

## Written evidence from Val O'Dea (COV0170)

I am a member of the public, my father died in a nursing home, thankfully before Coronavirus. Research and other references are available for my claims within this submission, e.g. ONS figures, surveys and some live research conducted in York during lockdown. Val O'Dea

Everyone has been affected by the Coronavirus Pandemic. The inquiry asks 3 questions about measures taken by the government and their impact on Human Rights compliance, during Covid-19. I intend to address the third question: Which group will be disproportionately affected? In so doing, I argue there is now a basis for an invisible (and growing) demographic so disproportionately affected, it should be investigated for protected characteristic status.

### BACKGROUND

Age is a protected characteristic under the Equality Act 2010 which prohibits direct and indirect discrimination - the latter where a rule or policy supposedly applying to everyone equally, actually works to the disadvantage of one or more groups. The inquiry has received many submissions already, relating to this subject, in particular a report from Age UK. (Evidence is now emerging that Covid-19 also disproportionality affects the protected characteristics of disability, sex and race).

### DIRECT AND INDIRECT DISCRIMINATION

Older people have higher Covid-19 infection rates but their Human Rights have been disproportionately affected by direct discrimination via the Coronavirus Act.

Older people without children have higher Covid-19 infection rates but their Human Rights have been even more disproportionately affected by way of indirect discrimination via the Coronavirus Act.

People ageing without children (1.65 million in UK over 65, whether through choice, infertility or circumstance) are indirectly discriminated against because of 'a failure to treat differently, persons whose situations are significantly different'.

Article 14 grounds are discrimination based on 'other status'. People ageing without children represent 'other status' and there is no objective justification for their status to continue to be ignored.

This other status is grounds for becoming a protected characteristic

### HUMAN RIGHTS AND GOVERNMENT INTERFERENCE EXAMPLES

Article 2, The Right to Life, including the *right not to take it, the duty to protect it and the duty to investigate if it is threatened*

Article 3, The Right not to be subjected to inhuman and degrading treatment

Article 5, The Right to liberty and security

Article 8, The Right to Private Life, including respect for physical and mental wellbeing, autonomy, relationships, community participation and home

Article 29, The Duty to protect other people's rights and freedoms

Article 14, direct or indirect discrimination (argued in connection with one or more of above).

THESE EXAMPLES AMOUNT TO DIRECT DISCRIMINATION OF OLDER PEOPLE AND INDIRECT DISCRIMINATION OF OLDER PEOPLE WITHOUT CHILDREN WHO HAVE BEEN DISPROPORTIONATELY, NEGATIVELY AFFECTED:

- 1 Lack of preparation and shielding of UK residents Articles 2 & 14
- 2 Lack of PPE stocks Articles 2 and 14
- 3 Coronavirus Act/Care Act easements (e.g. assessment) Articles 3, 8 and 14
- 4 Blanket DNAR and other policies Articles 2 and 14
- 5 'Choiceless' Hospital discharge regulations Articles 2, 8 & 14
- 6 Lack of online access for food and other services Articles 8 & 14
- 7 Isolation resulting from lockdown Articles 8 & 14
- 8 Increased risk of neglect/abuse Articles 5 & 14
- 9 Higher mortality rates in residential/nursing care Articles 2, 5 and 14
- 10 Restriction of visitors Articles 8 and 14
- 11 Effects on mental health of Coronavirus Act constraints Articles 5, 8 & 14
- 12 Late testing (and tracing) particularly in care homes, delayed care home mortality recording Articles 2, 29 and 14

REASONS WHY THE IMPACT FOR PEOPLE AGEING WITHOUT CHILDREN IS SIGNIFICANTLY MORE NEGATIVE - AND THE MEANS EMPLOYED ABOVE WERE NOT PROPORTIONATE TO THE AIM SOUGHT:

**1 Lack of preparation and shielding of UK residents Articles 2 & 14**

Absence of preparation and shielding against a Pandemic threaten human life. Insufficient and imprecise communications prevent(ed) people from foreseeing consequences of the Coronavirus and related restrictions, thus the Human Rights convention of lawfulness is not met, affecting people older without children disproportionately more.

**2 Lack of PPE stocks Articles 2 and 14**

Lack of initial herd immunity strategy and lack of PPE affected everyone, in particular older people and older people without children. People in nursing homes, with no PPE and with suspected Coronavirus, were in some cases prevented from being admitted to hospital, thus the duty to protect life was violated, leaving those older without children even more vulnerable, especially if suffering from Dementia with no family to advocate for them.

**3 Coronavirus Act/Care Act easements Articles 3, 8 and 14**

Despite a suspension of parts of the Care Act, the government stated that Human Rights must not be breached. Application of these conflicting mandates was not possible to enforce by overstretched hospital and care services. Older people without children are less likely to look after their own health well and can have unhealthier behaviours e.g. smoking/drinking. Article 14 means that people receiving care should not be discriminated against when accessing care and when decisions about their care are made. Care Act easements allowing suspension of assessment, treatment and services, based on pre-existing state of health is inhuman and degrading - and disproportionately affects people older without children.

**4 Blanket DNAR and other policies Articles 2 and 14**

Signing a DNAR form is both unsettling and intrusive, when obliged to do so. Without family advocacy, people older without children (25% more likely to be) in residential/nursing homes, cannot challenge moral judgement about equality of life versus medical decisions or individual prognosis, thus are disproportionately affected by such blanket policies which violate the Human Right duty to protect life.

“It is not lawful under Article 2 – the Right to Life - to balance the worth of one life against the worth of another” 2001 Fam 147.

### **5 'Choiceless' Hospital discharge regulations Articles 2, 8 & 14**

92% of informal care (and some personal care during Covid-19) is provided by family. The right to respect for private and family life protects people's autonomy and well-being, which includes making choices about one's own life and participating in decisions about one's care and treatment, including discharge and recovery goals. Article 2 means if discharge from the hospital would put one's life at risk, this right may be engaged. This may be particularly relevant in the current situation, where discharge into another place of care, such as a care home, involves being moved to an institutional setting where there was or is evidence of lack of PPE, increased infection and death rates. Hospitals do not capture whether patients have no children thus this group is disproportionately affected by government's hospital discharge easements.

### **6 Lack of online access for food/services during lockdown Articles 8 & 14**

Reported in my postcode, a sick gentleman, pushing an empty trolley to the shops to get food because he was alone, had no children and no food, was stopped by police for breaking lockdown. Older people with children and family are often assisted to gain internet access for food and services. 56% of people over 65 who live alone have no internet access and people ageing without children are more likely to be underweight, thus with no specific policy or statutory services to assist them, the Human Rights of this group are disproportionately affected, particularly during the Pandemic where government relies upon voluntary/sporadic services.

*“Whilst the pandemic has an impact on all of us, it is not equal impact and it is so important for the vulnerable to have access to Human Rights Law”*

Merris Amos, Professor Human Rights Law, Queen Mary University, London

### **7 Isolation resulting from lockdown Articles 8 & 14**

People older without children are more than lonely or isolated, they are invisible - in society, policy and within government Coronavirus law. ECHR requirement to respect wellbeing and community participation, is threatened. Whether or not the Human Rights test of 'last resort' is met for justifying lockdown, people ageing without children die on average two years earlier, even pre Covid-19 - thus are disproportionately more affected by lockdown isolation.

The British Gerontological Society say in a recent statement

*“There is an implicit assumption in much discussion about COVID-19 that people will have co-resident family members to look after them, to recognise that they are ill, to keep them hydrated, to help them if they are unable to get back to bed after going to the toilet, to try to encourage some nutrition or to call an ambulance. Co-resident family members can also advocate for hospitalisation or hospital care if needed. If people live alone and no-one is permitted to see them, who will do this?”*

### **8 Increased risk of neglect/abuse during lockdown Articles 5 & 14**

In 2017, older people needing care outstripped the amount of family available to provide it. One dept of health CV-19 guideline explained how 'family members' can help cannulate and provide end-of-life palliative care to their dying relatives. Nursing homes were asked to take in patients from hospitals who had tested positive for Coronavirus, threatening residents' Human Right to security. The guidelines particularly neglected those without children or family and are therefore discriminatory and disproportionate.

### **9 Higher mortality rates in residential/nursing care Articles 2, 5 and 14**

The opportunity for residents of residential care and nursing homes, to self isolate, is negligible. Care homes were asked to accept new residents from the community, who had not been tested for the Coronavirus. People older without children are 25% more likely than those who are parents, to

enter/live in a care home thus are 25% more affected by EHCR right to life and liberty interference and 25% more likely to die.

#### **10 Restriction of visitors Articles 8 and 14**

Government regret at having to prevent families visiting their relatives in care homes (or potentially granting family members of those with dementia, keyworker status), was not matched by any reference to those in care homes without children or family to visit. Both general Government policy and the Coronavirus Act relies on the family model of support. This reliance excludes specific consideration of the needs of people older without children who are therefore disproportionately discriminated against, in particular relating to the effect of visitor restrictions on their human rights.

#### **11 Mental Health effects of Coronavirus Act constraints Articles 5, 8 & 14**

Avoiding protecting people from psychological trauma or physical harm (e.g. caused by premature or delayed discharge) such as serious distress or hindering recovery, interferes with Article 8. People ageing without children are 30% more likely to be carers for their parents, thus for this reason and those outlined in this paper, the mental health effects of this group are disproportionately affected by government measures.

#### **12 Late testing (& tracing) in community & care homes Articles 2, 29 and 14**

Data regarding the status and needs of people ageing without children is not collected within the NHS or more widely, nor during the Pandemic - and along with delayed community and care home testing and mortality recording (i.e. other people's rights and freedoms), these absences prevent investigation of the human right to life and equate to lack of representation of this vulnerable group.

#### **ACTION REQUIRED**

Coronavirus threatens the Nation's life and mitigation has placed unprecedented pressure on the government, civil servants, frontline and key workers, thus people responsible for implementing the 25th March Act may not be fully skilled in Human Rights law. So during crisis, unintended derogation may occur however going forwards, learning from these events must require those ageing without children to be recognised as a protected characteristic, before or as a result of the Coronavirus Act review in September 2020 and before a potential second virus spike, wherein more older people without children will die alone and invisible. Likewise, the specific needs and rights of the growing number of people ageing without children (2 million by 2030) must be included in central and local government planning, data collection, service provision, communications, protocols and pre-point of need advocacy, because to ignore this going forwards - and not investigate - would not only squander an opportunity for money saving initiatives, but would be to **perpetuate indirect Human Rights discrimination, by failing to treat differently, persons whose situations are significantly different and who have already suffered disproportionately.**

*19/07/2020*