

COVID-19 INQUIRY

WITNESS STATEMENT OF
SAM GRANT

I, **SAM GRANT**, Advocacy Director at the National Council for Civil Liberties ('Liberty') of Liberty House, 26-30 Strutton Ground, London, SW1P 2HR, **WILL SAY** as follows:

a) Introduction

1. I am one of the Advocacy Directors at Liberty and make this statement in response to the Rule 9 Request for Evidence received from the Covid-19 Inquiry. This statement provides a chronological account of Liberty's work in response to the UK Government's core decision-making in relation to the pandemic, under the following headings:
 - a) Introduction;
 - b) The Coronavirus Act;
 - c) First lockdown and Health Protection (Coronavirus, Restrictions) (England) Regulations 2020;
 - d) Operation of the Coronavirus Act during the first lockdown;
 - e) Easing of lockdown restrictions;
 - f) First review of the Coronavirus Act;
 - g) Three Tier Scheme;
 - h) Second lockdown;
 - i) The All Tiers Regulations;
 - j) The Sarah Everard vigil;
 - k) Second review of the Coronavirus Act;
 - l) Lifting of national restrictions; and
 - m) Third review of the Coronavirus Act.

I also deal with several specific issues:

- n) Challenging Fixed Penalty Notices;
 - o) NHS Contact Tracing App;
 - p) Equality impact assessments;
 - q) Mandatory vaccination; and
 - r) Covid-19 status certification.
2. Save where otherwise indicated, the facts set out in this witness statement are within my own knowledge. Where facts are not directly within my own knowledge, I have indicated their source and they are true to the best of my knowledge and belief. I attach to this statement a number of exhibits marked **SG/1** etc, which are the key documents referred to in this statement. I also attach a list of those exhibits.
3. Liberty is a human rights organisation that campaigns for everyone in the UK to be treated fairly, with dignity and respect. We are an independent, membership organisation. At Liberty, I am co-Advocacy Director with my job-share partner Grey Collier. The Advocacy Team comprises a Policy and Campaigns Team, which focuses on public campaigning, parliamentary advocacy, and policy research; an Advice and Information Team, which provides advice to members of the public about their human rights; a Legal Team, which undertakes strategic litigation; and an editorially independent investigative journalism unit called Liberty Investigates. Apart from the Advocacy Team, Liberty has a Communications team that works on the organisation's internal and public communications; a Development Team that handles fundraising and membership; and an Operations Team that deals with the day to day functions of the organisation. The Director of Liberty is Martha Spurrier.
4. I joined Liberty in January 2018 as a Policy and Campaigns Officer. In July 2018, I was promoted to Policy and Campaigns Manager. In 2021 I became Head of Policy and Campaigns and finally in October 2022, I became joint Advocacy Director.

b) Coronavirus Act – March 2020

5. In the context of the global coronavirus pandemic and faced with significant risk to life, the Government introduced the Coronavirus Bill in Parliament for its First Reading on 19 March 2020. The Bill was extraordinary – not only in the breadth of its measures and the extent of powers it gave the Government, but also the speed at which it progressed through Parliament and onto the statute books. Just days after it was published, the 300-page Bill proceeded to Second Reading on 24 March 2020.

6. Liberty responded swiftly to the introduction of the Coronavirus Bill. While supporting the UK Government's obligation under human rights law to take steps to protect the lives of people within its jurisdiction, we were keenly aware that states of crisis and exception are often the ground on which long-term erosions of precious rights and liberties are seeded. For this reason, we sent a briefing to all Parliamentarians on 20 March 2020, warning that the Coronavirus Bill was the biggest restriction on our individual and collective freedoms in a generation (see **Exhibit SG/1 – INQ000130679**). We urged Parliamentarians to carefully scrutinise the Bill and ensure that its exceptional powers could only be invoked when necessary, and in a manner that was proportionate, time-limited, and in accordance with human rights law.
7. In particular, our briefing highlighted serious concerns over the Bill's two-year sunset clause, which we believed was unprecedented and a bar to effective parliamentary scrutiny. We compared it to other powers already on the statute book, such as the Civil Contingencies Act 2004 ('CCA') which set out a range of emergency powers exercisable for a period of up to thirty days, and questioned why such standalone legislation was necessary. We also focused on the Bill's extraordinary detention and border closure powers; creation of expansive powers to restrict events, gatherings, and premises; and increased capacity to conduct covert surveillance, which we felt were significant intrusions on rights, particularly when considering the length of time for which they could be in place.
8. Finally, we highlighted concerns about the Bill's weakened safeguards for people in mental health settings. Specifically, we noted the 'easements' to Section 9 and Schedules 7-9 to the Mental Health Act 1983 ('MHA'), which effectively reduced the requirements before people could be detained in hospital and extended the period for which people could be detained in a range of contexts in England and Scotland. Liberty recognised that some of the measures may have been necessary as a result of the strains caused by the public health response to coronavirus to the NHS. However, we argued that the response to coronavirus must not come at the expense of the health and fundamental rights of people with mental health problems and disabled people. In the conclusion to our briefing, we warned that human rights standards were a vital check on State power that became more – rather than less – relevant in situations of national emergency, and that the potential consequences of the Bill were too grave and far-reaching for it to be simply nodded through.

9. Separately, we supported an amendment and joint briefing drafted by the Joint Council for the Welfare of Immigrants and Medact to amend the Coronavirus Bill to suspend NHS charging for overseas patients and data-sharing between NHS Trusts and the Home Office for immigration enforcement purposes, to ensure that migrants were able to freely and safely access the care they needed (see **Exhibit SG/2 – INQ000130690**).
10. On 25 March 2020, the Coronavirus Bill was scrutinised and passed in a single day, with scarcely any amendment, and without a firm sunset clause for the entire bill.

c) First lockdown and Health Protection (Coronavirus, Restrictions) (England) Regulations 2020 – March 2020

11. The Health Protection (Coronavirus, Restrictions) (England) Regulations 2020 ('The Regulations') was a statutory instrument made and laid under the Public Health (Control of Disease) Act 1984 ('PHA') on 26 March 2020. The Health Secretary invoked section 45R of the Public Health Act 1984 which provides that an instrument may be made without a draft having been laid before Parliament and approved for reasons of urgency.
12. It is important to note that the process of parliamentary approval under the PHA is highly permissive, and enables the Government to make regulations without any prior Parliamentary scrutiny or approval. Regulations made under the PHA will expire after six months, but Parliament only has to approve them once within 28 days (which includes days in which Parliament is not sitting).
13. In May, ahead of the first and only time the Regulations would be scrutinised by Parliament, Liberty sent a briefing to all Parliamentarians asking them to oppose the motion to approve the Regulations. We argued that in the interests of meaningful parliamentary scrutiny and maintaining parliamentary sovereignty, the Regulations should be put in primary legislation. Failing that, we argued that the Regulations should, at a minimum, be remade under the CCA, which contains a series of mechanisms for regular parliamentary approval to hold the Government to account – for example, emergency regulations made under the CCA lapse after seven days unless Parliament approves them; fresh regulations requiring parliamentary approval would have to be laid before both Houses every 30 days; and provision is made for scrutiny where Parliament is prorogued or dissolved (see **Exhibit SG/3 – INQ000130701**). We also made substantive recommendations on how the

Government could amend the Regulations to protect fundamental rights and public health, including: expanding protections for homeless people and people at risk of domestic abuse, rolling back enforcement powers, establishing a right of appeal against Fixed Penalty Notices, and including disability or mental health needs as a reasonable excuse for leaving the home in the non-exhaustive list of reasonable excuses. Finally, we urged the Government to amend any guidance published to supplement the Regulations to distinguish between what is the law and what is best practice, and ensure that public communications are not inconsistent with the law.

d) Operation of the Coronavirus Act during the first lockdown – March to May 2020

14. Throughout the first lockdown, we raised concerns over the expansive powers within the Coronavirus Act through our public campaigning work. In particular, Section 51 and Schedule 21 of the Coronavirus Act 2020 conferred significant powers on police and immigration officials to detain people deemed 'potentially infectious', with 'potentially infectious' being so broadly defined as to capture large parts of the population at any given moment. Schedule 21 provided that a person deemed "potentially infectious" who failed without reasonable excuse to comply with a relevant direction or to cooperate with the police or public health officers would commit an offence. We argued that these powers would be disproportionately used against racialised people reflecting wider patterns of racial disproportionality in the criminal justice system (see **Exhibit SG/4 - INQ000226624** and **Exhibit SG/5 - INQ000226625**). In May 2020, following widespread concerns about the misuse of Schedule 21 powers, the Crown Prosecution Service took the unprecedented step of launching a monthly review of every charge under those provisions.

15. During this time, we also closely monitored the easements to the Care Act 2014 provided for in Schedule 12 of the Coronavirus Act, in partnership with disabled people led organisations. Schedule 12 allowed local councils not to comply with certain duties stipulated under the Care Act. This meant that when easements were in operation, Councils would have significantly reduced duties to meet the needs for care and support, provide assessments or prepare care and support plans for individuals who relied on care provision in the community. We wrote to the eight local authorities that since March 2020 had begun operating some form of the easement provisions, highlighting how the decision to apply the easements would adversely affect some of the most vulnerable people in these areas and put further strain on the NHS. We asked these local authorities to cease operating the easement and noted in some cases that

councils had not abided by the guidance on communicating and consulting on these changes.

16. The Coronavirus Act also contained 'easements' to the Children and Families Act 2014. Once a notice to enact these easements was made by the Education Secretary, local authorities would only be required to "use reasonable endeavours", rather than having an absolute duty, to secure special educational needs and disabilities ('SEND') provisions for disabled students. On 30 April 2020, the Education Secretary issued a notice using powers under the Coronavirus Act 2020 to enact these easements. The Alliance for Inclusive Education ('ALLFIE') found that this modification left many disabled students without any support. Fifty-four per cent of the parents of disabled children surveyed by ALLFIE said that they did not receive any support from either the local authority or their children's school to help with home schooling.
17. In May 2020, Liberty responded to the Women and Equalities Committee ('WEC') Covid-19 Inquiry "Unequal impact: Coronavirus (Covid-19) and the impact on people with protected characteristics" (see **Exhibit SG/6 – INQ000130706**). On the topic of health and social care, our submission highlighted the disproportionate impact of Covid-19 on racialised communities, in particular, the impact of longstanding social inequalities on health inequalities. We also noted our concern that the health of disabled people and older people was being deprioritised in a discriminatory fashion, including through the easements to the MHA and Care Act, as outlined above. Our submission also outlined the impact of the pandemic on women and unpaid carers resulting from the easements, and called on the Government to monitor the impact of the crisis on LGBTQ+ people, looked after children, and care leavers.
18. On rough sleeping, our submission to the WEC highlighted the issues faced by people who were homeless or sleeping rough, with particular attention to how LGBTQ+, Black, Asian, and Minority Ethnic ('BAME'), and disabled people experiencing homelessness or sleeping rough were being disproportionately affected. Our submission also emphasised the compounded inequalities faced by Gypsy, Roma and Traveller communities.
19. Finally, our submission considered how expanded police powers under the Regulations and Schedule 21 of the Coronavirus Act were having a profound impact on people with protected characteristics, including by entrenching patterns of racial disproportionality. We also warned that the Regulations, in particular the

criminalisation of failing to comply with any direction a police officer gave pursuant to their powers, could affect people with special educational needs or those experiencing mental health problems.

20. In our submission, we welcomed the Government's effort to clarify in guidance that people could leave home for medical needs and anyone with a learning disability or autism could leave the house more than once a day if they needed to. However, we argued that this was insufficient and that the Regulations should be amended to put it on a firm legal basis and the criminal offence of failing to comply with reasonable instructions repealed. We recommended that the Regulations should be amended to exclude children from criminal sanction. Finally, we argued that 'homelessness' should be defined more broadly within the Regulations and for exemptions within the Regulations for people experiencing homelessness to be extended, including to encompass people fleeing abuse and with no recourse to public funds.

e) Easing of lockdown restrictions – Summer 2020

21. In May 2020, an investigation by Liberty's investigative journalism unit, Liberty Investigates, and the Guardian revealed that BAME people were 54 per cent more likely to be fined under the Regulations than White people (see **Exhibit SG/7 – INQ000226626**). On 29 May, Liberty and a group of human rights, racial equality, community, faith and health organisations wrote to the Health Secretary highlighting the disproportionate impact of the coronavirus powers on racialised communities, recommending amendments to narrow the enforcement powers under the Regulations, the publication of disaggregated data for each police force on the use of enforcement powers, the establishment of a uniform right of appeal against any fine issued under the Regulations, and the publication of a rigorous Equality Impact Assessment for any future measures, in particular plans to impose restrictions in geographic areas deemed 'high risk' (see **Exhibit SG/8 – INQ000130707**). According to our records, we did not receive a response.

22. Following the murder of George Floyd, a 46-year old Black man, by a police officer in the United States, Black Lives Matter protests erupted around the world, including across cities in the UK. We closely monitored the police's treatment of protesters, including reports of police kettling protesters at a protest on 6 June 2020. In our public communications, we reiterated our concern that the sweeping powers in the Coronavirus Act and Regulations could be used to restrict fundamental rights, and our

recommendation that an explicit exception be added to the rules on gatherings under the Regulations to make it clear that people could exercise their right to protest. In June, Liberty Investigates revealed through analysis of data obtained via Freedom of Information requests that police forces in England and Wales were up to seven times more likely to fine BAME people in lockdown (see **Exhibit SG/9 – INQ000226627**).

23. In June, the Home Affairs Select Committee ('HASC') announced a timeline inquiry, "The MacPherson Report: Twenty-two years on". We gave written and verbal evidence to the HASC, highlighting the ways that the enforcement of coronavirus powers reflected existing racial inequality within the criminal justice system, with reference to the work of Liberty Investigates and media reports documenting that despite a drop in people being outdoors during lockdown, use of stop and search powers in London surged to its highest level in over seven years (see **Exhibit SG/10 – INQ000130708**). In addition to reiterating requests in previous briefings, we recommended that the Government amend the Regulations to: make a breach of the restrictions on movement and gatherings only a criminal offence where it causes another person immediate harm and explicitly state that the police had no power to stop and account under the Regulations and clarify that it was not a criminal offence to fail to answer a question or fail to follow instructions.

24. Also in June 2020, Liberty responded to the Joint Committee on Human Rights ('JCHR') inquiry, "The Government's Response to Covid-19: Human Rights Implications" (see **Exhibit SG/11 – INQ000130709**). In addition to reiterating concerns voiced in our submission to the WEC inquiry, we again highlighted issues around the lack of parliamentary scrutiny of coronavirus and lockdown powers. At this point, there had already been four different versions of regulations made to police the lockdown, all of which were made under the emergency powers provided for in the PHA. We echoed the serious questions that had been asked by legal experts over whether the PHA provided an adequate legal basis for provisions to confine people at home. We highlighted, in particular, that in the context of the Government's plans to ease lockdown measures, it was unjustified for the Government to continue relying on the emergency procedure to make regulations.

25. In our evidence to the JCHR, we urged the Government to take steps to address the disproportionate use of police powers against BAME people and recommended the publication of disaggregated data for uses of power by each force, with reference to the findings of racial disproportionality by Liberty Investigates. We also demanded that

the Government establish a statutory right of review and reduce the maximum level of fine that may be imposed, and that the police review all fines issued to date.

26. Liberty sent a briefing to all Parliamentarians in late July 2020, urging the Government to use the breathing space afforded by significant restrictions on our freedoms to create the infrastructure and conditions to reduce the need for drastic restrictions in the future (see **Exhibit SG/12 – INQ000130710**). The briefing also recommended that MPs vote against the renewal of the Coronavirus Act in the autumn.

27. On 28 July 2020, in collaboration with leading disabled people's organisations, mental health and human rights charities, we wrote to the Health Secretary to ask that he suspend the Care Act easement powers for local authorities contained within the Coronavirus Act 2020. We noted that each of the eight councils who had officially implemented easements had stopped operating them and that no councils were operating easements at this time (see **Exhibit SG/13 – INQ000130711**).

28. On 2 September, we received a response to our letter from the Ministerial Correspondence and Public Enquiries team at the Department of Health and Social Care (DHSC) (see **Exhibit SG/14 – INQ000130680**). The response noted that the Government "hugely values people with disabilities and is committed to ensuring that they are supported during this challenging and worrying time" and that the provisions in the Coronavirus Act were "time-limited, to come into force when absolutely necessary and to be terminated as soon as circumstances allow." The response noted that the powers in the Coronavirus Act were designed to "provide temporary flexibility over how the EHC [education, health and care] plan process works, to help frontline workers focus on direct support for those with the most complex needs, including people with disabilities, and on the response to COVID-19." It noted that its "overwhelming aim" in doing so was to "balance the needs of children and young people with special educational needs and disabilities (SEND) to receive the support they need with managing the demands on local authorities, schools, colleges and health bodies to respond to COVID-19." It recognised that "[t]hese measures may impact care plans. However, this will be temporary and based on careful risk assessment. The Government is in close contact with schools and local authorities to ensure all frontline professionals are able to keep children with disabilities safe and secure, working closely with their families."

f) First review of the Coronavirus Act – September 2020

29. The first six-monthly review of the Coronavirus Act took place on 30 September 2020. Liberty sent a briefing to all MPs on 25 September 2020, asking them to vote against the motion to renew the Coronavirus Act for a further six months (see **Exhibit SG/15 – INQ000130681**). In response to the shift from a nation-wide, full-scale lockdown to a reliance on ‘test and trace’ and localised measures, we warned that the coercive powers contained in Schedule 21 of the Coronavirus Act may be used to force people to be tested, self-isolate, or share travel histories and contacts, whereas public health research advocated persuading people to change their behaviour through clear, evidenced-based messages, rather than relying on coercion, control and punishment. We also called for the repeal of Schedule 21, as well as other powers afforded to the Government to ban gatherings, postpone elections, and close borders indefinitely. Our briefing ended with a call on Parliamentarians to support necessary and proportionate replacement measures that would facilitate compliance with public health guidance and better protect marginalised groups, including reiterating calls to suspend the hostile environment, ensure everyone has access to the support they need, reduce the use of immigration detention, enhance protections for homeless and rough-sleeping people, and ensure safe, suitable access to support for all victims of domestic abuse including migrant women.
30. Liberty also co-wrote a briefing with Disability Rights UK and Inclusion London and sent it to all Parliamentarians ahead of the review of the Coronavirus Act, specifically about the impact of the social care easements (see **Exhibit SG/16 – INQ000130682**). Notwithstanding the fact that only a small number of councils introduced official easements and that, at the date of the review, no councils had official easements in place, research from Inclusion London during and after the first lockdown showed that many disabled people receiving social care saw huge reductions in support. This is because day services were closed and no alternatives were put in place, care and support providers were not able to meet the needs due to staff and PPE shortages, and people managing their own support were left to deal with the breakdown in their care and support on their own. For example, Liberty was contacted by a 73-year old, terminally ill ex-serviceman who could not register for food or receive support from social services and so was forced to survive on packets of crisps. Our joint briefing noted that during the lockdown, assessments of care and support needs had been paused or significantly delayed. This had a particularly significant impact on young people in transition from children’s services to adult social care and people with new care and support needs. We argued that the possibility of introducing easements

meant that local authorities did not have the incentive to take proactive steps to ensure people could get the support they needed.

31. Our joint briefing also noted that where easements were officially operated by local authorities, it was underlined by opaque decision-making and poor communication to those affected by the changes. For example, many local authorities failed to provide any evidence that the high threshold for turning on the easements in their area had not been reached, and the vast majority of local authorities did not consider their duties under the Equality Act 2010 or the rights of service users or of their carers under the Human Rights Act 1998. We called for the Government to repeal the provisions of the Coronavirus Act which diluted safeguards under the MHA and Care Act, and in the alternative, for the easement powers to be suspended by the Minister by statutory instrument and switched back on only if deemed necessary.

32. At the second review of the Coronavirus Act, the Government recommended that Parliament expire the MHA and Care Act easement powers in the Coronavirus Act. While we and other civil society advocates welcomed this change, we remained concerned that these provisions should never have been on the statute books and had already resulted in severe impacts on disabled people's rights.

g) The Three Tier Scheme – October 2020

33. On 12 October, the Prime Minister announced that a tiered scheme of Covid-19 alert levels would be introduced in England. The aim of this tiered scheme was to establish different levels of restrictions on defined geographic areas, depending on its level of coronavirus infection – Tier 1 (Medium), Tier 2 (High), and Tier 3 (Very High). The Government laid three statutory instruments establishing this system: the Health Protection (Coronavirus, Local COVID-19 Alert Level) (Very High) (England) Regulations 2020; the Health Protection (Coronavirus, Local COVID-19 Alert Level) (High) (England) Regulations 2020; and the Health Protection (Coronavirus, Local COVID-19 Alert Level) (Medium) (England) Regulations 2020. These rules, while intended to simplify and clarify the web of laws in force at the time across England, ran to over 36,000 words and nearly 90 pages, with exceptions for most rules. Parliament was given the opportunity to debate, but not amend, these Regulations the next day.

34. Liberty sent a short briefing on the Three Tier Scheme to all Parliamentarians on 13 October 2020. We highlighted how the Three Tier Scheme handed extensive powers

over to the police to regulate everyday life, backed by the power to issue penalties of up to £10,000. Our briefing also raised concerns over the convoluted and confusing nature of the varying rules applying to the three different tiers, which in our view were a recipe for uneven enforcement and police overreach, while making it difficult for members of the public to know what was criminalised and to hold the authorities to account (see **Exhibit SG/17 – INQ000130683**).

h) The second lockdown – November 2020

35. On 2 November 2020, in response to the Government's announcement that new national restrictions would be introduced in England from 5 November 2020 to combat the spread of Covid-19, Liberty wrote to the Prime Minister, copying the Health Secretary, Lord Chancellor, Minister for the Cabinet Office, Leader of the Opposition and Shadow Health Secretary. The letter encouraged the Government to adopt the following recommendations on the new draft legislation: that it should include a sunset clause requiring the new restrictions to expire on 2 December 2020; for communications by public authorities to distinguish between law and guidance and come from reliable and accessible sources rather than anonymous sources or paywalled publications; for there to be proactive accessible communication of all exemptions both to the public and to authorities with enforcement powers; to minimise police enforcement powers; and to withdraw the reported Memorandum of Understanding between Public Health England and police forces to share test and trace data (see **Exhibit SG/18 – INQ000130684**).

36. In addition, the letter called for the suspension of charging of migrants for NHS services; local authorities to be given sufficient resources to maintain and enhance social care provision to protect the dignity, health, and wellbeing of people with care needs; ensuring robust protections for workers; providing a minimum guarantee of support for everyone including those with no recourse to public funds; ensuring people experiencing homelessness, migrants, and survivors of domestic abuse have access to safe and secure accommodation; implementing a further eviction ban; and taking urgent life-saving steps to immediately reduce the number of people in prison, young offender institutions, secure training centres, and immigration detention settings. According to our records, we did not receive a reply to our letter from the Prime Minister.

37. The Health Protection (Coronavirus, Restrictions) (England) (No. 4) (Regulations) ('the Lockdown Regulations') came into force on 5 November 2020, implementing the second lockdown. Two days prior to the Lockdown Regulations coming into force, a media outlet reported that "protests involving more than two people would be prohibited during the lockdown."
38. On 16 November 2020, we wrote to the Home Secretary and Health Secretary, raising urgent concern that the Lockdown Regulations appeared to give effect to a blanket ban on protest, under the threat of criminal sanction (see **Exhibit SG/19 – INQ000130685**). Whereas previous versions of the coronavirus regulations had created a number of criminal offences and restricted gatherings to various sizes, they had each given specific effect to fundamental rights by permitting gatherings for the purpose of protest provided that they were organised by a business, a public body, a political body, or a charitable, benevolent or philanthropic institution; that a risk assessment which met the requirements of the Management of Health and Safety at Work Regulations 1999 had been carried out; and that the organiser had taken all reasonable steps to limit the risk of transmission of the coronavirus in line with the risk assessment (and also, from 14 October 2020, in line with any relevant government guidance). This exception from the general restrictions was omitted from the Lockdown Regulations. In addition, while the Lockdown Regulations provided a non-exhaustive list of 'reasonable excuses' for a person to leave or be outside their home, and it was our view that the exercise of fundamental rights ought to constitute a reasonable excuse for the purposes of the Lockdown Regulations, this was not clear on the face of the Lockdown Regulations.
39. In our letter, we noted that after the Lockdown Regulations came into force, numerous protesters were fined and arrested in London, Manchester, Bristol, and Liverpool. We asked for clarification as to the intended effect of the Lockdown Regulations in respect of the right to protest; clarification as to how the Lockdown Regulations complied with common law, the HRA, and international human rights law; clear guidance to be issued to the police making clear that any enforcement should be a last resort and compliant with common law, the HRA, and international human rights law; and for the Lockdown Regulations to be amended to make provision to allow for protests to take place. Given that the Lockdown Regulations were due to expire on 3 December 2020, we requested a response by Monday 23 November 2020. According to our records, we did not receive a response.

40. On 27 November, the Metropolitan Police issued a statement and video warning that protests were not currently allowed under coronavirus regulations. Along with civil liberties organisation Big Brother Watch, we warned that this incorrect interpretation of the rules by the police demonstrated clearly the need for the right to protest to be explicitly outlined in an exemption in future regulations.

i) The All Tiers Regulations – December 2020

41. At the end of the second national lockdown in England, the Health Protection (Coronavirus, Restrictions) (All Tiers) (England) Regulations 2020 ('All Tiers Regulations') came into force on 2 December 2020, replacing the Lockdown Regulations. Importantly, the All Tiers Regulations provided for an explicit protest exemption.

j) The Sarah Everard vigil – March 2021

42. On 12 March 2021, following the kidnapping and murder of Sarah Everard by police officer Wayne Couzens, the High Court heard a challenge against the Metropolitan Police Service ('MPS') decision to ban a vigil organised by Reclaim These Streets ('RTS') due to take place on 13 March 2021 at Clapham Common. It transpired during that hearing that the MPS accepted that the regulations in place at the time had to be read in such a way as to give effect to the rights protected by Articles 10 and Articles 11 ECHR and that they did not impose a blanket ban on protest. Notwithstanding RTS's cancellation of the vigil, people gathered at Clapham Common on 13 March 2021 and were subject to shocking police use of force, arrests, and fines under the All Tiers Regulations.

43. Following these events, we organised a letter with Big Brother Watch to the Home Secretary and Health Secretary, signed by more than 60 MPs and Peers, demanding lockdown rules be amended to safeguard our fundamental right to protest (see **Exhibit SG/20 – INQ000130686**). In particular, the letter noted that under the All Tiers Regulations, protests were not expressly excluded from the restrictions on gatherings in Tier 4 areas, unlike in Tier 1, 2, and 3 areas. The letter also noted that the Government had not issued any guidance to police forces on facilitating protests in Tier 4 areas under the Regulations, nor guidance on the 'required precautions' for protests in Tier 1, 2, and 3 areas which meant that organisers and the police were left to decipher precisely what is required.

44. We also responded to the Home Affairs Committee inquiry, “Policing and organisation of vigils relating to the safety of women in public places” (see **Exhibit SG/21 – INQ000130687**). Our Interim Director submitted a separate response based on her experiences attending the vigil, in her personal capacity (see **Exhibit SG/22 – INQ000130688**). In Liberty’s submission we argued that the police’s response to the vigil at Clapham Common needed to be situated within the broader context of the Government’s response to the coronavirus pandemic, which had continually failed to adequately protect the right to protest. We recommended that the right to protest be explicitly protected under the Coronavirus Act and PHA. We also recommended that Section 52 and Schedule 22 of the Coronavirus Act – which created powers for the Government to restrict events and gatherings – be repealed.

k) Second review of the Coronavirus Act

45. Ahead of the second review of the Coronavirus Act in March 2021, Liberty shifted our attention to devising positive recommendations for how the Government could respond to the pandemic in a way that respected human rights. In consultation with 19 specialist charities and organisations and with the assistance of counsel specialising in the relevant areas, we drafted the Coronavirus (Rights and Support) Bill (or the Protect Everyone Bill), which we envisioned could be a replacement to the Coronavirus Act 2020 (see **Exhibit SG/23 – INQ000130689** and accompanying Explanatory Notes at **Exhibit SG/24 – INQ000130691**). The Bill spanned public health powers, justice, immigration, data protection, social welfare, education, housing and accommodation protections, employment, and elections, and in our view would have established measures that were effective and proportionate, respected civil liberties, and prioritised support for people to comply with health guidelines rather than punishment. It repealed aspects of the Coronavirus Act 2020 that were harmful, maintained its uncontroversial provisions, and created a range of protections that promoted human rights, civil liberties, and public health. Aspects of the Bill extended to the devolved nations.

46. The debate on the renewal of the Coronavirus Act took place on 25 March 2021. Before the debate, we sent a briefing to all Parliamentarians asking them to vote against the motion to renew the Coronavirus Act. We noted that if the motion was rejected by MPs, the Government would be afforded 21 days before the Coronavirus Act lapsed to propose alternative legislation. We argued that this was an opportunity for the Government to pursue the alternative, rights-based measures contained in our Protect Everyone Bill (see **Exhibit SG/25 – INQ000130692**). In our briefing, apart from

reiterating concerns voiced previously about insufficient parliamentary scrutiny of coronavirus powers and the abuse of police powers, we made positive recommendations as to how legislation could be drafted to respect the importance of democratic scrutiny, such as having a firm sunset clause. We argued that the powers to make regulations under Part 2A of the PHA are constrained to prioritise public health over coercion and control. We also recommended that the right to protest should be explicitly protected under the Coronavirus Act, the PHA and in any coronavirus legislation.

47. We also made a number of recommendations to the Government with the aim of protecting the human rights of individuals from marginalised communities, including people with protected characteristics, such as:

- a. Establishing a data-sharing firewall and suspending NHS charging to ensure migrants had access to healthcare;
- b. Restoring local authorities' SEND duties, taking steps to mitigate negative impacts of school closures, and provide free school meals to protect children and young people's rights;
- c. Guaranteeing safe and secure accommodation for people including survivors of domestic abuse, people experiencing homelessness and rough sleeping, people with no recourse to public funds;
- d. Providing equal access to housing and accommodation to Gypsy, Roma and Traveller communities in a way that protects their nomadic way of life;
- e. Ensuring that benefits sufficient to ensure people enjoy an adequate standard of living and can safely self-isolate be extended to everyone in need;
- f. Increasing statutory sick pay and minimum wage and implementing measures to protect workers from exploitation;
- g. Reducing the number of people detained in prisons; and
- h. Securing the release of all people in immigration detention.

48. Our Bill was tabled as a cross-party Private Members' Bill by Dawn Butler MP on 24 March 2021. During the debate on the Coronavirus Act renewal, the Prime Minister committed to considering the proposals within the Protect Everyone Bill.

49. On 24 March 2021, in partnership with leading disabled people's organisations, mental health and human rights charities, we wrote to the Education Secretary to ask that the Government permanently repeal the Children and Families Act ('CFA') easements

(see **Exhibit SG/26 – INQ000130693**). The Government had used powers under the Coronavirus Act to issue notices enacting these easements between April and July 2020, but since July the Government had not made another notice. Similar powers to apply easements under the Care Act and MHA had been expired at the previous review of the Coronavirus Act.

50. We received a response to our letter from the Parliamentary Under-Secretary of State for Children and Families Vicky Ford MP on 29 April 2021 (see **Exhibit/SG27 – INQ000130694**). The letter noted that since the Secretary of State for Education's July 2020 notice to apply the CFA easements had expired, the full duty to secure or arrange provision had been reinstated. Furthermore, the letter noted that the Secretary of State would not use the CFA easement powers unless the evidence of coronavirus transmission changed and there were compelling reasons to do so. Notwithstanding this, the letter confirmed that the Government did not consider it appropriate at this stage to remove the power to apply easements to the CFA powers. The Government argued that they remained an important contingency to use in the event of local outbreaks.

51. In addition, the Government said in response to our concerns that it had “seen no evidence of confusion” among local authorities, health bodies and schools regarding whether the easements were still in place and invited us to provide evidence in relation to particular areas, which it would follow up with. The letter acknowledged that some areas had found it challenging to secure or arrange the full provision set out in EHC plans but that this was due to the impact of the pandemic on the operations of organisations, rather than a response to perceived changes in the law.

l) Lifting of national restrictions – July 2021

52. On 19 July 2021, in response to the lifting of national restrictions, Liberty wrote to the Health Secretary. We argued that to maintain public trust and protect public health, the Government must consider what measures must be put in place to enable people to be protected as the pandemic remained ongoing, and to pave the way for a future in which we might all be protected (see **Exhibit SG/28 – INQ000130695**). We did not receive a response.

m) Third review of the Coronavirus Act – October 2021

53. The Coronavirus Act was reviewed for a third time in October 2021. Ahead of the debate on its renewal, we circulated a briefing to all Parliamentarians, urging them again to vote down the Coronavirus Act and replace it with measures such as those contained within our Protect Everyone Bill which would respect fundamental rights and protect public health (see **Exhibit SG/29 – INQ000130696**). We welcomed the Government's announcement that it intended to expire Section 51 and Schedule 21 of the Coronavirus Act (powers to detain "potentially infectious" persons). Indeed, every CPS review published up to that date had concluded that all charges under Schedule 21 (the main criminal offence under the Coronavirus Act, which relates to "potentially infectious persons" who refuse to co-operate with the police or public health officers) had been wrongful - 292 charges under the legislation, 292 of them incorrect. We also welcomed the Government's recommendation that Section 52 and Schedule 22 – which enabled restrictions on gatherings, but which were never exercised – be expired, while reaffirming that they were never necessary and would have resulted in disproportionate restrictions on human rights. We reiterated our concern that 18 months into the pandemic, there had been no uniform right of appeal established for Fixed Penalty Notices issued under coronavirus powers, and echoed the JCHR's recommendation that such an appeal mechanism be established.

54. Ahead of the Coronavirus Act's third review, the Government recommended that Parliament expire the powers in Schedule 17 allowing the Secretary of State for Education to issue notices enacting the CFA easements – a power which had not been used since before September 2020. While we welcomed this recommendation in our briefing, we maintained that these provisions should never have been on the statute books, and that the belated expiration of these provisions did nothing to reverse the negative impacts that they had on affected children and young people. We also criticised the way this measure (among others) appeared to reverse the logic of parliamentary scrutiny: powers were put into place prior to being effectively discussed, and only after the measures were proven to be harmful and to have disproportionate effects, were they eventually expired at the sole discretion of the Government.

55. In our briefing, we noted that as of October 2021, more than 80 sets of regulations had been made, with ever-decreasing justification, under a super emergency procedure in the PHA. The Government had been required to write to the Speaker at least 25 times to explain why legislation came into force before it was laid before Parliament. We noted the startling erosion of normal democratic processes, which minimised

Parliament's ability to scrutinise and hold the Government to account over its handling of the pandemic.

n) Challenging Fixed Penalty Notices

56. Apart from our campaigning and public advocacy work, Liberty's Advice and Information service supported members of the public to understand the powers established by the Coronavirus Act and various regulations, and the reams of Government guidance accompanying these laws, by distributing informational resources and answering public queries. Our Legal Team also supported individuals to challenge Fixed Penalty Notices issued in relation to protests. In November 2020, we prepared a legal action against the MPS after officers wrongly threatened to arrest and fine organisers of a trans rights protest, causing the protest to be cancelled. In May 2021, we again threatened the MPS with legal action after they issued fines under the All Tiers Regulations against four Legal Observers at protests against the Police, Crime, Sentencing and Courts Bill in March and April 2021.

o) NHS Contact Tracing App

57. In March 2020, the Government announced that it had commissioned NHS England and Improvement and NHSX to develop a centralised data platform in response to the pandemic – the largest ever handover of NHS patient data to private corporations. In response, Liberty sent a briefing to Parliamentarians (see **Exhibit SG/30 – INQ000130697**) and also submitted an interim response to the JCHR's inquiry in May 2020 (see **Exhibit SG/31 – INQ000130698**), with five key demands for the NHSX app. First, we urged any proposals on the NHSX contact tracing app to be brought forward via primary legislation to enable the fullest parliamentary scrutiny; second, for the app itself to be decentralised to better protect people's right to privacy; third, for there to be far greater transparency around what data would be collected by the app, how it would be used, how long it would be retained, and how long it would be deleted; fourth, for the app to be non-coercive and non-discriminatory; and fifth, for the app to be strictly time- and purpose-limited. Apart from a general concern about the impact of such an app on individuals' right to privacy (especially given the role of private companies in its development), we were particularly concerned about how it might entrench and compound overlapping societal and health inequalities. In particular, we were concerned that the NHSX app could expand harmful data-sharing practices between public bodies which have had devastating impacts for migrants and people claiming benefits. We were also worried that the introduction of a system of Covid-19 status

certification could compound the disproportionate impact of Covid-19 on particular marginalised group, including if it involved any predictive technology.

58. In January 2021, the Health Protection (Coronavirus, Restrictions) (All Tiers and Self-Isolation) (England) (Amendment) Regulations 2021 were published, that would allow police to access coronavirus test and trace data. We warned in our public communications that this would undermine public health efforts by eroding trust and undermining democratic accountability.

p) Equality impact assessments

59. On 19 June 2020, we wrote to DHSC and requested that they provide any equality impact assessments conducted ahead of the introduction of the Coronavirus Act 2020 and the Health Protection (Coronavirus, Restrictions) (England) Regulations 2020, and any other documentation demonstrating that compliance with the public sector equality duty under the Equality Act 2010 had been considered in relation to the Regulations and the Act. DHSC responded on 17 July 2020 and confirmed the information was held, but refused to provide it citing the 'formulation or development of government policy' exemption under section 35(1)(a) of the Freedom of Information Act 2012. DHSC maintained its reliance on section 35 following an internal review.

60. Liberty contacted the Information Commissioner's Office (ICO) on 16 December 2020 to complain about the way that our request for information had been handled. On 26 October 2021, the Information Commissioner considered that the public interest rested in favour of disclosure, given that by this time, the withheld assessments should have already been in the public domain by way of DHSC's annual 'reporting' of compliance (see **Exhibit SG/32 – INQ000130699**).

q) Mandatory vaccination

61. In June 2021, the Government suddenly and unexpectedly laid before Parliament the Health and Social Care Act 2008 (Regulated Activities) (Amendment) (Coronavirus) Regulations 2021, a statutory instrument that would make it mandatory for anyone working in a care home to be fully vaccinated unless subject to medical exemption. In doing so, the Government ignored the results of a public consultation that showed that 57 per cent of the public did not support such a policy. The Government also failed to produce an impact assessment for the proposal - including analysis of the effects on workers and on care homes if workers become ineligible for work – before laying it

before Parliament. The House of Commons eventually approved the regulations by 319 votes to 246, after 90 minutes of debate. In response to the regulations, the House of Lords debated and eventually agreed a motion of regret in respect of the SI, noting that there was insufficient information as to how the regulations would be operationalised and that a full impact assessment had not been published. The Secondary Legislation Scrutiny Committee subsequently argued that this information was crucial to Parliamentarians in understanding the policy, how it would work, and its implications ahead of any vote. In the absence of this assessment, effective parliamentary scrutiny was not possible.

62. In October 2021, Liberty responded to the DHSC “Proposal for making vaccination a condition of deployment in the health and wider social care sector” (see **Exhibit SG/33 – INQ000130700**). We opposed the proposal, arguing that it would disproportionately impact communities of colour and entrench social and health inequalities. Our submission also raised concerns about the impact of any policy of mandatory vaccination on the right to bodily autonomy, and emphasised the importance of education-based measures that would build trust and informed consent among health professionals.

63. On 31 January 2022, the Government announced its intention to revoke the regulations making coronavirus vaccination a condition of deployment in health and social care. In February 2022, we submitted a joint response with Big Brother Watch to DHSC’s “Proposal for revoking vaccination as a condition of deployment across all health and social care call for evidence” welcoming this policy development (see **Exhibit SG/34 – INQ000130702**). In addition to reiterating our previous arguments, we noted that in the Government’s prior consultation, 65 per cent of respondents did not support the proposal for mandatory vaccines. Eighty per cent of members of the public, 75 per cent of current service users, 58 per cent of healthcare workers, 56 per cent of representatives of healthcare organisations and 50 per cent of healthcare organisations also opposed the plans. In revoking these unpopular measures, we urged the Government to prioritise removing barriers to vaccination and building trust through education-based measures.

r) Covid-19 status certification

64. Throughout the pandemic, there were numerous reports of, and eventual policies enacted to, introduce forms of Covid-19 status certification as a prerequisite to access

to public space, travel, workplaces, and other settings. On the whole, Liberty strongly criticised these proposals. We warned that such plans, if brought to fruition, would create a two-tiered society whereby some people would be able to access support and exercise their fundamental freedoms, and others would be shut out – with the most marginalised people hardest hit. We also frequently argued that the Government's various u-turns on the subject of vaccine passports was a clear example of its failure to ensure effective and transparent public policy throughout the pandemic, which in our view hindered an effective public health approach to the pandemic (see **Exhibit SG/35 – INQ000130703**).

65. In October 2021, Liberty submitted to the DHSC “Proposal for mandatory covid certification in a Plan B Scenario call for evidence” (see **Exhibit SG/36 – INQ000130704**). Up till then, the Government had left it up to individual businesses to decide whether to set up their own Covid-19 status certification systems. In our submission to the DHSC inquiry, we expressed strong opposition to the implementation of any Covid-19 status certification scheme (including vaccine certification), including for venues and events. We focused on the potential negative impacts of any such scheme on workers' rights; its liability for mission creep and potential to expand surveillance; and its likely disproportionate impact on people of colour who have legitimate historical grievances regarding unethical medical treatment, migrants concerned about data-sharing, and others who lack effective access to healthcare such as Gypsy, Roma and Traveller communities due to societal inequalities. We noted that there may be situations in which Covid-19 status certification could be a proportionate response to protect disabled people's rights, but that the Plan B proposal far exceeded these limited and narrow circumstances. In the end, the Government did not introduce mandatory Covid-19 certification under its Plan B measures.

66. On 13 December 2021, ahead of a debate on Plan B measures, Liberty sent a briefing to all Parliamentarians regarding the human rights concerns surrounding vaccine passports, focusing on their discriminatory effects, liability for mission creep, impact on privacy, implications for workers' rights, and ineffectiveness (see **Exhibit SG/37 – INQ000130705**).

s) Conclusion

67. Throughout the coronavirus pandemic, Liberty continuously campaigned and advocated for a rights-based approach to protecting public health. We highlighted the ways that Parliament was being repeatedly and persistently sidelined, through the Coronavirus Act and the Government's extensive use of powers under the PHA to make regulations. Crucially, we were unwavering in our concern for the impact of expansions of state mechanisms of coercion and control on people already at the sharp end of societal inequality and structural oppression (including those with protected characteristics) – from people of colour disproportionately affected by expanded enforcement powers and plans to extend surveillance over health data, to disabled people deprived of access to vital support and care, to people experiencing homelessness affected by the lack of sufficient protections.

Statement of Truth

I believe that the facts stated in this witness statement are true. I understand that proceedings may be brought against anyone who makes, or causes to be made, a false statement in a document verified by a statement of truth without an honest belief of its truth.

Personal Data

Signed:

Sam Grant, Advocacy Director, Liberty

Dated: 4 August 2023