

Written evidence from Equally Our (COV0257)

1. Introduction

1.1. Equally Ours (formerly the Equality and Diversity Forum) is the national network of organisations committed to making a reality of equality and human rights in people's lives. Our members include Age UK, Mind, Stonewall, the TUC, the Runnymede Trust, Child Poverty Action Group, the Traveller Movement, the Fawcett Society, Inclusion London and Disability Rights UK. Further information about our work is available at www.equallyours.org.uk

1.2. Many of our members provide vital front-line services and advocacy for and with people with protected characteristics who are likely to be disproportionately affected by Covid-19 and its wider social and economic impacts in relation to their protected characteristics or human rights. This evidence is informed by Equally Ours' and our members' knowledge of the issues and problems that people and communities are facing due to the virus, and what needs to change or improve.

1.3. We submitted evidence to the Women and Equalities Committee inquiry into the unequal impacts of Covid 19 on those with protected characteristics in April. That submission focused on the immediate needs emerging from the crisis, many of which have human rights implications. This submission builds on that and will explore both ongoing risks to human rights resulting from the immediate crisis and where our members see a need to use human rights tools to build back better as a society.

2. Executive summary

2.1. At a time of national crisis, such as that resulting from the coronavirus pandemic, human rights are central to enabling the state to respond in an effective and proportionate manner. Often this will mean finding the appropriate balance between different rights – the right to life will need to be balanced with the right to liberty, the right to respect for private life with collecting the data necessary to track and combat the virus.

2.2. Such measures also need to take account of the needs of the whole population and not discriminate if they are to comply with the human rights framework. Failure to do so may render otherwise justifiable measures ineffective and unworkable, leading to entirely avoidable violations of rights and, ultimately, to avoidable deaths. We have sadly seen examples of this in the government response to the pandemic.

2.3. We all want to be valued, cared for and have an equal chance to thrive and Covid-19 has shown us just how important our shared humanity is. Equality and

human rights are the tools we use to live together freely and fairly. They are vital to rebuilding a more compassionate, resilient and just society that meets the needs and rights of us all.

Detailed submission

3. Covid-19 and the duty to respect, protect and fulfil human rights

3.1. The government response to the pandemic has been dominated by a narrative of protection and vulnerability, with rights viewed as optional at best and unnecessary at worst. As a result, many individuals and groups have seen their rights curtailed in law or infringed in practice beyond what is necessary and proportionate to combat the public health crisis resulting from the pandemic.

3.2. It was known from the start that certain groups – in particular black and minority ethnic people, women, disabled people and older people - were likely to be disproportionately impacted by the virus and yet it has become apparent throughout the pandemic that human rights and equality have been afterthoughts.

3.3. Instead a 'one size fits all' approach has been followed with reliance on individuals and communities to raise challenges when that one size inevitably does not fit the varying social and economic contexts or needs of all of us. Examples where changes were made following threat of litigation include:

- Adaptation to lockdown guidance to clarify that it was permissible to travel for exercise if this necessary because of disability.
- Clarification of guidance to clarify that it was legal to leave the home and to travel to escape domestic abuse and violence.
- Providing disabled people with reasonable adjustments to re-instate access to supermarket delivery services after access was severely disrupted by the government's introduction of 'vulnerable' and 'severely vulnerable' lists.¹

3.4. The government is continuing to take a 'one size fits all' approach in lifting shielding restrictions across parts of the country from 1 August, with many having to return to work despite heightened risk. A new TUC report² reveals that tens of thousands of people, especially older and disabled workers and those living with ill health, may not be able to go back to work safely, because they still face a high risk from coronavirus. The report also sets out that localised outbreaks are likely to lead

¹ Casserly, C & Fry, C, *The Coronavirus Act 2020 and its impact on disabled people*, Discrimination Law Association Briefings Vol 70 July 2020

<https://www.frylaw.co.uk/wp-content/uploads/2020/07/DLA-Briefings-vol-70-935-947-disabled-impact-CF.pdf>

² <https://www.tuc.org.uk/sites/default/files/2020-07/ClinicallyVulnerable.pdf>

to reinstatement of shielding restrictions in the future, again leaving shielded workers unable to attend work outside the home.

3.5. The difficulties in bringing legal challenges to discrimination are well known and documented. Reliance on individual enforcement was found to be particularly problematic by the Women and Equalities Committee in its 2019 report into enforcing the Equality Act 2010.³ Court reforms already underway have already been criticised for re-enforcing the digital divide.⁴

3.6. Nonetheless, within society at large the central importance of rights has been clear and goes beyond those contained in the Human Rights Act. The rights to food, to education, to an adequate standard of living, to housing and to the highest attainable standard of physical and mental health have all been engaged in the fight against the pandemic despite having been absent from a government approach predicated on vulnerability.

3.7. If we are to emerge from this crisis as a democratic society that respects the rule of law, then the government response must be underpinned by a human rights-based approach. Legislation and actions, or inactions, of public authorities must promote the rights and freedoms of us all with the vital check of access to legal challenge assured.

We recommend that:

- **The government provide human rights impact analysis of the implementation of the Coronavirus Act and relevant public health regulations as part of the September 2020 review of the Act, including in respect of international human rights standards.**
- **The Coronavirus Act be amended to provide a legal right of challenge to actions or inactions by public authorities on the basis of the rights to food, to education, to an adequate standard of living, to housing and to the highest attainable standard of physical and mental health for the duration of the pandemic and modelled on the enforcement mechanisms in the Human Rights Act.**

³ House of Commons Women and Equalities Select Committee, 2019 *Enforcing the Equality Act: the law and the role of the EHRC inquiry*, Tenth Report 2017-2019 Session <https://www.parliament.uk/business/committees/committees-a-z/commons-select/women-and-equalities-committee/inquiries/parliament-2017/enforcing-the-equality-act-17-19/>

⁴ House of Commons Justice Select Committee *Court and Tribunal Reforms inquiry*, Second Report of Session 2019: <https://www.parliament.uk/business/committees/committees-a-z/commons-select/justice-committee/inquiries/parliament-2017/court-and-tribunals-reform-inquiry-17-19/>

- **The government extends the furlough scheme for those at high risk who should be able to rely on a note from their GP or clinician to show their employer that they qualify for furlough.**

4. Human rights in health and care

4.1. The pandemic has seen the best and the worst of the health and care systems in the UK. At their best they have acted to save lives and provide those under their care with dignity and respect. In other instances, however, both the system and government legislation and guidance have acted to roll back respect for human rights within health and social care.

4.2. The government chose to use the Coronavirus Act 2020 to introduce 'easements' to duties under the Care Act and important protections under mental health legislation. Not only does this remove important rights and safeguards from disabled people at a time when they are most likely to need them, it also sends a strong message that disabled people are less important than others.

4.3. Our members report anecdotal evidence of abuse, particularly in care homes, but found themselves with few remedies available. A lack of access to family and friends during the lockdown has meant that many could not act as advocates. We were told that people had been unable to use the complaints procedure via the Local Government and Social Care Ombudsman during lock down and had not been able to access other legal routes of redress.

4.4. The government must:

- **Repeal the Care Act easements.**
- **Work with the Care Quality Commission, the Local Government and Social Care Ombudsman, the care sector and representatives of disabled and older people to develop a contingency plan for future emergencies similar to or arising from Covid-19 that incorporates effective oversight of any restrictions to rights and enforcement measures.**

5. Balancing the rights to respect for private and family life and obligations to protect life in 'track, trace and isolate'.

5.1. A well-functioning system of 'track and trace' is essential to public health and will be for the foreseeable future. This requires that it:

- **Be trusted.** People will not engage with the system if they do not trust that their personal data is not secure.

- **Be accessible.** All public health messaging must be delivered in accessible formats, by people properly trained and culturally competent and able to respond to the individual needs of those they are engaging with.
- **Be achievable.** If the virus is to be contained, and measures such as self-isolation requirements be justified as a proportionate and necessary in a democratic society, consideration must be given to how people can be enabled to follow advice.

Trust

5.2. Independent Sage report that “Fear and mistrust among BME and migrant populations may be acting as a barrier to accessing healthcare reducing the likelihood of timely identification of people with COVID-19 symptoms and their contacts.”⁵ This finding is supported by the experiences of our members, as is Independent Sage’s finding that fear and mistrust among BME migrants is a similar barrier. Many BME people are concerned that their data will be shared with immigration authorities, including British citizens who fear being unlawfully subjected to immigration control - as happened to the Windrush generation.

5.3. The 2019 report into tackling inequalities faced by Gypsy, Roma and Traveller communities published by the Women and Equalities Select Committee found that “trust is low between Gypsy, Roma and Traveller communities and public services, due to historic and ongoing discrimination”. Consequences of this included a lack of engagement with health services, including with public health campaigns.⁶

5.4. Specialist violence against women and girls organisations have warned that the contact tracing system is at risk of being used by abusers to seek to control or track down victims and survivors.⁷ Abusers will go to extreme lengths to track down a former partner and the risk of the test and trace system being used to do so is heightened with recent reports that the system is already in breach of data protection laws.⁸

⁵ <https://www.independentsage.org/disparities-in-the-impact-of-covid-19-in-black-and-minority-ethnic-populations-review-of-the-evidence-and-recommendations-for-action/>

⁶ House of Commons Women and Equalities Select Committee, 2019 *Tackling inequalities faced by Gypsy, Roma and Traveller communities* Seventh Report 2017-2019 Session
<https://publications.parliament.uk/pa/cm201719/cmselect/cmwomeq/360/full-report.html> at page 32

⁷ <https://www.endviolenceagainstwomen.org.uk/wp-content/uploads/Statement-by-VAWG-orgs-re-easing-COVID-restrictions-July-2020.pdf> and
<https://static1.squarespace.com/static/5ee0be2588f1e349401c832c/t/5ef45dd49c952511979762a9/1593073115020/Action-Plan-VAWG-Sector-Recommendations-Final.pdf>

Access

5.5. Our members are concerned that the government hasn't given sufficient advance thought to access requirements of the test and trace system. While it appears that a national lead for accessible information has been appointed⁹ we are still hearing reports of issues such as home testing kits that require a certain level of mobility with no consideration given to reasonable adjustments and there appears to have been little effort to reach groups excluded due to issues such as poor literacy.

Achievable

5.6. The purpose of a test and trace system is to ensure that those exposed to Covid-19 can self-isolate and so reduce the spread of the disease through the population. This is the justification for interference with individuals' article 8 rights to respect for their private and family lives. This justification falls away if it is impossible for individuals to self-isolate.

5.7. Overcrowded households are at greater risk of Covid-19, and black and minority ethnic communities are more likely to live in multi-generational overcrowded housing. This makes social distancing, self-isolation and shielding much more difficult, and increasing opportunities for within-household transmission.¹⁰

5.8. The legacy of poor site quality has had a negative impact on the health of Traveller populations and mean that some, especially those in roadside stopping places, are unable to follow guidance on health measures such as frequent handwashing. Concerns about the impact of site quality on health outcomes was also reported by the Women and Equalities Committee's 2019 report into tackling inequalities faced by Gypsy, Roma and Traveller communities¹¹ and yet our members have told us that they have had no help in ensuring access to basic sanitary facilities.

5.9. Our members working with asylum-seekers and refugees have also reported worrying occurrences of those subject to immigration control being required to live in shared accommodation without the possibility of social distancing and being required to travel by public transport to have their fingerprints taken in person. While the government has taken some action to address these issues – for example temporarily suspending reporting requirements or pausing face to face interviews –

⁸ <https://www.bbc.co.uk/news/technology-53466471>

⁹ <https://www.rnib.org.uk/campaigning/campaigning-news/government-appoints-national-lead-accessible-information>

¹⁰ <https://www.independentsage.org/disparities-in-the-impact-of-covid-19-in-black-and-minority-ethnic-populations-review-of-the-evidence-and-recommendations-for-action/>

¹¹ <https://publications.parliament.uk/pa/cm201719/cmselect/cmwomeq/360/360.pdf>

these are temporary measures some of which have already ceased to apply. We are not aware of any action to enable social distancing in shared accommodation or to ensure that those provided with accommodation are able to fully isolate if they are asked to do so by the test and trace system.

5.10. In order to ensure the test and trace system is a proportionate means of protecting public health the government must:

- **Implement the recommendations of the Independent Sage Group on adaptation and targeting of the test and trace programme to reach marginalised and black and minority ethnic communities.¹²**

Key recommendations include: priority testing for those most at risk; improve statutory sick pay and the social security safety net; and to provide temporary housing and emergency financial support for necessary isolation, including for those living in over-crowded accommodation.

- **Train contact tracers in accessible and culturally competent communications practice and have access to all necessary interpreting facilities.**
- **Undertake an accessibility audit to fulfil its duty to anticipate the reasonable adjustments that may be required for access to the service.**
- **Provide BSL interpretation for public statements in England, as is already the case in Scotland, Wales and Northern Ireland.**
- **Work with the Information Commissioner and organisations delivering services to those at risk of domestic violence and abuse to review data protection measures.**
- **Remove information sharing between health and immigration services.**
- **Suspended NHS Charges and abolish the 'no recourse to public funds' rule to ensure that migrants are not deterred from seeking a test or from self-isolating if needed.**

¹² https://www.independentsage.org/wp-content/uploads/2020/07/Independent-SAGE-BME-Report_02July_FINAL.pdf

6. Policing in a pandemic

6.1. The over-policing of black and minority ethnic communities is well documented, so it should not be a surprise that powers introduced to protect public health have been applied disproportionately to black and minority ethnic communities. Liberty Investigates found in May 2020 that black and minority ethnic people were more likely to be subject to fines for breaching lockdown, by July 2020 their data confirmed that powers were being used disproportionately against black and minority ethnic people.¹³

6.2. Despite this, the government does not appear to have taken steps to ensure that this pattern does not continue – either in the application of local lockdown powers or in policing of mandatory face coverings.

6.3. We recommend that the government:

- **Shift away from a criminal justice approach, emphasising public awareness and enabling compliance over punishment.**
- **Ensure there are adequate safeguards to ensure that any public health enforcement is proportionate and non-discriminatory and that those subject to such powers have a means of appealing against their use.**

7. Protection against hate crime

7.1. The coronavirus pandemic has seen a worrying rise in the levels of hate crime against disabled people and black and minority ethnic people. Our member organisation Inclusion London has been running a weekly survey of disabled people on the incidence and types of hate crime experienced since lockdown began. They found:

- A rise in hate crime committed by neighbours of Disabled people, including against Disabled children;
- A rise in verbal abuse against Disabled people and instances of being spat at whilst out of the house;
- An increase in online hate crimes – Disabled people have been told that their lives are inferior and are taking up resources from non-Disabled people.
- Disabled people being targeted whilst out shopping if they have PAs/carers with them or require prioritisation in queues for shops.¹⁴

¹³ <https://www.libertyhumanrights.org.uk/issue/discriminatory-policing-in-the-uk-how-coronavirus-made-existing-inequalities-even-worse/>

7.2. There has also been a rise in hate crime scapegoating minority groups for spreading Covid-19, with Chinese, Muslim and Traveller communities at particular risk.¹⁵ The Community Security Trust have reported a rise in antisemitic hate crime during the pandemic, particularly the spread of antisemitic conspiracy theories that have spread through social media.¹⁶ The LGBT Foundation has reported on Covid-19 related hate crimes targeting gay men in particular, linking back to HIV prejudice and scapegoating. Public health messages and media commentaries must not inadvertently fuel such views. Indeed, with communities across the UK working together to protect each other and the NHS there is a real opportunity to counteract such division. Both government and media should use this opportunity to promote positive narratives and examples of solidarity between communities at this time.

7.3. The government must:

- **Ensure that its own messaging does not re-enforce existing negative attitudes by, for example, by immediately stopping the use of terms like 'vulnerable' and framing public health messages around the human rights of all of us.**
- **Ensure that guidance is provided to the police and other enforcement bodies on the emerging forms in which hate crime is manifesting during the pandemic.**

8. The right to education

8.1. The right to education in Article 2, Protocol 1 of the European Convention on Human Rights provides a right of access to educational institutions, to the transmission of knowledge and intellectual development and to official recognition of studies through the ability to gain a qualification. These rights must be secured without discrimination.

8.2. The coronavirus crisis has caused unavoidable disruption to both access to education and to exams and assessment. This disruption has impacted particularly on groups already facing discrimination and disadvantage in the education system. Our members have reported that Gypsy, Roma and Traveller children, excluded children and those requiring support for special educational needs are particularly at risk of being left behind. Children from poorer backgrounds are also likely to be impacted more severely by the closure of schools and reliance on distance learning.

¹⁴ <https://www.inclusionlondon.org.uk/campaigns-and-policy/facts-and-information/hate-crime/inclusion-london-briefing-disability-hate-crime/>

¹⁵ Don't Fund Hate, evidence to Equally Ours Policy Forum meeting 8.4.20

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<https://cst.org.uk/data/file/d/9/Coronavirus%20and%20the%20plague%20of%20antisemitism.1586276450.pdf>

8.3. There has been some recognition of these issues by the Department for Education, and the planned catch up plan¹⁷ is welcome. Nonetheless, these plans must include targeted and specialist support in order to operate to the benefit of all children and young people and not further embed existing inequalities.

8.4. While we recognise that Ofsted and the Department for Education have sought to mitigate the negative impact on exams and assessment, we do not feel that their actions to mitigate the impact of discrimination and existing inequalities have gone far enough. We endorse the recommendations made by the Education Select Committee in their report 'Getting the grades they've earned: Covid-19: the cancellation of exams and 'calculated' grades'.¹⁸

8.5. In order to secure the right to education for all the government must:

- **Embed specialist and targeted support into catch up plans.**
- **Accept and implement the recommendations of the Education Select Committee report 'Getting the grades they've earned: Covid-19: the cancellation of exams and 'calculated' grades'.**
- **Collect data on access and attainment in education disaggregated by sex, ethnicity and impairment/disability at a national and local level and take appropriate mitigating measures where disparities are shown. Particular attention should be paid to measuring impact on Gypsy, Roma and Traveller communities where educational disadvantage is already acute but existing data sets use the categories of "Gypsy/Roma" and "Travellers of Irish Heritage" rather than the census categories meaning that it is difficult to understand which disparities are in which community.**¹⁹

31/07/2020

¹⁷ <https://www.gov.uk/government/news/billion-pound-covid-catch-up-plan-to-tackle-impact-of-lost-teaching-time>

¹⁸ <https://publications.parliament.uk/pa/cm5801/cmselect/cmeduc/617/61702.htm>

¹⁹ <https://publications.parliament.uk/pa/cm201719/cmselect/cmwomeq/360/360.pdf>