



Baroness Falkner of Margravine  
Chair, Board of Commissioners  
Equality and Human Rights Commission

By email: [correspondence@equalityhumanrights.com](mailto:correspondence@equalityhumanrights.com)

29<sup>th</sup> September 2021

Dear Baroness Falkner,

### **Consultation on EHRC strategic plan for 2022–25**

I welcome the opportunity to comment on your draft strategic plan for 2022–25. The Covid-19 pandemic has exposed many existing inequalities and injustices in our society and has undoubtedly had a disproportionate impact on older people – particularly those living in care homes.

I acknowledge that care homes across the UK have been required to make very difficult decisions to protect their residents. We have seen many care homes severely restrict residents' access to visiting professionals and their loved ones during the pandemic. Whilst the need to mitigate against the spread of infection is important, restrictions on visiting must not continue indefinitely. The risk posed by COVID-19 and measures to prevent its spread must be weighed against the long-lasting damage created by separating families, particularly for those older people living with dementia.

I welcome that the draft strategic plan acknowledges the way in which older and disabled people living in care homes have been treated throughout the pandemic and that it raises serious concerns about how our society treats and values them. I note and welcome the plan's aim of making sure that our social care systems and services are free from discrimination and protect the rights of social care users and that this will be achieved through using your enforcement powers to challenge breaches of people's rights in social care.

There is a danger of severely restricted visiting policies within care homes becoming embedded into the longer-term. Whilst this issue has received much media attention, the use of the human rights legal framework as a potential solution to the issue has received less attention. I note in the draft strategic plan for 2022-25 that it acknowledges that "strong and quick enforcement action is sometimes needed to

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Rydym yn croesawu derbyn gohebiaeth yn Gymraeg. Byddwn yn ateb gohebiaeth a dderbynnir yn Gymraeg yn Gymraeg ac ni fydd gohebu yn Gymraeg yn arwain at oedi.

We welcome receiving correspondence in Welsh. Any correspondence received in Welsh will be answered in Welsh and corresponding in Welsh will not lead to a delay in responding.

**03442 640 670**

Rydym yn croesawu  
galwadau yn Gymraeg

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stop individual and systemic breaches of the law, and to send a clear message or change practice in a particular sector.” I welcome this commitment. As the body responsible for promoting and upholding equality and human rights laws and standards across England, Scotland and Wales, I urge you to use the full force of your legal powers to defend older people living in care homes from this unfair and unequal treatment by challenging any potential breaches of the law.

The aim of making sure that Britain rebuilds from the pandemic in a way that puts equality and human rights considerations front and centre is also to be welcomed. For this to be realised, we must better understand the potential breaches of the rights of older people living in care homes during the pandemic if we are to protect against any future occurrences.

In July this year, I wrote to you as part of a group of leading older people’s organisations and individuals working across the UK to support older people and protect their rights to request that you scrutinise the decisions and actions taken during the pandemic by governments throughout the UK to assess whether they properly took into consideration impacts on the rights of older people living in care homes and whether they have been discriminated against. These decisions include:

- Discharging patients from hospitals into care homes with a positive Covid-19 test or without testing at all
- Limitations on friends and relatives visiting care homes and whether this infringed on residents’ right to respect for private and family life (Article 8)
- Potential incorrect use of Deprivation of Liberty Safeguards and restrictions on right to liberty and security for residents (Article 5)
- Implementation of blanket ‘Do Not Attempt CPR’ orders (Article 2)
- Residents’ access to health treatments and other services
- Whether differences in restrictions placed on care home residents compared to the rest of the population were in itself discriminatory against them.

The draft strategic plan 2022-25 states that you will use your powers to “work in partnership with organisations and other regulators that have expertise in a particular sector, to help us understand barriers and develop solutions that promote and encourage respect for equality and human rights”. I welcome this and urge action to determine whether human rights breaches or breaches of the Equality Act 2010 have occurred in order to prevent such breaches happening again. I would be happy to lend my support to working with you to undertake this work.

I strongly believe that scrutiny of potential breaches of the rights of older people living in care homes would meet the criteria set out in the draft strategic plan for 2022-25 for prioritising your work. The issues faced by older people living in care homes are widespread in the care home sector across the UK and the severity of the impact on older people where potential breaches have occurred is acute. There is a clear relevance to your powers as the body responsible for upholding human rights and equality law and to your objectives within this draft strategic plan for 2022-25. Whilst many organisations have expressed serious concern about the potential

breaches of the rights of older people living in care homes during the pandemic, no other organisation is equipped or has the legal powers to undertake such scrutiny specially in relation to human rights and equality.

I support the aim of the draft strategic plan for 2022-25 to upholding an effective framework for protecting equality and human rights and your commitment to challenge flagrant, serious and systemic breaches of the law. As outlined in the draft plan, providing a strong and reliable evidence base on the most urgent equality and human rights issues will help support others to meet their legal obligations.

Yours sincerely,

A handwritten signature in black ink, reading 'Heléna Herklots'. The signature is written in a cursive style with a prominent flourish at the end.

Heléna Herklots CBE

**Older People's Commissioner for Wales**