Response to Call for Evidence –

Joint Select Committee on Human Rights

The Government's response to COVID-19: human rights implications

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1. Horizon[1] is a Research Institute centred at The University of Nottingham and a Research Hub within the UKRI Digital Economy programme[2]. Horizon brings together researchers from a broad range of disciplines to investigate the opportunities and challenges arising from the increased use of digital technology in our everyday lives. Prof. McAuley is Director of Horizon and was principal investigator on the ESRC-funded CaSMa[3] project (Citizen-centric approaches to Social Media analysis) to promote ways for individuals to control their data and online privacy, the EPSRC-funded UnBias[4] (Emancipating Users Against Algorithmic Biases for a Trusted Digital Economy) project for raising user awareness and agency when using algorithmic services and the EPSRC-funded DADA (Defence Against Dark Artefacts) project on the legal and technical security of Internet of Things. Dr Koene was a lead researcher of the CaSMa and UnBias projects, is Research co-Investigator on the EPSRC-funded ReEnTrust[5] (Rebuilding and Enhancing Trust in Algorithms) project and chairs the working group for developing the IEEE P7003 Standard for Algorithm Bias Considerations. Dr Jiahong Chen is a Researcher Fellow of Horizon, working on the DADA project.
2. This submission addresses the three questions formulated in the Joint Select Committee's call with a particular focus on both the digital rights implications of the Government's measures against COVID-19 and the wider human rights implications of the technological measures. We are happy to be contacted for further evidence, and for this submission to be published in full.

Questions

1. What steps need to be taken to ensure that measures taken by the Government to address the COVID-19 pandemic are human rights compliant?

(1) Conducting a full human rights impact assessment (HRIA) before measures being taken

3. HRIA is a useful tool developed to help businesses comply with international standards on human rights,[6] but is also helpful for governmental policymaking. Impact assessment in certain regulatory areas is already a legal obligation, such as data protection impact assessment (DPIA) under the GDPR, but this should expand to cover a fuller range of human rights. For example, the DPIA on the NHS COVID-19 App pilot release on Isle of Wight addresses only Article 8 (right to respect for private

[1] http://www.horizon.ac.uk
[2] https://epsrc.ukri.org/research/ourportfolio/themes/digitaleconomy/
[3] http://casma.wp.horizon.ac.uk
[4] http://unbias.wp.horizon.ac.uk
[5] https://ReEnTrust.org
[6] https://www.ohchr.org/documents/publications/guidingprinciplesbusinesshr_en.pdf

and family life) ECHR,[7] but the widespread use of the app may also impact people's right to life (Article 2), freedom of assembly and association (Article 11), non-discrimination (Article 14) and so on. Performing a full-scale HRIA would support a more comprehensive approach to ensuring the proposed measures are compatible with human rights.

(2) Observing the proportionality principle when implementing measures

4. When restrictions are imposed on people's freedoms, such measures must be proportionate to the objectives sought, without creating unnecessary burdens on members of the public. We welcome, for example, the Government's guidance for businesses on record-keeping for Test and Trace,[8] which clearly specifies what information to collect from customers and visitors, and explicitly states that no additional information should be collected. Keeping the potentially invasive and interpretive measures to a necessary minimum should also be the norm for other areas of government efforts against the pandemic.

(3) Periodically reviewing the effectiveness and long-term impact of measures

5. After the measures are introduced, they should be reviewed on a regular basis to determine whether the policy goal has been achieved and whether such measures should remain in place. Investigation into the long-term effects of the measures should be planned as soon as possible. There have been concerns around, for instance, the lockdown's impact on the physical and mental health on people from certain demographics (children, elderly, ethnic minorities, and so on) and longitudinal studies should be carried out to support future strategies for recovery. Evidence previously submitted by Horizon has clearly indicated that screen-use time has a significant impact on young people's physical and mental health,[9] and this could be exacerbated during a time of lockdown. We call for the Government and the Joint Select Committee to inquire into the potentially widening digital divide during and post-COVID-19 and its broader human rights implications.

2. What will the impact of specific measures taken by Government to address the COVID-19 pandemic be on human rights in the UK?

6. As noted above, the Government's Test, Track and Trace Strategy[10] (including the Contact Tracing App and the NHS Test and Trace Service) involves the use of highly sensitive data, which may raise serious concerns about the right to respect for private and family life (Article 8). It has been reported that England's Test and Trace programme is believed to have breached data protection for the absence of a prior DPIA as required under the GDPR.[11] The negative effects may intensify as the possibility of the so-called "immunity passport" remains on the table,[12] which may affect the access to public and private services by certain groups of the population. This could potentially lead to a violation of Article 14 ECHR (prohibition of discrimination) since the demographics of some of the groups worst affected by COVID-19 appear to be associated with certain protected characteristics (gender, race and age).

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[7] https://faq.covid19.nhs.uk/DPIA%20COVID-19%20App%20PILOT%20LIVE%20RELEASE%20Isle%20of%20Wight%20Version%201.0.pdf

[8] https://www.gov.uk/guidance/maintaining-records-of-staff-customers-and-visitors-to-support-nhs-test-and-trace

[9] http://data.parliament.uk/writtenevidence/committeeevidence.svc/evidencedocument/science-and-technology-committee/impact-of-social-media-and-screenuse-on-young-peoples-health/written/81206.html

[10] https://www.gov.uk/government/news/coronavirus-test-track-and-trace-plan-launched-on-isle-of-wight

[11] https://www.bbc.co.uk/news/technology-53466471

[12] https://www.theguardian.com/politics/2020/may/03/coronavirus-health-passports-for-uk-possible-in-months

3. Which groups will be disproportionately affected by measures taken by the Government to address the COVID-19 pandemic?

7. The lockdown and social distancing measures may have particularly serious impact on children and the elderly in the long term. As mentioned above, the increased dependence on digital technologies in terms of receiving entertainment, education and even health services may lead to difficulties in children's development. A study conducted by our researchers has also shown that older people have legitimate worries about smart health technologies, especially concerning data sharing,[13] which may also affect their uninhibited access to healthcare during lockdown compared to other age groups. For similar reasons, people with limited access to electronic devices and broadband services will also almost certainly be relatively worse affected.

[13] https://www.mdpi.com/2227-9032/7/2/54/htm