

## **Written evidence from Liberation (COV0217)**

### **Introduction**

Liberation is a newly formed, user-led organisation, operating in England. Its focus is the implementation of full human rights for people with lived experience of a mental health diagnosis/mental trauma, in particular the rights set out in the United Nations Convention on the Rights of Persons with Disabilities (UNCRPD). That is because, Disabled people had a significant and meaningful influence over the content of the UNCRPD; the same was not true of the European Convention on Human Rights (ECHR), valuable though many parts of the ECHR have proved to be.

The views expressed in this submission stem from organisational and individual members of Liberation and associated networks.

### **Reason for submitting evidence to the inquiry**

The government has signed up to the UNCRPD, but there are major shortfalls in its implementation of the Convention. Because Liberation's focus is on the UNCRPD, we regard it as important to submit evidence which particularly relates to compatibility between the government's response to COVID-19 and its human rights obligations under the UNCRPD.

### **Summary of the report**

#### **1. Socio-economic issues related to government handling of the coronavirus outbreak**

- For people with lived experience of a mental health diagnosis/mental trauma, the COVID-19 situation is exacerbating existing inequalities; the latter have resulted from austerity measures which the government took in response to the 2008 financial crisis
- Evidence that people with lived experience have fared particularly badly under austerity measures has been supplied by the UNCRPD Committee in 2016 and the Special Rapporteur for Extreme Poverty and Human Rights in 2018
- Another major concern for Liberation is the government's failure to trigger the socio-economic equality duty set out in Section 1 of the Equality Act 2010
- People with lived experience have been particularly affected by austerity measures, because they form the largest number of benefit claimants

- Homelessness numbers have been increasing to as many as one in every 200 people. Individuals with lived experience have again been particularly impacted; as many as 80% of homeless people have pre-existing mental health diagnoses, or have developed related difficulties since losing their homes
- The situations described above represent a major breach of the government's obligations under Articles 5, 6, 19 and 28 of the UNCRPD
- Poverty, including food poverty, is rising during the coronavirus outbreak because of job losses and because, despite an increase in Universal Credit of up to £1,040 a year, payments still fall short of the amount needed to keep people out of poverty
- Welfare conditionality and benefit sanctions are being reintroduced, despite evidence that Disabled people face discrimination in the application of these; that they are 'harmful and counterproductive'; that they are resulting in increased deaths. Rethink Mental Illness has now called for an urgent, independent inquiry
- It is positive that the government has required local authorities to give rough sleepers housing in hotels, or emergency accommodation and that evictions of private tenants unable to pay their rent have been halted for three months. However, there have been shortfalls and these measures are unlikely to solve problems for more than a limited period
- The housing plan put forward by the Housing Minister on 30<sup>th</sup> June will not result in the numbers of affordable homes and new, socially rented homes that are vitally required.

### **Government steps needed**

1. Acknowledgement of longstanding socio-economic disadvantages for people with lived experience of a mental health diagnosis/mental trauma and the breach of human rights which these represent.
2. Recognition of additional socio-economic disadvantages for people with lived experience, stemming from the coronavirus outbreak.
3. Immediate action to address factors related to COVID-19, accompanied by longer term action to deal with underlying socio-economic disadvantages.

4. Activation of Section 1 of the Equality Act 2010.
5. Abolition of conditionality and sanctions in the benefit system and an urgent, independent inquiry into deaths resulting from the benefit system
6. In line with Article 4.3 of the UNCRPD, meaningful involvement of user-led organisations in approaches taken, decisions made and solutions adopted, including organisations which represent people disadvantaged in more than one way.

## **2. Physical health factors**

- Pre-existing shortfalls in physical healthcare provision for people with lived experience of a mental health diagnosis/mental trauma mean that COVID-19 represents a particular risk for them; this has been evidenced by the *Healthy Lives* research study
- People with lived experience have been among those very traumatised by initial guidance to clinicians from the National Institute for Health and Social Care Excellence: that clinicians should use a triage system, based on a frailty score, to decide what healthcare patients infected with the coronavirus should receive
- Many *Healthy Lives* study participants also held the view that they would not receive physical healthcare equal to that provided for patients in general if they had been, or were subject to the compulsory powers of the Mental Health Act 1983
- They expressed concerns, too, about higher death levels amongst Black patients and about healthcare which did not take adequate account of demographic differences
- It is, therefore, still more disquieting that deaths of people detained under the Act have doubled since 2019, with more than half the fatalities being caused by COVID-19. This is completely unacceptable, still more so given that people with lived experience have no power to refuse compulsory powers exercised under mental health law
- It would be hard not to see a connection between healthcare shortfalls of these sorts and the increased coronavirus infection and mortality rates amongst underprivileged people that are highlighted in the recent report from

Public Health England, including people from Black, Asian and other minority ethnic (BAME) communities

- Liberation finds it encouraging that the Equality and Human Rights Commission is now using its legal powers to inquire into the impact of COVID-19 on people from BAME communities and then to develop urgent, evidence-based recommendations
- A massive cause of anger for people with lived experience is the disproportionate number of deaths amongst care home residents, many of whom have mental health diagnoses as well as underlying physical health conditions.
- Government shortfalls described above would appear to represent breaches of Articles 5, 10 and 25 of the UNCRPD, as well as breaching the European Convention on Human Rights and the Equality Act 2010
- There is support amongst people with lived experience for Gardner and for the legal case which she is now bringing against the Health Secretary, because of her father's death from COVID-19 in the care home where he lived
- A compounding factor for people with lived experience is the government's apparent lack of preparedness for the coronavirus, delayed and muddled response once the virus reached the UK and confused communication.

### **Government steps needed**

1. An urgent focus on effective and equitable physical healthcare for people with lived experience of a mental health diagnosis/mental trauma, including all those who experience more than one form of discrimination.
2. Urgent action to address the doubling of deaths amongst detained patients.
3. An unreserved apology for the disproportionate numbers of deaths in care homes and reparation for failures.
4. An objective appraisal of current government handling of the COVID-19 pandemic and of what needs to be done differently.
5. Full use of expertise which people with lived experience hold about their physical healthcare needs and about how to meet these.

### **3. Mental health law**

- For many people with lived experience of a mental health diagnosis/mental trauma, a human rights problem with the Coronavirus Act is the provision for the Secretary of State to authorise a reduced use of the already unsatisfactory safeguards in mental health law, if a shortage of mental health professionals is thought to justify this
- UK mental health law is already in serious breach of fundamental human rights set out in the UNCRPD, including the call in Articles 12, 14 and 19 to end sectioning and forced treatment and respect people's right to live independently
- Implementation of the measures authorised under the Coronavirus Act would represent a still more serious breach of human rights.

### **Government steps needed**

1. Immediate agreement to refrain from implementing these increased powers and then to withdraw them at the time of the six-month review.
2. Active discussion with user-led organisations about feasible ways of accelerating deinstitutionalisation, followed by sustained action to bring institutionalisation to an end.

### **4. Support**

- Here, too, the negative impact of previous cuts has worsened the impact of the coronavirus outbreak. That is because there has been a £7 billion reduction in adult social care since 2010
- Local authorities have had major extra demands made on them during the pandemic. It is positive that the local government secretary has now provided a further financial support package. However, local authorities have said that this remains insufficient
- Feedback from people with lived experience of a mental health diagnosis/mental trauma has also illustrated huge fears about the easement of the Care Act 2014 under the Coronavirus Act 2020

- The government's persistent failure to provide an adequate standard of living and social protection for Disabled people is in breach of its responsibilities under Article 28 of the UNCRPD
- At times of crisis, mental distress and mental trauma very often increase. It is very important, therefore, for there to be a full, in fact increased amount of community support if the use of compulsion under mental health legislation is to be avoided
- Wide-ranging community resources, including alternatives to the white western medical model dominant in this country are highly important to many people with lived experience, but are in short supply because they receive little or no funding.

### **Government steps needed**

1. Further urgent action to address the worsening social care funding gap.
2. An early repeal of the Care Act easements.
3. A major increase in wide-ranging, community-based resources which support the independent living and community involvement approach set out under Article 19 of the UNCRPD.
4. A meaningful influence for user-led organisations over all three of the actions above, including user-led organisations which represent people with lived experience who encounter more than one form of discrimination.

### **5. Hate crime and abuse**

- Disabled people are experiencing worrying levels of hate crime. The most recent Home Office records show that disability hate crime was 14% higher than in the previous year
- The user-led and co-produced research study, *Keeping Control*, has evidenced the greater extent to which Disabled people are at risk of targeted abuse, especially those with lived experience of a mental health diagnosis/mental trauma, that this abuse is often on a prolonged and intersectional basis and that safeguarding processes set up under the Care Act 2014 are not proving effective. The findings have also demonstrated that

drawing on the experiences and insights of people with lived experience is vital if this situation is to change

- Feedback to Liberation indicates that many people with lived experience have been facing further abuse during the coronavirus outbreak, including intersectional abuse. Evidence from the Crown Prosecution Service also shows that abuse has been rising during the outbreak
- In the current context, it is no surprise either that there have been major Black Lives Matter demonstrations in the UK as well, following the death of George Floyd in the United States at police hands. Many Black people in this country experience the government as consistently failing either to acknowledge institutional racism adequately, or to counter it effectively.
- The government needs to meet its responsibilities under Articles 5, 15 and 16 of the UNCRPD as well as under the Human Rights Act 1998 and the Equality Act 2010.

### **Government steps needed**

1. Immediate action against rising hate crime, including a clear focus on addressing issues for people targeted because they have more than one protected characteristic.
2. Acknowledgement of the extent of institutional racism in the UK and agreement to address it decisively.
3. An effective use of the expertise held by user-led organisations in the drawing up and implementation of solutions to hate crime and abuse and in the monitoring of outcomes.

### **Concluding comments**

In all five areas considered above, it is clear that the government's response to the COVID-19 pandemic has resulted in some serious, increased breaches of human rights. Effective government action is needed both to redress these and to ensure significantly increased compliance with human rights in future.

## Main report

### Relevant issues

#### 1. Socio-economic issues related to government handling of the coronavirus outbreak

One major issue for people with lived experience of a mental health diagnosis/ mental trauma is that the Covid-19 situation is now exacerbating existing inequalities stemming from prior government action. People from already disadvantaged socio-economic groups, including many Disabled people, have fared particularly badly since 2008, following the UK government's introduction of austerity measures in response to the financial crisis that year. Strong evidence of this is provided by the UNCRPD Committee (2016)<sup>1</sup>, which undertook an inquiry into the UK under Article 6 of the Convention's Optional Protocol, following representations from Disabled people about the impact of these austerity measures on them and the government's lack of response to their concerns; the inquiry focused on Articles 19 (Living independently and being included in the community), 27 (Work and employment) and 28 (Adequate standard of living and social protection). The Committee concluded (2016:20) that:

*There is reliable evidence that the threshold of grave, or systematic violations of the rights of persons with disabilities has been met in the State party.*

The report from the United Nation's Special Rapporteur for Extreme Poverty and Human Rights (Alston, 2018)<sup>2</sup> made it clear that poverty issues remained acute. Alston highlighted the shocking fact that 1.5 million people in the UK were so destitute that they could not afford even basic essentials, despite the UK being 'the world's fifth richest economy' and containing 'many areas of immense wealth'.

In this context, a further, major concern for Liberation and many other user-led organisations is the fact that the government has not yet triggered Section 1 of the

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<sup>1</sup> Committee on the Rights of Persons with Disabilities (2016) *Inquiry Concerning the United Kingdom of Great Britain and Northern Ireland Carried Out by the Committee Under Article 6 of the Optional Protocol to the Convention. Report of the Committee* (CRPD/C/15/R.2/Rev.1). Available at: [https://www.ohchr.org/\\_layouts/15/WopiFrame.aspx?sourcedoc=/Documents/HRBodies/CRPD/CRPD.C.15.R.2.Rev.1-ENG.doc&action=default&DefaultItemOpen=1](https://www.ohchr.org/_layouts/15/WopiFrame.aspx?sourcedoc=/Documents/HRBodies/CRPD/CRPD.C.15.R.2.Rev.1-ENG.doc&action=default&DefaultItemOpen=1) (Accessed: 29 July 2019)

<sup>2</sup> Alston, P. (2019) *Visit to the United Kingdom of Great Britain and Northern Ireland. Report of the Special Rapporteur on Extreme Poverty and Human Rights* (A/HRC/41/39/Add.1). Available at: <https://undocs.org/A/HRC/41/39/Add.1> (Accessed: 29 July 2019)

Equality Act 2010. Technically, therefore, public bodies do not yet have a socio-economic equality duty, a duty actively to promote equality for people whom the Act classifies as having protected characteristics.

For people with lived experience of a mental health diagnosis/mental trauma, the impact of austerity measures has been particularly acute, because they form the largest number of benefit claimants; this has been illustrated in material from Bond, Braverman and Evans (2019)<sup>3</sup>. In addition, homelessness numbers have been rising to as many as one in every 200 people in England (Shelter, 2019)<sup>4</sup>. Homelessness has again been particularly affecting people with lived experience of mental trauma. Thus, in 2018, *The Big Issue*, a magazine which provides employment opportunities for people in poverty, drew attention to the fact that as many as 80% of homeless people have pre-existing mental health diagnoses, or have developed related difficulties since losing their homes<sup>5</sup>.

The government's continued failure to address the situation in any adequate way is already in major breach of its human rights obligations under the UNCRPD, including its obligations under Article 5 (Equality and non-discrimination), Article 6 (Women with disabilities), Article 19 (Living independently and being included in the community) and Article 28 (Adequate standard of living and social protection). It has also left many people with lived experience of a mental health diagnosis/mental trauma feeling hopeless. As one person said:

*I poured my heart out when Philip Alston came and it's like hitting your head against a brick wall. The government just denies there's a problem and nothing changes.*

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<sup>3</sup> Bond, N, Braverman, R. and Evans, K. (2019) *The Benefits Assault Course. Making the UK Benefits System More Accessible for People with Mental Health Problems*. Available at: <https://www.moneyandmentalhealth.org/wp-content/uploads/2019/03/MMH-The-Benefits-Assault-Course-UPDATED.pdf> (Accessed: 2 April 2018)

<sup>4</sup> Shelter (2019) *This is England. A Picture of Homelessness in 2019. The Numbers Behind the Story*. Available at: [https://england.shelter.org.uk/\\_data/assets/pdf\\_file/0009/1883817/This\\_is\\_England\\_A\\_picture\\_of\\_homelessness\\_in\\_2019.pdf](https://england.shelter.org.uk/_data/assets/pdf_file/0009/1883817/This_is_England_A_picture_of_homelessness_in_2019.pdf) (Accessed: 6 January 2020)

<sup>5</sup> The Big Issue Editorial (2018) 'Homelessness and the mental health scandal', *The Big Issue*, 1 February 2018. Available at: <https://www.bigissue.com/latest/homelessness-mental-health-scandal/> (Accessed: 9 December 2019)

The outbreak of COVID-19 has now exacerbated the situation. Thus, in relation to food access, Power, Doherty, Pybus and Pickett (2020:1)<sup>6</sup> emphasise that:

*The COVID-19 pandemic has sharpened the profound insecurity of large segments of the UK population, an insecurity itself the product of a decade of 'austerity' policies.*

The shocking report from the Select Committee on Food, Poverty, Health and the Environment (2020) recognises that an estimated 11 million people in the UK are living in poverty, that, in many cases, the current welfare system is failing to prevent them going hungry, that food banks are trying to fill the gap which the government should be addressing and that, following the outbreak of COVID-19, reliance on food banks has risen further still<sup>7</sup>.

For people experiencing more than one protected characteristic, human rights shortfalls are often still more acute. As a Black disabled woman with lived experience of a mental health diagnosis/mental trauma has commented:

*I have food coming in from the food bank, because I have no wage. Why is that when I'm advising ministers?*

Poverty is rising because of job losses during the coronavirus outbreak. This has been clearly demonstrated by the unprecedented numbers of people who have been applying for Universal Credit (UC). According to management information from the government's Department for Work and Pensions (2020)<sup>8</sup>, there were 3.2 million claims between 1<sup>st</sup> March 2020 and 9<sup>th</sup> June 2020. Whilst it is positive that the government has increased payments of UC by up to £1,040 a year, this still falls short of the amount considered sufficient to keep people out of poverty. A further issue is that, whilst the increase to UC represents a rise for new disabled claimants,

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<sup>6</sup> Power, M, Doherty, B, Pybus, K and Pickett, K (2020) 'How COVID-19 has exposed inequalities in the UK food system. The case of UK food and poverty [version 2; peer review: 5 approved]'. Available at: <https://publications.parliament.uk/pa/ld5801/ldselect/ldfphe/85/85.pdf> (Accessed: 3 July 2020)

<sup>7</sup> Select Committee on Food, Poverty, Health and the Environment (2020) *Hungry for Change: Fixing the Failures in Food*. Available at:

<https://publications.parliament.uk/pa/ld5801/ldselect/ldfphe/85/85.pdf> (Accessed: 6 July 2020)

<sup>8</sup> Department of Work and Pensions (2020) *Universal Credit Declarations (Claims) and Advances*. Available at: <https://www.gov.uk/government/publications/universal-credit-declarations-claims-and-advances-management-information> (Accessed: 17 June 2020)

people already receiving disability benefits remain on previous levels and these have fallen considerably behind the cost of living.

In addition, although welfare conditionality and benefit sanctions were suspended temporarily during the pandemic, the Work and Pensions Secretary announced on 30<sup>th</sup> June that these would now be reintroduced. However, there is concerning evidence of discrimination against Disabled people, for example that Disabled people claiming Job Seekers Allowance have more often had their benefits sanctioned (Pring, 2019)<sup>9</sup>. The Work and Pensions Committee (2018)<sup>10</sup> concluded that not only is there is no evidence that this system is effective, but it is also 'harmful and counterproductive'.

There is very worrying evidence that Disabled people have been pushed to desperation with the system – and to such an extent that it is resulting in deaths (Rethink Mental Illness, 2020)<sup>11</sup> - and that an urgent, independent inquiry is needed. The reintroduction of conditionality and sanctions in the teeth of this evidence and at a time when COVID-19 itself is causing huge trauma and resulting in still further poverty, can only worsen this desperation.

Liberation has welcomed steps which the government has taken to ensure provision for rough sleepers and to pre-empt evictions from the private rented sector during the COVID-19 pandemic, for example that it has required local authorities to house the former in hotels, or emergency accommodation and stated that evictions of private tenants unable to pay their rent should be halted for three months. However, the situation has not been without problems, including accommodation which is of an unacceptable standard, resource and support issues. There is also a real risk that private renters will fall still further into arrears and then be evicted, because they continue to be in poverty, and that local authority financial shortfalls will mean that

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<sup>9</sup> Pring, J. (2019) 'DWP sanctions system discriminated against disabled people for a decade, figures show'. *Disability News Service*, 25 July 2019. Available at: <https://www.disabilitynewsservice.com/dwp-sanctions-system-discriminated-against-disabled-people-for-a-decade-figures-show/> (Accessed: 26 July 2019)

<sup>10</sup> Work and Pensions Committee (2018) *Benefit Sanctions. Nineteenth Report of Session 2017-19*. Available at: <https://publications.parliament.uk/pa/cm201719/cmselect/cmworpen/955/955.pdf> (Accessed: 1 July 2020)

<sup>11</sup> Rethink Mental Illness (2020) *Stop Benefit Deaths: our campaign calling for an independent inquiry*. Available at: <https://www.rethink.org/news-and-stories/blogs/2020/03/stop-benefit-deaths-our-campaign-calling-for-an-independent-inquiry/> (Accessed: 16 March 2020)

homeless people are soon back on the streets. One of many comments which Liberation has received is:

*I'm terrified. I hide from the landlord now when he makes a visit.*

The extent of the problems is apparent in the submission from Shelter (2020)<sup>12</sup> to the Housing, Communities and Local Government Committee inquiry, set up to analyse the effectiveness of government housing measures. Shelter (2020) has also rightly challenged the housing plan which the Housing Minister put forward on 30<sup>th</sup> June, on the basis that it is not in fact a new plan and will not lead to the numbers of affordable homes and new, socially rented homes that are vitally required<sup>13</sup>.

### **Government steps needed**

1. Acknowledgement of longstanding socio-economic disadvantages for people with lived experience of a mental health diagnosis/mental trauma and the breach of human rights which these represent.
2. Recognition of additional socio-economic disadvantages for people with lived experience, stemming from the coronavirus outbreak.
3. Immediate action to address factors related to COVID-19, accompanied by longer term action to deal with underlying socio-economic disadvantages.
4. Activation of Section 1 of the Equality Act 2010.
5. Abolition of conditionality and sanctions in the benefit system and an urgent, independent inquiry into deaths resulting from the benefit system
6. In line with Article 4.3 of the UNCRPD, meaningful involvement of user-led organisations in approaches taken, decisions made and solutions adopted, including organisations which represent people disadvantaged in more than one way.

## **2. Physical health factors**

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<sup>12</sup> Shelter (2020) *Shelter's Submission. Housing, Communities and Local Government Inquiry into the Impact of COVID-19 (Coronavirus) on Homelessness and the Private Rented Sector*. Available at: [https://england.shelter.org.uk/\\_data/assets/pdf\\_file/0005/1922756/Final\\_Shelter\\_Submission\\_to\\_CLG\\_Select\\_Committee\\_on\\_Govts\\_CV-19\\_response\\_Housing\\_4-5-20\\_002.pdf](https://england.shelter.org.uk/_data/assets/pdf_file/0005/1922756/Final_Shelter_Submission_to_CLG_Select_Committee_on_Govts_CV-19_response_Housing_4-5-20_002.pdf) (Accessed: 15 June 2020)

<sup>13</sup> White R. (2020) 'Project Speed or project status quo?', *Shelter blog*, 1 July 2020. Available at: <https://blog.shelter.org.uk/2020/07/project-speed-or-project-status-quo/> (Accessed: 6 July 2020)

Pre-existing shortfalls in physical health care provision for people with lived experience of a mental health diagnosis/mental trauma mean that Covid-19 represents a particular risk for them. For example, as the *Healthy Lives* research study has illustrated (Gould, 2016)<sup>14</sup>, people diagnosed with serious mental illnesses are already more at risk of long-term physical health problems, receive poorer physical healthcare and have been dying an average of 15-20 years earlier than others, not least because of side-effects of psychiatric drugs.

People with lived experience have been among those very frightened by initial guidance to clinicians from the National Institute for Health and Social Care Excellence (NICE): that clinicians should use a triage system, based on a frailty score, to decide what healthcare patients infected with the coronavirus should receive. A typical lived experience reaction has been:

*This feels like eugenics through the back door.*

Although NICE has subsequently revised its guidelines, many people with lived experience remain fearful that they will be left to die because they already have a serious physical health condition, or because they think that they are regarded as worthless members of society.

Many *Healthy Lives* study participants also held the view that they would not receive physical healthcare equal to that provided for patients in general if they had been, or were subject to the compulsory powers of the Mental Health Act 1983. They expressed concerns, too, about higher death levels amongst Black patients and about healthcare which did not take adequate account of demographic differences. Thus, one participant spoke of unequal healthcare for Black patients in the local area and another, who had experienced abuse from men, of a failure to make sure that she had consistent access to a female GP:

*... Distribution of healthcare should be divided appropriately. Black Afro-Caribbean patients are not being supported at all (ibid: 51))*

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<sup>14</sup> Gould D. (2016) *The Healthy Lives Project*. Available at: <https://www.healthy london.org/wp-content/uploads/2018/03/Healthy-Lives-Project-Full-Report-Jan-2018.pdf> (Accessed: 2 May 2019)

*I kind of won't go to my GP, even if it's an emergency, if I'm going to go and see a male ... and to get an appointment with my GP, with a female, it's like 3 weeks (ibid: 51)*

For these reasons, it is still more disquieting that deaths of people detained under the Act have doubled since 2019, with half of the fatalities being caused by Covid-19 (Thomas, 2020)<sup>15</sup>. This situation has terrified many people with lived experience. As one person with lived experience expressed it:

*I'm badly frightened of COVID-19 because I'm already at high risk, you know. If I get into a psychological crisis and am sectioned, I'll be totally petrified.*

The level of deaths that has occurred amongst detained patients is completely unacceptable, still more so given that people with lived experience have no power to refuse compulsory powers exercised under mental health law. It appears to be a clear breach of human rights under Article 10 of the UNCRPD (Right to life) as well as the Human Rights Act 1998 and Equality Act 2010. A further issue is that, although the Care Quality Commission is monitoring what is happening, people with lived experience are not necessarily confident that the Commission has fully taken on board the tragedy that has been occurring and been sufficiently proactive.

It would be hard, too, not to see a connection between healthcare shortfalls of these sorts and the increased coronavirus infection and mortality rates amongst underprivileged people that are highlighted in the recent report from Public Health England (2020)<sup>16</sup>, including the fact that infection and mortality rates are much higher among Black, Asian and other minority ethnic (BAME) communities than among their white counterparts. For Liberation, it is encouraging that the Equality and Human Rights Commission (2020) is now using its legal powers to initiate an inquiry into the impact of COVID-19 on people from BAME communities and then to develop urgent, evidence-based recommendations; the Commission is doing

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<sup>15</sup> Thomas, R. (2020) 'Deaths of detained mental health patients double due to covid-19', *HSJ*, 8 May. Available at: <https://www.hsj.co.uk/coronavirus/deaths-of-detained-mental-health-patients-double-due-to-covid-19/7027601.article> (Accessed: 14 May 2020)

<sup>16</sup> Public Health England (2020) *Disparities in the Risk and Outcomes of Covid-19*. Available at: [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/892085/disparities\\_review.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/892085/disparities_review.pdf) (Accessed: 16 June, 2020)

so on the basis that ‘the coronavirus has shone a light on longstanding, structural race inequality in Britain’ in all areas of life<sup>17</sup>. The extent of racism in the UK is a human rights issue which BAME people with lived experience have long been raising and emphasising the need to tackle decisively (Griffiths, 2018)<sup>18</sup>.

A massive cause of anger for people with lived experience is the disproportionate number of deaths amongst care home residents, many of whom have mental health diagnoses as well as underlying physical health conditions. Over 16,000 care home residents had died from Covid-19 by early June (Booth and Duncan, 2020)<sup>19</sup>; this amounts to nearly one third of all deaths where the coronavirus has been identified as a cause. A continuing concern is that the UK government seemingly chose to give NHS services priority over care homes, despite the known physical frailty of many care home residents (Tapsfield (2020)<sup>20</sup>.

Government shortfalls described above would appear to represent breaches of Articles 5 (Equality and non-discrimination), 10 (Right to life) and 25 (Health) of the UNCRPD, as well as breaching the European Convention on Human Rights and the Equality Act 2010.

There is support amongst people with lived experience for Gardner and for the legal case which she is now bringing against the Health Secretary, because her father became infected and died from Covid-19 after a patient who tested positive for the virus was discharged from hospital into his care home (Booth, 2020)<sup>21</sup>.

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<sup>17</sup> Equality and Human Rights Commission (2020) *Inquiry into the impact of coronavirus on ethnic minorities*. Available at: <https://www.equalityhumanrights.com/en/our-work/news/inquiry-impact-coronavirus-ethnic-minorities> (Accessed: 1 July 2020)

<sup>18</sup> Griffiths, R. (2018) *A Call for Social Justice. Creating Fairer Policy and Practice for Mental Health Service Users from Black and Minority Ethnic Communities*. Available at: <https://www.nsun.org.uk/news/bme-mental-health-service-users-launch-manifesto> (Accessed: 1 July 2020)

<sup>19</sup> Booth, R and Duncan, P. (2020) ‘More than 16,000 people in UK care homes have died from coronavirus’, *The Guardian*, 16 June 2020. Available at: <https://www.theguardian.com/world/2020/jun/16/more-than-16000-people-in-uk-care-homes-have-died-from-coronavirus> (Accessed: 16 June 2020)

<sup>20</sup> Tapsfield, P. (2020) ‘Fury as Justice Secretary Robert Buckland admits Government ‘CHOSE’ not to test care homes for coronavirus’, *Mail Online*, 20 May 2020. Available at: <https://www.dailymail.co.uk/news/article-8339625/Robert-Buckland-admits-government-CHOSE-NHS-care-homes.html> (Accessed: 21 May 2020)

<sup>21</sup> Booth, R. (2020) ‘Matt Hancock faces legal action from daughter of Covid-19 care home victim’, *The Guardian*, 12 June 2020. Available at: <https://www.theguardian.com/world/2020/jun/12/matt->

A further, compounding factor for people with lived experience is the government's apparent lack of preparedness for the coronavirus, delayed and muddled response once the virus reached the UK and confused communication.

#### **Government steps needed**

1. An urgent focus on effective and equitable physical healthcare for people with lived experience of a mental health diagnosis/mental trauma, including all those who experience more than one form of discrimination.
2. Urgent action to address the doubling of deaths amongst detained patients.
3. An unreserved apology for the disproportionate numbers of deaths in care homes and reparation for failures.
4. An objective appraisal of current government handling of the COVID-19 pandemic and of what needs to be done differently.
5. Full use of expertise which people with lived experience hold about their physical healthcare needs and about how to meet these.

### **3. Mental health law**

For many people with lived experience of a mental health diagnosis/mental trauma, a human rights problem with the Coronavirus Act 2020 is the provision for the Secretary of State to authorise a reduced use of the already unsatisfactory safeguards in mental health legislation, if a shortage of mental health professionals is thought to justify this, the fact that, in the case of the Mental Health Act 1983, it will be possible for:

- An Approved Mental Health Professional (AMHP) to detain someone in mental distress under a section 2, or section 3, with a recommendation from one doctor, instead of two;
- There to be longer holding powers under sections 5, 135 and 136
- Compulsory treatment to last longer than 3 months without a Second Opinion Appointed Doctor (SOAD) being consulted first
- Related changes to be introduced in the case of Part Three patients.

UK mental health legislation is already in serious breach of fundamental human rights set out in the UNCRPD, including Articles 12 (Equal recognition before the law), 14 (Liberty and security of person) and 19 (Living independently and being included in the community); attention was drawn to this in the UNCRPD Committee's *Concluding Observations* (2017)<sup>22</sup> and legal change recommended. Implementation of the measures authorised under the Coronavirus Act would represent a still more serious breach of human rights. It would also be in contravention of point 5 in the recent *Joint Statement: Persons with Disabilities and Covid-19* (Chair of the UNCRPD, 2020)<sup>23</sup>, which advocates accelerated deinstitutionalisation of Disabled people from all types of institutions.

As one Liberation member has said:

*I just want the same human rights as anyone else. All these plans under the Coronavirus Act just make me feel even more of a nonentity.*

#### **Government steps needed**

1. Immediate agreement to refrain from implementing these increased powers and then to withdraw them at the time of the six-month review.
2. Active discussion with user-led organisations about feasible ways of accelerating deinstitutionalisation, followed by sustained action to bring institutionalisation to an end.

#### **4. Support**

Here, too, the negative impact of previous cuts has worsened the impact of the coronavirus outbreak. That is because there has been a £7 billion reduction in adult social care since 2010. As a result, problems faced by local authorities and service

<sup>22</sup> Committee on the Rights of Persons with Disabilities (2017) *Concluding Observations on the Initial Report of the United Kingdom of Great Britain and Northern Ireland* (CRPD/C/GBR/CO/1). Available at:

[http://tbinternet.ohchr.org/\\_layouts/treatybodyexternal/Download.aspx?symbolno=CRPD/C/GBR/CO/1&Lang=En](http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CRPD/C/GBR/CO/1&Lang=En) (Accessed: 1 July 2020)

<sup>23</sup> Chair of the United Nations Committee on the Rights of Persons with Disabilities (2020) *Joint Statement: Persons with Disabilities and Covid-19*. Available at:

<https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=25765&LangID=E> (Accessed: 6 April 2020)

providers have become progressively worse since then, as documentation from the Association of Directors of Adult Social Services (2019)<sup>24</sup> emphasises. Many services were already in crisis, therefore, even before the coronavirus outbreak. A consequence of the COVID-19 outbreak is that local authorities have had major extra demands made on them, whilst at the same time losing income from sources such as parking charges, leisure centres and planning fees. Liberation recognises it as positive that the local government secretary has now provided a further financial support package for local government, but, according to local authorities, this is insufficient to prevent the financial failure of some local authorities and service cuts in others<sup>25</sup>.

People with lived experience of a mental health diagnosis/mental trauma had already informed Liberation that they were not receiving vital support prior to the outbreak of COVID-19. Feedback to Liberation has also illustrated huge fears about the easement of the Care Act 2014 now permitted under the Coronavirus Act 2020. Limited though the Care Act is, people with lived experience do not want even to lose such support as is provided under that Act. Many are now very fearful, too, that their still greater difficulties in accessing support services during the outbreak will be replicated in the post-COVID-19 situation.

The government's persistent failure to provide an adequate standard of living and social protection for Disabled people is already in breach of its obligations under Article 28 of the UNCRPD. It also runs contrary to the *Joint Statement: Persons with Disabilities and Covid-19* about the provision of support during the coronavirus outbreak. In this statement, the UNCRPD chair has emphasised the need both to safeguard the supply of items such as food and medicine during periods of isolation and quarantine for Disabled people and to ensure that a full range of community support continues.

At times of crisis, mental distress and mental trauma very often increase. It is particularly important, therefore, for there to be a full, in fact increased amount of

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<sup>24</sup> Association of Directors of Adult Social Services (2019). *KEY MESSAGES- ADASS Budget Survey 2019*. Available at: [https://www.adass.org.uk/media/7276/key-messages-2019\\_sans-embargo.pdf](https://www.adass.org.uk/media/7276/key-messages-2019_sans-embargo.pdf). (Accessed: 7 October 2019)

<sup>25</sup> Bounds, A and Tighe, C. (2020) 'English Councils warn latest Covid funding still falls short', *Financial Times*, 2 July 2020. Available at: <https://www.ft.com/content/bf92985e-8fc9-4f41-bc86-90cde8e1b171> (Accessed: 4 July 2020)

community support if involuntary detention in a psychiatric hospital and forced treatment are to be avoided. For so many of us, it is vital that they are. As one person has expressed it:

*Going through lockdown feels very restricting - and incredibly tough, for those of us who are meant to be 'shielding'. But it pales into insignificance in comparison with the trauma of being sectioned and forcibly treated.*

A strong focus on wide-ranging community resources is also critical if the diverse needs of people with lived experience are to be met. The basis of psychiatry is the white western medical model which has dominance in this country. Alternatives to this, including user-led options, provision from local community groups and services which are culturally appropriate, are highly important to many people with lived experience, but often receive very limited, or no funding and so are in short supply.

#### **Government steps needed**

1. Further urgent action to address the worsening social care funding gap.
2. An early repeal of the Care Act easements.
3. A major increase in wide-ranging, community-based resources which support the independent living and community involvement approach set out under Article 19 of the UNCRPD.
4. A meaningful influence for user-led organisations over all three of the actions above, including user-led organisations which represent people with lived experience who encounter more than one form of discrimination.

## **5. Hate crime and abuse**

Disabled people are experiencing worrying levels of hate crime. Home Office records (2019)<sup>26</sup> illustrate the fact that there was a 10% overall increase in hate crimes

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<sup>26</sup> Home Office (2019) *Hate Crime, England and Wales, 2018/19*. Available at:

between 2017/2018 and 2018/2019, including intersectional crimes, and that hate crimes related to disability rose by 14%. Whether the rise is due to better police recording of crime, as the Home Office suggested, or reflects significant increases, this extent of hate crime is unacceptable.

The *Keeping Control* research study (Carr *et al.*,(2019)<sup>27</sup>, a user-led project co-produced with Middlesex University staff, has evidenced the fact that Disabled people, in particular people with lived experience of a mental health diagnosis/mental trauma, are at greater risk of targeted abuse than others, often on a prolonged and intersectional basis, and that safeguarding processes set up under the Care Act 2014 are not proving effective. The findings have also made it apparent that progress will be inadequate until the experiences and insights of people with lived experience are central to adult safeguarding legislation, policy and practice.

Feedback to Liberation is that many people with lived experience have been facing further abuse since the start of the coronavirus outbreak, including intersectional abuse.

*They treat me as if I shouldn't be here, should just go away, should disappear because I can only be an increased burden.*

Sadly, evidence from the Crown Prosecution Service (CPS) also indicates that there has been a rise of abuse during the COVID-19 outbreak, that alongside huge generosity and compassion, fear, suspicion, bigotry and hatred have escalated as well. In the Service's June Newsletter (2020)<sup>28</sup>, racist hate crimes, including crimes against Jews, people from South Asian communities, Muslims, Gypsies and Travellers, and crime against LGBT+ people are mentioned specifically. However, CPS work has been seriously affected under COVID-19, for example by social distancing in courts and by a need for guidance about new law and new ways of

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[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/839172/hate-crime-1819-hosb2419.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/839172/hate-crime-1819-hosb2419.pdf) (Accessed: 9 December 2019)

<sup>27</sup> Carr, S, Hafford-Letchfield, T, Faulkner, A, Megele, C, Gould, D, Khisa, C, Cohen, R and Holley, J (2019) 'Keeping Control.: A user-led exploratory study of mental health service user experiences of targeted violence and abuse in the context of adult safeguarding in England'. Available at: <https://onlinelibrary.wiley.com/doi/full/10.1111/hsc.12806> (Accessed: 7 June 2019)

<sup>28</sup> Crown Prosecution Service (2020) 'CPS Hate Crime Newsletter, Issue 25'. Available at: <https://www.cps.gov.uk/publication/cps-hate-crime-newsletter-issue-25> (Accessed: 12 June 2020)

working in the coronavirus situation. In addition, the CPS has put on hold proactive work set out in its new hate crime programme, pending further consideration of the best way to move forward.

In the current context, it is no surprise either that there have been major Black Lives Matter demonstrations in the UK as well, following the death of George Floyd in the United States at police hands. For many Black people in this country, Floyd's death strongly reflects institutional racism which they encounter, including racism in the psychiatric system. It is, too, experienced as a major human rights abuse which the government has consistently failed either to acknowledge adequately, or to counter it effectively.

The government needs to meet its responsibilities under Articles 5 (Equality and non-discrimination, 15 (Freedom from torture, or cruel, inhuman or degrading treatment or punishment) and 16 (Freedom from exploitation, violence and abuse) of the UNCRPD, as well as under the Human Rights Act 1998 and the Equality Act 2010. The situation is particularly acute because many people with lived experience of a mental health diagnosis/mental trauma are already under acute additional pressure and there has been a sharp increase in people experiencing major mental distress under COVID-19; this situation urgently requires addressing.

#### **Government steps needed**

1. Immediate action against rising hate crime, including a clear focus on addressing issues for people targeted because they have more than one protected characteristic.
2. Acknowledgement of the extent of institutional racism in the UK and agreement to address it decisively.
3. An effective use of the expertise held by user-led organisations in the drawing up and implementation of solutions to hate crime and abuse and in the monitoring of outcomes.

#### **Concluding comments**

In all five areas considered above, it is clear that the government's response to the COVID-19 pandemic has resulted in some serious, increased breaches of human rights. Effective government action is needed both to redress these and to ensure significantly increased compliance with human rights in future.

*22/07/2020*