

# Joint Committee on Human Rights

## COVID-19: human rights implications for older people

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[emily.mccarron@ageuk.org.uk](mailto:emily.mccarron@ageuk.org.uk)

Age UK  
Tavis House  
1-6 Tavistock Square  
London WC1H 9NA  
T 0800 169 80 80 F 020 3033 1000  
E [policy@ageuk.org.uk](mailto:policy@ageuk.org.uk)  
[www.ageuk.org.uk](http://www.ageuk.org.uk)

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1-6 Tavistock Square, London WC1H 9NA.

## 1 Introduction

1.1 The Government has called Covid-19 a major public health emergency and the most 'significant threat this country has faced for decades.' It is clear older people are very seriously affected by the virus. Hence, the most immediate issue they face during this pandemic is the risk of severe illness and death. Older people in need of care and support have been rendered acutely vulnerable by virtue of their circumstances, and there have been high numbers of death arising from Covid-19.

1.2 In addition to the loss of life, the human rights issues facing older people that have arisen during this pandemic include:

- The use of 'blanket' policies being applied to older people, including DNAR orders for care home residents or policies around hospital transfer and admission.
- Older people not accessing healthcare for chronic or long-term health conditions when they need it for fear of overburdening the NHS or contracting coronavirus.
- Access to the help, care and support that many older people need to sustain their health and wellbeing with specific challenges faced by older people in residential settings, those who live alone and older people who receive care at home.
- With lockdown measures in place, older people are also at increased risk of domestic and institutional abuse, and the use of restrictive measures that deprive them of their liberty.
- Access to food shopping, medicines and other necessary services including banking during the pandemic has been a huge source of difficulty and anxiety for many older people in both the 'shielded group', and for those older people who have a health condition that increases their vulnerability.

1.3 It is clear the response from Government and across public services has had, and will continue to have, a profound impact on almost all aspects of older people's lives. Therefore it is vital that older people are given appropriate consideration in current and future plans, and that we take particular care to balance the desire to safeguard the health of those at greatest risk, the impact of wider risk reduction or containment strategies on the older population and the human rights of older people. In getting that balance right, we must guard against unwarranted age-based policy approaches and direct or indirect age discrimination. However, the Covid-19 pandemic poses distinct threats to the equal enjoyment of human rights by older persons. Older persons have the same rights as others, and these must be equally protected during the pandemic.

- 1.4 Age UK is a national charity that works with a network of partners, including Age Scotland, Age Cymru, Age NI and local Age UKs across England, to help everyone make the most of later life, whatever their circumstances. In the UK, the charity helps more than seven million older people each year by providing advice and support. It also researches and campaigns on the issues that matter most to older people. Its work focuses on ensuring that older people have enough money; enjoy life and feel well; receive high quality health and care; are comfortable, safe and secure at home; and feel valued and able to participate.

## **2 Access to healthcare and treatment**

- 2.1 There is a rapidly growing body of evidence that people over 65 are both at greater risk of experiencing severe symptoms and have a lower likelihood of recovery from Covid-19; with the oldest age groups, older men and those living with cardiovascular and respiratory conditions being those at greatest risk.<sup>i</sup> There is growing concern that older BAME people are disproportionately represented in hospital cases and fatalities; and it is clear that older people in need of care and support – whether at home or in a care home – have been rendered exceptionally vulnerable by virtue of their circumstances.
- 2.2 For older people across the country with chronic or long-term health conditions the impact of the pandemic has the potential for devastating consequences. We know that many older people are not accessing healthcare when they need it for fear of overburdening the NHS or contracting coronavirus. Recent data shows that A&E attendances have dropped by 29% and admissions by 23% compared to 2019.<sup>ii</sup> At the same time, the number of people attending hospital for a suspected heart attack has halved, while there has been a 75% drop in urgent cancer referrals from GPs, as people put off seeking help.<sup>iii</sup>
- 2.3 The data is now showing a significant number of ‘excess deaths’ in all settings from recent weeks. In the nine weeks to 8<sup>th</sup> May 2020, there were an estimated 45,777 excess deaths of which only 35,044 (77%) had been identified as Covid-19 fatalities.<sup>iv</sup> Ninety three per cent of Covid-19 deaths were of people aged 60 and over. While we would expect a proportion to be unrecognised Covid-19 fatalities, many will be indirect deaths resulting from real or perceived barriers to accessing urgent care services. The impact of quarantines, lockdowns, and physical distancing measures on people with chronic or serious conditions should be evaluated and their access to necessary health treatment, including medicines must be guaranteed.

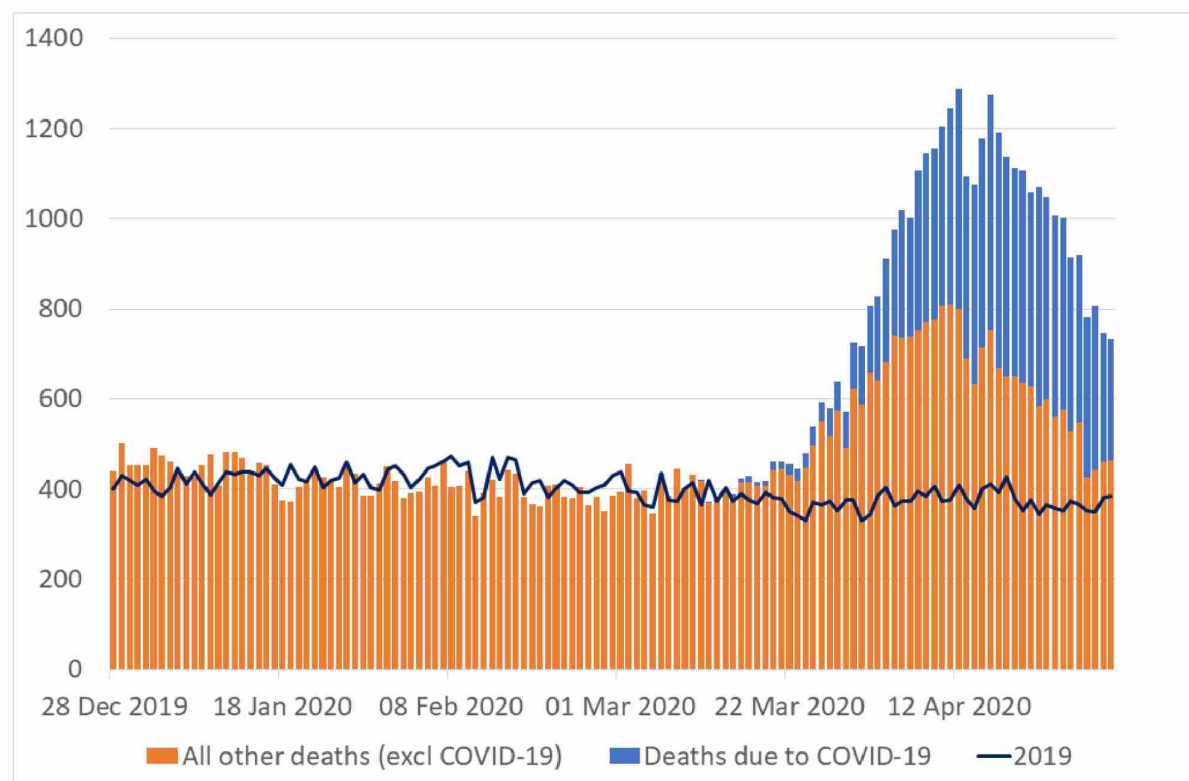
- 2.4 Age UK has also seen a deeply concerning rise in 'blanket' policies being applied to older people. Notable examples include DNAR orders for care home residents or policies around hospital transfer and admission. That someone is in need of care and support, in a care home or their own home, should not be used as a proxy for their health status, nor blanket policies applied - for example, over whether they should be admitted to hospital. To make such decisions without considering either an older person's needs or their capacity to benefit from treatment would be discriminatory and unfair. Blanket policies, especially those based on chronological age, have no place in decisions about treatment and care.
- 2.5 We are pleased that Government and NHS England have made clear that such approaches are unacceptable. However, we are aware that certain policies and practices persist locally. Everyone, without exception, has the right to life-saving interventions and all persons have the right to expect that decisions will be solely based on relevant medical information, individually assessed need, and taking into account their own wishes and preferences. While there is a well understood relationship between advancing age, frailty, and comorbidity, which reduces the chance of surviving intensive medical intervention, age alone should never be a criterion for medical triage.

### **3 Social care**

- 3.1 The lockdown has also affected access to the help, care and support that many older people need to sustain their health and wellbeing. In some instances, older people have lost their usual networks of informal support or have decided to discontinue their domiciliary care services to avoid the risk of infection, leaving them struggling to manage essential tasks, including personal care. In others, informal carers, many of whom are women, have been left to carry a greater burden of care with reduced access to health care professionals and other services or forms of support.
- 3.2 The Coronavirus Act 2020 which received Royal Assent last month means that many duties contained in the Care Act 2014 have been temporarily suspended, enabling local authorities to temporarily stop or reduce the support someone received. Some local authorities have now acted on those powers. Many of those who rely on care and assistance at home and in the community to cover daily tasks may now be left unattended. We remain worried that removing support perceived to be 'low level', such as help with cooking, risks tipping older people into greater need.

3.3 However, our overwhelming concern is the crisis unfolding in care homes and domiciliary care services. The vast majority of older people in need of care and support will be living with multiple long-term conditions and frailty and are amongst the most vulnerable to the effects of this virus. They are also rendered more vulnerable by virtue of their circumstances. Nearly all will be receiving intimate personal care with no possibility of social distancing; and in the case of care homes, residents are living in group settings where the virus can easily spread. Care homes have seen an unprecedented level of deaths overall throughout the period of this crisis. There were 46% (23,136) more deaths in care homes in 2020 to 1<sup>st</sup> May than in the same period in 2019 and 12,526 officially recorded deaths attributable to Covid-19.<sup>v</sup>

**The number of deaths of care home residents, England and Wales, from 28 December 2019 to 1 May 2020, registered up to 9 May 2020**



Source: Office for National Statistics, May 2020<sup>vi</sup>



- 3.4 Early decisions taken by Government to restrict testing of staff and residents amid growing reports that frailer older people present more 'atypical' symptoms meant that cases of Covid-19 in care homes went unrecognised in the early stages of the pandemic. The collection of data on care home deaths has now improved although problems with testing may still be leading to Covid-19 being under-reported on death certificates. Lack of access to PPE for care staff and testing for both carers and older people have no doubt played a role in the rapid spread of cases. Other challenges include concerns about timely access to relevant information and guidance, access, escalation, and discharge policies put in place by some NHS services and staff shortages. There are important questions as to whether Government has provided sufficient or rapid enough support to protect the lives of older people receiving care.
- 3.5 Care homes are now under immense pressure to protect residents who are at particular risk of contracting Covid-19. Some people who will have the mental capacity may agree to temporary restrictions on their liberty that is, 'self-isolate' for their own safety. However, we know that older people experiencing cognitive decline and lacking mental capacity, are confused and scared at being subject to new restrictions on their freedoms so any such restrictions must be necessary and proportionate. The use of physical and chemical restraint must comply with the Mental Capacity Act 2005 and the Deprivation of Liberty Safeguards process.
- 3.6 Many care homes have implemented a 'no visitor policy'. In exceptional circumstances, such as where a care home resident is nearing the end of their life, next of kin can visit. However, we know that with the pressures facing care homes, family members are not always able to visit or even speak to care home residents, even when they are at the end of life. This is made worse where family members have little or no access to the internet.
- 3.7 The needs of older prisoners, who are particularly vulnerable to contracting Covid-19, because of their age and overall health, must be recognised. The psychological and physical impact on older prisoners of being socially isolated in their cells, particularly for those prisoners with dementia, must be considered.
- 3.8 Continued monitoring of the situation in prisons and care homes during the Covid-19 pandemic is essential. The Care Quality Commission should intervene, if necessary, to protect individual rights.

## 4 The impact of lockdown

- 4.1 The implementation of 'lockdown' has had a wide-ranging impact on older people. Enforced isolation has exacerbated many of the existing challenges older people face in accessing essential goods and service. There are also worrying, if not surprising, signs that there are rising levels of loneliness and a growth in poor mental and physical wellbeing amongst older people.
- 4.2 Before the start of this pandemic there were already around 1.4 million older people who often felt lonely.<sup>vii</sup> 17 per cent of older people reported being in contact with others less than once a week and for 11 per cent of people this was less than once a month.<sup>viii</sup> 2.8 million older people also live alone.<sup>ix</sup>
- 4.3 We are seeing clear signs that levels of loneliness are increasing during this period and, with it, the consequences for people's mental and physical wellbeing. Since the start of the pandemic we have seen a 31 per cent increase in demand for Silver Line alone. Calls to our information and advice line also lay bare the toll on older people's health. A growing number of people are expressing feelings of loneliness, anxiety, and depression, as well as increasingly talking about the consequences for their physical health. We are seeing worrying signs that malnutrition, frailty, and falls are on the rise.
- 4.4 There is a significant risk that social distancing measures will further isolate those older people, particularly older women, who are suffering domestic abuse. Such abuse victims are likely to be dependent on the person abusing them financially or for their care and will face in addition to fear, barriers to reporting this abuse such as lack of physical and mental capacity and a lack of access to digital or other services. The needs of older people who are at risk of experiencing domestic abuse must be considered as part of the Government's response to the pandemic.
- 4.5 While many people have embraced online forms of social engagement, hobbies and physical activity, there are still 3.6 million people over the age of 70 who are not online. And while many of us have made the most of online opportunities, these are unlikely to fully compensate for the severe disruption to older people's routines, social networks, and coping strategies.
- 4.6 Older people, and particularly those shielding or at high risk, are advised to sustain social distancing measures for a lengthy period. There is a significant risk that people's social networks and support systems will be irreparably damaged. There is also a high risk that people who lose mobility or develop frailty over this period will not regain that physical function.

- 4.7 Access to food shopping, medicines and other necessary services including banking during the pandemic has been a huge source of difficulty and anxiety for many. There are now approaching two million people in the 'shielded group', many of whom will be older people, as well as large proportions of the older population who will have a health condition that increases their vulnerability. Many within those groups are also living alone or caring for others. Age UK, through both our services and information and advice work, has seen a massive rise in demand for assistance and support. There are also a growing number of people contacting the Charity expressing concern that their supplies of food, cash and other essential goods have been exhausted and they do not know how they will be able to get more.
- 4.8 Formal schemes to provide support have had some success in mitigating the effects, however vulnerable older people are still falling between the cracks of different initiatives or have yet to receive the help they need. Services need to be joined up and co-ordinated so that support reaches all those in need, particularly those who are isolated and not connected online.
- 4.9 With large numbers of older workers losing their jobs, or not being eligible for furlough, there is already likely to be a significant impact on older people's finances and longer-term career prospects. Many people are encountering difficulties with returning to work, because of fear about contracting the virus, bad employment practices, or simple confusion about how the new absence processes operate. There is some emerging evidence of employers discriminating against employees because of their age, which is unacceptable. The impact of Covid-19 on the economy is also causing pension funds to suffer significant losses. The impact of Covid-19 on the income of older persons and the drop in living standards that might ensue must be considered.

## **5 Older people around the world**

- 5.1 Internationally, there has been an increase in discriminatory policies based on age, including triage protocols that use arbitrary age criteria as the basis for allocating scarce medical resources, and a rise in the number of reported cases of neglect of older persons living in institutional settings in many countries, and the failure to provide them with necessary health, social and palliative care.
- 5.2 The UK Government must send a strong message to its UN agency and Member State partners that it does not stand for the erosion of the rights of older persons that is taking place in response to Covid-19 around the world. Now, more than ever before, a UN convention on the rights of older persons is needed to articulate clearly that older people are valued equally in society.



## 6 Looking ahead

- 6.1 Government has been clear that some level of social distancing will be the 'new normal' for a considerable period of time while they balance measures to resume as much economic and social activity as possible with some level of continuing measures to suppress the reproduction rate of the virus. This will inevitably lead to some difficult decisions and trade-offs between the combinations of activities that could resume while keeping overall social contact within safe limits.
- 6.2 At the same time, Government will need to continue to take steps to safeguard the health and lives of those who are most vulnerable. Yet given the time scales involved, this ambition must also balance the risks between different types of harm that may arise. While the virus itself poses clear risks to vulnerable individuals, the impact on people's mental and physical health, their financial wellbeing and social participation must also come into the equation.
- 6.3 We accept there are no easy answers. However, there are a number of principles that should be applied to decision-making moving forward:
- Measures designed to reduce overall levels of social contact (and therefore reproduction of the virus) should not discriminate against any part of the population. For example, mandatory social distancing measures based on age (or any other characteristic) would not be acceptable.
  - Mandatory measures (or their enforcement) should not place a disproportionate burden on any one part of society, recognising that pre-existing challenges or inequalities can have a major effect on the severity of their impact.
  - Measures intended to safeguard the health of vulnerable individuals must be proportionate, balanced and protect their individual rights. Ultimately people must reserve the right to decide on the acceptable level of risk for their individual circumstances.
  - People at high risk should have access to the right information and advice in order to make decisions about their health and lives, and the support they need in order to do so safely and well for the duration of the pandemic.
  - The lives and health of people who rely on essential services, including people living in care homes or receiving home care, informal carers and those in receipt of regular healthcare must be actively protected from the enhanced risk engendered by their circumstances.
  - At no time should blanket policies based on age be applied to individual decision making about treatment, care or access to services. Age should not be used as a proxy for the health status or vulnerability of any individual.

- The impact of Covid-19 on older people must continue to be monitored now and in the coming months and years. This should include ongoing data collection and analysis of how Coronavirus affects the financial wellbeing, physical and mental health of older people.

6.4 As Government moves into the next phase of its response to this crisis, it is vital it takes a proactive, but proportionate and balanced, approach to the risk this virus poses to our older population. And in doing so, it must ensure that the older population's specific vulnerability to this virus does not fuel ageist narratives or perceptions in society.

<sup>i</sup> Features of 16,749 hospitalised UK patients with COVID-19 using the ISARIC WHO Clinical Characterisation Protocol; Annemarie B Docherty, Ewen M Harrison, Christopher A Green, Hayley E Hardwick, Riinu Pius, Lisa Norman, Karl A Holden, Jonathan M Read, Frank Dondelinger, Gail Carson, Laura Merson, James Lee, Daniel Plotkin, Louise Sigfrid, Sophie Halpin, Clare Jackson, Carrol Gamble, Peter W Horby, Jonathan S Nguyen-Van-Tam, Jake Dunning, Peter JM Openshaw, J Kenneth Baillie, Malcolm Gracie Semple; medRxiv 2020.04.23.20076042; doi: <https://doi.org/10.1101/2020.04.23.20076042>; Accessed: 01/05/2020

<sup>ii</sup> NHS England (2020), A&E attendances and emergency admissions data. <https://www.england.nhs.uk/statistics/statistical-work-areas/ae-waiting-times-and-activity/>

<sup>iii</sup> Cancer Research UK (2020), How coronavirus is impacting cancer services in the UK. <https://scienceblog.cancerresearchuk.org/2020/04/21/how-coronavirus-is-impacting-cancer-services-in-the-uk/>

<sup>iv</sup> ONS; Deaths registered weekly in England and Wales, provisional, accessed 01/05/2020; <https://www.ons.gov.uk/peoplepopulationandcommunity/birthsdeathsandmarriages/deaths/datasets/weeklyprovisionalfiguresondeathsregisteredinenglandandwales>. Excess deaths calculated by subtracting the average total number of deaths in England and Wales from previous five years between 03/01-17/04 from the total number of deaths in England and Wales between 03/10/2020 and 17/04/2020.

<sup>v</sup> ONS; Number of deaths in care homes notified to the Care Quality Commission, England; accessed 01/05/2020; <https://www.ons.gov.uk/peoplepopulationandcommunity/birthsdeathsandmarriages/deaths/datasets/numberofdeathsincarehomesnotifiedtothecarequalitycommissionengland>

<sup>vi</sup> <https://www.ons.gov.uk/peoplepopulationandcommunity/birthsdeathsandmarriages/deaths/articles/deathsinvolvedcovid19inthecaresectorinenglandandwales/deathsoccurringupto1may2020andregisteredupto9may2020provisional>

<sup>vii</sup> Age UK. (2018). All the Lonely People: Loneliness in Later Life.

<sup>viii</sup> Age UK. (2015). Age UK Loneliness Evidence Review Evidence Review: Loneliness in Later Life.

<sup>ix</sup> Age UK analysis of UK Household Longitudinal Study (Understanding Society) wave 9 (collected 2017-18) and ONS mid-year population estimates 2018