

YORK HUMAN RIGHTS CITY NETWORK

Submission to the Parliamentary Joint Committee on Human Rights

SUMMARY

This submission is made from York Human Rights City Network (YHRCN), a civil society network, and is based on evidence gathered from 28 local organisations and 16 individuals. It reports that the following groups have been disproportionately affected by the Government's response, illustrated with examples for each: older people; disabled people; unpaid carers; homeless people; people with inadequate incomes; people affected by domestic and/or sexual abuse; refugees and asylum seekers; BAME communities; LGB and Trans people; and women. Issues that were raised fell into seven broad themes, namely: vulnerability as a dehumanising concept; inadequate communications; digital divide; privacy issues; reduced access to care and support; the importance of community; and local government and resilience. National 'command and control' government initiatives were found to be largely both inappropriate and ineffective, compounded where similar approaches were taken at local government level. The lack of partnership approaches utilising existing local structures and knowledge, including in the voluntary, community and social enterprise (VCSE) sector, was marked.

Our evidence shows that proper consideration was not given to ways in which disproportionate impacts could have been avoided and that, worryingly, such lack of consideration continued over time. This suggests that it could not be accounted for only by the speed at which emergency measures had to be introduced but also by an underlying lack of attention to human rights. There is an urgent need to address this by using human rights to frame both service delivery and policy nationally and locally. YHRCN sets out some of the steps needed to achieve this. These steps are:

- *Focus on equality, measured by outcomes*
- *Improve communications so they are relevant and accessible to all*
- *End the digital divide*
- *Embed training in and awareness of human rights across national and local government*
- *Recognise the role of the civil society and bolster the further development of the VCSE sector*
- *Increase the capacity of local Councils to build long-term resilience*

1 Who we are

- 1.1 York was declared the UK's first Human Rights City by the Lord Mayor in April 2017. This followed a partnership process led by the York Human Rights City Network (YHRCN) - a civil society network co-hosted by York CVS and the Centre for Applied Human Rights (CAHR) at the University of York – and involving local statutory services. This submission is made by YHRCN.
- 1.2 Our Network has championed the need for fresh thinking about how cities are ideally placed to embed human rights locally, using them to engage with wider political challenges of the day as well as to engage public opinion by making them relevant to everyday life.
- 1.3 We are continually refining our model, aiming to give voice to the most excluded; foster local traditions of social justice; spotlight the deficiencies of statutory authorities and hold them to account; and build a positive culture of human rights (www.yorkhumanrights.org).

2 Covid-19

2.1 As the pandemic struck and Government responded, it was clear that this was a challenge for which applying a human rights framework would be both appropriate and beneficial. YHRCN decided on a two-pronged course of action. First to publish factsheets for voluntary and community groups, and statutory agencies that highlighted 3 key human rights implications of the pandemic, namely:

- *Dignity, the right to life and non-discrimination*
- *Balancing Priorities, making difficult decisions*
- *Disease and democracy*

See Appendix B and www.yorkhumanrights.org/current-work/

2.2 Second, to gather evidence concerning the experience of the pandemic in York with particular reference to human rights. We did this through (i) a survey to which individuals and organisations could respond online, through email, British Sign Language (BSL) video, or by post; (ii) virtual consultations, one with a group of disability organisations and one with the YHRCN Steering Group; (iii) telephone interviews with voluntary sector leaders; (iv) free-style submissions. The resulting responses from 28 voluntary organisations (see Appendix A) and 16 individuals provided rich evidence, from which we have selected some key findings for this submission.

3 What groups in York have been disproportionately affected by measures taken by Government?

3.1 Strong evidence came through on a number of groups who have experienced significant and adverse impacts because of the Government's measures and the way they have been handled. YHRCN has consistently reported through its annual Indicator Reports that there are significant levels of inequality in the city and the evidence suggests that these have also affected experience.

3.2 *Older People.* The differential in death rates between young and old, the way older people were moved out of hospitals to care homes and the inconsistencies between care homes in such matters as visiting arrangements and the use of DNRs were all areas of concern for organisations working with older people and carers in York. The Government's blanket approach to anyone over 70 failed to reflect diversity in 'healthy life expectancy' and increased anxiety among those less able to speak out, what one organisation called "the inequality of voices". Concerns were expressed that residential homes have little knowledge of human rights, were withholding information about Covid-19 cases, and their lockdown prevented older people's organisations as well as their loved ones from having access to residents. The extent to which informal care from family, friends and neighbours enables older people to maintain their independence in the community was more widespread than previously thought. Not being able to access seemingly minor services/help like toenail-cutting could have a long-term impact on mobility. There was also a real concern that the impact of Covid-19 and lockdown will

be older people not regaining the physical and social mobility they experienced previously, especially if not provided with intensive support to do so.

- 3.3 *Disabled people.* Disabled people, including those with lived experience of mental ill-health, found themselves deprived of independent living care and support because of the distancing and shielding rules and the lack of PPEs and accessible information. For example, people with visual impairments who had previously relied on family, friends or PAs to leave their homes were now stuck at home. The closing of services with little or no warning because of the timing of government announcements had a big impact on adults with learning disabilities and children with special educational needs. Some disabled people who had previously enjoyed supermarket deliveries (including those with higher level PIP) suddenly found themselves “left in the lottery to find a magic delivery slot” if not classified as ‘shielding’, and hence short of food. People with hearing loss, across all ages including children, were disadvantaged both by not having public health or other messages provided in an accessible way and because communicating through phone and online platforms, or with people wearing masks present additional challenges. Concerns were expressed about the effect of isolation and substantially reduced or wholly withdrawn access to health and social care services on physical and mental health, rates of abuse and rates of self-harm. In addition as restrictions have eased and plans unveiled to encourage people back into the city centre, Blue Badge holders have in contrast had their city centre bays removed to a more distant location without consultation and with controversial attempts to mitigate the impact.
- 3.4 *Unpaid carers.* Organisations reported an over-reliance on, and lack of recognition of, unpaid carers as support (including short break and PA services) had been withdrawn leaving them to fill the void; there has been no guidance for unpaid carers, and lack of access to PPEs. Young carers have been hit especially hard by lack of recognition of their struggles, for example by some schools. Many carers experienced a digital divide: a carers’ organisation reported that they had 2000+ carers on their books with no email address. There were reports of gendered expectations on women who were consequently reducing working hours or stopping altogether and both male and female unpaid carers received little support from employers.
- 3.5 *Homeless people.* Certain groups were relatively well looked after in York. The Council was praised for the way it used central government funding to find hotel places for, at one time, up to 40 rough sleepers. However the group who have suffered most were those one step removed from rough sleepers. They may have temporary accommodation or be sofa surfing but live in poverty and are in great need of support – support which was closed down. They have become increasingly isolated, and some have expressed the view that they would be “better off if homeless or addicted to alcohol or drugs.”
- 3.6 *People with inadequate incomes.* There was a peak of three and a half times normal level use at York’s main foodbank during April, before this dropped off to still double normal levels. The main reason for referrals was low income. Physical distancing and added pressure through increased numbers meant that offering access to food ‘with dignity’ and the opportunity for social interaction and therefore early signposting to other support services was made more difficult. A lot of anxiety was evident, for example about an uncertain future, having lost jobs and not yet receiving benefits, and having difficulties with either the national free school meals voucher scheme or the national food parcels scheme with its poor nutritional value and lack of attention to specific dietary requirements.

- 3.7 *People affected by domestic and/or sexual abuse.* Many thousands of victims access support around domestic and/or sexual abuse every year in York and North Yorkshire. At the time of compiling the report local refuges were full and around 400 ‘at risk’ families in York and North Yorkshire were in temporary accommodation. Further increases in incidence and of demand for services were anticipated with the easing of restrictions and the on-coming recession. Additional resources released at a national level had not reached the local level and there were fears of them being diverted inappropriately to providers who know little about the specific needs of those affected by these types of abuse. While staff had adapted their ways of working, they reported limitations to online services, especially given that these were often taking place in people’s own (unsafe) homes and that some did not anyway have access to such technologies.
- 3.8 *Refugees and asylum seekers.* People who have *No Recourse to Public Funds* were reported to be in an exceptionally vulnerable situation, and the policy deemed punitive and not compliant with human rights. Some refugees and asylum seekers who were allowed to work had lost their jobs, causing feelings of stress, bewilderment and anxiety. Education is particularly important for refugee children learning English, and the impact of the lockdown was damaging, including through Government delays in providing digital equipment such as laptops which had still not arrived by the end of June. Questions were raised about whether the ‘online tutoring’ planned by the Government would cater adequately to their particular needs. Longer delays for hearings and appeals and lockdown itself had re-stimulated feelings of isolation, fear and trauma and had an adverse impact on mental health.
- 3.9 *BAME communities.* Concerns were raised about increases in race-related hate crime and incidents, highlighted by a well-publicised example of racism experienced locally by an NHS BAME staff member (<https://twitter.com/HaxbyGroup/status/1252183457767346176>). Numbers of BAME women accessing domestic abuse services had dropped significantly during the crisis, from one third of all service users to below a quarter. The lockdown and social/physical distancing had a particularly adverse impact on the Gypsy & Traveller communities with four known suicide attempts reported amongst people who “feel caged in and hopeless”. Important cultural ceremonies around deaths became impossible. The lack of a BAME specific response by local and national government was criticised, for example a failure to reach out to York BAME communities or provide culturally-sensitive information.
- 3.10 *LGB & Trans people.* A particular fear was expressed that the reform of legislation in relation to trans rights would be delayed, and that existing inequalities for all would be exacerbated.
- 3.11 *Women.* Many of the matters in which women were disproportionately affected, such as unpaid caring, domestic and/or sexual abuse, loss of employment and heightened rates of inadequate income, are included above. There was also a concern that more priority should have been afforded to making social contact with friends and family realistic and safe for single parents, who are predominantly female.

4 What has been the impact in York of specific measures taken by Government?

- 4.1 Public interest restrictions are allowed under the human rights framework, but we question whether the Government has taken full cognisance of the impact that some of the restrictions have imposed. Our evidence clearly shows that the lockdown has had a far greater impact on some York residents than others and that the Government’s measures have mostly been taken without proper consideration of the impact on particular groups. Many were left feeling that

they were second class citizens. The concept of 'social/physical distancing' has been hard to apply for nearly all groups, but in particular those living in high density and crowded accommodation and some disabled people. A lot of support previously targeted at specific groups, e.g. tutoring for children for whom English is not a first language and care for disabled children and adults and older people, has been stopped or redirected, and funding for the VCSE sector has been decimated. Organisations and individuals have expressed a real concern that these will not return to at least previous levels. Many disadvantaged people do not have a safety net and will find it harder to recover from the crisis. The recovery strategy must ensure that support structures are reinstated with no one left behind, and that inequalities and low income that existed pre-Covid as well as those heightened by the pandemic will be tackled robustly with measurable outcomes.

In addition, pre-Covid levels of active volunteering in the VCSE sector have dropped significantly, with two thirds (65%) of the 82 organisations responding to a York CVS survey reporting that they had fewer people volunteering in April than in January. This contrasts with the large numbers of people offering to volunteer with the local authority and the NHS and largely unused. Organisations experienced in using volunteers are arguably better placed to understand and manage the requirements and complexities of volunteering including: safe recruitment and matching practices; supervision and support; training as appropriate; need for adequate resourcing; and need for strategic oversight.

- 4.2 *Focus on 'vulnerability'*. As used, the term implies dependence and lack of agency, autonomy and self-determination and is therefore stigmatising and dehumanising. The evidence from York shows that the government's broad-brush usage of 'vulnerable groups' as a way to impose measures like shielding and to give access to essential services is problematic. Some people placed in those groups (including some people over 70) were able to look after themselves as long as the environment was inclusive, for example the shopping hour for older and disabled people and key workers. On the other hand, some people who were not deemed 'vulnerable' (some disabled and older people, people in precarious housing, many women, unpaid carers including young carers, BAME people), could not access support easily or had existing support withdrawn or depleted.
- 4.3 *Communications*. Perhaps the most frequent message that came from York's civil society concerned contradictory, mixed or unclear messages emanating from the Government – or absence of messages in some areas - on how to respond to Covid-19. This led to many reports of people feeling not only confused but also insecure and unsafe. Early guidance online and in messaging through the media was too simplistic whereas the accompanying guidance was too complex and this did not improve over time. A particular concern was raised about the lack of parallel communication channels for some groups of disabled people and those whose first language is not English. Some disabled people previously able to travel independently on public transport, for example, lost independence as they were uncertain whether their journeys might be considered 'essential' and guidance on this never reached them. Older people previously urged not to answer the phone if the number was not known to them in order to avoid scams were now dependent on clearly written and timely communication through the post (which was largely absent) as 'welfare calls' from volunteers or home-based staff went unanswered.
- 4.4 *Digital divide*. The Government's measures demanded a level of competence in the use of technology. Concerns were also high about people of all ages who are not digitally connected at all, including because of lack of access to suitable equipment, support, adequate income, good enough reception or delays in Government schemes to supply laptops to schoolchildren.

A York CVS survey of 82 organisations in the voluntary, community and social enterprise (VCSE) sector reported in 64% of responses that digital exclusion has been an issue during the Covid-19 crisis, and 82% were particularly concerned about older people. For those with internet access it was noted that virtual meetings can democratise the ability to meet, talk and come together – but exclusion is made worse for those without access. The Government’s response to the pandemic has speeded up the changes already evident in society about the importance of digital inclusion, but the problem of digital exclusion has become glaringly obvious.

- 4.5 *Privacy issues.* There has been a more relaxed approach by agencies to data protection with the sharing of information between them. Most respondents felt that this had taken place in a respectful environment with the primary motivation being that of making sure people received the help they needed. Fears were expressed, though, that the future environment may not be so benign and that greater levels of surveillance may arise, particularly around the issue of ‘test and trace’.
- 4.6 *Reduced access to care and support.* The lockdown has resulted in significant reductions in the level of care and support and this has placed members of the community in a significantly vulnerable situation. Face to face contact with professionals has all but ended, and the York CVS survey reported that 72% of VCSE groups have had to close or put on hold some community services. Many organisations reported concerns about the limitations of online communication when dealing with sensitive matters, for example in counselling, and where face-to-face contact provides important additional layers of information and a different experience of social interaction. Respondents recorded their concerns that, for many, the impact on well-being and mental health would be long term. Concerns were also expressed that some newly recruited volunteers and volunteer groups had little understanding of safeguarding.
- 4.7 *The importance of community.* York has a vibrant community sector which has been much in evidence during the pandemic. Whether through finding creative ways to maintain ongoing relationships and services, or organising new initiatives like local WhatsApp support groups, York residents have stepped up to the plate to support each other. There has been an increased sense of co-operation and partnership during the pandemic, including at inter-agency level. One initiative brought together local restaurants to deliver 12,000+ meals to older, disabled and socio-economic disadvantaged people across the city using 60 volunteers. It not only provided much needed meals but also made people feel they mattered, illustrating so well Eleanor Roosevelt’s maxim that human rights begin in small places close to home.
- 4.8 *Local Government and Resilience.* Although the City of York Council has received a lot of praise for its response, this has not been enough to counteract the negative impact of the Government’s measures and it has also itself come in for some criticism.

The Council was quick to set up its Covid-19 helpline and consulted with organisations on the ground over where to place the Community Hubs, which have ‘taken a lot of the weight’ off front-line providers.

The Council has not eased statutory provisions in Children’s and Adult Services, even where the Coronavirus Act 2020 allowed for that, but many services were still cut because of Government measures and the lack of support for the VCSE sector. The Council has suffered huge cuts approaching 30% in central government funding over the last 10 years. Local services, both statutory and voluntary, have been ‘hollowed out’ through austerity making it nigh impossible

to foster resilience in a meaningful way. While some individual council officers have been praised highly for their partnership working, the Council has also been criticised for at times adopting a local 'command and control' model. For example, one organisation working with highly disadvantaged people was forced to close its Centre and change its operation as a result of the lockdown. Its Director was waiting to hear how their re-organised service might fit into a forthcoming wider plan to be announced by the Council. It was only when a council officer phoned to offer support that the Director realised that their organisation "was the plan" in the eyes of the Council, without consultation.

Respondents also referred to poor communication locally, with information distributed by York Council being good but only provided in one format and partly out of date by the time it arrived through letter boxes several weeks into lockdown.

Given the importance of the Civil Contingencies Act 2004 in local planning for emergencies like this, the question of why is York's plan not available as a document for public scrutiny was also asked.

5 What steps need to be taken to ensure that measures taken by the government are human rights compliant?

- 5.1 Our core message is that the time is long overdue for human rights to be at the very heart of both responses by national or local government and the evaluation or critique of policies and practices. Both are needed if we are to be serious about respecting human rights for all. Our submission is that the Government needs to respond to the themes that have emerged from our exploration of the human rights factors at a local level. It is overwhelmingly clear that the Government has failed to consider both the human rights of many people – including those they found all too 'easy to ignore' - and the vital role of the VCSE sector in both their planning and delivery. This has created chaos, confusion and inefficiency that would otherwise have been largely avoidable. Although such top down approaches may have been understandable in the early days, they have continued to be the hallmark of many aspects of the Government's response. As a first step, the Government needs to withdraw the Coronavirus Act 2020 and associated Regulations and replace them (where required) with legislation that is human rights compliant.
- 5.2 *Focus on equality.* The Government should stop using the terminology of 'vulnerability' and focus instead on equality, measured by outcomes. A renewed focus on promoting equality and non-discrimination and the importance of a decent standard of living, access to good quality education, [physical and mental] health and social care and a permanent, decent home will be essential to making the Government's response human rights compliant.
- 5.3 *Improving communications.* The Government needs to improve its communications strategy so that it is relevant and accessible to all. A human rights approach requires honesty and transparency and an inclusive approach.
- 5.4 *Ending the digital divide.* We note Sir Timothy Berners-Lee's assertion that the web should be recognised as a human right and built for the public good. Government needs to make sure that everyone has access to digital equipment and connectivity with the right level of financial and practical support to enable its meaningful use.

- 5.5 *Training in and awareness of human rights.* It was striking how several organisations responded that people – as individuals and employees - needed to understand human rights better in order to feel confident to recognise and challenge situations where rights may not be respected. Human rights should be embedded in staff training and culture, including across national and local government.
- 5.6 *The importance of community.* A greater recognition of the crucial role played by civil society is needed. Measures should be introduced to support the further development of the VCSE sector and to recognise that this is not only about service provision but also about being an independent voice able to articulate the needs of a diverse community and protect human rights. This should include recognition of the VCSE's skill, experience and knowledge concerning effective management of volunteers and required resource levels; and that a volunteering and a paid 'workforce' are complementary not interchangeable.
- 5.7 *Local Government and Resilience.* Resilience at local level will only be achieved if the national Government recognises the funding challenges faced by local Councils and financially supports them to meet those challenges. In turn this will enable them to foster and facilitate the growth of a strong civil society.

In conclusion, a key question raised by the Covid-19 pandemic is 'what kind of democracy do we want?' Human rights are a key building block of democracy. We have learnt that a state capable of acting quickly to protect the community is essential, and we have seen how significant resources can be found when needed. At a local level we have witnessed how the local Council working in partnership with the positive energy generated by the profusion of volunteering and civic action can enhance social cohesion at a time of crisis. We need a strong government, at both national and local levels, which takes responsibility for ensuring core services reach everyone not just a few privileged people, that has a deep understanding and respect for human rights, that demonstrates commitment to acting in partnership not only with each other but also with a well funded civil society, and that encourages and facilitates active citizenship.

15th July 2020

APPENDIX A

List of Organisations that provided evidence for the submission

1. Age UK York
2. Ageing Without Children (AWOC) York
3. Brunswick Organic Nursery
4. Carecent
5. Diversity Enterprises
6. Eleanor Worthington Prize for Art and Disability
7. HealthWatch York
8. Independent Domestic Abuse Services (IDAS)
9. Joseph Rowntree Foundation/ Joseph Rowntree Housing Trust
10. Lollipop – Social Support for children
11. MySight York
12. Older Citizens Advocacy York
13. Refugee Action York
14. Survive
15. The Supper Collective
16. Time To Be Out
17. York Amnesty Group
18. York Carers Centre
19. York City of Sanctuary
20. York Council for Voluntary Service
21. York Fair Trade Forum
22. York Food Justice Alliance
23. York Interfaith Group
24. York Older People’s Assembly
25. York People First
26. York Racial Equality Network
27. York Travellers Trust
28. York Trussell Trust

APPENDIX B

York: Human Rights City Network

FACT SHEET 1: CORONAVIRUS AND HUMAN RIGHTS

This fact sheet is a first attempt to capture the human rights implications of coronavirus, and responses to it. We will update the fact sheet in the coming weeks as required. We hope it will be of use to government and statutory agencies – notably the City of York Council, the NHS, the police – and community and voluntary groups. For the former, the fact sheet provides guidance on addressing human rights when making the difficult policy decisions required by the pandemic; for the latter organisations the fact sheet provides frameworks to support advocacy and the monitoring of policy as it impacts on individuals, families and communities and/or on issues of concern e.g. mental health, disability, refugees. Three main human rights contributions are set out below: ensuring responses enhance dignity, the right to life and non-discrimination alongside protecting the vulnerable; using human rights when balancing priorities and making difficult decisions; and optimising the link between disease and democracy.

Dignity, the right to life and non-discrimination

As is often the case, neutral sounding measures to combat coronavirus can lead to inadvertent discrimination. For example, ‘social distancing’ means little in crowded housing conditions and prisons, and may lead to stigmatisation of already marginalised groups and increased levels of domestic violence and child abuse; mass school closings may mean some children go without the only meal they receive every day, and add to gendered care-giving burdens. In any crisis response there is the danger of the tyranny of the majority – ‘herd immunity’ by implication sacrifices the vulnerable minority to protect the majority. The idea that ventilators could be rationed and certain groups, e.g. elderly or disabled people, essentially sacrificed, is abhorrent. Dignity and the right to life are not subject to balance and debate in this context (see below). In the context of coronavirus, vulnerability is contextual – for example, children who are often considered a vulnerable group are not especially at risk of contracting the virus or from the virus, but are a potential and unwitting threat to more vulnerable groups such as elderly people, or people with underlying health conditions. Other groups which may be particularly vulnerable include homeless people, those with mental illnesses, self-employed workers on casual contracts, people deprived of their liberty, migrants and refugees, those at risk of domestic violence or other abuse, and key workers, including health and social care workers. Such groups need, and are entitled to, specific protection at this time.

Balancing priorities, making difficult decisions

Human rights are often thought of in absolute terms (see above). While some rights are absolute, many are not. Human rights law recognises that there are circumstances when the enjoyment of (qualified or non-absolute) human rights may be restricted, subject to certain conditions being met. Public health is specifically named as a legitimate reason for instituting what are termed ‘public interest restrictions’ on such human rights. For example, all of us are currently experiencing restrictions on our freedom of movement and assembly because of coronavirus. But other issues are more contentious. Should it be much easier to hospitalise or sedate people who are mentally ill? Policy makers are faced with numerous trade-offs and difficult decisions at present. The first way in which human rights is useful is that it acknowledges these dilemmas – these decisions are difficult - and, as the boxed text (Box 1) from Clapham

Box 1

‘[Qualified or non-absolute] (h)uman rights do not really resolve the tension between competing interests and various visions of how the world should be; rather, human rights ideas provide the vocabulary for arguing about which interests should prevail and how best to achieve the ends we have chosen’.

(Clapham)

suggests, provides a vocabulary for balancing, debating and prioritising interests. Should access to public spaces like parks be restricted, and if so when? When and how should restrictions on freedom of movement be eased?

Human rights make a second contribution by outlining criteria on the basis of which difficult decisions to restrict human rights should be made. Any restrictions must pass a 3 part test: they must be provided by law, address a legitimate purpose, and be 'necessary in a democratic society'.

1. The 'provided by law' requirement means that restrictions to rights must be clearly formulated and be accessible to the general public (ideally in written form), so that individuals can shape their behaviour and foresee consequences if they fail to do so.
2. In order to lawfully restrict rights, governmental authorities must pursue legitimate purposes, which include the protection of health (as noted above) and public safety.
3. The phrase 'necessary in a democratic society' means that restrictions on rights should be required by and be proportionate to the threat they are designed to meet – they should not go beyond responding to the threat in scope (materially, geographically), nor be open-ended. Restrictions should not undermine the essence of democracy and human rights.

These criteria can be used by City of York Council and other statutory bodies in policy formation, and by civil society to assess whether they think the criteria have been fully and fairly applied (especially criteria 3).

Disease and democracy

Some governments around the world have used the crisis caused by coronavirus to curtail democracy, side-line opponents and silence civil society. Such responses would fail the 3 part test set out above. In the UK the government's response, if not always the implementation of regulations, has largely been proportionate. That said, in the coming weeks and months it is important to keep the following in mind: democracy and associated human rights provide the oxygen that will breathe life into an effective response to the virus – democracy at a local scale, as well as nationally. Those who wrongly believe that authoritarian responses are a quick fix in such crises forget the evidence from past pandemics - HIV, Zika, Ebola, H5N1, Severe Acute Respiratory Syndrome (SARS) and Middle Eastern Respiratory Syndrome (MERS). We know what is essential to managing the spread of such diseases, and we know that human rights need to inform responses: transparency and accurate information about risk, transmission and treatment (the right to information); the active engagement of populations (right to participation); and maintaining a climate that will encourage people at risk or ill to seek diagnosis and care, rather than avoid health services because they are afraid of stigma and punishment (non-discrimination, right to adequate health care, right to life).

At the heart of the current relationship between disease and democracy is the question of the kind of state we want. Coronavirus is a reminder that we need an effective and responsive state, including at local government level. No other organisation or mechanism could have responded effectively to the virus on the scale required. At its heart, human rights are rights claimed by individuals and groups from the state as duty bearer. Decades of privatisation and austerity have weakened this bond, but the state is now centre-stage. Money is being spent on health systems and infrastructure in an unprecedented manner. Human rights are needed not just as a negative shield against government interference, but also as a means to make positive claims on government. Basic social provision, including health, social security, and housing, is a fundamental human right. Lessons learned in crisis – the state matters; free health care for all is precious – should be remembered when life returns to normality, not just in the priority given to professions like nurses, doctors, and

carers, but also for the ongoing responses required by crises such as climate change. A key lesson from the coronavirus response is that we can find the resources to address issues if we want to.

Further information

- British Institute of Human Rights: <https://www.bihhr.org.uk/Listing/Category/corona-virus>
- Koldo Casla: <https://www.opendemocracy.net/en/transformation/coronavirus-beyond-human-rights/> and <https://www.acorrectionpodcast.com/phoneyeconomy/allmg4lx4xdsf4jx47px6wh69yt7gc>
- Richard Carver: <http://cendep.blogspot.com/2020/04/human-rights-in-age-of-pandemic.html>

York: Human Rights City Network

FACT SHEET 2 (May 2020)

CORONAVIRUS AND HUMAN RIGHTS

This series of fact sheets attempts to capture the human rights implications of coronavirus, and responses to it, with a particular focus on the city of York (UK). Human rights concerns identified in Fact Sheet 1 will appear as boxed text in summarised form in subsequent fact sheets, followed by evidence of the actual human rights implications of coronavirus. We hope these fact sheets will be of use to government and statutory agencies – notably the City of York Council, the NHS, the police – and community and voluntary groups. For the former, the fact sheets provides guidance on addressing human rights when implementing the difficult measures required by the pandemic; for the latter organisations they provide frameworks to support advocacy and the monitoring of policy as it impacts on individuals, families and communities and/or on issues of concern e.g. mental health, disability, the situation of refugees.

The local newspaper – *The Press* – is providing a day by day account of the effects of coronavirus on the city, and it is drawn on heavily as a source in this fact sheet. By 30 April 2020, 73 patients with coronavirus had died in York Hospital,¹ and 50% of York's 36 care homes had reported coronavirus outbreaks.² In terms of the full profile of coronavirus-effects, York appears to be doing well in some areas – in addition to the above data, for example, the Google Community Mobility Report has commended York as one of the best cities in the country for adhering to the lockdown.³ But it is faring less well on other matters. Spending in York has fallen by over 50%, the fifth biggest fall out of 80 larger cities in England and Wales. The main reasons cited are the closure of universities, and the end to tourism. Non-grocery shopping has collapsed, falling by 75%.⁴ In this fact sheet we set out three human rights contributions to ongoing efforts to combat coronavirus: ensuring responses enhance dignity, the right to life and non-discrimination alongside protecting the vulnerable; using human rights when balancing priorities and making difficult decisions; and optimising the link between disease and democracy.

¹ '73 Covid-19, Patients Die at Hospital', *The Press*, 30 April 2020, at:

<https://www.yorkpress.co.uk/news/18417544.four-patients-covid-19-die-york-trust-hospitals/>

² 'Coronavirus in Half Care Homes', *The Press*, 2 May 2020, at:

<https://www.yorkpress.co.uk/news/18421718.coronavirus-outbreaks-reported-half-yorks-care-homes/>

³ 'Coronavirus: York a Top City for Staying at Home - says Google', *The Press*, at:

<https://www.yorkpress.co.uk/news/18387312.coronavirus-york-top-city-staying-home---says-google/>

⁴ 'Spending in York Plummets 50% - City Faces Challenging Times Post-Lockdown', *The Press*, 23 April 2020, at:

<https://www.yorkpress.co.uk/news/18398038.coronavirus-spending-york-plummets---city-faces-challenging-times-post-lockdown/>

Dignity, the right to life and non-discrimination

Fact sheets will monitor 3 routes to discrimination, with implications for dignity and the right to life:

- 1) *Discrimination in access to health care*. For example, the idea that ventilators could be rationed and certain groups, e.g. elderly or disabled people, essentially sacrificed, is abhorrent.
- 2) *Inadvertent discrimination* may arise from neutral sounding measures to combat coronavirus. For example, 'social distancing' means little in crowded housing conditions and prisons, and may lead to stigmatisation of already marginalised groups and increased levels of domestic violence and child abuse; mass school closings may mean some children go without food.
- 3) *Contextual and structural discrimination*, meaning enhanced vulnerability relating to qualities of coronavirus itself or the nature of society with which it interacts. Children, often considered a vulnerable group, are not especially at risk of contracting the virus or from the virus. Other groups, however, may be particularly vulnerable including homeless people, those with mental illnesses, people deprived of their liberty, migrants and refugees, those at risk of domestic violence and other abuse, and key workers, including health and social care workers.

Many of these anticipated vulnerabilities and forms of discrimination can now, sadly, be supported by empirical data. Early on in the UK concerns were expressed about elderly and disabled people being denied medical treatment – the National Institute for Health and Care Excellence (NICE) was forced to redraft its guidance to the NHS that it should assess patients with conditions such as learning disabilities and autism as scoring high for 'frailty', meaning they could be refused treatment because they needed support with personal care in their everyday lives.⁵ Human rights prescribes that access to medical care, in particular in situations of scarce resources, should be equal and guided by medical criteria – in short, decisions about the efficacy of treatment are not the same as judgements about the quality of a person's life, and as such no blanket measures excluding categories of people are permitted.⁶ Recent evidence has made it clear that coronavirus is disproportionately affecting ethnic minorities, and people living in poverty.⁷

A final example relates not to the effects of the virus, but to the effects of governmental responses to the virus. Very significant concerns have been raised about the 'Adoption and Children (Coronavirus) (Amendment) Regulations 2020', which came into force on 24 April 2020 (are not due to expire until 25 September 2020, and may be extended).⁸ These concerns relate to the dilution of social care and protection for some of the most vulnerable children in the country (those in care),

⁵ Frances Ryan, 'It Is Not Only Coronavirus That Risks Infecting Society – Our Prejudices Do To', *The Guardian*, 9 April 2020, at https://www.theguardian.com/commentisfree/2020/apr/09/nice-guidelines-coronavirus-pandemic-disabled?CMP=Share_iOSApp_Other

⁶ Council of Europe Committee on Bioethics, 'Statement of the Committee on Bioethics: Human Rights Principles Must Guide Health Decisions', Strasbourg 14 April 2020. A broader set of concerns are addressed in Oliver Lewis, 'Disability, Coronavirus, and International Human Rights', Doughty Street Chambers, 21 March 2020, at <https://insights.doughtystreet.co.uk/post/102g27s/disability-coronavirus-and-international-human-rights>

⁷ Lucinda Platt and Ross Warwick, 'Are Some Ethnic Groups More Vulnerable to COVID-19 Than Others?' Institute for Fiscal Studies, May 2020, at <https://www.ifs.org.uk/uploads/Are-some-ethnic-groups-more-vulnerable-to-%20COVID-19-than-others-V2-IFS-Briefing-Note.pdf>

⁸ For more general discussion of the short and long term impact of the virus on children, see Silvia Camporesi, 'It Didn't Have to Be This Way: A Bioethicist at the Italian Coronavirus Crisis Asks: Why Don't We Talk About the Trade-offs of the Lockdown?' 27 April 2020. At: <https://aeon.co/essays/a-bioethicist-on-the-hidden-costs-of-lockdown-in-italy>; and Aoife Nolan, 'A Child Rights Crisis', *London Review of Books* blog 6 May 2020, at https://www.lrb.co.uk/blog/2020/may/a-child-rights-crisis?utm_campaign=20200509%20icymi&utm_content=ukrw_subs_icymi&utm_medium=email&utm_source=LRB%20icymi

the lack of consultation about the new regulations, and to fears that for a government sceptical about these protections the coronavirus crisis is being used as a cover to dilute hard-won protections, and that temporary measure may become permanent.⁹ In short, while it is frequently claimed that we are all in this together and that coronavirus does not discriminate, it is now clear that neither of these statements is completely true. Rather than being a great leveller coronavirus is holding up a mirror, highlighting and possibly accentuating the divides and inequalities that characterise our country, through intersecting forms of inequality and discrimination – in access to health care, and through inadvertent, contextual and structural discrimination.

While the issues set out in the paragraph above are national level concerns, they will all affect York – for example, local authorities deliver social care and protection for children in care. Annual indicator reports produced by the York: Human Rights network have found that inequality in the city is a cross-cutting concern, on issues ranging from educational attainment to life expectancy, child poverty and ‘in work’ poverty.¹⁰ There are already clear signals that coronavirus is affecting the vulnerable, fuelling discrimination and exacerbating inequalities in York. Examples include claims asserting the neglect of elderly people in care homes;¹¹ reports of patient discrimination towards health staff;¹² Citizens Advice York figures indicating an increase in foodbank voucher referrals by 150% and of universal credit claims by 200% during lockdown;¹³ and reports from the Samaritans of a ‘huge rise’ in calls seeking help, notably from in relation to domestic violence and mental health issues.¹⁴ Local authorities, including the City of York Council, are helping vulnerable groups in various ways, such as supporting Community Hubs, but it is clear that ongoing vigilance will be needed to ensure that dignity, the right to life and non-discrimination are enhanced and not diminished during the pandemic and its aftermath. Such work will need to address discrimination in all its forms - in access to health care, and through inadvertent, contextual and structural discrimination.¹⁵

Balancing priorities, making difficult decisions

‘[Qualified or non-absolute] (h)uman rights do not really resolve the tension between competing interests and various visions of how the world should be; rather, human rights ideas provide the

⁹ A *Guardian* editorial noted: ‘The removal of protections in 10 sets of regulations relating to the care of looked-after children in England, with no public consultation or parliamentary debate, must be seen for what it is: an attack on their rights’. ‘The Removal of Important Protections from Children in Care is a Grim Indicator of Ministerial Priorities’, 28 April 2020. For further criticisms of the regulations, see the Children’s Commissioner, ‘Statement on Changes to Regulations Affecting Children’s Social Care’, 30 April 2020, at <https://www.childrenscommissioner.gov.uk/2020/04/30/statement-on-changes-to-regulations-affecting-childrens-social-care/>; and Joanna Lucas, Albion Chambers, at <https://www.albionchambers.co.uk/chambers-news/adoption-and-children-coronavirus-amendments-regulations-2020>.

¹⁰ The indicator reports can be found at: <https://www.yorkhumanrights.org/current-work/>

¹¹ ‘Coronavirus: “They’re Playing Russian Roulette with Residents” Says Care Home Boss’, *The Press*, 13 April 2020, at: <https://www.yorkpress.co.uk/news/18373194.coronavirus-theyre-playing-russian-roulette-residents-says-care-homes-boss/>

¹² ‘“It is Upsetting”: York Healthcare Staff Face Discrimination During Pandemic’, *The Press*, 22 April 2020, at: <https://www.yorkpress.co.uk/news/18395124.it-upsetting--york-healthcare-staff-face-discrimination-pandemic/>

¹³ ‘Coronavirus: Universal Credit Calls to Charity Rocket by 200% During Lockdown’, *The Press*, 25 April 2020, at: <https://www.yorkpress.co.uk/news/18404501.coronavirus-universal-credit-calls-charity-rocket-200-lockdown/>

¹⁴ ‘York Samaritans See Surge in Calls During Lockdown’, *The Press*, 4 May 2020, at: <https://www.yorkpress.co.uk/news/18420508.york-samaritans-see-surge-calls-lockdown/>

¹⁵ For the City of York Council work to support the vulnerable, see <https://www.york.gov.uk/C19CYCStaff/VulnerablePeople> - the NGO JustFair is documented what local authorities in the North East of England are doing to protect vulnerable people, at: <http://justfair.org.uk/north-east/>

vocabulary for arguing about which interests should prevail and how best to achieve the ends we have chosen'. Clapham

While some human rights are absolute, many are not. Human rights law recognises that there are circumstances when the enjoyment of (qualified or non-absolute) human rights may be restricted, subject to certain conditions being met. Public health is specifically named as a legitimate reason for instituting what are termed 'public interest restrictions' on such human rights. For example, all of us are currently experiencing restrictions on our freedom of movement and assembly because of coronavirus. Policy makers are faced with numerous trade-offs and difficult decisions at present.

The first way in which human rights is useful is that it acknowledges these dilemmas – these decisions are difficult - and, as the quote from Clapham suggests, provides a vocabulary for balancing, debating and prioritising interests e.g. When and how should restrictions on freedom of movement be eased?

Human rights make a second contribution by outlining criteria on the basis of which difficult decisions to restrict human rights should be made. Any restrictions must pass a 3 part test: they must be provided by law, address a legitimate purpose, and be 'necessary in a democratic society'.

1. The 'provided by law' requirement means that restrictions to rights must be clearly formulated and be accessible to the general public (ideally in written form).
2. In order to lawfully restrict rights, governmental authorities must pursue legitimate purposes, which include the protection of health (as noted above) and public safety.
3. The phrase 'necessary in a democratic society' means that restrictions on rights should be required by and be proportionate to the threat they are designed to meet – they should not go beyond responding to the threat in scope (materially, geographically), nor be open-ended. Restrictions should not undermine the essence of democracy and human rights.

These criteria can be used by City of York Council and other statutory bodies in policy formation, and by civil society to assess whether the criteria have been fully and fairly applied (especially criteria 3).

The clearest example of the need to balance interests and rights in York to-date has been the issue of whether and how funerals should be held during the pandemic. On 9 April 2020, the City of York Council banned mourners and stopped funeral services at York crematorium. The dead were to be subject to 'direct cremations' until further notice.¹⁶ There was recognition that this would be heart-breaking for the families of the deceased. The fact that families could not visit loved ones in hospital, nor attend their funerals, for fear of further infections had to be balanced against public health concerns and the safety of crematorium staff. There was a strong public response against this measure, and a petition quickly started to gather signatures. By 11 April the City of York Council agreed that a celebrant or minister could perform a short service, which would be filmed free of charge, and up to 10 mourners could attend but would have to remain outside the crematorium.¹⁷ The backlash continued, asserting that these compromises were not enough. Petition organiser, Kelsey Dobson, stated

¹⁶ 'Funeral Services and Mourners to be Barred from York Crematorium from Tomorrow', *The Press*, 8 April 2020, at: <https://www.yorkpress.co.uk/news/18366421.funeral-services-mourners-barred-york-crematorium-tomorrow/>

¹⁷ 'Coronavirus: Council Says Funeral Services CAN Happen – But Mourners Must Remain Outside', *The Press*, 11 April, 2020, at: <https://www.yorkpress.co.uk/news/18374799.coronavirus-council-says-funeral-services-can-happen---mourners-must-remain-outside/>; City of York Council Press Release, 'Confirmation of Guidance for York Crematorium', 11 April 2020, at: <https://www.york.gov.uk/news/article/143/confirmation-of-guidance-for-york-crematorium>

that ‘Whilst yesterday’s renewed guidelines allow immediate family outside the crematorium, this still refuses immediate family their right to be with their loved one during the service’.¹⁸ On 14 April the Council confirmed that up to 10 immediate family members could attend the crematorium, and a short ceremony held outdoors.¹⁹ This is a good example of balancing, with a sensible compromise reached through public debate. Public health concerns had to be weighed against other priorities and rights, notably the right to respect for private and family life, freedom of religion and belief, and to freedom of assembly and association. All of these rights are protected within the 1998 Human Rights Act.²⁰ Such balancing acts often involve everyday issues, and as such are an important means to engaging the majority of the public, and not just vulnerable groups, in discussions about the relevance of human rights to their lives.

Disease and democracy

‘We don’t do charity in Germany. We pay taxes. Charity is a failure of governments’ responsibilities.’
Henning When, a German comedian, at the start of the pandemic

There are two issues at stake in this final section.

- 1) The question of what degree of transparency and openness is required in public decision-making at times of crisis. Democracy and associated human rights provide the oxygen that will breathe life into an effective response to the virus – democracy at a local scale, as well as nationally. Those who wrongly believe that authoritarian responses are a quick fix in such crises forget the evidence from past pandemics - HIV, Zika, Ebola, H5N1, Severe Acute Respiratory Syndrome (SARS) and Middle Eastern Respiratory Syndrome (MERS). We know that human rights need to inform responses: transparency and accurate information about risk, transmission and treatment (the right to information and expression); the active engagement of populations (a cross-cutting principle of participation); and maintaining a climate that will encourage people at risk or ill to seek help, rather than avoid health services because they are afraid of stigma and punishment (non-discrimination, right to adequate health care, right to life).
- 2) The issue of state capacity and the kind of state – local government and national government – that we want.

At times of crisis, it is inevitable that the weight in decision-making shifts from consultation to direction, and from elected representatives to experts and civil servants. But here again it is important that a balance is maintained, with oversight of and limits to new arrangements. At a national level there have been calls, for example, for greater transparency about the composition of, and advice given by, SAGE – the Scientific Advisory Group for Emergencies.²¹ In York, a basic question is how many residents would be able to say how decisions are currently being made in the city? While the City of York Council has a webpage dedicated to ‘Councillors and local democracy’, which includes urgent decision-making guidance and details a focus on executive and regulatory

¹⁸ ‘Council leader says Mourner Ban Petition Will be Considered “Fully and Fairly”’, *The Press*, 13 April 2020, <https://www.yorkpress.co.uk/news/18376181.council-leader-says-mourner-ban-petition-will-considered-fully-fairly/>

¹⁹ City of York Council Press Release, ‘Additional Arrangements for Families at York Crematorium’, 14 April 2020, at: <https://www.york.gov.uk/news/article/145/additional-arrangements-for-families-at-york-crematorium>

²⁰ For more on the Act, see: <https://www.equalityhumanrights.com/en/human-rights/human-rights-act>

²¹ ‘No 10 Faces Calls to Lift the Secrecy Around Covid-19 Advisory Group’, *The Guardian*, 14 April 2020, at: <https://www.theguardian.com/uk-news/2020/apr/14/no-10-secrecy-around-sage-coronavirus-advisory-group>

functions,²² these new arrangements have been subject to virtually no press coverage or public debate. Concerns have been raised by opposition political representatives and some members of the public that key decisions are not in the hands of elected members, and that there is limited input into and oversight over decision-making e.g. decision logs have not been published in a timely fashion, and often lack detail.²³ While a full assessment of the Council's response to the crisis will take time, it is important to frame the parameters for this discussion now.

At the heart of the current relationship between disease and democracy is the question of the kind of state we want. Coronavirus is a reminder that we need an effective and responsive state, including at local government level. No other organisation or mechanism could have responded effectively to the virus on the scale required. Money is being spent on health systems and infrastructure in an unprecedented manner. In essence, human rights are rights claimed by individuals and groups from the state as duty bearer. Decades of privatisation and austerity have weakened this bond, but the state is now centre-stage. Human rights are needed not just as a negative shield against government interference, but also as a means to make positive claims on government. Basic social provision, including health, social security, and housing, is a fundamental human right. The realities of crisis – the state matters; free health care for all is precious – should be remembered when life returns to normality, not just in the priority given to nurses, doctors, carers, and other key workers, but also for the ongoing responses to crises such as climate change.

A key lesson from the coronavirus response is that we can find the resources to address issues if we want to. A second lesson is that the positive energy from the profusion of volunteering, civic action and Community Hubs (run by council staff and volunteers, to deliver food and medication, check in on vulnerable people, etc.) needs to be tapped to enhance social cohesion, while not by intent or default replacing the state as the main means of service provision. Charity and volunteering are important, but Henning When (above) has a point – these activities cannot and should not replace government. Finally, the legacy of coronavirus for the state will be complex. It will have expanded its role significantly in some areas, such as the economy, at least in the short term; but it will have contracted in other areas, such as social care and protection for children. If we want a human rights city, or a human rights state, we will need to be clear about what kind of government we desire, and vigilant in campaigning to bring it about.

Further information

- British Institute of Human Rights: <https://www.bihhr.org.uk/Listing/Category/corona-virus>
- Koldo Casla: <https://www.opendemocracy.net/en/transformation/coronavirus-beyond-human-rights/> and <https://www.acorrectionpodcast.com/phonyeconomy/allmg4lx4xdsf4jx47px6wh69yt7gc>
- Richard Carver: <http://cendep.blogspot.com/2020/04/human-rights-in-age-of-pandemic.html>

²² See: <https://www.york.gov.uk/COVIDDemocracy> - The Centre for Public Scrutiny is providing support for local authorities on governance and scrutiny, on behalf of the Local Government Association, at <https://www.cfps.org.uk/covid-19-notice/>

²³ Published decisions are available at: <https://democracy.york.gov.uk/mgDelegatedDecisions.aspx?&RP=0&K=0&V=0&DM=0&HD=0&DS=2&Next=true&META=mgdelegateddecisions&DR=08%2f04%2f2020-22%2f04%2f2020>