

The Pandemic and Beyond: Ethics, law, and decision-making during COVID-19
8th March 2022

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THE PANDEMIC AND BEYOND
The Arts and Humanities Contribution to Covid Research and Recovery

An Introduction
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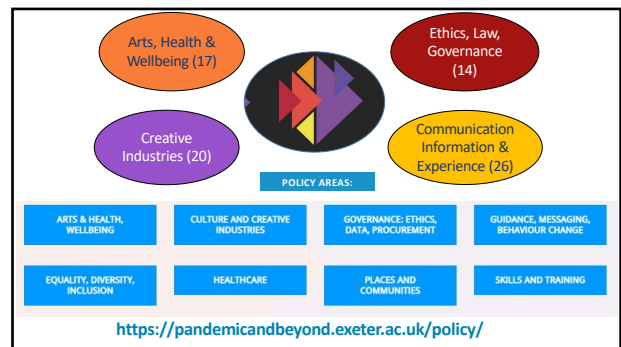
A HUB FOR RESEARCHERS, DECISION-MAKERS, AND USER GROUPS TO UNDERSTAND HOW COVID-19 IS IMPACTING ON LAW, CULTURE, SOCIETY, HEALTH AND THE ARTS

The Pandemic and Beyond brings together 70+ teams of researchers across the UK who are exploring the wide-ranging impacts of the Covid-19 pandemic and looking for solutions.

Our virtual hub connects research teams with each other and with user groups and decision-makers. Our aim is to ensure that expertise and resources are shared and that decisions about how best to tackle the pandemic and its aftermath is informed by relevant research on culture, society, law, Arts and health.

Our work is funded by the [Arts and Humanities Research Council](#).

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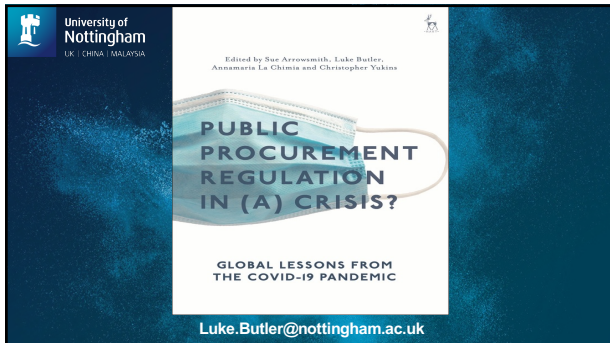
- Funder: Arts and Humanities Research Council, with additional funding from the University of Exeter (Policy Support Fund; Open Innovation Platform)
- Based at: University of Exeter / Wellcome Centre for the Culture and Environments of Health
- Policy Support: Culture Commons and Policy@Exeter
- Independent Evaluation: Sealey Associates

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Decision-making during the pandemic and beyond

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KEY FINDING AND RECOMMENDATIONS

Public Contracts Regulations: must award in competition **BUT** can negotiate with a single supplier where extreme urgency

GLP: confirmed illegality **BUT** not as bad as reported... Regulatory framework generally sound:

- (1) Lawful to award contracts on grounds of urgency which could not be foreseen.
 - ✓ Clarify grounds for use e.g. a legal definition of a "crisis"
- (2) Government failed to publish details of contracts awarded **BUT** has since
 - ✓ Improve transparency: reform notification, record/reporting aided by open contracting
- (3) What rules do apply where no competition but other process used e.g. "VIP" lane?
 - Government acted unlawfully **BUT**
 - Only after protracted legal argument about whether equal treatment rules even applied
 - Not because of politically connected companies but simply some were assessed quicker
 - ✓ Policies should be adopted and published detailing how suppliers are solicited (i.e. contacted) and principles of selection

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SUMMARY OF RECOMMENDATIONS

- (1) Some changes already being addressed in post-Brexit Green Paper based, in part, on our recommendations (e.g. Arrowsmith articles + book)
 - ✓ Clarification of grounds for single source awards e.g. new crisis ground
- (2) Even lawyers say **NO** more legal rules necessary on process
 - ✓ Quality central guidance – Boardman review recommendations were a start
 - ✓ Improve departmental guidance:
 - On process steps (how suppliers are solicited, chosen etc)
 - On transparency:
 - Mandatory notice for direct awards **before** award (Green Paper)
 - Information requirements (quality of the justification for choice)

We are available to help any public sector organization (including devolved nations), who wish to revise direct award policies and processes to be legally compliant and reflect good practice.

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Assessing the viability of models of equitable distribution of vaccines in international law

Dr. Mark Eccleston-Turner

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Research question and methods

what role can international law play in ensuring a COVID-19 vaccine is distributed fairly and equitably around the world?

Methods: Doctrinal legal and policy analysis of relevant international legal frameworks and policy documents in respect of equitable access to vaccines and medical countermeasures. For example, we examined procurement contracts between vaccine manufacturers and governments, WHO guidance, treaties, and policy documents from WHO, COVAX, and governments around the world.

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Key Findings

- The current international system is unable to facilitate equitable access to medical countermeasures, particularly vaccines, during a pandemic.
- Without significant structural changes, particularly at the international level, the vast inequality in access to vaccines we have seen during COVID-19 will be seen again in future health emergencies.
- At present, there is very little appetite amongst the world's wealthiest nations to make the necessary structural changes to facilitate equitable access to vaccines – e.g., not engaging in vaccine nationalism or expanding global manufacturing capacity through IP waivers and transfer of technology. This is largely because wealthy nations benefit significantly from such structural inequality, by being able to dominate the limited supply of vaccines which are currently available.

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Policy recommendations

- There is a need to diversify global vaccine manufacturing capacity, including platform technology, geographical location, and manufacturer.
- A permanent COVAX-style initiative needs to be created, with sustainable and consistent financing, to enhance equitable access to vaccines during the next pandemic.
- explore using Advance Purchase Agreements in order to secure priority access to vaccines in the future.
- A permanent public health TRIPS waiver needs to be negotiated at the World Trade Organization
- Explore options, such as technology clearing houses and patent pools, to facilitate transfer of technology to vaccine manufacturers based in LMICs.

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Thank you

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Fraud During A Pandemic

Identifying and Appraising New Challenges for the Criminal Justice Response in England and Wales



Dr Jennifer Collins, Associate Professor in Law, University of Bristol

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Key findings

- Reliance on the common law offence of conspiracy to defraud. Legal certainty must be prioritised in tackling new forms of fraud.
- A strong fraud-prevention push Supported by two under-theorised developments:
 - (i) a public-private partnership 'fraud-prevention' infrastructure
 - (ii) facilitated by Artificial Intelligence (AI) and Machine Learning (ML) technologies.

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5 Recommendations

- **MINIMISE** conspiracy to defraud's role in tackling emerging forms of fraud.
- **TRANSPARENCY** in publishing conspiracy to defraud figures, disaggregated from other charging data.
- **PROMPT PUBLISHING** of minutes of Economic Crime Strategic Board, and **UPDATE** needed on the developing overall anti-fraud plan for the UK including a new Economic Crime Plan for beyond 2022.
- **CLARITY** on how private-public partnerships will feed information about suspected fraud into the criminal justice system (see Economic Crime Plan: Statement of Progress (July 2019-February 2021) 5). E.g. 'de-risking' decisions.
- **ENUMERATE** core principles (privacy, transparency and explainability) for the use of AI and ML technologies for fraud detection and prevention purposes given the high-risk context.

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Got questions?

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Public engagement in decision-making

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Public engagement in decision-making


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The Accelerator

- The UK Pandemic Ethics Accelerator brings ethics expertise to bear on the ethical challenges of the covid-19 pandemic.
- The PA3 workstream focuses on pandemic governance and public engagement.
- PA3 has both critically reflected on pandemic public engagement and led its own public dialogues on participants' views on the ethical values most central to the covid-19 response.





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Key findings

- Policy makers need to reflect on how and why they are engaging with publics and the methods they are using to do so.
- Public engagement in the UK needs to place more emphasis on deliberative democracy: engaging ordinary citizens in developing policy solutions.





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The public dialogue

- The Accelerator's own public dialogue identified several key public priorities for covid-19 recovery and future pandemic responses:
 - **Re-balance inequalities** that covid-19 has exposed and exacerbated
 - **Build trust and transparency** into government policies and actions
 - **Foster public involvement** in policy making
- PA3's work following these deliberations has focused on the issues participants identified as most important to them.



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PROJECTS

The Role of Good Governance and the Rule of Law in Building Public Trust in Data-Driven Responses to Public Health Emergencies

Public engagement insights & implications

Claudia Pagliari, on behalf of the project team









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Citizens Juries

Mini-publics, co-organised with and delivered by the Ada Lovelace Institute, amidst real-world debates about pandemic technologies and data uses

- Two week-long, online sessions each with 25 members of the public
- Jurors deliberated on what constitutes **good governance** in the context of pandemic data, as well as red lines, principles and recommendations

THE CONVERSATION

NHS plan to share GP patient data postponed - but will new measures address concerns?

End to Covid rules for England 'leaves 3.8m vulnerable people feeling abandoned'

The Guardian

UK

Vaccine passports: Pubs and restaurants urged to roll out NHS Covid Pass with lockdown easing on 19 July



Briefing/framing

Claudia Pagliari introduced the 'wheel of good governance' and its links with UN SDGs around institutional integrity and human rights, as well as data and digital governance in public health

Jury deliberations spontaneously mapped onto these themes, with context-specific adaptations

Other experts introduced the following examples to focus the discussions:

- Vaccine passports (NHS Covid Pass)
- Covid vulnerability risk scoring algorithms (QCovid)
- Health data infrastructures (GDPDR)



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Intersecting themes

Transparency, communication and clarity

- Decision making processes should be inclusive and open to scrutiny e.g. public procurement of technology
- Information should be open, regular and accessible, particularly around uses of personal data

Accountability

- Rule of law is essential for trust, while there needs to be a fair balance of responsibilities between government and citizens e.g. use of contact tracing apps

Trustworthiness

- NHS is a by-product of good governance, but also depends on trustworthy systems at all levels (institutions, developers, technology, governance)

Equity, inclusiveness and non-discrimination

- Addressing the digital divide, avoiding data bias

Personal freedoms/liberties

- e.g. How a requirement to show a Covid status app or digital vaccine passport could open society but also curtail movement or remove choice over vaccination

Balance and proportionality

- Defining the scope and duration of 'emergency' and not oversteering the mark. Having appropriate checks/balances. Recognising lived experiences

Efficiency, effectiveness and foresight

- Justifying innovation based on a strong rationale or evidence of benefit

'All of those different messages all of the time, it allows people to have the excuse to not do things because they can say it's not clear'

'There is no accountability for these businesses or scientific bodies because it's a state of emergency. I feel we might end up in a constant pandemic because of that'

'We need to have a democratic parliament of technology, to hold scrutiny and account what is happening the very fast-moving way'

'Look at Dominic Cummings - You have to practice what you preach'

'The medical (also) comes from the people (companies) who handle our data ... We are just like pawns for profit'

'What about the homeless who don't have a smartphone or who have old phones, like my mother?'

'Why should we waste our time isolating for ten days, potentially losing out on money?'

'We should have ownership and agency over our own digital identity. Is there a power grab here?'

'We need to understand the parameters of these technologies and why we need them and what our rights are.'

'When the [contact tracing] app came out, I wasn't going out so it never pinged me.'

Reflections

Good governance is essential both for establishing and maintaining public trust in the use of data, not only during emergencies of national or international concern but also as part of ongoing public health efforts

Citizens are not fundamentally opposed to data-driven public health monitoring and recognise its value in response to crises. But it is essential to be **transparent and inclusive** at all stages - from participatory planning of such measures to their sunset, where appropriate.

They also need to be confident that those uses are **appropriate, necessary, valuable and proportionate**.

Governance of data and digital tech, is also about much bigger issues around **institutional integrity**. It requires the appropriate application of laws and other institutional checks and balances, such as ministerial codes. This has strong links with concepts of **democracy**, which includes rights to participate in decision making and the means to hold public institutions to account.

Clear and actionable requirements are needed for government, NHS and private sector actors.

It is essential to implement **well-established** lessons about public engagement around health data usage, whilst at the same time having a robust playbook that can kick in during emergencies. Experience during Covid-19 illustrate these deficits, certainly in the early phases.

Scandals and data rebellions illustrate the difficulty of **trying to claw back trust** after it has been damaged by inappropriate uses of personal data or the use of disproportionate or ethically questionable digital interventions.

Trust is multi-factorial and requires the **visible integrity** of systems, players, projects, data, as well as openness around areas of uncertainty in emergency situations.

This is important, since it will help with decisions about which tools or infrastructure should be maintained beyond COVID-19

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The use of children's and young people's data during the pandemic

- Under 18s are aware of many of the Government's strategies for responding to the pandemic but suggested Government could do more to ensure young people can access information about policies affecting them
- They hold (varied) views about the merits of key data-driven approaches: wastewater testing, information sharing to monitor self-isolation compliance, the use of algorithms to determine exam results
- Whilst largely supportive of information sharing for public health reasons, some under 18s express mistrust about sharing with the police, particularly when there appears no clear justification for such sharing
- Under 18s believe their views, interests, needs and rights have been given insufficient consideration during the pandemic

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Recommendations

- The Government should consider how best it can communicate its policies/proposed policies to those under 18
- More thought needs to be given to how their views about use of their data can be ascertained and fed into policy
- Under 18s suggest a range of different approaches are possible – Under 18s themselves are best placed to advise upon which approaches to use when engaging with this sector of society

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PUBLIC ENGAGEMENT IN DECISION-MAKING

- Policymakers must consider how key messages are conveyed - to all sectors of the community, including children - to afford them the information needed to develop public trust.
- Policymakers and civil servants must more actively involve the public both in developing policy solutions and in developing new technological solutions to societal issues.
- To ensure solutions respond to societal needs policy makers must engage with both adults and children, to develop understanding of their different views, perspectives and needs.
- Careful attention must be given to how such engagement can most effectively be achieved. The most effective approaches are those co-designed with stakeholders.
- With 'Data: A New Direction' confirming that the Government proposes to build upon the data-driven approaches used during the pandemic, thought should be given to specifically to how to engage the public in discussions about data-driven measures.



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THE PANDEMIC AND BEYOND
A Cross-Research and Recovery

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Treating healthcare staff with respect

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Nursing Narratives: Racism and the Pandemic



Professor Anandi Ramamurthy (PI)
Dr Sadiq Bhanbhro, Sheffield Hallam University (Co-I)
Dr Faye Bruce, Manchester Metropolitan University (Co-I)
Dr Ken Fero, Migrant Media (Partner)

www.nursingnarratives.com







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The Pandemic

52.6% of Black and Brown staff experienced unfair treatment in the pandemic regarding Covid deployment, PPE or risk assessment provision

COVID-19 deployment
27% overall felt unfairly deployed
Worst affected:
44% of Filipinos staff
33% of Black African staff
32% Pakistani and Bangladeshi

PPE
19.5% experienced discrimination in access or suitability

Risk assessments
32.7% experienced discrimination in access or adjustment

'we were chosen to be exposed'
Filipino nurse
'(if I was in the shift, if it was any COVID positive... it was gonna be mine!' African midwife

'Some people sometimes hoarded it, especially the FFP3 masks and the N95. It was the whites who were close to the managers and storekeepers' [Filipino nurse]

'a tick box exercise' [Asian midwife]

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Historical context

Cultures of racism:

- Exclusion and neglect as a form of bullying were among the most widely recounted experiences. 'they just don't care'; 'I was invisible'; 'pushed out'
- Failure to address racism: 77.3% of Black and Brown staff who complained about racism were not treated fairly.
- Widespread differences in workload allocation pre pandemic
Riskier and 'heavier' work often given to Black and brown staff
- Migrant nurses -52% of migrant nurses felt that work visas had made them more vulnerable to racism and exploitation

It's bad enough to be racially abused by patients, colleagues, or whatever, but then not getting support from your team and your colleagues. That is a really has can have a really um... strong impact
(Black British nurse)

You're more likely to be allocated... more complicated service users to care for if you are on shift, or you're expected to have a heavier, larger workload.
(South Asian midwife pre-pandemic)

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Impacts and next steps

'We are not just a commodity, we're humans'

- 59% had experienced racism during their working lives that had made it difficult for them to do their job
- 53% said racism had impacted their mental health
- 36% had left a job as a result of racism during their working lives
- 33.4% had been forced to take sick leave as a result of racism

Watch our film **EXPOSED** (60 mins) – nurses and midwives who have spoken out to challenge racism and discrimination and advocate for change. www.nursingnarratives.com

Conference resolution:

Change cannot happen without transparency and accountability. Nurses and health workers ask:

- Release of data on the number of health care staff who died of Covid-19 by ethnicity
- Adopt the anti-racist Manifesto for Change – (22 health worker organisations have endorsed it so far)

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Key Policy Challenges

'It'll be a little bit like one of the war conflicts... we'll end up losing more colleagues due to the after-effects and the mental health ... than we will actually in the conflict.'
'we'll have a mass-exodus of healthcare professionals that just basically get entirely broken by Covid and can't ever face working in healthcare again.'

- **Address** the moral harm experienced by NHS staff.
- **Build** much better public understanding of what it is reasonable to expect the NHS to provide in terms of services.
- **Tackle** longstanding and connected issues of workforce shortages and racism and discrimination.



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'Resetting' Ethics – research in context

- Maternity, neonatal and paediatric care **are core NHS Services**
- Substantial service 'resetting' during the pandemic has significant **implications**
- Healthcare staff have had to continually balance 'usual' healthcare with pandemic, and now endemic, Covid-19 management



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'Reset Ethics' research – key findings

- Healthcare professionals have lacked **structured ethical support** in managing the public health/clinical ethics tensions characterising the reset phase
- Infection prevention measures prevent healthcare professionals from offering treatment that feels *caring*
- The impact on healthcare professionals of being unable to offer *care*, as well as *treatment* opens the door to **moral harm**



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Reset Ethics - policy recommendations

- **Establish an ethical framework** balancing usual healthcare with pandemic/endemic, Covid-19 management
- **Enable professional autonomy for healthcare staff** in prioritising values-based care over infection prevention measures
- **Facilitate public dialogue** about what it is reasonable to expect from the NHS as services are reset
- Acknowledge **moral harm** as a consequence of the pandemic and **offer information, training and support to all staff** when needed



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Together our findings demonstrate the incidence of **moral harm to healthcare professionals** in some cases caused by the Covid-19 pandemic and in some cases exacerbated by it.


Our use of the holistic term 'moral harm' is based on a conceptual model that plots **moral distress** and **moral injury** on a *spectrum of moral harm*, where they are differentiated broadly by reference to the severity and frequency of the events suffered



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Joint policy recommendations

- **Recognise moral harm as a consequence of the pandemic.** Provide information and training as to the causes, symptoms, and routes to resolving moral harm, to ensure that **all staff** can access appropriate support
- **Use the pandemic as an opportunity to address historical and structural issues around workforce shortages, racism and discrimination.** A culture of zero tolerance to racism **MUST** be actively implemented in all NHS Trusts with accountability and statutory penalties for trusts who breach this duty. To prevent the vulnerability of international health care workers, visas should not be tied to trusts, and expensive fees should be scrapped
- **Establish public dialogue about what it is reasonable to expect from NHS services** as non-Covid services continue to be 'reset' alongside ongoing Covid-19 care. A culture of zero tolerance to verbal and physical abuse from patients to staff must be implemented in healthcare settings across the UK



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Sealey Associates

Higher Education Innovation and Collaboration

Thank you for entering your name and email address in the chat

You will be contacted by Sealey Associates for evaluation of the effectiveness of our policy engagement. Your survey responses and feedback will help us shape our future policy work.

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