



BIHR BRIEFING: 6-MONTH REVIEW OF THE CORONAVIRUS ACT

25 September 2020

Summary

The continuation of the Coronavirus Act (2020) (the Act) without the necessary support to implement it or to monitor its use compatibly with The Human Rights Act (1998) (which rings the fundamental protections from the European Convention of Human Rights (1950) into UK domestic law) will lead to a continued precarious situation for human rights for people in already vulnerable situations in the UK.

This briefing sets out the evidence gathered through our work with over 700 people accessing public services including their families and those who care about them and over 1000 people working in health and care services including advocates and campaigners. It shows that since the Act came in, decisions across the UK, both by Governments and in local areas, have compromised people's rights. This ranges from withdrawing vital care and support that many people rely on to keep safe and well, through to refusals of treatment based on people's age or disability.

It is for these reasons that we are calling on the Government to preserve our commitment to human rights and democratic oversight and if this cannot be achieved with the Coronavirus Act in place, the Act must be scrapped.

Since lockdown in March 2020, BIHR has worked directly with 1700 people. Over the summer we have **conducted research** with 230 people with care and support needs (including disabled people and older people), frontline staff and community groups and advocates across Great Britain. The headlines from our research on people's real-life experiences of the implementation of the Coronavirus Act in its current form are:

- **Over 15% of people have experienced the right to life not being protected because of reduced services or prioritisation of other services.**
- **Almost 30% of people have experienced care being taken away impacting their right to be free from inhumane or degrading treatment.**
- **Over 50% of staff working in health and care experienced restrictions being put in place which negatively impact people's physical and mental wellbeing.**
- **50% of staff told us they had experienced decisions being made which impacted people's right to non-discrimination.**

The [British Institute of Human Rights](https://www.bihr.org.uk) (BIHR) is a charity working in communities across the UK to enable positive change through human rights. We support people with the information they need to benefit from their rights without court action; with community groups to advocate for respect for our protections; and with staff across public services to support them to make rights-respecting decisions. This enables us to call for the development and implementation of national law and policy which truly understands people's experiences of their human rights. Each year we work with over 2,000 people using public services and the staff members delivering them. Our policy recommendations are directly informed by people's real-life experiences of the issues.

Background

On 26 March, The Coronavirus Act was passed at breakneck speed, giving the UK and devolved governments extensive powers to change the law, and providing permission to local authorities, police and other officials to suspend vital safeguards for us all.

The Human Rights Act requires all actions of public authorities, including suspensions of care and support to not breach our rights. This is made explicit in Section 4 Schedule 12 of the Coronavirus Act in reference to the Care Act. However, the reality is that most frontline staff do not have the human rights knowledge and confidence to make these difficult decisions. And people are rarely able to speak up and challenge these risks to their rights.

[Our recent research](#) draws on the experiences of people in a range of care and support sectors since the passing of the Coronavirus Act. The research demonstrates the reality for 1) people accessing (or trying to access) services, their families and those that care about them; 2) advocates, campaigners and community groups supporting people; and 3) frontline staff from health, care, social work, education and housing. Our findings shine a worrying spotlight on the negative impact of the Coronavirus Act and subsequent changes to law and policy for many:

- Almost **70% of people said their care and support had got worse during Covid-19.**
- Almost **70% of people** were **not provided with information that the duty on staff and services to respect their human rights had not changed as a result of Covid-19.** (Note: Section 4 of Schedule 12, of the Coronavirus Act explicitly states that any easements of care under the Care Act 2014 cannot be taken if they breach people's human rights)
- **Almost one quarter of people** said whilst they **used to be involved in making decisions about their care and support, this has stopped since Covid-19.**
- **Over half of people** were **not told how to review and challenge decisions** made **about their care and support** during Covid-19.
- **60% of people** were **not told the legal basis for changing (i.e. reducing) their care and support** during Covid-19.

This evidence is referred to by the Parliament's Joint Committee on Human Rights in their recent report on [the Government's response to COVID-19: human rights implications](#). That report further demonstrates the significant negative impact of the Coronavirus Act, and subsequent changes to law and policy, for people in vulnerable situations across the UK. The report calls on the Government to urgently address a number of issues to make sure that its handling of the Coronavirus pandemic is compatible with human rights. We have highlighted some of the recommendations which are the most relevant to our research and work in our Explainer which you can read [here](#). We note in particular the concerns about additional emergency laws passed by statutory instruments and the continued lack of parliamentary scrutiny on a range of legal measures which further restrict people's rights.

The Coronavirus Act: BIHR's key concerns

The human rights litmus test

In April 2020 the United Nations Secretary General [stated](#):

"The Covid-19 pandemic is a public health emergency but it is far more ... a human crisis that is fast becoming a human rights crisis ... human rights can and must guide COVID-19 response and recovery ... People, and their rights, must be front and centre. We have

seen how the virus does not discriminate, but its impacts do, exposing deep weaknesses in the delivery of public services and structural inequalities that impede access to them. We must make sure they are properly addressed in the response.”

In the UK, to ensure the response to and the recovery from the pandemic does not become a human rights crisis, the Government’s measures need to be lawful, legitimate, proportionate and non-discriminatory.

From our work directly with people, community groups and frontline staff, it is clear there have been significant problems with the implementation of the Coronavirus Act, and subsequent law and policy changes. The human rights litmus test of lawful, legitimate, proportionate and non-discriminatory is being failed; action must be taken to redress this.

Below we offer more detail into our key human rights concerns around the Coronavirus Act:

- Human rights compliance - the ability to uphold human rights during the pandemic
- Scrutiny and monitoring
- The reality for people with care and support needs

Human rights compliance

The right to life (Article 2 of the European Convention on Human Rights and our UK Human Rights Act) has been, and must remain, central to the Government’s response to Covid-19. The Government, and those delivering a function of public nature, have a duty to recognise where there is a real and immediate risk to life, they put measures in place to safeguard those lives. Our research shows that there has been failure to protect life and that certain groups within our society have been at greater risk which has not always been met by greater protection; this has been a key issue for disabled and/or older people.

Many of the measures taken by Government to halt the spread of Coronavirus have been taken on the grounds of protecting life, **at all costs**. This focus has meant that actions taken by the Government have interfered with other rights. Where this is the case, the interference with other “qualified” or “non-absolute” rights may be justified but only where this interference is lawful, legitimate and proportionate and crucially where the checks and balances are in place to monitor the interference with people’s rights.

It is these checks and balances that are too often missing in the implementation of the Coronavirus Act in its current form. This is despite the fact that the Act, on paper, requires suspensions of care and support to not breach our protections under the Human Rights Act. Explicit inclusion of this legal duty on the face of the Act is a positive approach which we welcome, and which in fact reflects how the HRA operates in relation to other laws.

However, the reality is that most frontline staff do not have the human rights knowledge and confidence to make these difficult decisions. From our research, **staff** told us:

- **Over 80%** of staff are **finding it harder to uphold human rights** during Covid-19.
- **More than three quarters** of staff had **not received training or clear information about upholding human rights law** during Covid-19.
- **Almost 80%** of staff were **not provided with training or clear information about the use of Emergency Powers under the Coronavirus Act**

Additionally, our [research](#) shows that **people who access (or are trying to access) services** are rarely able to speak up and challenge these risks to their rights:

- Almost **60%** of people felt **less confident to raise concerns about their human rights with care and support staff and decision-makers** as a result of the Covid-19.
- **Over half** of people were **not told how to challenge decisions made about their care and support** during Covid-19.

Scrutiny and monitoring

Clearly the pandemic is an emergency situation and required a swift response. However, scrutiny of the implementation of the Act is vital. The Act was passed swiftly with limited review. Yet it gives the UK and devolved governments extensive powers to change the law, and provides permission to local authorities, police, and other officials to suspend vital safeguards for us all. We have significant concerns about the implementation and monitoring of the Coronavirus Act, and in particular those measures and “easements” related to care and support:

- In **England**, a system of Local Authorities declaring their use of easements to the care and support duties was set up, with a publication of this information (following questions in parliament). However, there does not appear to be any further process of monitoring and review of decisions to apply the easements to ensure the necessary checks and balances, given the significant impact this could have on the lives of people with care and support needs.
- In **Scotland**, Health and Social Care partnerships and Local Authorities do not have to declare their use of social care easements, monitoring takes place through non-mandatory surveys sent two-monthly from the Scottish Government to local bodies to complete. We, alongside a long list of other organisations raised serious concerns about the lack of transparency and accountability in this approach to the use of Emergency Powers. You can read more about this work [here](#).
- In **Wales**, we understand Local Authorities notify the Government of use of easements, but this is not published. We also understand that the Welsh Government has confirmed with the EHRC that there is officially no usage of the easements. However, our work with frontline staff and community groups suggests that in practice this is fact happening.

There must be absolute transparency and clear communication both centrally and locally where Emergency Powers are being used across the UK, it is clear that this is not the case at present. Whilst official counts of the usage of easements appears low, in practice the easements are **creating a permissive environment for the reduction of care and support for people across the country**. This is happening at a time when many people are reliant on the support to keep safe and well, not only in terms of physical health and pandemic, but also for their mental health and wellbeing.

As noted in our [Briefings](#) to both Houses on the Coronavirus Bill in March 2020, the two-year time limit for the Coronavirus Act raises significant proportionality issues. Whilst a 6-month review clause was added to the Act, it is very clear from our research that the impact these changes are having on people with care and support needs are significant. The long-term impact of these changes continuing for up to two years has huge implications for human rights in the UK.

The reality of implementation

Since the Coronavirus Act became law six months ago, we have seen how decisions across the UK, both by Governments and in local areas, have compromised people's rights, from withdrawing vital care and support many rely on to keep safe and well, through to refusals of treatment based on people's age or disability.

- **Almost 70% of the people who responded to our survey said that their care and support had got worse during Covid-19.**
- **Worryingly, 16% of people told us that they had experienced life not being protected because of reduced services or the prioritisation of other services**
- **28% of people told us that they had experienced care or support being taken away so much that dignity cannot be upheld.**

You can find our right by right analysis of issues raised by the people who participated in our survey [here](#). These findings were mirrored in the responses from [staff](#) and [advocates, campaigners and community groups](#).

The voices of people

"I had been receiving psychological treatment in another part of the country after notifiable safety incidents caused me psychological harm. Suddenly, without warning, I received an email last week explaining that the criteria for accessing their services have changed. I no longer meet the criteria and cannot continue my psychological therapy there. I was not involved in the decision - it was a decision made at meetings of the psychology department and NHS Trust. Patients were not part of that meeting. It has been devastating - and it is worse to start the treatment and have it taken away in a way that seems quite arbitrary."

"Respite and day centre care have all been taken away from me. I'm down and depressed as I don't understand why I am doing nothing for months."



Quotes from people during Covid-19



"There was a lack of thought in how unpaid carers would manage during the pandemic. They have and continue to put their own health and the cared for's health at risk so they can continue caring. Some unpaid carers provide care for their loved ones 24/7 and don't get a break. Before Covid, they had access to community support groups, day centres and respite. This has all been put on hold."



Quotes from people working in health and care during Covid-19



"At this stage we need to be clear about the way forward and the way "out" of some situations that the people we support have found themselves in. Is there a view that services are now stretched and under resourced? If so, when discussing options, we need to understand what options are actually available. In Cornwall, there is a severe shortage of packages of care as well as care home placements. People I support have been left in hospital for 6 weeks waiting to go home."



Quotes from people working in health and care during Covid-19



BIHR's Calls to Action

Our work and research over the past six months, since the passing of the Coronavirus Act, has shown us that the Emergency Powers contained within the Act, rather than safeguard those most in need of protection, have resulted in human rights issues for many people across the UK.

At this point, 6 months in, the Government needs to take immediate action to ensure that the legal duty to respect, protect and fulfil people's human rights is front and centre of Covid-19 law and policy. In order to do this under the Coronavirus Act, the following needs to happen.

- The Government, both centrally and locally must make it entirely clear that all legal duties under the Human Rights Act (HRA) remain in place regardless of Emergency Coronavirus legislation.
- The Government must ensure that all public officials are fully trained, resourced and supported to practically implement their legal duties under both the Human Rights Act (1998) and the Equality Act (2010).
- The Government communications about Covid-19 (and beyond) should be centred in human rights. Thus far there has been very little evidence of this, even though the main responses to the pandemic focused on rights-restricting measures.
- People accessing (or trying to access services) and those working in health and care must be provided with accurate and up to date information about which Emergency Powers are in use and which are not.
- Information about the Emergency Powers being used at local level should be monitored locally and centrally via a robust procedure.

If the above cannot be ensured by the Government whilst the Coronavirus Act is in place, then the Act will continue to be incompatible with human rights. Without the above in place, the Act is not fit for purpose and rather than safeguard those most in need of protection the Act is making people in already vulnerable situations more vulnerable.