

Written evidence from Mr Lynton Orrett (Barrister at Nexus Chambers) (COV0226)

Introduction

1. The Joint Committee on Human Rights (“JCHR”) is currently undertaking an inquiry entitled “The Government’s response to COVID-19: human rights implications”. The call for evidence lasts until 22 July 2020.

2. Evidence has been invited to address the following questions:

“What steps need to be taken to ensure that measures taken by the Government to address the COVID-19 pandemic are human rights compliant?”

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

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

3. I have re-framed the first question as: What steps does the Government need to take to address existing inequalities to prevent a second wave of Covid-19 further adversely impacting the most vulnerable sections of society? In answering that I have looked at two areas: health and inquests.

4. This response considers

The reframed first question

Health

4. s.1 of the Equality Act 2010 and Article 2 of the Human Rights 1998 both impose obligations on the Government and public authorities to consider the right to life when making decisions that might put a person’s life in danger. Yet, in relation to Covid-19 Public Health England found that:

“BAME groups tend to have poorer socioeconomic circumstances which lead to poorer health outcomes. Data from the ONS and the PHE analysis confirmed the strong association between economic disadvantage and COVID-19 diagnoses, incidence and severe disease”ⁱ

5. The factors that led to the disparity in socioeconomic circumstances are the result of political decisions that have been taken over many years. Unless those factors are remedied, the measures taken to combat Covid-19 could be human rights compliant and still lead to a disproportionate number of infections and deaths in some communities due to existing human rights failures.

Inquests.

6. There are already calls for decisions, which were made by the Government and/or Health Trusts in relation to (a) PPE and (b) treatment decisions to be investigated; when those decisions could have contributed to an avoidable death an inquest should be held.

7. The Chief Coroner has stated that if there were human failures that led to a person contracting Covid-19 or it is suspected that there was some failure of clinical care that contributed to the death it may be necessary to have an inquest.ⁱⁱ

8. If an inquest is needed it is important that the family is included, but in most cases they will not be granted legal aid. No one would think it fair or just that a family, who probably were not with the deceased at the time of death, should be excluded from actively participating into the investigation of that death. Yet that is the impact of the law as it stands.

The second question

7. If the Government acts positively in respect of the re-framed first question and implements measures that are, or have previously been, recommended to it then the impact on human rights within the UK will be a positive one.

8. In relation to existing health inequalities, it is possible that unless it acts in a considered, yet urgent manner, the Government's actions will add to those inequalities that already exist.

9. The Government recently imposed a local lockdown in Leicester and at the time of writing one is being considered in Blackburn with Darwen. It is no coincidence that both locations have populations that are identified as being of increased risk of disproportionate Covid-19 health risks by Public Health England.

10. At the same time, the Government has announced that it will no longer make decisions in relation to lockdowns and will leave such decisions to local authorities. Unless the local authorities receive sufficient funding from central government and accurate and timely test and trace data, there is a real risk that existing health inequalities will be exacerbated.ⁱⁱⁱ

11. In an LGA webinar on 10 July 2020, Tom Riordan (the person responsible for the Government's test and trace programme) stated that they were still not where the Government needed to be in relation to the receipt of accurate data but had made a lot of progress. Mr. Riordan went on to say:

"Ethnicity data will be coming at a very granular level and that's vital, I agree, for everybody to do their job on the ground".^{iv}

12. That admission by Mr. Riordan makes it clear that the Government's existing response to Covid-19, in relation to combatting health inequalities, still has a long way to go before it could reasonably be considered as protecting the human rights of our disadvantaged communities.

The third question

12 This response has been focussed on two groups, those suffering health inequalities and those who want to participate effectively in inquests, but those groups contain people who are culturally and ethnically wide-ranging. The starting point, when asking who will be disproportionately affected by the Government's responses to Covid-19 must be to understand what the data tells us. In order to do that the information has to be accurately collected and collated and then widely disseminated.

13. In relation to the health issue the phrase BAME has been used a lot, and as a general descriptor it has some use. But when considering what the Government needs to do to ensure that human rights are respected it is not good enough. It is important that the term BAME is

deconstructed so that data is properly understood, and resources properly allocated. There are significant differences between, and within, the groups defined as Black, Asian and other Minority Ethnic.

14. The local lockdown in Leicester is a good example of the need for precision in data. No one understands why Leicester saw such a drastic spike in Covid-19 cases but other superficially similar communities, such as that in Bethnal Green, did not. It is only by looking at the differences between the communities that human rights can be properly protected.

15. It is commendable that the Government has introduced the “Covid-19 Community-Led Organisation Recovery Scheme” (“the Scheme”)^v. For the Scheme to work properly, and restore family life and structures in the worst hit and vulnerable communities, it is essential that there is accurate data so that funding reaches those organisations that provide local support to those most at need.

17. When considering inquests, the people worst impacted will be those who cannot gain funding to (a) push for an inquest and then (b) effectively take part if one is granted.

18. The arguments, about the exclusion of family representation from inquests will be well known to the Committee. What the families need is for the committee to seek from the government a widening of the provisions that presently only allow legal aid to be granted in exceptional cases. To this end, the Government should be pushed to implement ‘Inquests’ call for a National Oversight Mechanism^{vi} and to extend provision of legal aid to cover inquests.

19. If that does not happen then, as Marienna Pope-Weiderman, said the lack of access to an inquest:

“... could obscure the role of government failures in the deaths, not only of hundreds of NHS workers, but tens of thousands of patients. As a bereaved relative going through an inquest myself, I know what this means for the families in mourning.”^{vii}

20. **Conclusion**

21. It is generally accepted that there will be a second wave of Covid-19 cases, when that will be no one can be sure. It is imperative that pressure is kept on the government to do better than it did when combating the first wave. Protecting the human rights of the people in the UK is about more than just protecting jobs.

22. We clapped for the NHS because of the strain it was put under. We now need to campaign for equality in provisions and outcomes in relation to Covid-19 cases so that the trauma caused by the impact of the first wave does not envelop us a second time.

22/07/2020

ⁱ [Beyond the data: Understanding the impact of COVID-19 on BAME groups](#)

ⁱⁱ [Guidance No 37: COVID-19 Deaths and Possible Exposure in the Workplace.](#)

ⁱⁱⁱ On 21 July 2020, the Government conceded that its track and trace system was unlawful because it had not been properly registered with the Data Commissioner. That raises the issue of Article 8 privacy rights and data protection laws.

^{iv} <https://www.youtube.com/watch?v=IDSsT6FkccU>

^v <https://www.ubele.org/news/2020/7/13/multi-million-pound-covid-19-recovery-scheme-launches-for-community-led-organisations>

^{vi} <https://www.inquest.org.uk/grenfell-phase1#:~:text=For%20over%2015%20years%2C%20INQUEST,Article%20'%20state%20related%20deaths.>

^{vii} <https://www.independent.co.uk/voices/coronavirus-deaths-ppe-nhs-staff-chief-coroner-bame-a9572536.html>