Open letter

28th May, 2020

To:

The Secretary of State for Health and Social Care

The Home Secretary

We are civil society organisations and privacy advocates writing to express concerns that the NHSX app being developed as a response to the Covid-19 pandemic, is using a centralised contact matching system with more invasive data collection than a decentralised model.

Contact tracing is a fundamental part of epidemiology going back to the field's founder, John Snow, and we agree that it is an essential part of managing this pandemic to be undertaken along with mass testing and quarantine measures. Contact tracing must be designed and implemented as part of a broader comprehensive public health framework to be successful and effective to serve the public health needs.

Widespread public trust and take-up are crucial to ensure the contact tracing app is downloaded and installed in the necessary numbers to ensure the measures are effective. In this regard, transparency and respect for privacy and other fundamental rights are essential elements in securing that trust and cooperation. This is upheld also by the World Health Organisation which states that the ethics of public health information, data protection, and data privacy must be considered at all levels of contact tracing activities and that contact tracing measures should not be associated with security measures, immigration issues, or other concerns outside the realm of public health.[1] In this regard, we call on the government to particularly consider the impact this technology will have on marginalised and socially excluded people.

A range of groups and individuals in precarious situations may be unable or unwilling to use the technology for a variety of reasons. They may be facing significant material deprivation, lack access to mobile technologies or have devices that do not support the app, be socially excluded and marginalised, be reluctant to interact with governmental agencies or technologies and worried about data sharing.[2] These concerns are reinforced by the hostile environment policy, which has eroded overall trust between ethnic minorities, migrant communities and the Home Office.

Considering these factors, among our concerns are that either the data gathered via the NHSX app will be incomplete or pockets of exclusion may appear. Both of these outcomes create risks to public health and may undermine other on-going legitimate and necessary efforts to tackle the spread of the virus, while at the same time further enhance discrimination practices certain population groups are already experiencing.

[1] https://www.who.int/publications-detail/contact-tracing-in-the-context-of-covid-19
[2] https://privacyinternational.org/long-read/3752/coronavirus-tracking-uk-what-we-know-so-far

Therefore, we **call on the government to consider switching to a decentralised model** with identifiers that change with greater frequency, which has been found to be more likely to comply with both human rights and data protection laws and to enhance trust.

If the government continues with the centralised model, we call for it to:

- Publish its **assessment of risks and mitigations** for vulnerable and marginalised groups.

- Clarify who holds the collected data, who has access to it, how it will be shared between the platform and private and government agencies. Also, set clear purpose limitations for its use and to avoid function creep. Under no circumstances should **the immigration exemption contained in paragraph 4 of Schedule 2 to the Data Protection Act 2018 be relied upon for any processing of/ requests for personal data relating to the contact tracing app**.

- Provide **guarantees that data shared through the contact tracing app will not be used to deny access to public services or for the purposes of immigration enforcement**. These guarantees must be in the form of legal safeguards, such as, but not exclusively, the ones included in the 'Digital Contact Tracing (Data Protection) Bill' promoted by the Joint Committee on Human Rights; and through technical safeguards, such as a "firewall" – which will ensure personal information collected by the app will never be shared with the Home Office for immigration enforcement purposes.

- Such safeguards also need to be **accompanied by a clear communication campaign** from the government and the NHS focused on communities to create much needed trust and confidence in the NHSX app.

This is important to ensure fundamental rights are protected during the pandemic and as new measures are introduced post-lockdown. It is also essential to ensure both trust in and take-up of the planned measures and ultimately to make them successful in helping to contain the Covid-19 pandemic.

We would appreciate a response as soon as you are able to and before the app is launched.

Signed (in alphabetical order),

Foxglove

Joint Council for the Welfare of Immigrants

Liberty

Medact

Open Rights Group

Privacy International