

The lateral flow testing of university students

Guidance for students returning to, and starting higher education, in spring term 2021 requires universities to set a clear expectation that all students should access Covid-19 testing on their return to university.

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Please note: the information contained in this legal update is correct as of the original date of publication.

Guidance for students returning to, and starting higher education, in spring term 2021 requires universities to set a clear expectation that all students should access Covid-19 testing on their return to university. This should include those returning in January 2021 (in the very limited circumstances and permitted for face to face teaching) and those returning later. Of course, many higher education providers had already put in place processes and policies for student testing during the autumn term, and supported the Government's mass testing programme for students, which provided students with the opportunity to take a Covid-19 test before travelling for the winter break.

Individual HE providers may choose to test students on their return, using different testing technologies but most are likely to use lateral flow devices. The guidance states that if a provider is using lateral flow testing devices, students should be tested twice – immediately upon their return to campus and then again, three days later.

The aim of this testing scheme is to quickly identify when asymptomatic individuals, who would not otherwise have been diagnosed, have Covid-19, thereby reducing the further spread of infection.

Recent reports in the media have, however, claimed that the Medicines and Healthcare Regulatory Agency (MHRA) has refused to approve the lateral flow testing in schools and this has caused confusion and anger amongst education providers. No doubt the HE sector are keeping a close eye on matters as they unfold, not least because the use of lateral flow devices was a major step forward in enabling universities to open, whilst keeping students and local communities safe.

The MHRA is the regulator responsible for regulating medicines, medical devices and blood donations for transfusions within the UK. Concerns have been raised about the accuracy of the lateral flow testing devices for individuals with no symptoms, as evidence suggests that the lateral flow tests are much more accurate at detecting infections in people with high viral loads of Covid-19 and therefore are most effective on those displaying symptoms.

The MHRA has already granted an exceptional-use authorisation for self-use of lateral flow tests to be used to help find asymptomatic cases. This is not a case of the MHRA withdrawing that authorisation and tests can continue to be administered.

The concerns have been raised over the rapid lateral flow tests that promise to give results in 30 minutes and which form part of the governments mass testing programme to deal with cases where an individual has been identified as being a "close contact" of someone who has tested positive for the virus. The idea being that use of such testing daily will allow the close contact to stay in the education setting rather than having to self-isolate. The MHRA has apparently advised the Government that it has not given the green light on the use of this 30-minutes daily testing of individuals who would otherwise have to self-isolate. There is a concern that the large-scale use and reliance on this testing will give false reassurance to people if they receive a negative result without fully understanding that this test has lower accuracy levels for asymptomatic people and they will therefore potentially fail to follow appropriate measures or guidance, such as self-isolating when they should do. This misconception about what a negative result means would then have the potential to continue the spread of Covid-19 within education settings and the wider community during a period of significant numbers of positive cases and pressure on public health services.

Neither the Government nor the Department for Education have yet responded to the news reports or to the MHRA's concerns and we will update this guidance as soon as further information is available.

The key for universities is to continue to ensure risk assessments remain current and up-to-date and that all control measures that are in place are being strictly adhered to. Mass testing using lateral flow might be one of the control measures identified in a Covid-19 risk assessment, but it does not replace all other control measures.

To guard against any potential over-reliance on the effectiveness of any testing undertaken, there should be very clear messaging around what a negative result means for individuals: namely, that the test is negative because the viral load is not high enough to have produced a positive result. It is not the "all clear" and people should continue to follow government guidance and the rules currently in force during this national lockdown.

Even where testing is in place, other control measures will also be in place and therefore universities are advised to ensure that these measures continue to be applied rigorously, such as social distancing when possible, enhanced cleaning regimes, ventilation and good hygiene practices.

It remains important to keep clear communication with staff and students on the measures in place to control the spread of Covid-19 and on the importance of thoroughly following guidance, irrespective of a negative lateral flow test result.

This legal opinion was co-authored by [Steph McGarry](#) (Partner) and [Daisy May Coster-Hollis](#) (Associate), health and safety experts in our regulatory practice team. For further bespoke advice tailored to your institution, please get in touch.

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