



OFFICIAL REPORT  
AITHISG OIFIGEIL

DRAFT

# Equalities and Human Rights Committee

Thursday 25 June 2020

Session 5



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**EQUALITIES AND HUMAN RIGHTS COMMITTEE**  
**12<sup>th</sup> Meeting 2020, Session 5**

**CONVENER**

\*Ruth Maguire (Cunninghame South) (SNP)

**DEPUTY CONVENER**

\*Alex Cole-Hamilton (Edinburgh Western) (LD)

**COMMITTEE MEMBERS**

\*Angela Constance (Almond Valley) (SNP)

Mary Fee (West Scotland) (Lab)

\*Maurice Golden (West Scotland) (Con)

\*Alison Harris (Central Scotland) (Con)

\*Fulton MacGregor (Coatbridge and Chryston) (SNP)

\*attended

**THE FOLLOWING ALSO PARTICIPATED:**

Elisabeth Campbell (Scottish Government)

Christina McKelvie (Minister for Older People and Equalities)

Pauline McNeill (Glasgow) (Lab) (Committee Substitute)

Sean Stronach (Scottish Government)

**CLERK TO THE COMMITTEE**

Claire Menzies

**LOCATION**

Virtual Meeting



# Scottish Parliament

## Equalities and Human Rights Committee

Thursday 25 June 2020

*[The Convener opened the meeting at 09:00]*

### Covid-19: Impact on Equalities and Human Rights

**The Convener (Ruth Maguire):** Good morning, and welcome to the 12th meeting in 2020 of the Equalities and Human Rights Committee. I thank all members and witnesses for their attendance today, and I thank the broadcasting office for its work in setting up this remote formal meeting of the committee.

Our main item of business is our fourth evidence session on how Covid-19 has impacted on equalities and human rights. Responses to our on-going call for views are on our website.

I welcome our witnesses from the Scottish Government: Christina McKelvie, the Minister for Older People and Equalities; Sean Stronach, the equality unit head; and Elisabeth Campbell, the human rights strategic lead.

Minister, I invite you to make a brief opening statement, after which we will move to questions.

**The Minister for Older People and Equalities (Christina McKelvie):** Good morning, and thank you for giving me the opportunity to speak to the committee today.

As we all know, the current health crisis is the biggest that we have ever faced, and the Scottish Government's absolute priority—indeed, everybody's priority—is to save lives. However, we are acutely aware that the pandemic and the restrictions that are currently in place are causing harms of their own. That is why recognising the impact on people's everyday lives, especially in relation to their rights and freedoms, is so important.

The Scottish Government is committed to ensuring that human rights, children's rights and equality are embedded in everything that we do and must be central to our response to the coronavirus outbreak. Our framework "COVID-19—A Framework for Decision Making" sets out seven core principles across all our work, including "fair and ethical". We are committed to continuing to uphold

"the principles of human dignity, autonomy, respect and equality"

as we deal with the pandemic and its inevitable consequences. Crucially, the framework for decision making also makes it clear that the harms that are caused by the coronavirus

"do not impact everyone equally",

and the Scottish Government is ensuring that our response to the pandemic limits those unequal impacts.

Though our £350 million community support fund, we have acted to provide support to the groups and communities that need it most. We have also sought to address the unequal impacts of Covid-19 by ensuring that our actions meet the needs of all Scotland's people. I have a few examples to emphasise that point. We are paying for minority ethnic older people to receive hot meals, and we are supporting Age Scotland's national telephone helpline with around £700,000 for significant expansion and upgrading. We are translating public health information into British Sign Language and ensuring that interpreters are at key briefings. We are funding Young Scot to provide information and social media support to young people. We are providing specific advice and funding for Gypsy Traveller communities to ensure that their needs are met during the emergency, including through the provision of specific funding for essential sanitation facilities for Gypsy Traveller families, to enable them to follow Government advice and curb the spread of the virus. We have provided an additional £1.35 million to Scottish Women's Aid to support service redesign, expand its national helpline capacity and provide support for vulnerable women and children.

We have also worked across a range of legislative and policy areas, from ensuring that ethical guidance in clinical settings upholds both the right to life and non-discrimination to embedding civil and political rights through the development of policy around restrictions on movement, gatherings and policing.

We continue to be open and transparent with Parliament about how we are working to ensure that the Covid-19 response is fully compliant with human rights and children's rights obligations and that it embeds equality.

This week, in response to a letter from the convener, I wrote to the committee on a number of issues relating to the equality and human rights impacts of the Scottish Government's Covid-19 response. I hope that members have all had a chance to see the letter.

I look forward to members' questions and to discussing the crucial issues with you this morning.

**The Convener:** Thank you. I will start by talking about inclusive communication. Does the Scottish Government have data on the number of people in Scotland who have communication needs? In your letter to the committee, you mentioned the communication hub. How long has that been in operation, and how long has the Scottish Government's guidance on inclusive communication been in place?

**Christina McKelvie:** The committee will know that one of the key issues with Covid-19 is the amount of disaggregated data that we have. A big piece of work is being done across the whole of Government to focus on the data and work out what we need and how we need it. The impact on black, Asian and minority ethnic people is a perfect example of an area in which we thought we had all the right data, but we do not. We have some work to do on data.

We have been working with members of many organisations, including disabled people's organisations such as Glasgow Disability Alliance, to carry out surveys to help us to understand the complete picture. Although many people give us information about communication issues, we do not hit everybody in that way. Some of the organisations that are doing that work are carrying out surveys every week. From those surveys, we hope to have updated and much more accurate data, which will be looked at by the cross-Government work.

Inclusive information is about ensuring that people get the right information in the format that they need it in, and the actions that we have taken are incredibly important, especially when the information is complex and incredibly important public health messages. For users of British Sign Language, for example, the Scottish Government arranged for in-situ BSL/English interpreters to cover the daily press conferences, because that seemed to be where everybody was getting the information. We have worked with the Scottish Commission for Learning Disability, Disability Equality Scotland and NHS Inform to produce easy-read and BSL versions of the Covid-19 advice. We have also published an easy-read version of "COVID-19—A Framework for Decision Making" and alternative formats—easy-read, BSL translation and audio—of "Scotland's route map through and out of the crisis". We did the same for the phase 1 and phase 2 guidance documents, producing them in a number of languages and working with Deafblind Scotland to provide Braille, Moon, XXXL print and audio versions.

The communication hub has been incredibly important. For a number years, the convener and I have supported making the right information available. A big issue is digital exclusion, if many of the formats are available online. We now

produce all our documents in about 16 different formats to ensure that the information gets out there. We ran a few pilots with GDA on digital exclusion, providing not only devices but access to data, which was an issue for many people. Initially, about 40 per cent of the members of GDA were digitally competent to tune in to a conference, but, when I tuned in last week, it was 80-odd per cent. We could see what a difference that interaction had made in those few weeks.

You asked specifically about the communication hub, which has been running since 2016—and we develop it all the time. The pandemic has made us look at how we can do more work in the communication hub to make sure that people get access to the communications that they need in the format that suits them best and helps them to understand, especially when those communications involve important messages such as public health information.

**The Convener:** The committee has heard evidence that, broadly, the simple messaging from the Scottish Government has been good and that the daily briefings from the First Minister and the Cabinet Secretary for Health and Sport were very helpful. However, communication is not just about giving people information; it is about allowing them to respond and interact.

Inclusion Scotland told us that the SMS response option on the shielding letter was helpful for some people but not for others. It also said that, when some of the guidance came out, it was

"only in written English"

and that it

"had to go to the Scottish Government to say that it must come out in easy-read format at the same time."—[*Official Report, Equalities and Human Rights Committee*, 18 June 2020; c 2.]

It feels as though good things are happening, but not consistently.

Age Scotland told us that it

"had to decipher and translate information from the national health service and the Scottish Government".—[*Official Report, Equalities and Human Rights Committee*, 28 May 2020; c 3.]

The reason why I ask how long inclusive communication standards have been in guidance and how long the hub has been operating for is that, if it is not happening consistently, we may need to do more than provide guidance.

We heard from Kim Hartley Kean of the Royal College of Speech and Language Therapists that, as you have said, it is fundamental in a public health effort that people understand the issues and the risks to them and that they can access their rights and the support that they need and to which they are entitled. We have seen cases in

which having inclusive communication embedded in legislation has worked very well. Inclusive communication was embedded in Social Security Scotland's legislation right from the beginning and, by all accounts, it is getting it right. Do you support the view that inclusive communication should be seen as a public health priority?

**Christina McKelvie:** That is a very fair point. In the first few days and weeks of the pandemic, getting a massive public message out there as quickly as possible was foremost in most people's minds. It became a health emergency, so you can see why we wanted to get to the bulk of the population quickly and hoped that the information would be disseminated to others. That is a fair characterisation of how things were done in the very beginning.

Since then, I have worked with Inclusion Scotland and have had many stakeholder meetings. Most of my time over the past three months has been taken up by engagement with stakeholders to find out what the issues are, where they are, how we can remedy them, how we can work together and where we need to intervene. My team in the equality unit and the human rights team have been working right across Government to advise other departments that have a different first response—in the health department, the first response is a clinical or medical response. We have been producing EQIAs, giving the best outcomes and sharing best practice.

A lot of the work that we have done with stakeholders over the past three months has involved asking how what we have done has worked, whether we can do better and, if so, how. A brilliant relationship has been built up between the Government and all our stakeholders, including local government, because a big part of the work has been with the Convention of Scottish Local Authorities. We have also worked with charities and local organisations so that the information gets as close to individuals as possible. The committee will know that there is the national helpline and that there has been the national leaflet drop.

We have tried to cover every base, which has been a massive undertaking. We did not get everything right at the beginning, but all of us will understand the reasons behind that. We have learned a hell of a lot as we have moved along.

I mentioned the communications hub in my opening remarks. We need to work across other parts of Government so that, when we next have such an emergency, we have all the different versions—including easy-read, braille and BSL—ready to go. It was quite tough to do that at the beginning, but we have managed to catch up and do that now.

There is also the work on the route map. We will produce an EQIA, and an easy-read version of the route map is also available, so I hope that we have got the timing right on that. I heard the same issues that were raised at the committee's meetings. We listened to those concerns, and we have worked with organisations to—I hope—remedy them.

**Maurice Golden (West Scotland) (Con):** I accept that we are in an emergency situation, but how has the Scottish Government been undertaking impact assessments on all Covid-19-related policies?

**Christina McKelvie:** You will understand that doing things as swiftly and effectively as possible is always tough. If we have human rights and equalities at the centre of our work, we do not build in the challenges that we had at the beginning and we remove the barriers. We have been absolutely committed to carrying out equality impact assessments on everything that we do in relation to Covid-19. You can imagine how quick moving the situation is and the detailed work that needs to be done across the whole Government to do that. We designed our work to ensure that the policies that respond to Covid-19 work for everyone in a way that is founded in fairness and dignity and that ensures that equality and human rights are safeguarded. The guidance from the Scottish Government and the Equality and Human Rights Commission made it clear that EQIAs should be commenced as soon as possible, and we did that. As we know, impact assessments are of critical importance in tackling inequality.

09:15

The assessment of the equality, human rights and children's rights impacts of the coronavirus emergency legislation is an essential aspect of our reporting approach. Every three weeks, when we get the reports, there is an equality impact assessment and a human rights impact assessment. That includes signposting to information that is disaggregated by protected characteristics, where possible. That is one aspect of further work that we are now developing in our approach to future reports.

Consideration of human rights is, and continues to be, embedded in policy development for coronavirus emergency legislation. As my human rights team will verify, they worked very closely with the bill team on both the Coronavirus (Scotland) Bill and the Coronavirus (Scotland) (No 2) Bill, with a clear analysis and understanding from our partners, including the Scottish Human Rights Commission and the Equality and Human Rights Commission. We have, in effect, published all that information in the policy memorandums for both bills. EQIAs for the Coronavirus (Scotland)

Bill and the Coronavirus (Scotland) (No 2) Bill were published on 31 March and 11 May, respectively, and they are both available as pdf documents on the Scottish Government website.

**Maurice Golden:** It is understood that the public sector equality duty review is delayed. Can the minister provide the committee with an update on that, please?

**Christina McKelvie:** Yes. I am not sure whether, the last time I spoke to the committee, I talked about the fact that we were increasing the capacity within our equalities team to set up a stand-alone mainstreaming team. That is being headed up by Jenny Kemp, whom many of you will know from the voluntary sector. That team was working closely across the whole of Government on the mainstreaming of equalities and human rights, underpinning some of the work on where we will go next with the public sector equality duty.

Because of Covid, the public sector equality duty part of the work was halted. Regarding the capacity within Government, it was difficult to do that aspect of the work because of all the other EQIA work that needed to be done on the emergency legislation and on other pieces of policy. That difficulty also arose because of the lack of capacity within organisations. Embarking on a big piece of work of that sort while trying to deal with supporting people on the front line during the pandemic was incredibly difficult for them.

A big factor in the work that was announced last week by Aileen Campbell and Shirley-Anne Somerville on social renewal will be equality and human rights duties. There will be areas in which we could do some more work on those. I am basically confirming that we are not proceeding with that work right now.

The other piece of work that is being done in Government lies with the human rights task force, and part of that is about equality duties. It is not as though the work has completely halted; it is being done through social renewal and through the human rights task force. However, in trying to tackle all the EQIA work that needed to be done across the whole of Government, working closely with health colleagues, the team was focused on doing that work over the period.

**The Convener:** Are you content with that answer, Maurice?

**Maurice Golden:** Yes. Thank you.

**Alex Cole-Hamilton (Edinburgh Western) (LD):** Good morning, minister—it is nice to see you. I want to ask about a couple of things. First, we know that the test is quite a traumatic experience, and carers are keen to help to administer the test with the people they are caring for in order to minimise that trauma. We have had

anecdotal feedback, however, that the guidance is not as clear as it might be, particularly for using testing facilities or the home test kits, when it comes to administering the test in order to get an effective result. Given that testing is absolutely core to our getting out of the situation and controlling the virus, is the Government considering mitigating the requirements or changing the guidance to make it a bit more user friendly, particularly for carers who are trying to administer it to people who are suffering?

**Christina McKelvie:** That is an incredibly important question. Alex Cole-Hamilton and other committee members will know that my background, before I came into the Parliament, was in social care and social work. When I saw how invasive the test is, it crossed my mind to ask how people would manage to administer it with someone with dementia, an adult with a learning disability or someone with motor neurone disease, who would have diminished swallowing capacity. I kept thinking about the mechanics of doing that incredibly horrible test.

The point is perfectly legitimate, and I hope that we are remedying the situation now with our ongoing work. Support is available via health hubs, community health teams and a number of other such areas. If a carer is not confident about doing the test—which can be quite scary if you are not medically trained to do it—a number of support mechanisms are in place.

If, as Alex Cole-Hamilton says, the guidance on home testing is not an easy read or as understandable as possible, I can certainly take it back to the test team so that they can look at it again. That is one of the emerging issues as we move out of lockdown, and things are becoming a bit more specified around individuals who continually need to shield. I am happy to go back to the test team and ask them to look at the guidance to see what else we can do around it and to come back to the committee on the matter.

Alex Cole-Hamilton makes a fair point. I cannot imagine, if I were in a social care setting, having to test somebody and not feeling confident about it. We need to ensure that carers are confident so that people get the test when they need it—and that they get the quickest response as well.

**Alex Cole-Hamilton:** Let us move on to a wider issue that affects older people, in particular. The convener will perhaps permit me to ask about mental health issues afterwards. At the start of the pandemic, there was widespread news coverage of doctors going into care homes and asking—or, rather, imposing—DNR orders for either residents or their family members to sign. The reason that was given for that at the time was concern about the capacity in the national health service—if the most intensive areas of primary care were



overwhelmed, they could not take patients who were near the end of life anyway. What has the Government learned from that? Does the minister believe that that practice was a breach of human rights? What can we do to remedy the situation so that it does not happen again?

**Christina McKelvie:** That was an incredibly difficult time. It seems that a letter went out from a general practitioner's in Wales and that the practice became widespread. I do not know whether what happened there was a knee-jerk reaction, but lots of medical professionals possibly thought that they should have done that a while ago.

Our guidance on CPRs and DPRs, depending on what acronym is used, has not changed. We have always maintained that the guidance has not changed and that those orders should be part of a gentle anticipatory care plan that respects and supports people's dignity and human rights. We have had examples of cases in which that did not happen, and I know that the Cabinet Secretary for Health and Sport has been concerned about that, as has the chief medical officer's office.

Alex Cole-Hamilton wants to know what we have done about the practice, and he is absolutely right to ask about that. I had immediate concerns about people feeling pressured or not understanding what a DNR was, as well as questions about people's capacity and ability to make decisions and the fact that some people might not have known whether someone else had made the decision for them. We heard of terrible examples such as a form being slipped into somebody's bag.

The CMO's office quickly issued ethical guidance on the back of that situation. That was one of our immediate pieces of work. A lot of people, especially DPOs in organisations with which I had stakeholder engagement, were very concerned about the situation and felt that people were not being treated equally. We attempted to go back to stakeholders at every stage of our work to ask whether that ethical guidance worked, whether it answered their questions and whether it gave them the support and reassurance that they needed, and we had some feedback on it. We have gone back and forth on that.

A group including Sally Witcher from Inclusion Scotland—members know that she does not mince her words—is working with the CMO's office, and updated ethical guidance will come out very soon. It has gone back and forth with stakeholders in order that we get it absolutely right, because that is incredibly important if we are to reassure people, maintain their human rights and dignity and not just scare the bejesus out of them—because that is exactly what was happening. I ask the committee to please let me

know if it has heard of, or can share, any other information that we can feed into our current process. Equalities and human rights officials are working with the CMO's office, with health officials and—most importantly—with stakeholders such as Sally Witcher, and I hope that we have now got the guidance right.

**Alex Cole-Hamilton:** Thank you for that comprehensive answer.

The final area that I will ask about is schedule 9 to the Coronavirus Act 2020. I challenged the Cabinet Secretary for the Constitution, Europe and External Affairs on whether we could repeal the act's more draconian mental health aspects, particularly in relation to the number of clinicians required to impose a detention order and the amount of time that a person could be held in detention. The cabinet secretary referenced correspondence from a senior psychiatrist, who may have had a different view on the issue from that of human rights practitioners. Further to the committee's letter of 4 June 2020, has the Scottish Government had discussions with the UK Government about repealing schedule 9? If not, does the Scottish Government have a trigger for bringing that schedule into force?

**Christina McKelvie:** You will know that the emergency legislation must be reviewed every three weeks in Scotland and that some changes were made to certain aspects of it in the Coronavirus (Scotland) (No 2) Act 2020.

Schedule 9 was always going to be contentious; Alex Cole-Hamilton is absolutely right that it means very different things to human rights activists and psychiatrists. The schedule was put in place at a time when we thought that the health service would be completely overwhelmed with Covid-19 cases; it was meant to ensure that people got the right care when they needed it, and as quickly as possible. We know and understand that, in some instances, enacting legislation might not be the best way to do that—we realised that when we were working up schedule 9. However, we felt that it was important to have that provision in the legislation. We have not had to bring schedule 9 into force, and I do not know whether we ever will.

The UK Government legislation is reviewed every six months. We have raised those points with the UK Government, and we are hoping that it will listen to our comments.

I know that there are very different views of psychiatrists' work. When attempting to balance rights and make sure that people get the interventions that they need and the right medical help or support in an emergency, it is good to have the sort of backstop that we have in schedule 9, but it is also good to be able to review it, and we

have the opportunity to do that. We have had conversations with the UK Government about that, and I will make sure that, once we have some feedback, I will let the committee know so that it is completely up to date on the response—I do not think that we have had that feedback yet.

**The Convener:** I will press you a little on the trigger for bringing schedule 9 into force. We heard from Social Work Scotland that there had been some pressure—it did not give any specifics, but we heard that colleagues had been pressing for the schedule to be brought into force. What would the trigger be for that?

**Christina McKelvie:** That is a difficult question to answer, because I suspect that it would be triggered on an individual case basis and we would never know all the circumstances as to why schedule 9 would be used in a particular case. We also do not know whether there will be a second wave or another peak in the virus and, if that happens, whether we will need the legislation.

My honest answer is that we do not know how and when schedule 9 would be triggered, because it is about an individual and their needs at a particular time. If schedule 9 is ever used, it will be important to keep a strong human rights focus on that so that we can make sure that we have the right monitoring and auditing of how and when it is used.

**The Convener:** We can leave it there, but I suspect that the committee will want to follow that up with the Scottish Government to get more information on the specifics. We will move on. I will bring in Pauline McNeill.

09:30

**Pauline McNeill (Glasgow) (Lab) (Committee Substitute):** Should I ask about that subject, or should I ask another question?

**The Convener:** I have you down for questions on mental health and shielding, but the floor is yours.

**Pauline McNeill:** Good morning, minister. You will be only too aware of the pressures on mental health—many members have raised the issue. As with most services, there is a backlog of cases. What are your thoughts on dealing with the backlog and whether additional resources will be made available to mental health services?

**Christina McKelvie:** You might know that officials across lots of parts of Government have been working closely with health boards and wider stakeholders to support mental health staff to maintain the integrity and quality of services across Scotland. It has been difficult to achieve that, and they have looked at all sorts of innovations in doing so. We are also looking

forward, as lockdown is lifted, to the time of recovery. What is going to emerge and how can we be ready to provide the service to deal with it?

You will know that on 1 May we issued a set of principles to guide the delivery of mental health services, including referral processes and the management of existing waiting times. Crucially, on 14 May, the Government wrote to all NHS boards, highlighting mental health as a clinical priority and setting out many plans for recovery and the requirements for mental health in the coronavirus mobilisation plans. We look to reflect that priority in the resourcing.

In relation to resourcing, we have had the very high-profile—and I think successful—Clear Your Head marketing campaign. As part of that, we have invested around £6 million in initiatives to support mental health over recent weeks, including £2.6 million to increase the capacity of NHS 24 telephone and online services and £1.2 million to extend the availability of digital therapies, including £1 million to roll out a Distress Brief Intervention programme nationally. I think you will agree that the DBI piece of work is incredibly important as we emerge from lockdown, as people will have developed some mental health issues. The social harm of three months in lockdown is huge.

I have been working closely with stakeholders and health colleagues on social isolation and loneliness. We have developed many resources and scenarios and have worked with lots of organisations to ensure that there is a choice of a suite of services. Those services might be offered not in the traditional ways that people receive mental health interventions, but in other ways. A couple of young people I know in my constituency accessed some of the online interventions that we did through YoungScot, which they felt were much more effective than some traditional interventions. There are things to learn about how we can use other ways to connect with people in a setting that they might find more comfortable than a clinical setting. We are looking at all that as part of our social renewal work.

**Pauline McNeill:** I have a question that follows on from what Alex Cole-Hamilton asked on the “do not resuscitate” notices and the controversy around the over-65s, which is clearly in your portfolio. I know what you said about the guidance, but have we investigated where that came from? Not only is there a concern about “do not resuscitate” notices, but many GPs have said that, early on in the lockdown, they were specifically told not to send over-65s to hospital. That advice changed. Have you spoken to the chief medical officer, for example? Where did the advice come from in the first place?

**Christina McKelvie:** The honest answer is that we do not know. Our guidance to GPs and other health professionals did not change. I think that there was a bit of panic at the beginning, with people thinking that the health service would be overwhelmed. As I said to Alex Cole-Hamilton, I suspect that a number of GPs thought that—*[Inaudible.]*—that they needed to make sure that people understood it—or did not understand it, or whatever. The honest answer is that we do not know where it emerged from. It came with the virus; it was part of the many concerns that came up.

On the over-65s, my older people's strategic action forum is a fantastic, amazing group of individuals who are very connected in their communities and age demographic and across many disciplines. Quite a few of them had anecdotal evidence—they knew somebody that it happened to, who had got just a phone call from the GP's receptionist or a letter or an email. There was a terrible case in Aberdeen, in which somebody got a text message.

It is incredibly difficult to work out where the advice came from, but we have been absolutely clear that the DNR guidance has not changed. The ethical guidance that came along with it was a quick remedy to remind people to apply ethics, dignity and human rights considerations to all those decisions and to remind them that anticipatory care planning should be done in a sensitive and co-produced manner, not in the manner that we have seen in some of the anecdotal evidence.

On the back of that, we have worked with health professionals—in particular, with the chief medical officer's office, and the equality and human rights team—to develop ethical guidance that is even more clear. We have done that alongside many of stakeholders, as I have said, including our amazing OPSAF group, who have been very vocal about some of the challenges that they have seen. I have attempted to incorporate all that lived experience and understanding into our continuing work.

As we emerge into recovery and renewal, what have we learned? There must be a lesson from how a piece of information could travel in a viral fashion and scare so many people, when that was not necessary.

**Pauline McNeill:** Will you will make any inquiry as to where it came from? If you accept that it happened, it was direct discrimination against over-65s. Early in lockdown, somewhere, somebody in the system—whether medical or clinical, I do not know—took a decision not to admit over-65s to hospital. Do ministers not want to get to the bottom of how that happened in the first place?

**Christina McKelvie:** Yes, absolutely. The same question was asked of the First Minister yesterday, I think. She has agreed that we need to look at that. We are already working with the CMO's office on it. I am happy to go back and find out exactly what investigations it has done to find out where it came from. I think that the First Minister made that commitment yesterday.

**Angela Constance (Almond Valley) (SNP):** Good morning, minister. I have two questions.

The first is a quick follow-up to the questions on mental health legislation and schedule 9 to the 2020 act, in particular. Will you say more about that? The Government has consistently said that the emergency powers will not remain in force for a moment longer than they are required. How does the need to keep those powers on the books, just in case of a second wave, fit with having a human rights perspective?

**Christina McKelvie:** It is a question of how we keep the balance right and how we maintain a public health response in relation to the fundamental right to life, keep people safe and have the powers and the measures to do that while understanding that they are a pretty blunt instrument to use in supporting individuals. As Angela Constance will know, it has been a practice in social work for many years to have backstops "just in case".

That does not take away from the point that the provisions of the legislation are pretty blunt and fearsome for an individual who has been caught by them. It is a question of how we get the balance right. Work has been done to attempt to balance the rights of the individual against the public health response that is necessary to keep people safe and alive. That balance has been one of the most difficult to strike in Government.

The emergency legislation that contains the powers provides for a human rights report every time we have a review. Every time the review comes up, we ask whether we still need the powers, and right now, on balance, we still need them.

I heard news this morning of a possible vaccine, which will fill us all with hope that soon something will emerge that will take away all our concerns about how we manage a second wave, another peak or perhaps a sectoral issue that arises. A vaccine will allow us to deal with those issues better.

I hope that we will never need to use the powers in the legislation. I think that someone who is looking at the powers from a human rights point of view will think that their effect could be a bit rough and that they are rather a blunt instrument. However, if the medical profession was overwhelmed, we can see that we would need to

be able to respond quickly. It is about getting the balance right, which is difficult. It has been one of the hardest pieces of work that we have had to do.

**Angela Constance:** I am conscious that a few other members have still to come in, so I will try to be brief.

My next question is about social care packages. The minister will be interested to know about the evidence that we heard from the Health and Social Care Alliance Scotland and other organisations about the issues around the increases in the eligibility criteria for packages, which, in some cases, has resulted in reduced or no support.

Given that the Scottish Government wants to make independent living a reality for disabled people in Scotland and has a lead role in the action plan, “A Fairer Scotland for Disabled People”, what steps will be taken to ensure that disabled people get the right support at the right time?

**Christina McKelvie:** That is an incredibly important question, which the stakeholders whom I have met have raised at almost every meeting. Some local authorities ended up in dire straits quite quickly. Glasgow City Council had an absence rate of about 30 per cent in its social care work force, but it was able to recruit more people to increase the numbers. The consequence was that care packages were reduced or, in some cases, withdrawn. That is not something that we supported at Government level.

There has been a disproportionate impact on some people, especially people who have complex disabilities and need access to day care, families who need access to respite care, and families who want to visit a parent or elderly relative in a care home. All those issues have been incredibly difficult. When it comes to care packages, families and home carers, in particular, have been left with some of that burden. It has been difficult to sort out the issues.

However, local authorities have been given additional money to maintain care packages. We are working closely with the Convention of Scottish Local Authorities, and have said that we expect care packages that have been limited or reduced to return to normal as soon as possible. We know that many local authorities are already working towards achieving that aim. For example, they are looking at how they provide respite and day care and support for families who have been caring for people in lockdown. For many of those families, the person whom they care for has been shielding, which has additional consequences.

We expect local authorities to get those care packages back up and running as quickly as possible. We do not expect there to be massive reviews of care packages, which would just add to

the stress and worry that many carers and families have experienced over the past three months.

09:45

**Fulton MacGregor (Coatbridge and Chryston) (SNP):** One of the most worrying issues during lockdown, particularly during the strict period, was the exposure of many women and children in Scotland to further domestic violence. I know that the minister is passionate about that issue and the committee has taken a lot of evidence on it during its inquiry. What support has the Scottish Government put in place for women and children who may be experiencing domestic abuse and violence, and what support have local authorities received specifically to provide housing for families in that situation?

**Christina McKelvie:** The first stakeholder meeting that I had, on the day after lockdown, was with the violence against women sector. I, like many of us, realised quickly how difficult the advice to stay in their house for three months would be for people in abusive, coercive and violent relationships. One of the first things that we did was ensure that the coronavirus legislation allowed someone to flee.

We received a clear understanding from our main stakeholders—Scottish Women’s Aid and Rape Crisis Scotland—that they expected a massive influx through their digital and helpline platforms, because women would not be able to access services in a traditional way. Within a week or two, the First Minister announced an additional £1.35 million for Scottish Women’s Aid, in order to increase the capacity of its helpline and get new kit to enable more extensive use of its digital and online services. It had to reprioritise a number of pieces of work—something that cut across the work of all violence against women organisations.

We talked to other organisations, such as supermarkets and pharmacies, and we carried out a number of pieces of work with colleagues in England, Wales and Ireland to look at how to get the message out. Morrisons put the national helpline number on the back of its receipts and Tesco put banners up in its shops with the national helpline contact details. We realised that the weekly visit to the supermarket for the shopping might be the only moment of freedom that someone would have to attempt to access a service. We tried to think of the most innovative and basic ways in which someone could get access to those services and we funded that appropriately.

COSLA and the Improvement Service published guidance for local authorities, which included signposting to local resources to assist all the decision makers in identifying women and children

who were at risk. That was another big piece of work. It identified the short, medium and long-term steps that would be needed both to protect people during the pandemic and to look after their wellbeing as we come out of it.

We anticipate that, in the next few weeks, as lockdown is lifted, those services will be inundated. We are planning for that and speaking to our stakeholders almost every week. We have ensured that our domestic abuse and forced marriage helpline is open to anyone experiencing domestic abuse, and we have looked at all the ways in which we can make sure that people have access to it. The national leaflet that was sent out included the national helpline among the helpful numbers.

I mentioned earlier that we ensured that one of the coronavirus exemptions was to allow people to flee if they needed to. We worked closely with COSLA and others to ensure that councils could act to open voids. Scottish Women's Aid and the Chartered Institute of Housing in Scotland published their guidance for social landlords, which was incredibly helpful. We supported that piece of work to ensure that, if someone needed to flee, they had opportunities to go somewhere safe.

One of the challenges was that, because of social distancing, refuges had to go from being multifamily to single-family units. Capacity was therefore already reduced, so allowing that bit of freedom for local authorities and social landlords to address that was helpful. I am trying to give a quick response because I know that we are quickly running out of time. There has been a huge piece of work, on which I can give the committee a further update.

We also did a piece of work on no recourse to public funds, working with Shakti Women's Aid, Hemat Gryffe Women's Aid and others such as that. No recourse to public funds is an absolute abhorrence, as we know, but because it was a public health emergency, there were things that we could do to use the emergency to support people in those situations.

**The Convener:** I thank the minister for that very full answer. Did it cover the points that you wanted to raise, Fulton? It was certainly a comprehensive answer.

**Fulton MacGregor:** It was, but I have a quick follow-up question. The minister is right that a lot of work has been done in the area. Although I know that hindsight is a wonderful thing, with the possibility of a second wave, I wonder whether anything could be done around—*[Inaudible.]*

—it was obvious in the early days of lockdown that the public were taking a very active role. I do not think that any MSP had an inbox that was not full of information about what other people were

doing and whether they were out on the street or out at parks when they should not have been there, and councils and police authorities were reacting appropriately to that.

However, it dawned on me—and, I am sure, on every other MSP—that we do not know the circumstances of those people, and that some of those people may, in fact, have been getting out of the way of an extremely abusive situation when all their safety nets had been taken away. Is the Government thinking about how we could have messaging around that if there is ever a need to impose such restrictions again—which, of course, I hope there will not be?

**Christina McKelvie:** That is a really important question. Part of the work that we have done in Government has been through the public services hub—there are also hubs for economy and health. The public services hub is chaired by the Deputy First Minister. It includes me, Shirley-Anne Somerville, Aileen Campbell, Kevin Stewart, Humza Yousaf, Ash Denham, Maree Todd and Richard Lochhead—the committee will see the breadth of public services represented there.

In all those meetings, there is a justice update every day. At the very beginning of this, there was a collegiate approach across Government, looking at domestic violence and the challenges of that, one of which was what the justice response would be to people who were fleeing. Police already had an understanding of all the work—about 14,000 police officers are now trained in our new legislation. I suspect that if someone said, “I needed to just get out the house,” because that was what was happening, there would be understanding. I have not seen anything come through any of that work to suggest that the police took a heavy-handed approach with anyone on that aspect; it was probably more the case that they were able to signpost them to the right services and the right support.

Nonetheless, it is a good question to think about as we emerge, and it is not lost on any of us who are thinking about how we go into renewal and how we make sure that we address the issue much more effectively—especially in relation to test and protect and people having to periodically go back into isolation because they have been in contact with someone with the virus. How we manage that more effectively and give a more tailored response are definitely questions that I will think about.

**Alison Harris (Central Scotland) (Con):** As the minister will obviously be aware, the Scottish Government has set up two expert groups: the expert group to look at the impact on minority ethnic communities, and the advisory board on social renewal, which I think that you mentioned earlier. Can you provide us with any information

on the membership of those two groups and what the groups will be doing?

**Christina McKelvie:** The expert reference group on Covid and ethnicity will meet for the second time right after the committee's meeting. I attended the group's first meeting and I will attend the second one, too. Five targeted pieces of work have been developed, which will not come as a surprise to the committee.

The first piece of work is on understanding the data, which we have already spoken about. Analysts in the Scottish Government, Public Health Scotland and National Records of Scotland are carrying out further work on the data to review what we have and to create a clearer picture of the impact of Covid on minority ethnic communities in Scotland. The data that we currently have tells us that there is not much of a difference here, but that is heavily caveated, because the data is not complete. That is why that piece of work needs to be done.

The second piece of work is on workplace assessments and protecting front-line workers who are from black, Asian and minority ethnic communities. We have implemented interim national guidance on that, so that risk assessments are carried out and reviewed appropriately. That process is carried out along with the member of staff, to make sure that they are fully protected and enabled to continue to do their job.

The third piece of work was a targeted marketing campaign that we ran, especially through Ramadan, to get the messages about Covid out in a format and a language that people understood. We targeted some of our minority ethnic communities by using other media platforms and bespoke radio stations.

The fourth piece of work is on direct engagement. Most of my work over the past three months has involved meeting stakeholders and asking them what is being done, how it is being done, what we can do to redress the situation and what ideas they have about working together. That work will continue.

In addition, as the committee knows, we have set up the Covid and ethnicity reference group, which I will meet later today. I can give a quick rundown of the membership of the group, although it might not be complete, because we might bring in additional expertise as we go along. You will know Ima Jackson, as she has given evidence to the committee. Vittal Katikireddi is a senior clinical research fellow at the University of Glasgow and a consultant in public health. Douglas Anderson is a senior actuary who specialises in longevity and diversity. Raj Bhopal is emeritus professor of public health at the University of Edinburgh. Jatin

Haria is from the Coalition for Racial Equality and Rights. Rami Ousta from BEMIS is also a member, because we felt that it was important to have stakeholder voices represented on the group. Aisha Holloway is the head of nursing studies at Edinburgh university. Kaliani Lyle is the Scottish Government's former race equality framework adviser. Nasar Meer is professor of race, identity and citizenship at Edinburgh university's school of social and political science. Gina Netto is a reader in the school of the built environment at Heriot-Watt University who specialises in ethnicity and social justice.

As those names demonstrate, we have a pretty broad range of academics and health professionals on the group. We also have a number of Scottish Government advisers and officials on the group, including our data experts.

The membership list of the social renewal advisory board, which I think met for the first time last week, is much longer. For the sake of time, I could send the list to the committee, if that would be helpful. It includes people such as Angela O'Hagan, Anna Fowlie, Bill Scott, Councillor Alison Evison and Eileen Cawley from the Scottish Pensioners Forum. The set-up will be a bit like that of the national advisory council on women and girls in that, in addition to an advisory board, there will be individual circles that will focus on specific topics. Some of those topics have already emerged; they include food security and access to food, and housing and all the issues that go along with that. Shirley-Anne Somerville and I will be involved in a circle on age and disability. In that way, we want to target all the various intersections.

People from the social security and older people and communities and local government portfolios, along with housing, disability, poverty and homelessness experts and third sector representatives, are all involved in that. The membership list is extensive, so I will get officials to send it over to the committee so that members know exactly who is on the social renewal advisory board.

**The Convener:** Thank you, minister. We appreciate that.

**Alison Harris:** The committee has heard about progress that has been made in the course of addressing the pandemic, such as on flexible working practices, and how that has benefited some disabled people and other groups. We have also heard about progress in dealing with homelessness. How can that progress be sustained after the pandemic?

10:00

**Christina McKelvie:** The social renewal advisory board, led by Shirley-Anne Somerville and Aileen Campbell, is working on that, and some amazing work has been done. The ethnic minority national resilience network has fed hundreds of people with culturally appropriate food. The network got a small bit of money and distributed it among the local networks to provide an amazing service. Our work with the Gypsy Traveller community has actually improved working relationships across the board, including with local authorities and other agencies. I was speaking to those authorities last week about how we can sustain those relationships. It is about not just funding sustainably, but the relationships and mechanisms.

On working from home, no one can now say that a reasonable adjustment to allow a member of staff to work from home is not achievable—we all know now that it is. The Scottish Government has a flexible working fund and we will look at how we can use that fund more effectively.

We need to look at some of the learning—for example, in relation to how we tackle homelessness. We have managed to lift everyone who was rough sleeping out of that situation. How can we sustain that? Kevin Stewart is working very hard on that because the last thing that he wants is to see those people going back on to the streets. That is why he has re-established the SRAB—the acronym is my notes, but I do not know what it means—which is the work led by Jon Sparkes on how to end homelessness. We have drawn on all that experience and understanding. Tiny bits of money have made transformational changes and we need to think about how we can maintain that.

The funding rounds in my portfolio were coming to an end at the end of June. I have managed to extend one fund and to bring a new fund into play in the autumn, and to extend other funds right through to 2021. The last thing that any of those organisations needed while they were at the front of the pandemic was to go into a new application and procurement round. I am considering all that funding to see how we can use it more effectively and target it at things that really matter. We have learned a lot of lessons. We now know who the essential workers are and how we need to support them. We know how amazingly communities can respond when we give them a wee bit of support and money—they just get on and do it, and they have been absolutely fabulous.

**The Convener:** On that note, we conclude our public evidence session. I thank the minister and her officials for their attendance. We will follow up any scrutiny issues by correspondence, which will be published on our website. Our inquiry is still

open for responses, and I encourage people and organisations to let us know how the easing of lockdown restrictions is affecting them and to give us their views on equalities and human rights in the recovery plan for Scotland.

The next meeting will be scheduled for when Parliament returns in August. We will now consider items 2 and 3 on the agenda in private, on Microsoft Teams.

10:03

*Meeting continued in private until 11:05.*





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