

Submission by the IHREC on the  
relevance of the Public Sector Equality  
and Human Rights Duty to service  
planning for non-Covid healthcare, and  
considerations relevant to future  
pandemic planning

*July 2020*



**Coimisiún na hÉireann um Chearta  
an Duine agus Comhionannas**  
Irish Human Rights and Equality Commission

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1. The Irish Human Rights and Equality Commission recognises that the COVID-19 pandemic has presented challenges for the protection of human rights, both in its threat to life and health of persons, and in actions taken by the State in its response. Times of crisis can exacerbate existing inequalities and render people more vulnerable. We have seen that COVID-19 and the consequent economic and social dislocation has had a disproportionate impact on certain groups in society, for example older people, people with disabilities, minority ethnic groups and women.

## **Relevance of the Public Sector Equality and Human Rights Duty to service planning**

2. In planning for the reopening of non-Covid health and related services, the Commission believes that it is essential that an explicit human rights and equality-based approach be taken. In this regard the Commission would emphasise the importance of the Public Sector Equality and Human Rights Duty which the Oireachtas enacted in Section 42 of the *Irish Human Rights and Equality Commission Act 2014*. This places a statutory obligation on public bodies to actively promote equality, protect human rights, and eliminate discrimination in the performance of their functions.<sup>1</sup>
3. The Equality and Human Rights Duty applies to both staff and service users. It is a positive duty, requiring public bodies to be proactive and to consider equality and human rights issues when developing policies, plans and services. This Duty applies to the Department of Health, the Health Service Executive and to a very wide range of health and social care provider, regulators and allied bodies.
4. Ireland's human rights and equality norms are critical to sustainable and effective recovery plans. The State is legally bound to respect, protect and fulfil human rights obligations and equal treatment. These obligations apply both in normal times and emergency times. The Public Sector Equality and Human Rights Duty can assist public bodies in adhering to human rights and equality standards in a systematic way in their

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<sup>1</sup> See section 42 of the *Irish Human Rights and Equality Commission Act 2014*. For further information, see IHREC (2019), Implementing the Public Sector Equality and Human Rights Duty. [https://www.ihrec.ie/app/uploads/2019/03/IHREC\\_Public\\_Sector\\_Duty\\_Final\\_Eng\\_WEB.pdf](https://www.ihrec.ie/app/uploads/2019/03/IHREC_Public_Sector_Duty_Final_Eng_WEB.pdf)

daily work. This provides an important framework to systematically consider and reflect the particular needs of staff and service users at risk of inequality, discrimination or disproportionate impact, and helps to mitigate and avoid unintended consequences.

## **Planning for pandemics in the future – ethical framework for access to critical care**

5. The Commission notes that the Committee requests views on the impact guidelines will have on provision of care and also asks for views on what might be necessary to prepare for pandemics in the future. In this regard the Commission would draw the Committee's attention to the guidance on prioritisation in access to critical care set out in a number of documents published by the Department of Health at the height of the crisis.<sup>2</sup>
6. This guidance anticipates that in the COVID-19 pandemic a situation could arise where the numbers of people who, under normal circumstances, might be considered for admission to an ICU is significantly greater than the number of ICU places available. We understand that anticipating a situation where demand for critical care may exceed supply is part of pre-emptive planning in advance of a pandemic. However, the Commission has a number of concerns about the guidance for healthcare decision-makers which has been published – and as such is a statement of public policy.
7. For example, we note that none of the guidance published to date specifically considers relevant domestic or international equality and human rights law and standards, and there is no discussion of the legal and human rights requirements which clinicians need to follow in making decisions about patients. Further, there appears to have been limited or no consultation with those groups most likely to be affected.

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<sup>2</sup> 'Ethical Framework for Decision Making in a Pandemic' published on 27 March (the Framework); 'Ethical considerations relating to critical care in the context of COVID-19' published on 3 April (the Considerations); and 'Ethical considerations relating to critical care in the context of COVID-19 – Supplementary Information' published on 1 May (the Supplementary Information).

8. It is now clear that we are going to be living with the threat posed by COVID-19 for the foreseeable future. The Commission strongly recommends that a participative consultation process, which engages with relevant rights holders or their representatives, and draws on human rights and equality expertise, be initiated as soon as possible to further refine the guidance documents produced to date. Indeed, the *Ethical Framework* itself argues that the procedural value of ‘inclusiveness’ requires that “stakeholders are consulted (to the greatest extent possible in the circumstances), views are taken into account, and any disproportionate impact on particular groups is considered” (p.9).
9. We recognise that these documents were developed at a moment of acute crisis, when it was difficult to predict if the COVID-19 virus could be suppressed and contained. Furthermore, the Commission is not seeking to encroach on the ethical relationship between a treating clinician and their patient. However, the issues raised are too profound not to be open to further consideration and public scrutiny. Therefore, in order to be adequately prepared in the event of a resurgence of the virus in the community, the Commission believes that it is important to proceed to refine this guidance as a matter of priority.
10. As a Commission we know that there are no easy answers to the questions posed by a need to prioritise access to critical care. However, as a society, we can protect and uphold our values by explicitly considering such fundamental decisions through the prism of human rights and the equal dignity of each person.

## Conclusion

11. Responses shaped by equality and human rights considerations result in better outcomes, and a more efficient, sustainable and effective response.<sup>3</sup> Having due regard for equality and human rights supports better decision making and service delivery and ensures a sustainable and inclusive recovery. The World Health Organisation has stated that not

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<sup>3</sup> United Nations. COVID-19 and Human Rights: We are all in this together. April 2020  
<https://unsdg.un.org/resources/covid-19-and-human-rights-we-are-all-together>

paying explicit attention to the needs and vulnerabilities faced by certain groups subjects them to a higher risk of infection, undermines the broader COVID-19 response, and causes unintended difficulties and consequences. Special measures are required to be put in place to ensure protection from discrimination and to ensure access to information and services for such groups in COVID-19 response and recovery.<sup>4</sup>

12. Approaching service planning with an explicit objective to promote equal treatment and uphold human rights, is the most positive way of ensuring that no-one is left behind as we transition to a new phase of living with the threat of Covid-19.

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<sup>4</sup> World Health Organization. (2020). **Addressing human rights as key to the COVID-19: response**, 21 April 2020. <https://apps.who.int/iris/handle/10665/331811>.



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