

Witness Name: Melanie Field

Statement No.: 1

Exhibits: none

Dated: 05.05.23

UK COVID-19 INQUIRY

WITNESS STATEMENT OF MELANIE FIELD

I, Melanie Field of the Equality and Human Rights Commission, Arndale House The Arndale Centre, Manchester, M4 3AQ, will say as follows: -

A. Introduction

1. I make this statement in my capacity as Chief Strategy and Policy Officer of the Equality and Human Rights Commission ('EHRC', formally the Commission for Equality and Human Rights), in response to the request by the UK Covid-19 Inquiry ('the Inquiry') for evidence relating to its Module 1, pursuant to Rule 9 of the Inquiry Rules 2006. References in this statement to "we" and "our" refer to the EHRC collectively.
2. I have worked at the EHRC since 27 January 2014. I have been in my current role since 2015. I understand that the period that the Inquiry is considering in Module 1 is 11 June 2009 to 21 January 2020 ('the specified period'). In the latter part of this period I have had overall responsibility for strategy and policy at the EHRC, reporting directly to the Chief Executive Officer ('CEO'), save for a short period as acting joint CEO, between July and September 2021.

3. The Inquiry has requested a statement from the EHRC in Module 1, seeking information about the extent to which the government (as defined for the purposes of Module 1) factored pre-existing inequalities and vulnerabilities into emergency planning during the specified period. The EHRC is also providing witness evidence, at the Inquiry's request, in relation to Modules 2, 2A and 2B (to date). There is some overlap between the respective statements.
4. The EHRC's work relating to the Covid-19 pandemic ('the pandemic') was reactive in response to developments as the pandemic unfolded, and so the information held by the EHRC that might inform lessons for future pandemic planning derives from our work undertaken during the pandemic.
5. This statement is divided into the following sections:
 - 5.1. The EHRC (paragraphs 6 to 13);
 - 5.2. Pandemic planning and emergency preparedness (paragraphs 14 to 17);
 - 5.3. General resources (paragraphs 18 to 22);
 - 5.4. Lessons learned for the future (paragraphs 23 to 45).

B. The EHRC

6. The EHRC is Britain's national equality and human rights body. It is a statutory body established under the Equality Act 2006 ('EA 2006'). It operates independently of the UK, Scottish and Welsh Governments to encourage equality and diversity, eliminate unlawful discrimination, and protect and promote human rights. It enforces the Equality Act 2010 ('EA 2010') and encourages compliance with the Human Rights Act 1998 ('the HRA'). It is accredited at UN level as an 'A status' National Human Rights Institution ('NHRI') in recognition of its independence, powers and performance.
7. We have unique duties and powers which are set out in Part 1 of the EA 2006. Pursuant to section 3 of the EA 2006, our general duty is to encourage and support the development of a society in which: (a) people's ability to achieve their potential is not limited by prejudice or discrimination; (b) there is respect for and protection of each individual's human rights; (c) there is respect for the dignity and worth of each

individual; (d) each individual has an equal opportunity to participate in society; and (e) there is mutual respect between groups based on understanding and valuing of diversity and on shared respect for equality and human rights.

8. As an independent and impartial body, the EHRC is not directly involved in any formal advisory groups and does not participate as of right in any government administrative processes, but does so on request. Our role is to promote understanding and engagement with equality and human rights issues, to encourage compliance with the law, and to use our authority and influence to secure improvements in policy, practice and the law where necessary. This involves regulating employers and service providers across Britain, whether private, public or third sector. While we actively participate in debates across equality and human rights issues, and seek to foster good relations with and between stakeholders, it is not our role to be an advocacy or campaigning organisation. The EHRC's work generally has not, and does not, include epidemic or pandemic preparedness, as this issue is outside our explicit remit.
9. We regulate equality across the three nations of Great Britain and our human rights mandate extends to England and Wales, and Scotland in relation to matters reserved to the UK Parliament. The Scottish Human Rights Commission has a mandate to promote and protect human rights in Scotland where they fall within the competence of the Scottish Parliament. We take a three nations approach to our work, to ensure that our action to improve equality and human rights is relevant to the devolved contexts of Scotland and Wales, with assistance from our statutory Scotland and Wales Committees, and to devolved decision makers in England. In practice, this means regular discussion and information sharing between staff in our Great Britain, Scotland and Wales teams.
10. Our funding is provided by the Government Equalities Office, which is part of the Cabinet Office, and we are accountable to Parliament through the Minister for Women and Equalities and the Women and Equalities Committee. We appear before the Women and Equalities Committee to give oral evidence as required and at least annually.

11. Responsibility for the strategic oversight of the EHRC lies with the Board of Commissioners. The Chair and Commissioners are public appointments made by the Minister for Women and Equalities.
12. There are also four committees which help guide our work: two statutory committees, the Scotland Committee and the Wales Committee; and two non-statutory advisory committees, the Audit and Risk Assurance Committee and the People and Workspace Committee. During the specified period, we also had a Disability Advisory Committee.
13. The EHRC staff is made up of a number of teams, and we employ some 230 staff.

C. Pandemic planning and emergency preparedness

14. The EHRC's work generally did not, and does not, include epidemic or pandemic preparedness, resilience and planning. As a small organisation with a limited budget but with a large remit, in order to be effective we have to make strategic choices about our priority areas of focus. These are set out in our statutory Strategic Plan (which covers a three year period) and our annual Business Plans, all of which are available on our website. Our work does encompass health disparities more broadly, and some of this will be applicable to pandemic planning. For example, we will be working with Integrated Care Boards ('ICBs') in England around their collation of information on the people who use their services, including those who are most likely to experience health inequalities. If opportunities arise in future to influence government in this specific area then we will consider engaging with reference to our strategic priorities, in line with our approach to other work. We have not yet given formal consideration to incorporating emergency preparedness and resilience directly into our work, and we are currently commencing planning to develop our next Strategic Plan, due for publication in spring 2025.
15. The EHRC has not to date engaged with the UK government, devolved administrations, or any local government regarding the extent to which inequalities and vulnerabilities should be factored into any emergency preparedness or planning, or specific pandemic planning in the UK; and we have no current plans to do so. Because of our limited resources, we have to take a more general approach to these issues. An example of this is our future work with ICBs referred to above,

which is aimed at improving the collection and analysis of user data in health and social care. As far as I am aware, we have also not been asked by any of these bodies for advice in relation to emergency preparedness in the context of inequalities during the specified period, nor in order to inform future planning, since the Covid-19 pandemic.

16. The EHRC has not carried out any research, published any guidance, or undertaken any monitoring or enforcement activities in this area. This would be a resource-intensive project, which would entail significantly reducing our work in other priority areas. Given our budget limitations and the consequent need to focus on a limited number of strategic areas, I do not anticipate that we will carry out any such work in the near future.
17. However, as with any public policy-making activity there are a number of resources produced by the EHRC that can be drawn on by policy makers to ensure that inequalities and vulnerabilities are taken into account, that the public sector equality duty ('PSED') is complied with, and that human rights are respected. These are addressed in the next section.

D. General resources

18. We publish a large amount of guidance. Key examples of guidance in relation to compliance with the PSED that the EHRC has published (and which are available on our website) are as follows:
 - 18.1. The essential guide to the PSED (2014, updated 2022);
 - 18.2. Technical Guidance on the PSED: separate guidance documents for England (2014), Scotland (2016) and Wales (2014), all of which have been updated in 2023;
 - 18.3. Coronavirus (COVID-19) and the equality duty (2020): separate guidance for England and Scotland.
19. The EHRC has produced a number of publications in relation to health disparities, which are of relevance when considering how to take into account poor health

outcomes of certain groups in pandemic planning. Key examples of these are as follows:

- 19.1. Is Britain Fairer? The state of equality and human rights (2018) (see also our October 2020 report, How coronavirus has affected equality and human rights, which specifically addressed the impact of the pandemic);
 - 19.2. Being disabled in Britain: a review into disability inequality in Great Britain (2017);
 - 19.3. Healing a divided Britain: the need for a comprehensive race equality strategy (2016).
20. We have also published guidance on human rights. One such example is Human Rights: Human Lives, A Guide to the Human Rights Act for Public Authorities (2014). This publication is designed for those working in any public body to support them in making decisions through a human rights lens.
 21. In addition, as a National Human Rights Institution ('NHRI'), the EHRC monitors the UK and Welsh governments' compliance with a number of human rights treaties and submits reports to the UN that set out principles that are applicable to policy-making in healthcare and other areas. As part of the Universal Periodic Review process the EHRC submits a report to the UN every 5 years, which makes recommendations to the UK and Welsh governments on how to better respect and protect human rights, and fulfil their international obligations in health and other areas.
 22. Our remit requires us to engage regularly with government at various levels. We have a key role in advising governments on equality and human rights issues, and a range of statutory powers under the EA 2006 enabling us to provide advice and guidance on equality and human rights matters. We regularly offer advice to the UK, Welsh and Scottish governments, and during the pandemic we did so in relation to their reactive responses. Such advice can be given in correspondence and meetings with Ministers and governmental departments, as well as through guidance, briefings (in particular, parliamentary briefings) and consultation responses.

E. Lessons learned for the future

23. Emergency legislation, guidance and government policy in response to a pandemic such as Covid-19 – as well as the effects of the pandemic itself – have the potential to exacerbate existing inequalities and particularly affect those with certain protected characteristics or who are in vulnerable situations. As with any area of public policy and regulation, equality and human rights should be at the heart of emergency planning and pandemic planning. I have set out below how in practical terms this can be achieved.
24. The PSED provides a framework that seeks to ensure public bodies routinely and systematically consider equality from the outset of decision-making. When public policy decisions are being made, decision-makers must actively consider the full range of people with protected characteristics affected by those decisions. Doing this will avoid the risk of developing or implementing policies which have negative or unintended consequences for particular groups and maximise opportunities to reduce barriers and disadvantages people with different protected characteristics may face. We recommend that, in order to comply with the PSED, the government should routinely seek views on the likely different impacts of proposals on different groups, where pressure of time allows, and ensure that impacts are monitored and steps are taken to mitigate any adverse impacts on particular groups. It should also continue to scrutinise decision-making and policy impacts through the lens of the human rights framework. In doing so, it should work with, and seek advice and guidance from, other bodies such as the EHRC, on the impact of its decisions on particular groups or individuals.
25. For many public bodies, completing and updating equality impact assessments can be helpful for documenting how equality has been and is being considered in a systematic way. There is no prescribed process for this, but what is important is that the exercise is undertaken (and documented) in a rigorous way and that the consideration is constantly reviewed and updated.
26. Explicitly embedding the PSED into the emergency planning stage would help to ensure that, in a response phase to an emergency, decision-makers routinely consider the impact of decisions on people with different protected characteristics. Organisations who do this well train their staff (and decision makers) to understand

their responsibilities under the PSED, and they are open and transparent in their compliance with the duty. There is a specific PSED obligation on many public bodies to publish information each year to demonstrate how they are complying with the duty through their work.

27. As a practical example of this approach, in the area of health and social care we will shortly start working with ICBs in England to encourage them to collect accurate up-to-date information on the people in their areas who use their services. This will include those groups of people who are most likely to experience health inequalities. We will also be looking at how integrated care systems analyse and act on the data they hold, and the steps they are taking to identify and close any information gaps.
28. Another example is the use by the Welsh government during the pandemic of online platforms to enable Ministers and officials to seek the views of and learn directly from the experiences of groups with particular protected characteristics.
29. In the emergency planning stage the EHRC could have a role in ensuring that protected characteristic groups are adequately considered during the response phase to an emergency. This could include providing a range of guidance and tools to support public bodies to comply with the PSED, such as the resources I refer to at paragraph 18 above. In addition, through our engagement work we gather information about the impact of public policy on protected characteristic groups and use these insights in our work to influence policy, to support compliance with equality and human rights obligations, and in engagement our communications work to highlight where issues need to be considered and addressed. This work could inform policy makers responsible for emergency planning.
30. In relation to human rights, the UK government is obliged under the European Convention on Human Rights ('ECHR') to secure the rights set out in the ECHR within its own jurisdiction. Those rights are incorporated into domestic British law through the HRA. Section 6 of the HRA requires public authorities to act compatibly with human rights unless this is not possible due to other primary legislation. For every UK government bill, the relevant Minister must make a statement in Parliament under section 19 of the HRA that, in their view, its provisions are compatible with ECHR rights. If they are unable to give such an assurance, they must state that the government nevertheless wishes for Parliament to proceed with the bill. In Wales,

an Act of the Senedd must also be compatible with the ECHR. There are also a number of international United Nations (UN) human rights treaties which have been 'ratified' by the UK government, which means it is expected to reflect them in domestic legislation, policy and guidance.

31. Those responsible for and involved with emergency and pandemic planning can apply a range of tools to support a human rights-based approach to decision making and service delivery. For example, the PANEL principles developed by the European Network of NHRIs (ENNHRI) underpin a human rights-based approach and are based on five key principles: Participation, Accountability, Non-discrimination and Equality, Empowerment and Legality. In the area of health and social care, the Care Quality Commission's approach is underpinned by the FREDA human rights principles: Fairness, Respect, Equality, Dignity, and Autonomy (choice and control). Tools such as these, together with guidance such as our 'Human Rights: Human Lives' publication referred to above, can help to ensure that public authorities fulfil their legal obligations.
32. This type of approach should be woven into the structures, tools and training that support emergency responses at the design stage, rather than as an afterthought. Human rights considerations such as these should be applied to each phase and aspect of emergency planning. Doing so would improve the ability of decision makers and emergency responders to make rapid decisions which are informed by proper consideration of equality and human rights implications.
33. This is an important way of ensuring that emergency responses are compatible with public services' responsibilities under domestic law. It would ensure that where fundamental rights are engaged, such as the rights to life, liberty, private and family life, freedom of expression, freedom from discrimination, protection of property and the right to education, they are properly considered and upheld.
34. One of the most significant lessons for all parties is that, in a climate of fast-paced and critical decision-making, the particular needs of individuals and groups with protected characteristics, and those in vulnerable situations, may be less likely to be at the forefront of decision makers' consideration processes. The same is true of human rights.

35. Our advice would be that decision makers must routinely consider the needs of, and impacts of decisions on, everyone who is likely to be affected by a public policy decision, no matter how routine or how time-pressured. This is in fact a legal requirement on all public bodies under the PSED. If this consideration of the needs of people with different protected characteristics is built into all decision-making, it will be less likely that this vital step will be missed when decisions have to be made at pace, and less likely that important public policy decisions affecting people's lives and livelihoods will be ineffective, or less effective, for some groups – often those already experiencing disadvantage.
36. We would also advise that in time- or resource-pressured situations where decision makers do not have time to undertake thorough consultations with representative groups, the EHRC should be a utilised source of expertise and guidance on equality and human rights law which is available to decision makers. We strongly recommend that, in circumstances where the government is operating under pressure, it should avail itself of our expertise on matters relating to protected characteristic groups and human rights issues to inform its decision-making.
37. No specific mechanism is in place to engage the EHRC in preparations for future emergencies. However, there are mechanisms in place which should ensure that opportunities for the EHRC to engage in response to future emergencies are identified. Our relationship with the UK government is governed by our Framework Document, which establishes the respective responsibilities of the EHRC and our sponsor department for engagement and the sharing of information. For example, there are regular meetings at ministerial and official level to share relevant information, and the Principal Accounting Officer in the Sponsor Department is responsible for informing the EHRC of relevant government policy in a timely manner. In addition, the Departmental Senior Sponsor is responsible for aiding the flow of information and nurturing relationships. This includes facilitating EHRC's relationships with officials in other UK government departments where reasonably possible, and ensuring that where reasonably possible our Chief Executive has advance notice of wider government announcements on equality, human rights and/or the EHRC.

38. In relation to whether groups with protected characteristics were adequately considered by decision makers, in my view such groups were not considered as part of every decision that was taken. Where the EHRC identified this as an issue, we used our powers to seek to influence government thinking and practice. As explained above, we intend that proper consideration of the impacts of decisions on protected characteristic groups should be the starting point for policy makers. Policy makers should ask for our expert assistance at an early stage when making decisions, to ensure the needs and impacts on such groups are routinely considered in order that public policy works for everyone.
39. During the pandemic, we accepted that it was not necessarily practicable for formal, written equality impact assessments to be undertaken on all decisions. It is important to note, however, that the PSED remained a duty which should have been complied with at all times by decision makers. It is a “due regard” duty, meaning that proper, reasonable consideration must be given to the need to achieve its aims. I recognise that at times of extreme pressure the regard that is due may be less than under normal circumstances. However, due regard cannot be no regard at all.
40. A major theme of all of our engagement with the government was that consideration of the impacts of decisions on all groups should be at the heart of decision making, and that the different needs and circumstances of, and effects on, different groups thus needed to be understood. If decision makers lack capacity to consider those impacts, then the EHRC, as Britain’s statutory equality regulator, stands ready to advise.
41. As well as the consideration of needs for groups with particular protected characteristics, another potential gap that we have identified is routine consideration of policy decisions through a human rights lens. An important theme of many of our parliamentary briefings was to highlight that there is an existing framework which can be used to help balance the needs and rights of different groups and individuals, which is set out in the human rights framework, including the ECHR, as incorporated by the HRA. The importance of the human rights framework in guiding policy responses which strike an appropriate balance between the right to life and, say, the rights to liberty, to private and family life, to a fair trial and freedom of assembly, cannot be over-emphasised in the context of a pandemic.

42. An example of where a human rights lens may have been useful is in relation to the Article 8 right to a family life. During the first lockdown, blanket rules were laid down which considered the Article 8 rights of one group of people, the children of separated parents, but did not consider the Article 8 rights of a different group of people, older and disabled people living in care homes. In that example, children of separated parents were able to visit the family members who did not live with them, but older and disabled people were not allowed family member visitors. If a human rights lens had been applied to those blanket rules, and each group considered accordingly, these issues may have been identified more promptly.
43. We therefore also strongly recommend that, in future situations where decisions must be made quickly on matters that may have human rights implications, policy makers should also seek the advice of the relevant NHRIs in the UK, including the EHRC which has responsibility for human rights in England and Wales and for reserved matters in Scotland.
44. If there were a legislative requirement to consult and engage NHRIs in emergency planning, this could usefully complement the existing duty on public authorities under section 6 of the HRA to act compatibly with human rights wherever possible. It could provide a formal mechanism for ensuring that human rights considerations are embedded in the emergency planning process. Such an obligation would have resource implications for the NHRIs, which must be properly funded to perform any additional role.
45. Both the Covid-19 pandemic and the response to it had a major impact on our fundamental rights and freedoms, including the right to life, to a private and family life, and to liberty and security. Any future planning must have at its centre consideration of the ways in which interference with human rights can be avoided or minimised, the particular needs of protected groups can be met, and the ways in which an appropriate balance between rights can be found where they overlap.

Statement of Truth

I believe that the facts stated in this witness statement are true. I understand that proceedings may be brought against anyone who makes, or causes to be made, a false

statement in a document verified by a statement of truth without an honest belief of its truth.

Signed:

Personal Data

Dated: 05/05/2023