



Liberation's individual submission for the United Nations Universal Periodic Review of the United Kingdom (4th Cycle): March 2022

Liberation is a recently formed, user-led organisation, which began during the second half of 2020. Liberation works as a grass roots group. Its aim is to promote full human rights for people with lived experience of a mental health diagnosis/mental trauma, in particular the fundamental rights set out in the United Nations Convention on the Rights of Persons with Disabilities (UNCRPD). Liberation's focus is on adults. Its work includes an especial emphasis on human rights for people with lived experience who encounter more than one form of discrimination. Liberation operates in England, but has links with other countries both inside and outside the UK. The views expressed in this submission stem from Liberation's members.

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Introduction

1. In line with Liberation's organisational aims, this submission will particularly address human rights of adults with lived experience of a mental health diagnosis/mental trauma in England. The focus will be on five key areas which relate to the review in 2017 and/or are interlinked with the recommendations in that review:

- The UK government's Bill of Rights
- Socio-economic and healthcare issues
- Discrimination
- The government's proposed reform of the Mental Health Act 1983
- The extent to which people with lived experience have a meaningful influence over law and policy which affect them.

2. Because Liberation's focus is the UNCRPD, there will also be a particular, though not exclusive emphasis on this in our submission.

The UK government's Bill of Rights

3. The government's intention is to replace the Human Rights Act (HRA) 1998¹ with a Bill of Rights².

4. If there is to be genuine progress, it will be important for the Bill of Rights not only to maintain the protection of human rights currently provided by the HRA, but to address human rights issues not yet covered by the HRA, in particular the right of people with lived experience of a mental health diagnosis/mental trauma to have equal recognition before the law (Article 12 of the UNCRPD) and liberty and security of the person (Article 14 of the UNCRPD).

5. However, so far from strengthening recommendation 134.75 in the matrix of recommendations from the last Review, the Bill of Rights appears likely to weaken the HRA considerably and so to be in conflict with previous Review recommendations (134.67-134.76 in the matrix). For example:

- Changes proposed run the risk of weakening links between the European Court of Human Rights and UK law
- If the government no longer has to state and explain why a piece of law is incompatible with human rights, legislation of the latter type could well increase
- It is already difficult for people with lived experience of a mental health diagnosis/mental trauma to bring a court case for discrimination (*Carr et al*,

¹ *Human Rights Act 1998, c. 42*. Available at: <https://www.legislation.gov.uk/ukpga/1998/42/contents> (Accessed: 28 March 2022)

² Ministry of Justice (2021) *Human Rights Act Reform: A Modern Bill of Rights. A Consultation to Reform the Human Rights Act 1998*. Available at: https://consult.justice.gov.uk/human-rights/human-rights-act-reform/supporting_documents/humanrightsreformconsultation.pdf (Accessed: 28 March 2022)

2019)³. If people now have to demonstrate that they have suffered ‘a significant disadvantage’ before they can bring a court case, this is likely to add further to the difficulties

- Suggestions of avoiding ‘costly human rights litigation’ and of taking account both of the impact on public services and a claimant’s general conduct when deciding compensation are clear breaches of human rights
- It seems very possible that public bodies will be able to act more easily in ways that are not compatible with human rights if they can now justify their behaviour on the basis of compliance with primary legislation alone, or of changes in how laws are now interpreted
- The suggestion that ‘deportations made in the public interest’ should not be ‘frustrated by human rights claims’ is again a clear breach of human rights.

6. Consultation processes used also fell well short of enabling consultation with civil societies (recommendation 134.76 in the matrix) on any adequate level. For example, the consultation questions were unduly technical. In addition, an actual easy read version of the consultation⁴ was not published until the last minute after protests about the lack of it from Disabled people and was of poor quality as well. As a result, people who need easy read documents in order to participate were strongly disadvantaged.

7. Recommendation

- **The government should both retain the current content of the HRA and strengthen the Bill of Rights further in line with Articles 12 and 14 of the UNCRPD, before the Bill is enacted.**

Socio-economic and healthcare issues

8. As Pollard (2022)⁵ demonstrates in his report, people with lived experience of a mental health diagnosis/mental trauma are not infrequently living in such poverty that they lack money for basic essentials such as food, heating and rent. Not only have welfare benefits fallen increasingly short of basic living costs, but people have found that organisations such as the Department of Work and Pensions have caused them huge additional stress through inaccessible and bureaucratic systems. A lack of support with finding employment and/or having access only to low paid work have

³ Carr, S. *et al* (2019) ‘“Keeping control”: a user-led exploratory study of mental health service user experiences of targeted violence and abuse in the context of adult safeguarding in England’, *Health and Social Care in the Community*, 27(5), pp. e781-e792. Available at: <https://onlinelibrary.wiley.com/doi/full/10.1111/hsc.12806> (Accessed: 28 March 2022)

⁴ Ministry of Justice (2022) *Human Rights Act. Easy Read Version*. Available at: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1059086/human-rights-final-easy-read.pdf (Accessed: 4 March 2022)

⁵ Pollard, T. (2022) *Pushed to the Edge. Poverty, Food Banks and Mental Health*. Available at: <https://uploads.strikinglycdn.com/files/dd06f2f2-bea9-46ff-941c-1d8849dce077/Mental%20Health%20Report%20-%20Final%200303.pdf> (Accessed: 4 March 2022)

proved to be additional problems. A factor which might be added to the findings from Pollard's report is the crisis in social care funding for local authorities⁶. The outcome has been that social care has been falling well short of people's needs, still more so during the Covid-19 pandemic when local authorities were struggling to cope with the pressures of that.

9. Just Fair's report (2021)⁷ for the UN Special Rapporteur on Extreme Poverty and Human Rights shows the dire straits experienced by people who cannot access public funds because they are immigrants, including the disproportionate impact of the legislation concerned on those with protected characteristics such as Disabled people.

10. The chancellor took a certain amount of action to ease financial pressures for people receiving welfare benefits during the Covid-19 pandemic, for example he temporarily raised Universal Credit by £20 a week for people receiving that particular benefit. However, the rise has now been withdrawn and, despite recent, spiralling costs for basic essentials such as food, heat and rent, the chancellor's spring budget has done almost nothing to support people experiencing particular poverty, despite recommendations 134.164 and 134.163 in the matrix. Pring (2022)⁸ has illustrated clearly the devastating impact of this for Disabled people.

11. Not only have people with lived experience traditionally received poorer healthcare than other community members, but they, like other Disabled people, have been disproportionately represented amongst those who have died during the Covid-19 pandemic⁹.

12. In these senses, recommendation 134.81, 134.166, 134.63 and 134.165 in the matrix have not been met adequately.

13. Recommendations

⁶ The King's Fund (2019) *More people asking for social care support but fewer getting it*. [Press release]. 26 April. Available at: <https://www.kingsfund.org.uk/press/press-releases/social-care-system-crisis-point> (Accessed: 17 March 2022)

⁷ Just Fair (2021) *Social Protection: A Reality Check*. Available at: <https://justfair.org.uk/wp-content/uploads/2021/12/Social-protection-a-reality-check-Just-Fair-and-Project-17.pdf> (Accessed: 4 March 2022)

⁸ Pring, J. (2022) 'Disbelief at chancellor's "appalling refusal" to target support on disabled people'. *Disability News Service*, 24 March. Available at: <https://www.disabilitynewsservice.com/disbelief-at-chancellors-appalling-refusal-to-target-support-on-disabled-people/> (Accessed: 25 March 2022)

⁹ Scott, E. (2021) *Covid-19 pandemic: impact on people with disabilities*. Available at: <https://lordslibrary.parliament.uk/covid-19-pandemic-impact-on-people-with-disabilities/> (Accessed: 28 March 2022)

- **The government should put immediate measures in hand to tackle effectively the major poverty in which many Disabled people are living**
- **Disproportionate deaths of Disabled people during the Covid-19 pandemic should receive a clear focus as part of the current public inquiry¹⁰ (HM Government, 2022) into the handling of the pandemic**

Discrimination

14. A key issue for the UK government is to address concerns that it is failing to take an adequate stance against discrimination, including intersectional discrimination, may in fact be taking a discriminatory stance. For example:

- The government has endorsed the report from the Commission on Race and Ethnic Disparities (2021)¹¹. Although the report contains some useful material, it fails to give weight to the reality of structural racism in the UK. As a result, its recommendations fall seriously short of those actually needed if racism in the UK is to be addressed effectively
- The Nationality and Borders Bill (2021)¹² contains troubling aspects which further undermine the UK's existing asylum system and breach the UK's international obligations; these breaches include penalising refugees and asylum seekers who arrive through irregular routes such as Channel crossings when they have no other option
- There is disturbing evidence of sexism, racism, bullying and homophobia amongst police (Independent Office for Police Conduct, 2022)¹³
- There are continuing shortfalls in steps taken by the government to address discrimination against people who identify as lesbian, gay, bisexual, transgender, or queer plus (LGBTQ+), as has been highlighted by Stonewall (2021)¹⁴
- Reports of hate crime against Disabled people, including people with lived experience of a mental health diagnosis and those experiencing

¹⁰ HM Government (2022) *COVID-19 Inquiry Terms of Reference*. [Press release]. 10 March. Available at: <https://www.gov.uk/government/news/covid-19-inquiry-terms-of-reference> (Accessed: 14 March 2022)

¹¹ Commission on Race and Ethnic Disparities (2021) *The Report*. Available at: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/974507/20210331_-_CRED_Report_-_FINAL_-_Web_Accessible.pdf (Accessed: 25 March 2022)

¹² *Nationality and Borders Bill* (2021) Parliament: House of Commons. Bill no. 138. Available at: <https://bills.parliament.uk/bills/3023> (Accessed: 22 March 2022)

¹³ Independent Office for Police Conduct (2022) *Operation Hotton. Learning Report*. Available at: <https://www.policeconduct.gov.uk/sites/default/files/Operation%20Hotton%20Learning%20report%20-%20January%202022.pdf> (Accessed: 21 March 2022)

¹⁴ Stonewall (2021) *Written evidence submitted [GEO0046]*. Available at: <https://committees.parliament.uk/writtenevidence/23914/pdf/> (Accessed: 23 February 2022)

intersectional discrimination, rose by 9% during 2019-2020¹⁵ and, whilst this represents an improvement from the previous year, it is highly concerning that only one in 62 cases resulted in a criminal charge¹⁶.

15. Because of the issues set out above, the government would appear to have fallen short of addressing adequately a large number of the recommendations set out in the matrix covering the last Review, under the themes of *A41 Constitutional and legislative framework*, *B31 Equality and non-discrimination*, *D1 Civil & political rights*, *F12 Discrimination against women*, *F13 Violence against women*, *G1 Members of Minorities* and *G4 Migrants*.

16. See further equality issues raised in the section below on reform of the Mental Health Act 1983.

17. Recommendations

- **The UK government should take immediate steps to acknowledge systemic racism and address it effectively**
- **At the pre-legislative stage, the government should strengthen, instead of undermining measures designed to ensure the humanitarian treatment of asylum seekers and refugees**
- **The government should ensure that the current inquiries into police conduct include measures which will effectively lead to the rooting out of discriminatory attitudes and behaviour among the police**
- **In conjunction with its reform of the HRA, the government should address shortcomings in its equality measures for LGBTQ+ communities**
- **In partnership with the police and with organisations led by Disabled people, the government should acknowledge and take further action to address the extent of hate crime against Disabled people and low conviction rates.**

The government's proposed reform of the Mental Health Act 1983

18. A positive development is that the government wishes to improve mental health services. There was also consultation with people who have lived experience of a mental health diagnosis/mental trauma, but a failure to take on board the views of significant numbers of those who want radical reform. In human rights terms, a major concern is that the government is focusing on improvements instead of undertaking

¹⁵ Home Office (2020). *Hate crime, England and Wales, 2019 to 2020*. Available at: www.gov.uk/government/publications/hate-crime-england-and-wales-2019-to-2020/hate-crime-england-and-wales-2019-to-2020 (Accessed: 23 February 2022)

¹⁶ Leonard Cheshire Society (2020) *Reports of violent disability hate crime continue to rise as number of public charges fall again*. Available at: <https://www.leonardcheshire.org/about-us/our-news/press-releases/reports-violent-disability-hate-crime-continue-rise-number-police> (Accessed: 23 February 2022)

the fundamental reforms that are needed if mental health service users are to have full human rights, in particular those set out in the UNCRPD. Some key issues are that:

- A medical model dominates the White Paper which sets out reform plans¹⁷; there is a lack of recognition that mental trauma will continue to be prevalent/increase until its underlying roots in an unjust society are tackled
- Despite pleas from many people with lived experience for a full range of alternatives to clinical options, there is only a very limited mention of the latter in the White Paper
- People with lived experience will continue to be subject to involuntary detention in psychiatric hospitals, forced treatment and community treatment orders, if on a reduced scale, despite the fact that this represents a continuing breach of Articles 12, 14 and 17 of the UNCRPD
- People will be able to use Advance Choice Documents (ACDs) to say what treatment they would prefer if they are detained, but there are major inbuilt limits to the ACDs; for example, they cannot be used to refuse detention. In addition, clinicians can still overrule someone's choices even if s/he was judged to have capacity at the time of the ACD
- People will now have access to a person nominated by them, instead of the nearest relative being automatically approached about detention, but again detention will remain a possibility
- The White Paper's material about intersectional (multiple) discrimination contains fundamental flaws. Despite putting a focus on particular discrimination which Black, Asian and other minority ethnic communities experience in the mental health system, the White Paper does not deal adequately with the structural racism in mental health services and so falls well short of what is needed. The White Paper also has very little about particular issues for service users who are female, identify as LGBTQ+, are older, are disadvantaged in socio-economic ways and/or also have physical and sensory impairments
- People in the criminal justice system who are subject to the Mental Health Act will gain still less from the planned changes. In contrast to proposals for other detained patients, criteria for detaining people who fall under Part III of the current Act will not be amended and the nominated person chosen by them will have more limited powers. A potentially worrying precedent, too, is set by the plan to use supervised discharges for forensic patients who are not thought to be gaining further from treatment, but are considered too dangerous to release otherwise

¹⁷ Department of Health and Social Care (2021) *Reforming the Mental Health Act*. Available at: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/951398/mental-health-act-white-paper-web-accessible.pdf (Accessed: 28 March 2022)

- The White Paper rightly acknowledges that no-one should be detained purely because of a learning disability/autism. It also contains proposals about particular needs of people with learning disabilities and autistic people. However, it will still be possible to detain the latter, if they also have a mental health diagnosis. In addition, people with learning difficulties/autism can still be detained under mental capacity legislation¹⁸ which has still weaker safeguards.

19. In the above senses, the government is again falling short of recommendations in theme *A41 Constitutional and legislative framework*. It is also falling short of recommendations 134.81 and 134.178.

20. Recommendation

- **That the government recognises the inadequacy of attempting improvements to fundamentally flawed mental health legislation and so includes in its forthcoming Mental Health Bill the radical changes needed to achieve compliance with the UNCRPD.**

The extent to which people with lived experience of a mental health diagnosis/mental trauma have a meaningful influence over law and policy which affect them

21. An ongoing issue is the failure both by government and by public bodies to give adequate weight to the experience, knowledge and expertise of Disabled people, including those of people with lived experience of a mental health diagnosis/mental trauma. Thus, the only way in which organisations led by Disabled people were able to raise their concerns about the government's new National Disability Strategy¹⁹ was by going to judicial review²⁰.

22. However, it is unusual for organisations led by Disabled people/Disabled individuals to have the resources for legal action and this option will become ever more difficult to employ if planned changes to the HRA occur. (See above.)

¹⁸ *Mental Capacity (Amendment) Act c. 18*. Available at:

<https://www.legislation.gov.uk/ukpga/2019/18/enacted> (Accessed: 28 March 2022)

¹⁹ HM Government (2021) *National Disability Strategy*. Available at:

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1006098/National-Disability-Strategy_web-accessible-pdf.pdf (Accessed: 5 January 2022)

²⁰ Chapman, A. (2022) 'Case Note: challenging consultations in judicial review proceedings – R (oao Binder and others) v Secretary of State for Work and Pensions [2022] EHC 105 (admin)', *Kingsley Napley*, 10 February. Available at: <https://www.kingsleynapley.co.uk/insights/blogs/public-law-blog/case-note-challenging-consultations-in-judicial-review-proceedings-r-oao-binder-and-others-v-secretary-of-state-for-work-and-pensions-2022-ewhc-105-admin> (Accessed: 11 February 2022)

23. In 2020, the government set up Regional Stakeholder Networks²¹ which were intended to give Disabled people more of a voice. However, there have been concerns about these among groups led by Disabled people, for example about the fact that Network Chairs need not be Disabled people themselves. Two years ago, the government set up a forum for groups led by Disabled people, but this was very quickly disbanded again. The Minister of State for Care and Mental Health has recently invited Disabled people and carers to meet her through a 'lived experience group' (a term used in this context to cover both Disabled people as a whole and carers). An initial concern is that the group is for individuals rather than for groups led by Disabled people as such. However, the extent of influence which this group will have remains to be seen.

24. A further major issue is that the Police, Crime, Sentencing and Courts Bill (2021), if implemented as planned, will restrict protests to an extent opposed by parliament's own Joint Committee on Human Rights²².

25. The issues raised above indicate that the government needs to make extensive progress with ensuring that Disabled people, including people with lived experience of a mental health diagnosis/mental trauma have a meaningful influence over law and policy which affect them. The government is falling short of recommendation 134.55 in the matrix of recommendations from 2017.

26. Recommendations

- **For the government to recognise that serious human rights flaws will continue to occur in law and strategic approaches affecting Disabled people if there is inadequate involvement of organisations led by the latter**
- **That, in partnership with organisations led by Disabled people including those led by people with lived experience of a mental health diagnosis/mental trauma, the government draw up a relevant action plan during the next three months; its purpose will be to ensure that these organisations have meaningful involvement in approaches taken to law and strategy affecting Disabled people**
- **That the government takes immediate steps to amend the elements in its Bill of Rights and Police, Crime, Sentencing and Courts Bill which will negatively affect the influence of Disabled people.**

Conclusions

²¹ Disability Unit (2020) *Regional Stakeholder Network to give disabled people a stronger voice*. Available at: <https://www.gov.uk/government/news/regional-stakeholder-network-to-give-disabled-people-a-stronger-voice> (Accessed: 1 March 2022)

²² BBC (2022) *What is the Police, Crime, Sentencing and Courts Bill and how would it change protests?* Available at: <https://www.bbc.co.uk/news/uk-56400751> (Accessed: 2 March 2022)

27. Although the UK government has made some progress with addressing human rights issues for people with lived experience of a mental health diagnosis/mental trauma, key shortfalls and, in some cases, regression in the approach taken need urgent attention from the government.