

**Authors: Dr Marie Tidball, Co-ordinator of the Oxford University Disability Law and Policy Project; Professor Anna Lawson, Director of the Centre for Disability Studies and Co-ordinator of the Law School's Disability Law Hub, University of Leeds; Lindsay Lee, former WHO technical officer; Professor Jonathan Herring, DM Wolfe-Clarendon Fellow in Law, Vice Dean and Professor of Law, Faculty of Law, University of Oxford; Dr Brian Sloan, a Fellow of Robinson College, University of Cambridge; Kamran Mallick, Chief Executive Officer at Disability Rights UK; Dan Holloway, Futures Thinking Network, The Oxford Research Centre for the Humanities; and Dr Sara Ryan, Senior Research Lead at University of Oxford.**

---

### ***About this Submission***

This submission is based on the recommendations of our recent policy [report](#), which found the Government failed to properly implement fully its legal duties with respect to the rights of people with disabilities under the European Convention on Human Rights (the ECHR), the European Convention on the Rights of Persons with Disabilities (the ECRPD), the Equality Act 2010 and the United Nations Convention on the Rights of Persons with Disabilities (UNCRPD). We set out the steps required to ensure that the Government's measures to address the Covid-19 pandemic are human rights compliant.

#### ***A. On protecting the right to life for disabled people (general)***

Disabled people in the United Kingdom, like those from [BAME groups](#), have died from Covid-19 on a tragic scale. The magnitude of deaths amounts to a violation of the State's obligation to protect the right to life, under [Article 2](#) (ECHR). In June, the [Office for National Statistics Data](#) (ONS) revealed that 22,487 disabled people died from coronavirus between 2<sup>nd</sup> March and 15<sup>th</sup> May 2020, representing ~60% of all Covid-19 deaths. The ONS suggests these estimates are "conservative". Disabled women are 2.4 times more likely to die from Covid-19, compared to 1.9 times for disabled men. These risk levels *rise* to 11.3 times for disabled women aged under 65 and 6.5 times for men.

Mortality among people with learning disabilities and autism is also alarming; with the [CQC reporting](#) a 134% increase in April–May 2020, compared to the same 2019 period. Nevertheless, [concerns have been raised](#) that such deaths have not been accurately included in the overall numbers reported or recorded by [statutory agencies](#) under the Learning Disability Mortality Review Programme (LeDeR). Further, it seems that ‘Do Not Resuscitate’ instructions have been [written unlawfully into the care plans](#) of some Learning Disabled residents in care homes. If proven, these incidents are likely contrary to Article 2 protections for persons in the context of healthcare. Firstly, by knowingly putting patients’ lives in danger by a [denying access to life-saving emergency treatment](#) and secondly for failing to consult those with capacity or failing to follow Mental Capacity Act 2005 procedures for those lacking capacity and, thus, [excluding the patient’s active consent in the decision-making process](#).

Yet the [Government Guidance](#) on shielding and protecting people who are clinically extremely vulnerable from Covid-19 [resurrected the idea of ‘vulnerable’](#) groups and excluded nine million disabled people not categorised in this way. There is [emerging evidence of cases](#) where this regulatory framework [operated to the patient’s detriment](#). It has also contributed to significant [systemic barriers](#) faced by disabled people in [accessing and acquiring food](#) and food poverty during the pandemic, contrary to [Article 28 UNCRPD](#) on adequate standards of living and social protection.

It is important to remember that a core positive obligation under Article 2 of the ECHR requires states to [take appropriate steps](#) to safeguard the lives of those within their jurisdiction. This obligation exists in several contexts, including [healthcare](#) and [medical care and assistance](#) given to vulnerable persons institutionalised in State facilities. Deaths in care homes alone were [220% higher](#) at the April peak than in February. Insufficient action was taken by Government to [prevent Covid-19 spreading](#) in care homes and other institutional settings, along with those receiving home care, as the government stopped regular testing and tracing and care workers [did not have access to adequate Personal Protective Equipment](#). This potentially amounts to [‘a systemic or structural dysfunction in hospital services...’](#) (see [Aydoğdu v. Turkey](#)), evidence of a further failure by the State in its duties under the substantive limb of Article 2 and violation of [Article 14](#) (Prohibition on discrimination).

The Academy of Medical Sciences predicts [‘a peak in...deaths in January/February 2021’](#) similar to that of the first wave. The European Court of Human Rights has [held](#) that Article 2 imposes positive investigatory obligations (see [here](#)) on signatory states where there have been apparent breaches of the article. Urgent action is needed, therefore, by Government to prevent a second wave of deaths and fulfil its duties under Article 2 of the ECHR by:

- 1. Undertaking an inquiry to investigate fully the impact of Covid-19 on disabled people and the scale and causes of Covid-19 related deaths of disabled people during the first wave of the pandemic.**
- 2. Establishing a Covid-19 Disability Inclusive Response and Recovery Group of disabled people and Disabled People’s Organisations, to advise Government.**

3. Producing a disability inclusive Covid-19 response and recovery action plan, aligned with the [UN's guidance](#), to mitigate immediate impacts and long-term socio-economic consequences of the pandemic.
4. Investigate the variation in LeDeR reporting between local authorities and the cause(s) of the significant number of learning disability deaths from Covid-19.
5. Producing urgent guidance on access to food for disabled people during pandemics, aligned with the Equality Act 2010 and the UNCRPD.
6. Ensuring pandemic response measures promote the wellbeing of those shielding, accounting for their caring responsibilities and relational welfare.

***B. On the Coronavirus Act 2020, [disability rights and mitigating effects of the pandemic](#)***

Changes to legislation affecting the rights of disabled people, through the Coronavirus Act 2020, has disproportionately impacted upon every aspect of our daily lives (see sections E, F&G below and our [report](#)).

The Government's policymaking in response to the pandemic has failed to fulfil its own [Public Sector Equality Duty under the Equality Act 2010](#) with respect to disabled people and its obligations under the UNCRPD.

We, therefore, urge the government to:

7. Undertake an immediate review of legislation passed during the coronavirus crisis, reforming this legislation and related policymaking to meet its duties under the Equality Act 2010, and commitments under both the ECRPD and UNCRPD. In doing so, taking steps to avoid or mitigate any potential disadvantage for disabled people.
8. Implement recommendations made by the 2016 House of Lords Select Committee and Women and Equalities Committee's [Report](#) on the Equality Act 2010 and Disability on [enhancing its enforcement](#).
9. Enshrine the [human rights model of disability](#) in law and all policymaking responses to Covid-19.

***C. On accessibility of government [communications and consultation](#)***

The ONS [reported](#) widespread anxiety amongst disabled people about the effects of the coronavirus pandemic. The [lack of timely and accessible public health information](#) is one of the reasons disabled people face increased risk of contracting the disease. However, contrary to Articles [8](#) and [21](#) of the UNCRPD, disabled people have been largely [excluded from Government's communications](#). Therefore, Government must take steps to:

10. Involve people with disabilities at every stage in developing communications messaging.
11. Ensure all public health information is accessible for disabled people.
12. Ensure Government communications do not produce negative narratives which create further discrimination against those with disabilities and other protective characteristics by asking these seven questions (see Recommendation 9 [here](#)).

#### ***D. On disabled people's access to healthcare services***

Disabled people face three distinct but related dimensions of increased risk of Covid-19: contracting the disease; developing a severe case once contracted, and; negative secondary consequences from the Covid-19 response.

In order to fulfil its obligations under Article 2 of the ECHR and Article 25 of the UNCRPD, and to mitigate the disproportionate impacts of coronavirus on disabled people's health and access to healthcare services, the Government must:

- 13. Ensure that disabled people have access to all the health care services and equipment, such as ventilators, they need over the course of the outbreak on an equal basis with others.**
- 14. Ensure that the reasonable adjustments disabled people had in place for healthcare services prior to the Covid-19 outbreak remain operational, including provision of WASH facilities, care services and transportation.**

#### ***E. On the social care of disabled people***

The so-called 'easements' by Schedule 12 of the Coronavirus Act 2020, of already modest duties owed by local authorities to service users under the Care Act 2014, pose grave risks to the dignity of disabled and older people.

In order to fulfil its obligations under the UNCRPD to enable disabled people to live independently and be included in the community, and ensure they are accorded respect for home and the family (Article 19 and 23) we urge the government to:

- 15. Repeal 'easements' of local authorities' duties under the Care Act 2014 as soon as is feasible.**
- 16. Reconsider reliance on the ECHR to provide a minimum level of protection for social care users, given their limited effectiveness in this context, and add a duty to protect from a risk of abuse and neglect.**
- 17. Establish an emergency cross-party working group to produce a White Paper setting out draft new legislation to ensure that social care is adequately, fairly and sustainably funded to preserve the dignity of its users and workers.**
- 18. Provide local authorities with resources to hold Citizens' Assemblies for Homes fit for the Health of the Nation.**

#### ***F. On mental health***

The temporary modification of mental health and mental capacity legislation, through Section 10 and Schedule 8 of the Coronavirus Act 2020, has caused those with mental ill health to feel unsafe by allowing a single registered medical practitioner to determine hospitalisation and potentially extending the period of detention under section

considerably. Under ECtHR jurisprudence persons with ‘mental disabilities’ are considered to constitute a ‘particularly vulnerable group’ who [require protection from self-harm](#).

Therefore, the Government must:

19. Reverse these [modifications](#) to better protect the life of people with mental ill health under Article 2 of the ECHR and their Liberty and security of person under [Article 14 UNCRPD](#).

***G. On disabled people’s access to [education](#) during the pandemic***

Children and young people with special educational needs and disabilities (SEND) are being [disproportionately affected](#) by Covid-19 and their right to education ‘relaxed’ by [Section 38](#) and [Schedule 17](#) of the Coronavirus Act 2020.

To comply with its obligations under Article 14 ECHR and Articles [24](#) and [7](#) of the UNCRPD on Education and Children with disabilities, the government must:

20. Reverse the ‘relaxation’ of duties on local authorities in the Children and Families Act 2014 to provide Educational Health Care Action Plans to SEND young people.

**22/07/2020**