**To all practices Surrey & Sussex LMCs**

17th January 2022

Dear Colleagues

**Vaccination as a Condition of Deployment [VCOD] for Healthcare Workers: Update**

Alongside many other LMCs, SSLMC is seeing an increased number of enquiries from practices regarding the planned regulatory requirement for many of those working within the NHS to have received (unless medically exempt) a recognised course of Covid19 vaccination currently this does not include a booster.

The LMC wrote to all practices on 13th December 2021 highlighting NHS England’s “Phase 1: planning and preparation “guidance [6th December 2021 Publication Reference C1470] and in particular noted the flowchart [Appendix 1] which describes which colleagues will be in scope.

The fuller description taken from that document is as below: -

*Who is in scope of the regulation?*

*Workers who have face-to-face contact with patients and/or service users and who are deployed as part of CQC regulated activity*

*The regulations apply to health and social care workers who are deployed in respect of a CQC regulated activity, who have direct, face-to-face contact with service users. This include individuals working in non-clinical ancillary roles who enter areas which are utilised for the provision of a CQC-regulated activity as part of their role and who may have social contact with patients, but not directly involved in patient care (e.g., receptionists, ward clerks, porters, and cleaners), regardless of contracted hours or working arrangements. All honorary, voluntary, locum, bank and agency workers, independent contractors, students/trainees over 18, and any other temporary workers are also in scope6*

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*The requirements would not apply to those employed, or otherwise engaged, in the provision of a CQC regulated activity if they do not have direct face to face contact with patients and/or services users/patients. For example, those providing care remotely, such as through triage or telephone consultations or those in managerial roles working on sites separate from patient areas would not have direct face to face contact and so registered persons could continue to deploy them in those roles as usual. People on long term absence from work, such as maternity, shared parental leave or sickness absence, would not be in scope unless and until they return to having any face-to-face contact (which would include on one off visits such as Keeping in Touch (KIT) days).*

It is clear, depending on the interpretation of what work practice staff do, and what the phrase “enter areas which are utilised for the provision of a CQC regulated activity as part of their role” actually means, the proportion of practice staff that will be required to be vaccinated could in many cases extend to almost everyone.

There is also a FAQ, available at:

[C1547-vcod-faqs.pdf (england.nhs.uk)](https://www.england.nhs.uk/coronavirus/wp-content/uploads/sites/52/2022/01/C1547-vcod-faqs.pdf)

NHS England has now published an updated ‘Phase 2’ Implementation Guidance, available at:

[C1545-update-vcod-for-healthcare-workers-phase-2-implementation.pdf (england.nhs.uk)](https://www.england.nhs.uk/coronavirus/wp-content/uploads/sites/52/2022/01/C1545-update-vcod-for-healthcare-workers-phase-2-implementation.pdf)

The necessary legislation to require VCOD in relation to CQC regulated activities has now passed into legislation [ Statutory Instrument 2022 No 15] and the original timetable remains in place, this being:

**6th January 2022** 12-week grace period begins, following passage of legislation

**3rd February 2022** currently advised last date for workers to receive their first dose to ensure they are fully vaccinated by:

**1st April 2022** the date the Regulations come into force

NHS England has set up a VCOD Workspace on the Future NHS web platform where guidance and other highlighted resources can be found: this requires self-registration [nhs.net email required].

The Phase 2 guidance refers to Phase 1, including the flowchart Appendix 1already noted. The ‘in scope’ description in the Phase 2 letter is slightly different to the Phase 1 ‘in scope’ description above, and the LMC is not yet [see below] able to advise whether the differences between these are significant in terms of identifying ‘in-scope’ workers.

*The regulations provide that the registered person can only deploy or otherwise engage a person for the purposes of the provision of a CQC-regulated activity, in which they have direct, face to face contact with patients and service users, if the person provides evidence that they have been vaccinated with a complete course of a Medicines and Healthcare products Regulatory Agency (MHRA) approved COVID-19 vaccine. This is subject to specific exemptions and conditions.*

*The vaccination as a condition of deployment (VCOD) requirements include front-line workers, as well as non-clinical workers not directly involved in patient care but who may have face to face contact with patients, including ancillary staff such as porters, cleaners or receptionists.*

Although NHS England has stated it is not their role to provide HR advice to practices, colleagues should note a number of key points within the Phase 2 guidance:

* NHS England state this is not a redundancy exercise, instead unvaccinated employees will either be redeployed (or their role redefined) to a role that does not require vaccination [is out of scope] or be dismissed. Redeployment or dismissal “is determined by the introduction of the Regulations and the individual’s decision to remain unvaccinated”
* Aside from workers with a medical exemption, exceptions are limited (such as being under the age of 18 or having participated in a Covid19 vaccine trial) although colleagues should also note that those who are pregnant are entitled (although vaccination is recommended) to a temporary medical exemption until 16 weeks post-partum
* Dismissal would be on the grounds of a contravention of a statutory restriction [that in-scope workers must be vaccinated, unless exempt] or “some other substantive reason” [SOSR], for example, a vaccination status cannot be obtained from the worker. Dismissal notices should not be issued before 4th February and should not expire before 31st March 2022 (but this depends on the individuals notice period)
* Potential Redeployment: this may be temporary (for example for pregnant employees or those who are late completing their vaccinations) or permanent. Practices should proactively identify roles not ‘in-scope’ and, if practical, pause external recruitment to such posts to allow for internal redeployment, however, NHS England’s own guidance notes that for many providers, and this is particularly likely to be the case in GP practices, redeployment of staff because of VCOD “may not be feasible or practical”
* Both redeployment and dismissal need to follow a documented process that is fair and consistent, and includes discussion with staff, making information available, and carefully considering both whether the current role is in-scope and whether any redeployment options are available. If more than one employee is involved there will need to be a fair selection process.

The LMC is not able to provide HR advice: clearly many practices do have retainer arrangements to obtain this as required but given that all GP practices will need the same advice, and indeed all NHS and CQC regulated independent organisations will have to make the same arrangements, the LMC has urgently requested the BMA provide detailed guidance.

The situation is very complicated: GP practices, as employers, will need to show they have followed an appropriate process. Initially this involved identifying staff who have received vaccinations and encouraging via 1:1 discussions which encouraged unvaccinated staff to be vaccinated. This is what practices should do first and the LMC has received several examples where a discussion with a trusted, often, but not necessarily, clinical colleague has led to a change of mind. Practices should also obtain evidence that a medical exemption applies, if said to be the case, although are not required to know the medical condition that creates this.

At this point the next steps will involve: -

1. Ensuring colleagues are aware of the potential implications of not being vaccinated
2. Considering potential redeployment
3. Making arrangements for legal dismissal if necessary

Each of these steps will require HR advice and careful documentation. Within individual practices, the potential for redeployment is likely to be limited, and therefore the impact of staff not being vaccinated is likely to be significant especially in terms of key clinical and in-scope non-clinical personnel. Across the wider NHS, this is a very concerning scenario, as although in many Acute and Community Trusts overall staff vaccination rates approach and exceed 90%, this conceals a number of variations within staff groups. Given the current and anticipated future demands on the NHS together with eroding staff numbers and morale, it is hard to see how the NHS services can cope with the potential impact of staff who may leave because of the implication of these Regulations.

GP colleagues should also be aware this Regulation may affect vaccinated medical (and other in scope) partners, who are not covered by usual employment law arrangements. GPC has been asked to urgently provide guidance for this situation. It is possible that the GMC (and other Regulators, such as the RCN) may provide professional guidance that will also be relevant and touch on clauses within your Partnership Agreement. Practices should be aware of any partners vaccination status, alongside their employees.

I appreciate this is yet another concern for practices, imposed centrally, taking up colleagues time, and causing anxiety for all involved.

Given the importance of demonstrably following HR arrangements, practices will need to take HR advice on this issue, although I hope more detailed and helpful guidance will be available very shortly and I will circulate this.

With best wishes



Dr Julius Parker

**Chief Executive**