

Unequal Impact: Coronavirus (Covid-19)
and the impact on people with protected characteristics
Discrimination Law Association response

Introduction

The Discrimination Law Association (“DLA”), a registered charity, is a membership organisation established to promote good community relations by the advancement of education in the field of anti-discrimination law and practice. It achieves this by, among other things, the promotion and dissemination of advice and information, and the development and co-ordination of contacts with discrimination law practitioners and similar people and organisations in the UK and internationally. The DLA is concerned with achieving an understanding of the needs of victims of discrimination amongst lawyers, law-makers and others and of the necessity for a complainant-centred approach to anti-discrimination law and practice. With this in mind the DLA seeks to secure improvements in discrimination law and practice in the United Kingdom, Europe and at an international level.

The DLA is a national association with a wide and diverse membership. The membership currently consists of over 300 members. Membership is open to any lawyer, legal or advice worker or other person substantially engaged or interested in discrimination law and any organisation, firm, company or other body engaged or interested in discrimination law. The membership comprises, in the main, persons concerned with discrimination law from a complainant perspective.

The Committee calls for written evidence on people’s experience of Covid-19 and for suggestions for improvements in the short-term and the medium to long-term:

Experience:

1. How people have been affected by the illness or the response to it.
2. If there have been specific impacts on people due to them having a protected characteristic
3. Whether there may be unforeseen consequences to measures brought in to ease the burden on frontline staff, for example relaxing the measures under the Mental Health Act and Care Act)

Answer:

The DLA has prepared this initial response within the short timeframe given by the Select Committee. However, the DLA may provide a further response, when we have

received fuller response from our membership of how the Covid-19 crisis has impacted on people with the range of protected characteristics covered by the Equality Act 2010. The DLA will answer questions 1 and 2 together as everybody has a protected characteristic.

Pregnancy and Maternity discrimination:

One of our members, an employment and discrimination solicitor, has observed in their practice: they have more inquiries and instructions from pregnant clients. The new Coronavirus Regulations lists any person who is pregnant as a vulnerable person and guidance from Public Health England advises vulnerable persons to physically distance. This is possible to do if the vulnerable person can work remotely from home, but if they're classed as a key worker or they don't have the luxury of being able to carry out their work from home then this can cause a serious dilemma for the pregnant key-worker.

In these cases, it is preferable for pregnant employees to be medically suspended on full pay, however what we are seeing often happen to our clients is their employer stating that they must come in or face dismissal / be put on Statutory Sick Pay (SSP).

We believe that this is an unacceptable position. Forcing pregnant key-workers to choose between the need to pay their bills or protect theirs and the health of their unborn babies is having a detrimental discriminatory impact on the pregnant key-workers.

Disability:

Some disabled people are more at risk of contracting Covid-19, being seriously ill or dying for a combination of factors, including: lack of information in an accessible format, inability to physical distance, having their needs met in congregate care facilities and a higher risk of a worsening outcome due to co-morbidities such as respiratory disease, heart disease, immune system deficiencies, diabetes and obesity.

At present, there is a dearth of information in an easy-read format. The latest government information is not always provided in alternative formats for people who have hearing impairments, visual impairments and other impairments. At a time when information is fast-changing, it is difficult to follow Government guidelines, if the potentially life-saving information is not adequately communicated to the entire population.

One of our members works in community care law, their clients are also classified as vulnerable pursuant to the Government's guidance and they cannot physically distance because they rely upon their eligible care and support needs being met by carers. Therefore, they are reliant upon their carers having adequate Personal Protection Equipment (PPE) and access to Covid-19 testing. Presently, neither adequate PPE or testing is available to the clients carers. Most of the carers will work in different settings. Meaning that the clients are living in a daily state of fear where they don't know whether the carer that they rely upon to live in a dignified and hygienic state will give them Covid-19. Some vulnerable clients have not allowed access to

their carers because of this fear meaning that these vulnerable clients are not able to stay clean and live in dignity, as they fear death.

This risk of serious outcomes for some disabled people is heightened in congregated care facilities. Care staff in such settings pose the same risk of spreading the virus to vulnerable service-users as the people who are cared for at home for the same reasons. Additionally, of course, congregated care facilities are 'breeding grounds' for infection and in our members experience there has been a lack of impetus from local authorities and the NHS in moving people out of these congregated care facilities.

The other factor is the mental impact on disabled persons of physical distancing, while it is understandable that vulnerable persons are not able to have personal visits from friends and relatives during the crisis, there is no reason why they cannot still keep in touch with friends and relatives using the various modern media tools of communication. It is an indictment on some local authority social care provision that litigation had to occur before isolated service-users were provided with I pads to maintain contact with their friends and relatives.

Age

One of our members who is over-70 was concerned about the arbitrary definition that every person over 70 is vulnerable. When somebody at the age of 75 may be much healthier than a 69 year old. It is felt that the definition should be in respect of health conditions and not because of somebody's age.

Additionally, older people who live in congregated care facilities or receive care and support in the community are exposed to the same risks of infections and loneliness and mental ill health as detailed above in respect of persons with disabilities.

Further, there is a fear among older people that they would not get treated at hospital if they contracted Covid-19.

Access to scarce Health Resources:

The fear among doctors and patients is that the demand/need for vital healthcare equipment outstrips supply causing doctors to make decisions that no doctor ever wishes to make to whom receives the vital equipment. Presently, there are no Department of Health statutory guidelines for clinicians to follow when placed in this invidious position, they are following British Medical Association (BMA) Guidance and whatever legal advice their employer may have provided from the Queens Counsel (QC) that they instructed. The effect of published statutory guidance would be that the criteria for clinicians to decide whom receives the vital treatment is the same throughout the Country and that the public can clearly see how the criteria would be applied. Additionally, the guidance would be assessed for its potentially discriminatory impact on people with protected characteristics, such as age and disability.

Unfortunately, the language of our government throughout this crisis has led people with disabilities and older people to believe that they are 'expendable'. When the British public started dying of the virus in early March 2020, the death was always reported in the media from official sources that the deceased was either over 70 or

had underlying health conditions or both. Further, the government's initial reported comments on 'building up herd immunity' only served to cement the view among the most vulnerable in society that their lives didn't matter or didn't matter as much.

One of our members who works in community care law, has found that one of his clients, an adult with learning disabilities has been told by his support worker that he would not get treated if he contracted Covid-19. The client does not have any respiratory problems. Unfortunately, miscommunication and misunderstanding about this issue is real and will prevent vulnerable people from seeking treatment.

3. Whether there may be unforeseen consequences to measures brought in to ease the burden on frontline staff, for example relaxing the measures under the Mental Health Act and Care Act)

Answer:

In the experience of our member who practices community care law, his observations of relaxations so far is that the local authority in his area is using the Coronavirus Act 2020 easements guidance as an excuse not to provide care and support to vulnerable people. This is despite the local authority not going through the formal procedure specified in the statutory guidance to disapply the Care Act duties and refusal to exercise their discretionary powers. In this specific and extreme case, the consequences of the local authorities' failure to provide care and support may breach the client's rights pursuant to Article's 3 and 8 to schedule 1 of Human Rights Act 1998, namely prohibition of torture and inhuman or degrading treatment or punishment and the right to respect for private and family life.

Additionally, a member who practises housing law has found that local authorities are using the crisis as an excuse not to accommodate homeless people or not to accommodate them in suitable interim accommodation, despite the fact that Housing Act duties were expressly not included in the easement measures. As a consequence, vulnerable persons are not able to follow government advice to keep clean and stay off the streets because of the Covid-19 crisis, because that local authority has wrongly used the easements to justify not carrying out their statutory duties under the Housing Act 1998.

Reviewing the measures

The Government has said current measures will be reviewed in three weeks' time, and measures in the Coronavirus Bill be voted on again in 6 months' time.

1. What needs to change or improve, which could be acted on in three weeks' time;
2. What needs to change or improve, which could be acted on in 6 months' time.

Answer:

In respect of the safety of people with disabilities and older people at this time, there needs to be adequate provision of PPE and screening of carers both in the short-term and the long-term.

In the short-term, as many people in congregated care facilities need to be moved out of these settings as possible and in long-term, vulnerable people being cared for in congregated care facilities needs to be minimised.

In the short-term Local authorities need to ensure that vulnerable people have the ability to maintain contact with loved ones even if it is as simple as purchasing an Ipad out of the social care budget and showing the service user how to use it. In the long-term, there will need to be greater provision of mental health services for physically isolated people to deal with the long-term impact of isolation on a persons' mental health and wellbeing.

In the short-term, in respect of rationing of vital health equipment such as ventilators, there needs to be an urgent public conversation as to how this equipment is allocated and this has to be communicated to all sections of statutory guidance issued by the Department of Health which has went through Equality Impact Assessments pursuant to s.149 of The Equality Act 2010- Public Sector Equality Duty as to how NHS health professionals decide who receives the potentially life-saving equipment. It is hoped that this clarity that the decision as to whom may get crucial life-saving equipment if demand for the equipment outstrips supply will dispel the fear among disabled and older people that they simply won't receive the healthcare.

In the long-term, the easements powers given to the local authorities and health bodies to relax their duties towards the most vulnerable in society needs to be reviewed to assess whether it achieved its objective or was actually counterproductive and causing the vulnerable people not to be able to follow government guidance. As well as being used as an excuse for some 'rogue' local authorities to evade their responsibilities.

Discrimination Law Association
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