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**Promotion and protection of all human rights, civil,
political, economic, social and cultural rights,
including the right to development**

Written submission by the United Kingdom of Great Britain and Northern Ireland: Equality and Human Rights Commission (EHRC)*

Note by the Secretariat

The Secretariat of the Human Rights Council hereby transmits the communication submitted by the Equality and Human Rights Commission (EHRC),** reproduced below in accordance with rule 7 (b) of the rules of procedures described in the annex to Council resolution 5/1, according to which participation of national human rights institutions is to be based on arrangements and practices agreed upon by the Commission on Human Rights, including resolution 2005/74 of 20 April 2005.

* National human rights institution with A status accreditation from the Global Alliance of National Human Rights Institutions for the Promotion and Protection of Human Rights.

** Circulated as received, in the language of submission only.



Report of the EHRC in response to the Report of the Independent Expert on the enjoyment of all human rights by older persons, Claudia Mahler

Social Care

Since 2010, rising demand and substantial reductions in government funding have led to increased levels of unmet need.¹ Requests for adult social care by older people in England increased by 5.7% between 2015–16 and 2019–20, while the number of people receiving support reduced by 18,000.² In 2019, Age UK estimated that 1.54 million older people in England were not getting the care they wanted or needed.³ Real-terms local authority spending on social care in England was approximately £400 million lower in 2018–19 than in 2010–11.⁴ According to a survey of Directors of Adult Social Services, the COVID-19 pandemic has also reinforced both short- and long-term funding pressures for social care, and “whilst Government support has dampened some of the additional pressures facing adult social care through one-off grants, this will fall significantly short in meeting the full costs of the pandemic.”⁵

Care home residents accounted for 50% of all COVID-19 related deaths in Scotland, 39% of deaths in England and 34% of deaths in Wales.⁶ As highlighted in EHRC’s evidence to the Joint Committee on Human Rights (JCHR) inquiry of the Government’s response to COVID-19, the pandemic has exacerbated existing pressures on the social care system with increased demand for services and reductions in workforce capacity.⁷

The provisions of the emergency Coronavirus Act 2020 allow scope for services to reduce by permitting local authorities in England to suspend their duties under the Care Act 2014.⁸ Only eight English local authorities in fact triggered easements between the end of March and July 2020, and the Care Quality Commission (CQC) has reported that since 3 July 2020 no local authorities in England operated under the easements.⁹ The Coronavirus Act makes clear that the provision of social care should remain compliant with the European Convention of Human Rights (ECHR), including where Care Act easements have been triggered. However, there is evidence that equality and human rights standards have not been upheld in residential care settings during the pandemic, including in key decisions about care home admissions, visits and access to critical care.¹⁰ Restrictions to visits and daily living activities – while put in place to protect the right to life – have led to restrictions of other human rights, including the right to independent living, respect for private and family life, and the right to liberty.¹¹ We have also received concerning intelligence that some care home have continued

¹ The King’s Fund (2020), [Social care 360](#).

² Ibid.

³ Age UK (2019), [Estimating need in older people: findings for England](#).

⁴ The King’s Fund (2020), [Social care 360](#).

⁵ Association of Directors of Adult Social Services (11 June 2020), ‘[Budget Survey 2020](#)’.

⁶ Equality and Human Rights Commission (2020), [How coronavirus has affected equality and human rights](#).

⁷ Ibid.

⁸ Coronavirus Act 2020 replaces the previous duty on local authorities in England to assess and meet a person’s needs for care and support (as provided for by the Care Act 2014) with a power to do so, thereby downgrading the level of care to which an individual is entitled. The Coronavirus Act also allows local authorities to suspend their duties to review care plans and carry out financial assessments. See [Coronavirus Act 2020](#), Clause 15 and Schedule 12, and [Coronavirus Bill Explanatory Notes](#), paras 232–237.

⁹ House of Commons Women and Equalities Committee (25 September 2020), [Unequal impact? Coronavirus, disability and access to services: interim report on temporary provisions in the Coronavirus Act](#), paragraph 13. See also: Care Quality Commission (updated February 2021), [The Care Act and the ‘easements’ to it](#).

¹⁰ Equality and Human Rights Commission (2020), [Equality and human rights in residential care in England during coronavirus](#).

¹¹ Ibid.

to operate blanket or unduly restrictive policies even when visits should have been permitted under national guidance.¹²

While it is right that the right to life has been prioritised, existing equality and human rights laws and standards provide a practical framework to navigate decisions about fulfilling people's full range of rights, helping to assess the impact of restrictions and whether they are proportionate and appropriate to individual needs.¹³ Equality and human rights laws should be at the heart of decision-making, both in the ongoing response to the pandemic and any future reform of the social care system.

The European Committee for the Prevention of Torture has stated that older people's exposure to coronavirus and 'extreme level of suffering' may be found incompatible with the UK Government's obligations to protect life and prevent ill-treatment.¹⁴ There are concerns that equality considerations were not effectively and transparently built into decision-making at the national, regional and local level, both in terms of the immediate risks from coronavirus and the wider impact of restrictions. This may have resulted in failures to comply with the public sector equality duty (PSED). Questions remain as to whether sufficient data is being collected to understand and mitigate the potential and actual impacts of policies. Up until 29 April 2020, care home deaths were not included in official reports.

Disabled and older adults with care needs can also face significant barriers in challenging decisions when their care needs are not met. Research by Independent Age in 2019 found that just one-in-five councils had an adult social care appeals process, meaning many service users had to rely on drawn-out complaints procedures.¹⁵ In 2021, EHRC announced an inquiry into how older and disabled adults and unpaid carers can challenge local council decisions about social care and support in England and Wales, including – but not limited to – complaints to local authorities and Ombuds, and judicial review.¹⁶

Access to digital services hindered by the pandemic

Covid-19 has had far-reaching further impacts that disproportionately affect older people, which extend beyond direct public health risks. According to research of Age UK, the pandemic has adversely affected the confidence of older people to participate in society. For instance, "64% of older people (around 10 million) agree they are less confident using public transport since the start of the pandemic."¹⁷ This also cuts across other protected characteristics as "26% of older ethnic minority people feel less confident leaving the house by themselves since the start of the pandemic, compared to 17% of older people from a white background."¹⁸

As the pandemic necessitated the closure of a number of public and private services, access to a number of vital services was increasingly provided through digital platforms. According to the EHRC's 2018 *Is Britain Fairer* report, only 41% of those aged over 75 years in Britain were recent internet users in 2017, compared with 99% of those aged 16 to 34.¹⁹ According to Age UK, "there is little evidence that significant numbers of those previously digitally excluded have been prompted to get online during the first few months of the pandemic. Among those aged 75+, only around a quarter (24%) are using the internet more while nearly

¹² Ibid. See also: Healthwatch (21 December 2020), [Call for better guidance on care home visits: Read our letter to Government](#).

¹³ Ibid.

¹⁴ Council of Europe (7 April 2020), '[Respecting democracy, rule of law and human rights in the framework of the COVID-19 sanitary crisis: a toolkit for member states](#)', p. 5.

¹⁵ Independent Age (2019), [Reviewing the case: The right to appeal in adult social care](#). See also: Carter, C. (2019), [Just one in five councils have appeals processes for adult social care decisions, research finds](#), Community Care, 14 October.

¹⁶ Equality and Human Rights Commission (2021), [Inquiry into challenging decisions about adult social care](#).

¹⁷ Age UK (2021), [Impact of Covid-19 on older people's mental and physical health: one year on](#).

¹⁸ Ibid.

¹⁹ Equality and Human Rights Commission (2018), [Is Britain Fairer](#).

one in ten (9%) are using it less”.²⁰ As a result, there are significant risks that these groups are potentially further excluded from accessing key services, whether that be public services or online shopping for essential goods.

Further to this, concerns predate the pandemic regarding the accessibility of public sector websites and apps. A 2018 survey led by the Society for Innovation, Technology and Modernisation found that 40% of local council homepages failed basic tests for accessibility for people with sight loss, physical disabilities, cognitive impairment, dyslexia and other accessibility issues.²¹ Since July 2020, EHRC has partnered with the Central Digital and Data Office (CDDO) to enforce adherence to “The Public Sector Bodies (Websites and Mobile Applications) Accessibility Regulations 2018”. The regulations require public sector websites and apps to meet the international WCAG 2.1 AA accessibility standard. A failure to ensure that an organisation’s website is fully compliant is also a failure to make a reasonable adjustment as required in law under section 20 of the Equality Act 2010. The EHRC as regulator can take enforcement action against organisations that fail to comply.

²⁰ Age UK (2021), [Digital inclusion and older people – how have things changed in a Covid-19 world?](#).

²¹ Central Digital and Data Office (2018), [Understanding accessibility requirements for public sector bodies](#).