is not clear why a new form of certification is required for this.

There is a major risk in relation to immunity certification whose significance depends on scientific advice. It is highly likely that the public will assume that when a person has certificate of 'natural immunity' then it is also being certified that the person is not an asymptomatic carrier. If there is a high degree of confidence in scientific advice to this effect, then certification of natural immunity would bring similar benefits to certification of vaccination as discussed in the next section. The ethical case for certification in such circumstances would be that economic and social activity can be increased without risk to public health. Provided that certification was open equally to all who could benefit from it, this would amount to a strong case. However, if scientific confidence is medium or low that those certified will not be asymptomatic carriers, the certification could be akin to state sponsorship of 'Typhoid Mary'. This would increase harm not minimize it, and could not be supported within the UK's Ethical Framework.

(c) Certification to show an individual has been vaccinated

The certification of past vaccination would contribute to harm minimisation by enabling those who have been rendered immune through vaccination to return to more normal lives, with personal, social and economic benefits. Certification is only required when there would otherwise be good grounds for a ban on activities. Thus, we encourage flu vaccinations but do not require them to be certified because vaccinations are not a prerequisite for participation. Instead, we record them as a health intervention that would attract an expectation of confidentiality. Medical ethics and data protection law would preclude mandatory disclosure of the information, but patients would be provided with evidence of their vaccination status on request.

The ethics of certification of past vaccination will depend largely on the benefits that the certificate would bring and whether those are fairly distributed. However, there are also concerns about risks of misunderstanding. The implication of a certificate would be that the person possesses immunity, but depending on the vaccine used this is likely to be a matter of probability not certainty. If a vaccine offers a 65% chance of immunity or at least reduction in severity of disease this is a valuable benefit. However, it is not the same as a guarantee that you cannot contract the disease or pass it on. Clear communication of the meaning of certificates will be crucial. It would be unethical to implement certification if it was known that it would lead to misunderstanding, particularly if it might create a false sense of security that would lead to people unwittingly taking risks. In those circumstances, certification might increase harm and not minimise it.

The strongest ethical case for certification of vaccination arises where it gives both immunity against being infected and also prevents the person vaccinated carrying and transmitting the virus. Certification would enable such vaccinated persons to get the personal benefit of being released from restrictions, and also bring collective social and economic benefits by moving towards more normal social interactions.

However, if vaccination gives protection to individuals but does not prevent them carrying and transmitting the virus then the benefit to the vaccinated individual would be at the expense of others who would in fact face increased risk if those certified were permitted wider social interactions. This would seem to amount to treating vaccinated individuals as if they mattered more than the non-vaccinated. Scientific advice is required on this. It would be reasonable to suggest that

a high degree of confidence would be required that those vaccinated would not be asymptomatic carriers before certification was adopted.

Concerns common to all certification options

It is hoped that certification will enable some people, particularly those who are currently most disadvantaged, to return to economic and social activities earlier than the general population. The Ethical Framework recognises that it may be fair to ask some people to wait longer than others for benefits, but it suggests that this is only equitable where those who have an equal chance of benefiting have an equal chance of receiving them. It will be important to explain this, and also the rationale for the prioritisation of people being called for early vaccination, clearly. This will be easier to do when it is known that everyone will get access to the relevant tests and vaccines within a reasonable time.

There would be ethical concerns if access to the tests and vaccines was unfairly distributed.. It would be necessary to assess whether this might constitute indirect discrimination in relation to a protected characteristic such as to be unlawful. It would be prudent not to launch certification at a time when access is limited and especially when it is uneven. It may also be appropriate to mitigate the differential impact on those without certificates, perhaps through financial support. It is highly likely that existing inequalities would be exacerbated by certification via private vaccination services or private certification schemes. If this occurs, it may be necessary for the Government to act to prevent discrimination.

One argument in favour of certification is that the benefits it brings might incentivise individuals to get tested or vaccinated. Such incentivisation only raises ethical questions when it comes close to coercion. This might occur if a certificate was required before access to essential social goods, such as employment or entry to shops or social venues. The connection between such incentivisation and trust is unclear. Mandatory vaccination programmes have often failed because of lack of trust. There is a possibility that encouraging vaccination and testing through promotion of the benefits of certification could make people suspicious that they were unsafe and could not be recommended on their own merits. It would be important to assess the risks that certification might undermine important health interventions and thereby lead to increased harm not its reduction.

If certification brings significant benefits, then there will quickly be a market for false certificates. If such false certificates become at all widespread, the benefits to public health in minimising transmission will be undermined. Quality control and authentication of certificates will therefore be required, which may divert resources from other socially desirable activities. Historical comparisons suggest that, in practice, disease certification is more easily accessible to socially advantaged groups and that it leads to stigmatisation of the uncertified. This suggests that statutory anti-discrimination provisions may be required to guard against such problems emerging.

These factors all raise the risk that trust might be undermined; not only in the certificates themselves, but also in the tests and vaccines on which they are based, and the Government that proposes them. If trust in these is lost, then the adverse impact on successful responses to Covid-19 might outweigh any gains from certification.

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