

## Written evidence from the Royal College of Physicians of Edinburgh (COV0172)

The Royal College of Physicians of Edinburgh is a professional membership organisation that sets clinical standards and aims to improve the quality of patient care. Founded in 1681, we support and educate doctors in the hospital sector throughout the UK and around the world with over 13,000 Fellows and Members in over 90 countries, covering 54 medical specialties and interests. The College enables a worldwide community of physicians and their teams to advance the health of our global population for the long-term benefit of society acting as the voice of our membership, engaging in health policy and promoting equality and human rights.

Members of the College's Lay Advisory Committee have considered the questions posed by this inquiry and they suggest that experts in the field, such as human rights lawyers examine any new measures before they are adopted. An ethical review committee would also be helpful in this regard to examine government proposals, with the committee being composed of a mix of those with an interest in the legal system, ethics, human rights and including healthcare users etc. An essential step is to take account of the best possible legal advice to ensure compliance with the Human Rights Act 1998, which incorporated into UK law the rights contained in the European Convention on Human Rights (ECHR). The Act makes it unlawful for a public authority, which includes Government, to act in such a way as to contravene "Convention rights".

Such authorities must also take steps to ensure compliance with the Equalities Act 2010, which prohibits discrimination in the workplace and wider society on the basis of protected characteristics, of which age is one. Article 14 of the ECHR prohibits discrimination but does not mention age, though it does refer to "birth and other status". Case law has demonstrated that "other status" covers a variety of circumstances, and the term can also be used to challenge discrimination on the basis of age.

In summary, Ministers need to be guided by legal as well as "scientific" advice. While it would be for the Court(s) to determine if breaches of human rights/equalities legislation have occurred, it will no doubt reduce the risk if Government takes steps to ensure that measures are evidence-based, proportionate, transparent, subject to democratic (Parliamentary) scrutiny, time limited and subject to regular review and revision where necessary and communicated widely.

- **What will the impact of specific measures taken by Government to address the COVID-19 pandemic be on human rights in the UK?**

*Prima facie*, the lockdown and measures such as test, track and trace, have impacted, or have the potential to have an impact upon, a number of human rights, such as:

- the right to respect for private and family life (Article 8 of the ECHR) – inherent in separation from family, denial of being with dying relatives, restrictions on funeral attendance, requiring contacts to be revealed);
- freedom of religion (Article 9) – with respect to being unable "in community with others...to manifest belief in worship";
- freedom of assembly and association (Article 11) – the lockdown as such;

- prohibition of discrimination (Article 14) – such as on age grounds under the “other status” provision, if more stringent conditions (including clinical guidelines as to who was entitled to ICU/ventilation treatment) were compulsorily applied to an age group, such as over 70s without regard to individual health status or evidence of individual, as opposed to collective, vulnerability;
- the right to education (first Protocol of 20 March 1952, Article 2) –closure of schools;
- freedom of movement (Protocol 4 of 16 September 1963, Article 2) – the lockdown as such and quarantining of UK nationals returning from abroad.

Article 15 of the ECHR provides for Governments to apply for a derogation from its provisions, and some have appeared to do so. It does not appear to be an option being considered by the UK Government. It is for debate whether Article 15 was meant to address the situation created by a pandemic, though it is designed for a “national emergency”.

There are also provisions throughout the ECHR for Governments to disapply compliance, among other things for the protection of health. It seems likely that the Government could successfully argue in Court or elsewhere that any *prima facie* breaches of human rights legislation were covered by the need to protect the health of the population, *provided that* measures were evidence-based, proportionate, transparent, subject to democratic (Parliamentary) scrutiny, time limited and subject to regular review. There are questions to be asked about how effective Parliamentary scrutiny has been.

The current COVID-19 pandemic is a worldwide emergency situation that is without precedent in our lifetime and as such requires restrictions that may come close to infringing human rights as we have previously understood them. The ‘right to life’ as laid down in article 2 of the Act is a basic and important element in considering whether restrictions are compliant with our rights of liberty but this ‘right to life’ is for everyone and not for one individual. Underlying many of the rights and responsibilities of the public is a sense of ‘fairness’ and that is central to life in the UK. Members of the Lay Advisory Committee acknowledge that evidence based restrictions on our way of life are fundamental to combating COVID-19.

- **Which groups will be disproportionately affected by measures taken by the Government to address the COVID-19 pandemic?**

These would be likely to include groups who are already living under other restrictions, for example those with serious health conditions which would require them to shield or in long term care facilities; those who have a chronic health condition including drug addiction, those who are homeless or who are in prison. Those whose livelihood relies on face to face contact with others, including key workers and NHS staff, and who cannot work from home could also fall into this disproportionately affected group. More widely, it could be argued that people living in areas of deprivation; minority ethnic group citizens and older people have been disproportionately affected.

Those people requiring non-COVID – 19 related health services, such as GP appointments, cancer screening, referrals, treatment and surgery, mental health referral or dental treatment have also been affected. School students and students in Further and Higher Education have also had the

delivery and continuity of their education severely disrupted. Those who have recently graduated face very uncertain job prospects.

Media reports have been very concerning that discharges from secondary care took place regardless of the wishes of the individual patient or involvement in the decision to discharge them. Given the number of deaths that have occurred in care homes, many older people's lives were undoubtedly put at risk by rushed discharges from secondary care settings. Members of the Lay Advisory Committee suggest that equality and human rights legislation was not adhered to for this group, and continuing action is required to ensure that people requiring additional care and support are treated as individual citizens with human rights, rather than as a large cohort with identical needs. It is vital that decisions are made with regard for wider public health and the health and social care system as a whole.

*20/07/2020*