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# RAPID ETHICS REVIEW

## OLDER PEOPLE AND PANDEMIC CONTAINMENT: A HUMAN RIGHTS PERSPECTIVE

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### OVERVIEW

- Human rights offer a hierarchy to solve conflicts between the rights of older and younger people.
- In the first wave of the pandemic or in case of an unknown variant the government has the duty to impose tough restrictions (e.g. general lockdowns) to protect the right to life of older people.
- Now, with vaccines and more knowledge on Covid-19, restrictions on older people are admissible if:
  - Necessary to protect fundamental rights of younger citizens (e.g. employment, education);
  - The latter bear proportional restrictions;
  - Services are in place to allow older people to still live with dignity.
- If restrictions impacting younger people are needed, better off older people must contribute to cushion their social impact.

Older people are among the more vulnerable to Covid-19 (even if vaccinated) and thus benefit to a relatively stronger extent from measures such as restrictions that limit the spread of SARS-CoV-2. [1] However, when ethically evaluating the justifiability of such measures, some consider it unfair that the people who are relatively less vulnerable to the most serious harms of the disease should suffer restrictions to protect a minority of older citizens. [2] This leads to arguments for limits only to the social life of the latter group, even in case of a new spike in infections or a new deadly variant. [3] However, others consider this ethically problematic for being ageist. [4] This ethics review explores such arguments through an ethical lens based on a human rights framework. Such a framework can help identify and resolve points of ethical tension in answering the question:

*To what extent is it right to refrain from implementing, or to remove, Covid-19 restrictions knowing that this might put older people at risk?*

The question will be addressed ethically, through the perspective and language of human rights as understood in domestic and European human rights law documents, and summarised in the review *A human rights approach to ethical dilemmas during the Pandemic*, which is this review's framework. [5] Human rights law is useful here as it focuses on protecting individual and minority rights in times of crisis. It also establishes a hierarchy of principles validated by international consensus in light of concrete cases. So, it provides a heuristic tool to navigate unstructured ethical dilemmas, including ones that do not end up in court. Here I will focus mainly on the principles of the European Convention on Human Rights (ECHR), as by virtue of the Human Rights Act 1998 they are legally enforceable by UK courts. Relevant principles are also affirmed in other human rights documents such as the European Social Charter (ESC, 1961). However, these are not directly applicable at a domestic level (i.e. in UK courts), and thus have had a lesser impact in Covid-19-related debates in the UK.

Precisely, the aims of this review are to:

- summarise the key arguments advanced by scholars, policy-makers and activists in favour of and against Covid-19 policies targeting older people;
- present and offer an evaluation of criteria grounded in ECHR principles to balance the conflicting interests of older and younger individuals;
- guide authorities in establishing what restrictions, when and for whom are ethically (and potentially legally) acceptable in the reopening phase of the pandemic or in case of a new variant;
- reflect on the potential and limitations of human rights in this area.

## 1. COVID-19 AND OLDER PEOPLE

In the first weeks of the pandemic, UK Prime Minister Boris Johnson advocated for individuals over 70 to self-isolate to allow others to carry on with their lives. [9] After the first UK-wide (March-May 2020) and second English lockdown (November-December 2020), while restrictions were gradually lifted for the rest of the population, older people were requested to limit their social activities. [10] The Coronavirus Act 2020 (Schedule 12) authorised local authorities in England and Wales to reduce/suspend care and support for older and disabled people until July 2021. [11] Similar provisions have been in force in Scotland (section 16 Coronavirus Act 2020), until 30th November 2021. Lockdowns, restrictions to everyday activities and suspension of care home visits have put older people at higher risk of loneliness, depression, abuse and death. In addition, a rise has been seen in 'blanket policies', such as DNAR orders for care home residents and policies to encourage older people not to access hospitals in case of Covid symptoms. [4] In addition, the added pressure on hospitals and the (understandable) need to use scarce care resources to save the most lives or maximising life years has led to triage protocols tending to favour younger individuals and posing the question of the extent to which they can be ethically acceptable. [11]

On the other hand, lockdowns and other coronavirus restrictions have caused significant social harms to younger people, but have been portrayed as a sacrifice younger generations need to make to protect their parents or grandparents. [12] [13]

Addressing ethical questions about the possible need for restrictions remains crucial. At the time of writing (July 2022), Covid-19 restrictions have been lifted, but infections are still high. This has increased risks for older individuals. Furthermore, there is still the possibility of vaccine resistant variants forcing us to go back to strict measures. Also, public inquiries are being carried out into whether the government has failed to protect the life and dignity of older people during the pandemic. [6] [7] [8] Our evaluations of past practices are well served by a robust ethics framework. Therefore, it is crucial to clarify what governments' human rights obligations were and what should have been done especially in the first Covid wave. Finally, in the future we might be faced with another pandemic posing similar dilemmas. Starting from a human rights perspective, this review provides guidance for future containment plans which are ethically sound and balance conflicting interests.

In this regard, questions have arisen concerning the extent to which it is right that the whole population should endure restrictions to protect a minority of vulnerable citizens. Controversy was caused by Lord Sumption's statement on the BBC's The Big Questions on the 17th January 2021, with regard to the appropriateness of lockdowns to protect older people: 'I don't accept that all lives are of equal value, my children's and my grandchildren's life is worth much more than mine because they've got much more of it ahead'. [2] On the other hand, older people have been given priority in the distribution of Covid vaccinations. [14]

Older people are considered by some to be in a privileged category as, having (so the argument goes) benefitted from secure jobs, good pensions and affordable houses, they are in a better position to endure the current crisis than younger generations. [12] In this regard, the insistence on the need to protect older individuals is at times branded as an attempt by them to continue to cling to their privileges, robbing younger generations of their future. A sign of this resentment is the popularity on social media of the disturbing hashtag #Boomerremover and of 'babyboomer remover' YouTube videos saluting Covid-19 as a blessing in disguise for eliminating older people and giving space to the young. [15]

## 2. TO WHAT EXTENT CAN WE ETHICALLY LIMIT THE RIGHTS OF OTHER CITIZENS TO PROTECT THE LIVES OF OLDER PEOPLE?

### 2.1 What kind of actions would be necessary and proportional to protect the lives of older people from Covid-19?

As explained in *A human rights approach to ethical dilemmas during the Pandemic*, Article 2 of the European Convention on Human Rights (ECHR) establishes governments' positive duty to take 'all reasonable steps' to protect the right to life of even a minority of citizens, [16] [17] [18] putting in place regulatory measures to prevent loss of lives and informing the public of life-threatening emergencies. [19] [20] The right to life is unqualified and non-derogable (i.e. does not permit of exceptions), and takes priority over competing interests. [21] According to Article 8(2) ECHR, the right to a private and family life can be limited by law for reasons of health and public safety. So citizens' right to a private life can be restricted if the restriction is necessary and proportional to protect older people's lives. Also, in light of the case law of the European Court of Human Rights (ECtHR), [22] [23] [24] [25] [26] lockdowns and other movement restrictions do not violate the right to liberty (Article 5 ECHR), [27] Liberty restrictions to those who are judged as infectious (such as those allowed under Schedule 21 Coronavirus Act 2020) are also admissible if authorised by law, necessary and proportional (e.g. in a situation in which infection rates are high and there is no effective vaccine available). In this sense a measure is necessary and proportional if: first, a less intrusive measure is not available; secondly, a fair balance has been struck between the rights of the individual and the interests of the community; and thirdly, the burden/cost associated with the measure is not unreasonably excessive also in light of its benefits. [28]

In light of these criteria:

- In the first wave of the pandemic lockdowns to protect older people (and others who were more susceptible to serious illness from the disease) appeared admissible, being proportional in light of global mortality data, pressure on hospitals and lack of treatment/vaccines. In this regard, some scholars consider there to have been a violation of Article 2 ECHR obligations towards older and vulnerable people given the UK government's delay in enacting measures even milder than a full lockdown in February 2020 through the first half of March (e.g. mandating, rather than just advising face masks, social distancing and working from home). [29] [30] Indeed, in light of the news coming from abroad, the number of victims and disruption to health services that the

virus was creating at that time, even very strict measures would have been proportional at least in the acute phase of the epidemic.

- Now, with better scientific knowledge on Covid-19 and having had time to prepare and adapt our society, it seems reasonable to expect that those more at risk adopt the necessary precautions, even accepting limitations to their social life. After all, Article 5 and 8 ECHR rights (including those of older people) can be proportionally restricted for the greater public good.
- Nonetheless, these are still fundamental rights, so restrictions would be justifiable only to guard serious interests of younger citizens. In light of this consideration, it seems to me logical to conclude that as regards needs that are not fundamental of younger people, the fundamental rights of older people must prevail. So, while governments can advise or even mandate older people to limit their social life and shield to allow younger people to return to school or work, it does not necessarily follow that they may do this, for example, in relation to clubbing or attending large-crowd sports events. If such activities pose a risk (signalled by a growing trend in infection rates) that hospitals are again put under pressure or that vulnerable people are more easily infected and developing serious symptoms, then the balance should tip in favour of those recreational activities being restricted, rather than the social lives of older people.
- Against this human rights framing, we may therefore question ethically the decision in England, and later elsewhere in the UK, to lift the legal duty to wear masks in public places despite ongoing pressure on hospitals and long waiting lists preventing older people from getting the care they need. Such a consideration applies even if a low number of older people who risk getting seriously ill due to Covid-19 are impacted. Human rights are about fundamental interests of the individual and protecting minorities. [31] Moreover, in light of the principle of necessity and proportionality, questions of (in)justice arise in imposing restrictions on older citizens when younger people are still permitted to refuse Covid-19 vaccinations.
- The framing also indicates the ethical importance of understanding that government must also guarantee that older people, while shielding, still have a decent quality of life (e.g. through accessible services for the delivery of groceries or enhanced home care services).

Older people should also be provided moral support or a safe system of family visits in care home. The government must always guarantee to the (older) individual a sufficient level of dignity, which is one of the great moral values at the basis of human rights law. [32] Failure to do so might result also in a violation of Article 3 ECHR, which prohibits inhuman and degrading treatment. In this regard, the Finnish NGO Validity lodged a complaint (not yet decided), in front of the European Committee of Social Rights (in charge of monitoring the implementation of the European Social Charter), against their government for the way in which disabled people were affected by the Finnish Covid-19 measures. [33] They alleged that such measures violated the right to health (Article 11 ESC) the right to social welfare (Article 14 ESC) and the right to social integration (Article 15) of disabled people, as the Finnish government failed to adopt appropriate measures to protect their life and health, and to support them during the emergency, imposing restrictions which led to the complete isolation of disabled people in institutions with a ban on any visits.

- If the conditions mentioned in the previous bullet point are not in place, the duty of the State to protect the right to life of its citizens might require new measures limiting the social life of other citizens. However, the human rights framing also presents the ethical significance of younger people's entitlement to act against governmental violation of their right to respect for private and family life (Article 8 ECHR), as at this point those to blame would be the negligent government, who did not prepare for this situation. In this sense, what could make targeted restrictions for older people still unethical in concrete terms is government not having put all necessary infrastructures in place for them to live with dignity.

### *2.2 Balancing older people's right to life and the economy*

The approach to ethical reasoning just outlined can, nonetheless, have a negative economic impact. Even minor measures, such as social distancing, negatively impact restaurants, theatres, train and flight companies, and hence jobs. Bearing some restrictions might be feasible for older generations; or at least older people with stable pensions and assets. However, for people in their 20s-30s, facing unstable jobs, stagnating salaries, soaring house prices and a crumbling welfare state, this could kill their last hopes of a decent life.

However, with such considerations we are facing two different sets of problems which require different policy tools. Extraordinary public health measures to protect older people can and must be compensated by equally extraordinary wealth redistribution policies, taxing better off people (which often are those relatively older) in order to provide younger (and worse off) individuals with the financial support they need to stay home and protect the lives of older people. [34] However, wealth redistribution policies still seem a taboo. [35] Indeed, on 6th April 2022, the government increased National Insurance to fund rising health and social care costs. [36] This policy has been criticised for taxing the hard-working young, rather than the wealthy old. [37] In a way, the ethical dilemma between protecting older people and not unduly impacting the life and opportunities of younger people originates for a big part from this lack of solidarity also in an economic sense.

#### Key Points

- Applying the principles of human rights law, at the beginning of the pandemic it would have been right to impose lockdowns and other strict measures on the rest of the population to protect older people.
- Now, we should focus on milder restrictions and living with the virus.
- Targeted restrictions on older people could be admissible to protect fundamental rights of younger people (e.g. right to work, education) but not to meet less essential needs (e.g. entertainment).
- Services should be in place so that older people can live a dignified life despite restrictions.
- Older people should contribute to cushion the restrictions impact on younger generations.

### 3. CAN OLDER PEOPLE BE TREATED DIFFERENTLY?

The right to non-discrimination is referred to in Article 14 ECHR: here, it applies to equality specifically in the enjoyment of ECHR rights, rather than a 'standalone' non-discrimination right. But in England, Wales and Scotland, equality is also protected by the Equality Act 2010, which prohibits:

- **Direct discrimination** which happens when 'because of a protected characteristic, [a person] A treats B less favourably than A treats or would treat others' (Equality Act 2010, section 13);
- **Indirect discrimination** when A applies to B a policy which applies to others as well but it puts, or would put, B or people with the same protected characteristic of B at a particular disadvantage and cannot be justified as a proportionate means of achieving a legitimate aim (Equality Act 2010, section 19).

Characteristics protected by the Equality Act 2010 include age (section 5).

#### 3.1 Suspension of treatment and care services

In relation to age and Covid-19, activists and legal scholars have made it clear that the suspension of care services or essential non-Covid-19 related treatment is directly discriminatory. [4] In this regard, provisions suspending care and support services could be an unethical violation of the fundamental rights of older people. [11] Indeed, in order to free resources which can be invested in protecting others for them to avoid other health dangers and to live a dignified life. During a public health emergency, in which measures are imposed with a significant impact on the wellbeing of frail individuals, the ethical framing provided in this review suggests that the answer should be more support, rather than less.

#### 3.2 Limiting the freedom of older people to set the younger free?

According to organisations for the rights of older people, stay-at-home orders and other restrictions based on age are unacceptable. [4] Indeed, if we are all equal, why should someone be confined at home while others go 'out and about', just because they are older? However, prominent scholars such as Savulescu and Cameron argue that even lockdowns targeting older people would be justifiable. [3] According to them, there is a 'morally relevant difference' – older people are more likely to get hospitalised because of Covid-19 – which would make the discrimination 'a proportionate means of achieving a legitimate aim'.

Savulescu and Cameron's article was published in May 2020, when we had few tools to manage the pandemic. But how would the question of selective restrictions for older people play out now?

#### Restrictions to protect older people

- **Mandatory:** if the aim is just to protect older people, imposing movement restrictions is probably not acceptable; not so much because it is discriminatory, but because it is paternalistic. It is an established principle of medical ethics and law that, unless the choice negatively and illegitimately impacts on others, an adult (unless proven to lack decision-making capacity), if adequately informed, has the right to refuse treatments and expose themselves to health risks. [38]
- **Advisory:** non-coercive measures would instead be legitimate. In this case we fall into a case similar to that of many preventive interventions, for example to combat obesity, or alcohol abuse, which can even consist of incentives, but ultimately leave the choice to the person.

#### Restrictions to protect the NHS

- **Mandatory:** if the aim is to protect the NHS, there could be more scope for selective restrictions, as there would be a valid public health reason in preventing those who are more likely to end up in hospital due to Covid-19 to exert further pressure on the NHS. In this case, we are in a situation similar to that of vaccine mandates, in which the autonomy of someone is legitimately restricted to protect others. However, also in this case the room for manoeuvre remains limited. Legal prohibitions on freedoms to associate or move around are quite restrictive measures (more restrictive than vaccine mandates) and the government has had every opportunity to at least start to increase NHS capacity, so it would be ethically problematic to sacrifice older people's interests to sort out the unpreparedness of the NHS. Indeed, in such a context, the risk to the lives of older people and in terms of overburdening of the NHS does not derive anymore from an unforeseen and unknown virus, but from the fact that the government has deliberately failed to prepare, violating their duty, established by Article 2 ECHR, to protect the life of their citizens, without seriously restricting their freedom. Besides, even if a new, deadly and vaccine resistant variant should emerge, the case for selective lockdowns for older people will not be easy. First, there would still be an argument that the government should have foreseen the event and made preparations. Second, if the younger segment of the population is allowed to live their life unrestricted (despite the fact that doing so increases the virus circulation and infection risks also for older people), it would be still very difficult to not see the arrangement as discriminatory.

- **Advisory:** again, therefore, advisory measures are preferable. Coercive selective restrictions can be put in place but only in very limited extreme circumstances, similar to those witnessed at the beginning of the pandemic. Of course, there is always a risk that many do not follow the 'advice' issued to them and if the risk of contagion or NHS overburdening escalates, mandatory measures may be more appropriate on a practical level; but again their admissibility under human rights would depend on the extent that burdens are shared in solidarity also by all other citizens.

Savulescu and Cameron justify their preference for selective lockdowns or social restrictions stressing how 'the alternative is to continue to keep everyone in lockdown' which would amount to a detrimental 'levelling down equality', in which we deprive someone of a good (release from strict social restrictions) without making anyone else better off. [3] In this regard, they argue, selective isolation for older people 'is analogous to only screening women for breast cancer on the basis of their higher probability of getting sick'. [3, p. 718] However, in the case of women and breast cancer screening, the vulnerable category benefits from extra resources, while in our case, older people are given more burdens in order to release other less vulnerable individuals. In order for differential treatment to be justified under the equality law, the discrimination needs to be a proportionate means of achieving a legitimate aim (Equality Act 2010, section 13(2)). Giving extra services to people who are more vulnerable appears a proportionate means of achieving a legitimate aim, giving extra burdens to those who are already vulnerable to refrain from imposing burdens to the lesser vulnerable does not. In addition, as noted by Hughes, general lockdowns or social restrictions do not constitute a real form of 'levelling down', but rather allow to spread burdens among the population. [39] Indeed, they reduce infection risks for older people, resulting in lower infection levels. This means that older people are less likely to come into contact with the virus and hence have to restrict less their human interactions than if they would be the only ones shielding. In addition, general lockdowns or other social restrictions can lower infection numbers more quickly, resulting in both the old and the young enduring restrictions for a shorter time.

Moreover, a human rights framework rests on moral principles, including fundamental values such as equal recognition of the dignity of all individuals, thus problematising the making of exceptions. [40] [41] The reason for this is that, even in the presence of apparently plausible policy reasons, establishing when it is ethically justifiable to sacrifice a category of citizens for the greater

good is often difficult and controversial, and can create (and has created) segregation, injustice and in the extreme eugenics programmes. [42] [43] This kind of consequentialist logic has been famously criticised for virtually justifying any act, no matter how morally despicable, to produce greater benefits for others. [44, pp. 257-260] The traumatic events of the Second World War, which constitute the historical context in which human rights law and modern healthcare ethics originated, showed that policy approaches allowing the sacrifice of some individuals for the greater good could be instrumentalised and lead to horrifying acts. [40] For this reason, the international consensus agreed on universal rights declarations and conventions (informed by a Kantian model) based on the primacy of fundamental individual interests and dignity above social interests, and a strong ban on discrimination on the basis of personal and social status. [45] [46]

Of course also in our case one can argue that we are being too fundamentalist and maintain, with Lord Sumption, that it is not fair to treat people who have already lived (what might get termed) a full life in the same way as people in their 20s-30s, who have the majority of their life ahead of them. However, this position goes against the international consensus and clashes with the value of universal human dignity which is at the basis of human rights law and is still perceived as crucial in preventing horrors such as those of World War II and protecting individual rights especially of vulnerable individuals. [46] After all, as noted by Coggon, Lord Sumption, with regard to other issues such as euthanasia, is in favour, on the basis of human rights, of restrictions to the freedom of all to protect vulnerable individuals, denying the right to assisted suicide to every citizen to avoid vulnerable individuals being pushed towards involuntary euthanasia. [47]

To all this, one can object that, during the pandemic, there have been areas in which we have treated older people more favourably than younger people, such as prioritisation programmes for the Covid-19 vaccine rollout. However, this arrangement does not appear discriminatory (against the young). First of all, the UK vaccine rollout gave precedence not only to older people, but also to clinically vulnerable (younger) individuals, health and social care workers and others delivering essential services, in line with the recommendations of international bodies and ethicists. [48] [48] Therefore, the criterion here was using the available doses so that they could have the greatest possible impact in reducing infections in the shortest time possible.

In addition, by prioritising (among others) older people, the government provided to people who were in a position of vulnerability an aid to better cope with their vulnerability and disadvantage, in line with the State's Article 2 ECHR obligations. On the other hand, targeted lockdowns or social restrictions for older people impose a further burden on already vulnerable people, in order to leave non-vulnerable people free to live their lives unrestricted. Finally, prioritising older people and other vulnerable individuals in the vaccine rollout is exactly what allowed the government to gradually lift Covid-19 restrictions after a relatively short period of time, so it has been in the interest of younger citizens as well.

### Key Points

- Suspension of non-Covid-19 related treatment or care services can be directly discriminatory.
- With regard to containment measures targeting older individuals, if the aim is mainly to protect older people, rather than the population in general, only voluntary measures (e.g. advice to shield) are admissible.
- Limited compulsory targeted restrictions might be acceptable to protect the NHS, but only if it is impossible to expand the NHS capacity and also younger people bear proportional restrictions.

## 4. COULD A DIFFERENT APPROACH AVOID DISCRIMINATION?

All the criteria discussed so far refer to ad hoc containment measures following the classical public health approach to epidemics. However, Venkatapuram proposes a more holistic 'human capabilities model'. In doing so, Venkatapuram criticises the narrow SIR model ('Susceptible, Infectious or Recovered') which is the basis of the containment strategies put in place to manage Covid-19 in the UK. [49] Such a model, he points out, works with limited biological information (e.g. case fatality rate, number of susceptible people, number of infected and recovered people) and assumes 'equal susceptibility to infection and probability of death'. [49, p. 289] Therefore, it is unable to account for the social dynamics making certain people more vulnerable to the virus and to collateral effects of containment measures such as excess mortality from non-Covid-19 causes, rise of mental health issues, increased risk of abuse and the halt to economic and social activities. [49] [4] Moreover, according to Venkatapuram, such an approach is responsible for the thousands of deaths among older people during the first wave of the pandemic, when, amid fears of overburdening, thresholds for admission to emergency care were risen, and older people were sent back to nursing homes where conditions were in place for the disease to kill most residents. [49, p. 283]

Venkatapuram proposes to focus on the holistic wellbeing of individuals that, due to their social positioning, are more vulnerable to the virus, rather than just preventing Covid infections. In this regard he states: 'policies taking the capability perspective would go beyond instructions to keep distance, wash frequently, and wear a mask, to also identify and address the structural barriers to such behaviours'. [49] Of course, at least in the first phase of a pandemic, there might not be enough time or tools to deal with all these barriers. Nonetheless, by applying such an approach it is still possible to make some choices which will result in a better management of the situation (e.g. avoiding to discharge older people in places in which social distancing is impossible, drawing plans to

redistribute or support them in the community), putting in place more systemic policies when there is more time.

Applying these ideas to older people would mean:

- Starting from the needs of older people (e.g. to be protected from the virus while being adequately cared for, to be psychologically supported, to have efficient home care even in poorer areas) to devise policies to handle the pandemic (e.g. limiting the number of patients per carer, predisposing carefully considered 'care bubbles', supporting older people in keeping contacts with loved ones, devising flexible arrangements for those who cannot self-isolate with dignity);
- Providing them with services to fulfil these needs, while avoiding their getting infected;
- Investing in broader policies which can change social structures putting older people at risk (e.g. scaling up care and hospitals capacity in deprived areas; investing in reducing the digital divide or improving housing and life conditions of those from poorer backgrounds, investing in public transport to reduce overcrowding).
- Only when these actions are not enough, implementing mild general social restrictions.

### Key Points

- The current approach focused on virus containment harms older people and the economy.
- We need a 'human capabilities model' which looks holistically at older people's wellbeing during the pandemic.
- This model starts from older people's needs and focuses on the social dynamics making them more vulnerable to Covid-19.

## 5. ARE HUMAN RIGHTS THE RIGHT WAY TO DEAL WITH THE PANDEMIC?

Human rights frameworks are informed by a specific vision (of deontologist origin) and by clear choices of what ideas or distinctions (not) to rely on. They generally offer a clear scheme of principles to help judge how burdens can be distributed among different members of society during the pandemic. However, some shortcomings emerge:

- Human rights focus on the individual case, while in a pandemic we also need systemic changes, and measures which go beyond the individual level, looking at wider social structures and outcomes; [50]
- Even though the government would seriously engage in pandemic preparedness and wealth redistribution, it might still not have the resources to do all that human rights demand during the pandemic and choices would still have to be made between competing rights claims; [51, pp. 12-130]
- Human rights reason on the basis of absolute uncompromising principles while in public policy (especially in a pandemic) it could be necessary to find compromises, as it is impossible to satisfy everyone's wishes and again one has to balance also the collective interest; [52] [53]
- Human rights strenuously avoid any distinctions on the basis of personal characteristics. However, holding on to an abstract ideal denying morally relevant differences might also seem unfair.

Therefore, the current situation, as explored here with reference to pandemic policies and older people, might require human rights to be used in a partially different way. In particular:

- Human rights principles need to remain the main guide of policy actions and to dictate the limits of State action.
- However, they have to be activated through policy discussions which take into account the wider context.
- Policies targeting older people during the pandemic should focus on providing services rather than imposing restrictions.
- Such policies must also tackle the social structures at the basis of older people's enhanced vulnerability to SARS-CoV-2.
- We need to be aware that in a pandemic, choices regarding resource distribution which are normally matters of political discretion might become human rights issues on which governments might have less ethical (and indeed legal) wriggle room.

- We need to have frank public debates on controversial issues such as whether, in a time of crisis, it is fair to assume that younger and older people should be guaranteed the same life possibility.
- While having these debates we need to bear in mind that these are dangerous conversations, which require that before acting upon them there is a widespread human rights consensus.

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### About this submission

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### About the UK Pandemic Ethics Accelerator

The UK Ethics Accelerator is a UKRI/AHRC-funded initiative that aims to bring UK ethics research expertise to bear on the multiple, ongoing ethical challenges arising during a pandemic emergency. We provide rapid evidence, guidance, and critical analysis to decision-makers across science, medicine, government, and public health. We also facilitate public stakeholder deliberation around key ethical challenges.