
An Affront to Dignity, Inclusion and Equality: Coronavirus and the impact of law, policy and practice on people with disabilities in the United Kingdom

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About the Oxford University Disability Law and Policy Project

The [Oxford University Disability Law and Policy Project](#) develops initiatives to increase academic teaching and research on disability and related issues at its intersection with law and policy. In doing so it aims to bring new perspectives to academic analyses of law and policy and to generate policy-relevant research which better engages with the issues faced by our diverse population of people with disabilities.

About the Bonavero Institute of Human Rights

The Bonavero Institute of Human Rights is a dedicated institute within the Faculty of Law at the University of Oxford. The Institute is based at Mansfield College, Oxford. Here we undertake world class research in the field of human rights law and foster public engagement in human rights issues beyond the academy. As part of its mission, the Institute will establish a vibrant community of graduate students, host outstanding scholars of law and other disciplines, and collaborate with practitioners engaged in the most pressing contemporary human rights issues around the world.

Executive Summary

The coronavirus pandemic has led to far reaching changes to law and policy affecting disabled people in the UK, impacting upon every aspect of our daily lives. From restrictions around the 12 week ‘shielding’ of vulnerable individuals to reducing the number of professionals needed to make a hospital order under the Mental Health Act 1983, and ‘easing’ the requirements on local authorities to provide care for disabled people under the Care Act 2014, the [Coronavirus Act 2020](#) has wide ranging and damaging implications for the rights and freedoms of disabled people in the United Kingdom. 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 United Nations Convention on the Rights of People with Disabilities.

The voices of disabled people have been largely excluded during the crisis and yet the impact on our lives has been dramatic. In June, the [Office for National Statistics Data](#) has revealed that almost 60% of deaths from coronavirus in the UK have been people with disabilities. Disabled women are 2.4 times more likely to die from Covid-19 and men with disabilities 1.9 times more likely to die. These risk levels *rise* to 11.3 times for disabled women aged under 65 and 6.5 times for men. The ONS think these estimates are "conservative". Their data also reveals the disproportionate [rates of morbidity and infection amongst BAME groups](#). As the United Nations observes the ‘heavier burden of the immediate and long-term economic and social consequences of the pandemic’ on ‘[p]ersons with disabilities experiencing intersectional and multiple discrimination as a result of their gender identity, age, ethnicity, race, sexual orientation, origin, location and legal status’. Urgent work is needed to understand these immediate intersectional impacts on disabled people in the UK and to put in place action to mitigate the long-term consequences.

There has been a failure of the government to embed [social and human rights models](#) of disability in its pandemic response. This is writ large in its approach to determining its shielding list – those people who should stay at home for 12 weeks. [Many of those who ought to have been included in this register have been omitted and face no access to food without leaving their homes](#) despite being severely disabled and being affected by chronic illness. The government’s messaging that the [“virus does not discriminate”](#) misunderstands the differential impact of the extensive changes to daily life for disabled people. There has been a failure to properly support disabled people to cope with these changes and for reasonable adjustments to be made where appropriate and safe to do so. This has led disabled people to feel like they are not important, and to lose trust in government.

The unequal impact of the coronavirus crisis, charted in the essays in this report, comes after a decade of austerity. In 2017, the United Nations Committee on the Rights of Persons with Disabilities [raised concerns about the treatment of disabled people during this period in their Concluding Observations on the initial report of the United Kingdom](#). Our report reflects the themes of articles of [the United Nations Convention on the Rights of Persons with Disabilities](#) (UNCRPD), ratified by the United Kingdom in 2009. It does so to demonstrate the widening inequality for disabled people during the coronavirus crisis in all parts of our lives, and to reflect the insufficient incorporation and uneven implementation of the Convention across all policy areas, by the government, in response to the crisis.

This Report is based on material submitted to the House of Commons Women and Equality Committee inquiries on [the unequal impact of Covid-19 and the Coronavirus Act 2020 on People with protected characteristics](#) and papers given at our webinar on [Disability in the Context of the Coronavirus Crisis](#). Each paper is summarised in this section alongside the associated recommendations.

General Recommendations:

- 1. We urge the government to undertake an immediate review of legislation passed during the coronavirus crisis and communication thereof.** In doing so, we ask that the government changes the Coronavirus Act and all its policymaking to meet its duties under the Equality Act 2010, and commitments to the United Nations Convention on the Rights of Persons with Disabilities, taking steps to avoid or mitigate any potential disadvantage for disabled people.
- 2. The Government must put in place a disability inclusive Covid-19 response and recovery action plan, for the immediate and long-term economic and social consequences of the pandemic, that reflects the multiple and intersecting identities of, and forms of discrimination faced by, persons with disabilities.**

Professor Anna Lawson, Director of the Centre for Disability Studies and Co-ordinator of the Law School's Disability Law Hub, University of Leeds, focuses on legal obligations, both in the United Nations Convention on the Rights of Persons with Disabilities and in Great Britain's Equality Act 2010. She does so to highlight the need to ensure that policy and practice responses to the Coronavirus Crisis are disability-inclusive. Her paper focuses on obligations imposed on providers of services and public functions, including the government. In particular, it highlights the importance and relevance of the anticipatory reasonable adjustment duty. It draws attention to two cases, in which hundreds of disabled people allege that the government and supermarkets respectively breached this duty in the early months of the coronavirus crisis. It is to be hoped that these obligations will serve to highlight to providers of services and functions the importance of routinely anticipating and considering how to minimise the disability-related disadvantage of potential policies and practices that respond to the new demands of physical distancing and other infection-reduction requirements. **Recommendations:**

- 1. Government should comply with the Equality Act's proactive duties to consider the disability impact of its COVID-related policies and practices,** and to anticipate and take steps to avoid or mitigate any potential disadvantage which might otherwise be caused to disabled people.
- 2. Government should work with disabled people's organisations and the Equality and Human Rights Commission to produce authoritative guidance for providers of services and public functions on ensuring that infection-reduction policies and practices are developed and implemented in ways that do not disadvantage or exclude disabled people, in line with the UN's [Disability-Inclusive Response to COVID-19](#).**
- 3. Government should implement recommendations made by [the 2016 House of Lords Select Committee Report on the Equality Act 2010 and Disability](#), and by the [Women and Equalities Committee](#),** on enhancing the enforcement of the Equality Act 2010, both by removing deterrents to individuals bringing disability discrimination cases; and by measures which embed the monitoring and enforcement of relevant duties in the work of regulatory and inspection bodies.

Writing on disabled people's access to healthcare services, Lindsay Lee, former WHO technical officer, gives an overview of the [Policy Brief of the UN Secretary-General: A Disability-Inclusive Response to COVID-19](#) and unpacks the disproportionate impacts of coronavirus on disabled people's health and access to healthcare services. Disabled people face [three distinct but related dimensions of increased risk of COVID-19](#): increased risk of contracting the disease; increased risk of developing a severe case of the disease once contracted, and; increased risk of negative secondary consequences from the COVID-19 response. It is important to unpack the distinct reasons for this disproportionate impact, in order to target solutions that can address the problems. **Recommendations:**

1. **Ensure all public health information is accessible for disabled people.** This includes providing information inclusive formats such as captioning, sign language, Easy Read, and formats usable by electronic screen readers. Accessible public health information should also be distributed directly to community networks of disabled people.
2. **Ensure that disabled people have access to health care services they need over the course of the outbreak.** This includes regular health care services, but also services related to COVID-19 treatment. Disabled people must have access to scarce health resources such as ventilators on an equal basis with others.
3. **Ensure that the reasonable adjustments disabled people had in place prior to the COVID-19 outbreak remain operational.** This includes any [provision of water, sanitation, health care waste management, hygiene and environmental cleaning infrastructure in healthcare facilities](#), care services and transportation.

Professor Jonathan Herring, DM Wolfe-Clarendon Fellow in Law, Vice Dean and Professor of Law, Faculty of Law, University of Oxford, writes on shielding the vulnerable. COVID-19 and the resulting guidance has brought out into the open the disadvantages and prejudices associated with disability. Those labelled extremely vulnerable are defined and dominated by their medical diagnosis. Their identities as parents, carers, doctors, lovers are lost by their medical diagnosis. They are rendered invisible in the public discourse and it is seen as their responsibility to meet their needs. The guidance fails as it is based on an ablist idealisation of the autonomous disease free individual, which bears no relation to our lived in reality as caring, relational, vulnerable communities.

Recommendations:

1. **To ensure advice to shielding people takes account of their caring responsibilities and relational welfare.**
2. **To ensure pandemic response and recovery measures better accommodate those shielding to promote their wellbeing. For example, if a future lockdown is needed, to provide times of the day when only those shielding are permitted outside.**

Dr Brian Sloan, a Fellow of Robinson College, University of Cambridge, covers legislative changes affecting the social care of disabled people in their homes and in residential care settings. One of the many effects of the Coronavirus crisis on social care has been the relaxation of already modest duties owed by local authorities to service users under the [Care Act 2014](#). While somewhat understandable in the context of an under-resourced system facing an unprecedented threat, the so-called 'easements' pose grave risks to the dignity of disabled and older people. The reliance on Convention rights, albeit purporting to provide a minimum level of protection while more extensive duties are attenuated, is limited in its effectiveness because of the deference shown by courts to policymakers in this area. It is vital that the 'easements' are repealed, and that the crisis prompts a wholesale review of social care policy and funding. **Recommendations:**

1. **Repeal the so-called 'easements' of local authorities' duties under the Care Act 2014 as soon as is feasible.**
2. **Reconsider reliance on European Convention on Human Rights 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.**
3. **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 ensure the dignity of its users and workers.**

Kamran Mallick, Chief Executive Officer at Disability Rights UK, describes the charities vision to create a society where disabled people have equal power, rights and equality of opportunity. He writes about the lived experiences of disabled people during the Covid-19 crisis and what policy makers, institutions and individuals to remove the barriers that exist for us at this time. As we adjust to another 'new normal' as we begin to exit lockdown measures in July, and with the shielding

programme due to end later in the year, he asks how we win back our hard fought rights so eroded by the Coronavirus Act 2020? How can disabled people gain a seat at the decision-making table as the government plans the economic and social recovery from the pandemic? He argues that we need government to establish a Covid-19 Inclusive Response and Recover Group, of experts by experience with disabilities and Disabled People's Organisations. He urges disabled people to join Disability Rights UK and become part of that movement to inform policy work and lobbying as part of this work. **Recommendations:**

- 1. Government must establish a Covid-19 Inclusive Response and Recover Group, of experts by experience with disabilities and Disabled People's Organisations, to ensure disabled people are central to decision-making on the economic and social recovery to the pandemic and ongoing healthcare guidance.**
- 2. Government must provide local authorities with resources to enable them to hold Citizens' Assemblies for *Homes fit for the Health of the Nation*, in order to place disabled people's independent living at the heart of 'building back better'.**
- 3. Government must produce urgent guidance on supporting access to food for disabled people during the current coronavirus crisis and future pandemics which is aligned with duties under the Equality Act 2010 and the United Kingdom's commitment to the UNCRPD.**

Dan Holloway, Futures Thinking Network, The Oxford Research Centre for the Humanities, writes on the effectiveness and accessibility of Government communications and the effects of poor communications on mentally ill and neurodivergent people. The paper highlights the failure of government communications to address the uneven distribution of the effects of Covid-19 on people with disabilities. Dan argues that it is especially at times of crisis that we need to prioritise those whose needs are greatest and the role narrative plays during such crises in fashioning society. Dan provides some examples of the ways in which Covid-19 messaging has excluded or directly harmed mentally ill and neurodivergent people and suggests a series of seven questions, developed as a field kit for communications officers, which are important to ask before sending out any communications message. It is essential to ask these questions to us as a community too, and work with us to co-produce the policies and communications which are developed. This always matters. It matters doubly so in times of crisis. **Recommendations:**

- 1. Ensure the communications on policies at times of crisis does not create negative narratives which create further discrimination against those with disabilities and other protective characteristics.**
- 2. Ask these seven questions when producing government communications: 1. If I am asking people to do something, does it seem easy? 2. Does it seem simple? 3. Am I making assumptions of privilege that could alienate some people I am addressing? 4. Am I confusing wellness with illness? It is important to consider everyone's health. But people who are ill often have specific needs that are different. 5. Is there a danger what I say now conflicts with what I have said in the past in a way that singles out disabled people? 6. Am I ignoring people's hardship? Am I falsely equating people's situations?**
- 3. Involve people with disabilities at every stage of the development of communications on pandemic response and recovery.**

Dr Sara Ryan, Senior Research Lead at University of Oxford, writes on people with learning disabilities and the impact of Covid-19. She asks what light has the current pandemic shone on the treatment of and responses to disabled people? She documents how the government's response to COVID19 is working (whether deliberately or otherwise) to generate additional impediments to the freedom of disabled people to lead flourishing lives, reinforcing this notion of disposability. Notably, the approach to prioritisation of particular patients over others based on judgements of value and the placing of Do Not Resuscitate orders on people without their knowledge or permission. The cumulative effect of impediments to the flourishing of disabled people is added to by the

Coronavirus Act 2020's easing of social care duties and the 'relaxation' of duties upon local authorities to provide Education and Healthcare Action Plans for young people with special Educational needs and disabilities. Dr Ryan locates these changes in the broader historical context, highlighting the exclusion of learning disabled people in particular have faced and challenging government and society to move beyond the systemic **dehumanisation of learning disabled people** and take action to remove impediments that hinder the realisation of human capabilities of disabled people. **Recommendations:**

- 1. The impact of COVID-19 on all marginalised groups needs urgent examination and review.**
- 2. We need to end the longstanding disregard and dehumanisation of learning disabled people.** To achieve this, the government must enshrine the [human rights model](#) of disability in law. This model focuses on the inherent dignity and inestimable value of each human being and places the individual centre stage 'in all decisions affecting him/her and, most importantly, locates the main "problem" outside the person and in society'.
- 3. Reverse the so-called 'relaxation' of duties under the Children and Families Act 2014 on local authorities to provide Educational Health Care Action Plans to young people with Special Educational Needs and Disabilities.**