COVID-19 UK Inquiry

Module 2/2A: Decision-making and political governance in Scotland

Public Health Scotland Statement produced in response to supplementary request for evidence pertaining to M2-2A/PHS/01

23rd October 2023

Contents

1. Preface

1.1.1 Public Health Scotland (PHS) is responsible for leading efforts to protect and improve the health and wellbeing of people in Scotland and reduce health inequalities across Scotland. This includes protecting the people of Scotland from communicable diseases and environmental hazards. PHS works across a wide range of topics and settings with many partners and stakeholders, including national and local government, NHS Boards, other public bodies such as prison and police services, academia, and the third sector.

1.1.2 PHS brought together three legacy bodies. These were NHS Health Scotland (a national Health Board), and the two components of the Public Health and Intelligence Strategic Business Unit of the national Health Board NHS National Services Scotland (NSS): Health Protection Scotland (HPS) and Information Services Division (ISD). Prior to the formation of PHS on 1st April 2020, the national public health response to COVID-19 – and support for Scottish Government decision-making – was provided by HPS.

1.1.3 PHS received a Rule 9 request from Module 2A of the UK Public Inquiry on 1st December 2022 and submitted a draft corporate statement in response on 17th March 2023.

1.1.4 On 15th May 2023, PHS received the Module 2A Provisional List of Issues which provides an indicative guide to the topics and areas that it is proposed Module 2A should explore within its investigation. PHS then undertook a review of the draft corporate statement to ensure that it represented a full account of what PHS could offer to the inquiry. Amendments were made to the statement as a result of this analysis, and the statement was resubmitted to the inquiry on 14th September 2023.

1.1.5 On review of the revised statement, the inquiry asked seven follow-up questions on 22nd September 2023 and requested that PHS's answers be added to the statement. All but two of these answers were included in the final version of the corporate statement in response to Module 2A submitted to the inquiry on 2nd October 2023. This supplementary statement provides answers to the two outstanding questions.

2. Supplementary question one: public health guidance

2.1.1 PHS explained in its response to M2-2A/PHS/01 that the NHS in Scotland was placed on an emergency footing on 17th March 2020 (PHS/258 - INQ000235164)[1], and this remained in place until 30th April 2022. This impacted on PHS's operational autonomy, along with that of all other Health Boards. One consequence of the emergency powers brought was the transfer of the ultimate responsibility for the provision of public health advice from HPS/PHS to Scottish Ministers. This meant that while PHS continued to offer Scottish Government advice on the wording on guidance documents relating to COVID-19 public health matters, the Scottish Government had the final decision on the wording in guidance documents.

2.1.2 The UK Public Inquiry asked by way of follow-up for PHS to provide examples of when the Scottish Government did not follow the suggested wording in guidance documents proposed by PHS. Three examples are provided below:

- Guidance for non-healthcare settings: the Deputy First Minister paused the publication of the guidance to allow for engagement with local government and trade unions.
- Interim care home guidance: changes were made the day after publication following an exchange of emails between the Cabinet Secretary and the Chief Executive of PHS and a request from senior clinicians in the Scottish Government.
- Further guidance for care homes: challenges in the alignment of public health practice around risk assessment and Scottish Government testing policy.

2.1.3 By way of context, whereas 'advice' may be verbal or written, informal or formal, the term 'guidance' is specifically used to refer to published written materials that support agreed health protection principles and national policy in line with the Public Health etc. (Scotland) Act 2008 (PHS/259 - INQ000147832).[2] Prior to the pandemic, Health Protection Scotland (HPS) produced guidance in line with the Scottish Health Protection Network (SHPN) Guidance Group 'Framework for Health Protection Guidance (PHS/260 - INQ000175962).'[3] This framework was clear that 'Ideally all Health Protection practice guidance would be evidence-based. An Evidence Based Guideline (EBG) is the

[1] Scottish Government. NHS Scotland placed on emergency footing. March 2020.

[2] National Archives. Public Health etc. (Scotland) Act 2008. 2008.

[3] Scottish Health Protection Network Guidance Group. Framework for Health Protection Guidance Development (Version 5.0 Final). November 2017.

preferred standard of guidance where possible and is generally considered to represent the gold standard for practice guidance.' The framework sets out the final approval of the guidance document in terms of scientific and technical content, and quality assurance of the guidance development process. Both elements were the responsibility of the SHPN Guidance Group with no involvement from the Scottish Government. The SHPN was hosted by HPS and is now hosted by PHS.

2.1.4 The Framework for Health Protection Guidance recognises that there are situations in health protection practice where there is a need to address an urgent or newly emerging issue for which there is no suitable existing guidance. This was the responsibility of HPS as part of incident and outbreak management and – as set out in the framework – a process was developed by HPS for use in situations where there was a need for guidance to be developed rapidly. This was the approach used prior to and across the early part of the pandemic when guidance had to be developed quickly, using rapid evidence appraisal methods. Such guidance formulation was assisted by dialogue with and important contributions from key stakeholders prior to publication.

2.1.5 This approach to health protection guidance changed as a result of the emergency powers referred to above, with sign-off becoming the responsibility of the Scottish Government. From 17th March 2020, the Scottish Government made all decisions relating to the use of Non-Pharmaceutical Interventions (NPIs) in Scotland in their developing pandemic policy as well as the more clinical interventions in health and social care settings. The role of HPS/PHS was to support Scottish Government decision-making by a variety of formal and informal means as set out in the main PHS corporate statement in response to Module 2A.

Guidance for non-healthcare settings

2.1.6 The Scottish Government first utilised this power in relation to refreshed guidance for non-healthcare settings. HPS had updated the guidance published on 24th March 2020 to reflect recently published PPE guidance from Public Health England (PHE). The refreshed guidance was ready to publish on 6th April 2020, but publication was paused following an email from the Organisational Readiness team in the Scottish Government (PHS/261 INQ000320630 [4] The email conveyed a request from the Deputy First Minister that the guidance be shared with the Convention of Scottish Local Authorities (COSLA) and the Society of Local Authority Chief Executives and Senior Managers (SOLACE)

[4] Email exchange PHS and SG. IMMEDIATE: Non-NHS PPE Guidance. 6.04.20 – 7.04.20.

with an invitation to comment prior to publication. PHS was further instructed to pause the publication of the guidance on 7th April 2020 until Ministers had discussed it that evening.[ibid] On 9th April 2020 the Scottish Government, COSLA and the Scottish Joint Council Trade Unions released a joint statement setting out their agreement that the four nations guidance published under the auspices of PHE on 2nd April 2020 was 'the official and fully comprehensive guidance on the matter of the use of PPE in the context of COVID-19' (PHS/262 INQ000320633).[5]

2.1.7 PHS received feedback on the guidance from COSLA and trade union colleagues on 11th April and 13th April respectively. Responses were provided to each aspect of the feedback, and minor changes made to the guidance prior to publication on 14th April 2020. The changes mostly consisted of being clear that the guidance aimed to support those working in a range of settings outside of health and social care and provided links to separate guidance covering social and residential care settings. PHS also provided detailed feedback to COSLA and the trade unions, which helped local authority stakeholders understand the purpose of PHS's health protection guidance. This included being clear that where sector or occupation-specific guidance was required to operationalise Scottish Government policy, this would be led by the key national organisation with expertise in the specific area with expert health protection input and advice provided by PHS as required.

2.1.8 PHS raised concerns with the Scottish Government that the request to delay publication undermined their ability to produce timely public health advice tailored for Scotland. This was a period when PHE guidance was itself rapidly changing and it was a challenge to tailor the guidance for Scotland and publish it before PHE shared updated guidelines. PHS's aim was to publish a Scottish version of the agreed four nations guidance within 48 hours of publication by PHE. For completeness, there is a more general discussion of the topic of delays in the production of guidance in the main PHS Module 2A corporate statement at paragraph 4.2.11.

Interim care home guidance

2.1.9 The following month, on 14th May 2020, PHS published 'Interim guidance on COVID-19 PCR testing in care homes and the management of COVID-19 PCR test positive residents and staff' (PHS/263 INQ000320628).[6] PHS developed this interim guidance to aid

[5] Scottish Government. Protecting the social care workforce. April 2020.

[6] PHS. Interim guidance on COVID-19 PCR testing in care homes and the management of COVID-19 PCR test positive residents and staff. May 2020.

NHS Board colleagues, care home providers and others interpret and implement the extended policy for testing for COVID-19 infection in care homes announced on 1st May 2020. The aim was to reduce the risk of transmission of the virus within residential care home settings, in the shortest possible time. The advice was therefore written from a clinical perspective and reflected a consensus on which health protection measures are likely to be the most effective in achieving the maximum reduction in the risk of infection, most quickly. In particular, the guidance was produced to assist NHS Board Health Protection teams (HPTs) and care home providers manage COVID-19 PCR test positive residents and staff, especially asymptomatic test positive staff.

2.1.10 PHS had understood that agreement for publication had been obtained from the Scottish Government. As explained by PHS Chief Executive in an email to the Cabinet Secretary for Health and Sport, Angela Leitch had understood that the Chief Nursing Officer, Chief Medical Officer and the Clinical Director had agreed the guidance (PHS/264 – INQ000320634[7] The Cabinet Secretary was clear in her response at 9.45am the following morning that the guidance had not been signed-off and should not have been published. Just over half an hour later, the PHS Director of Clinical and Protecting Health, Dr Mary Black, received an email from the Chief Nursing Officer, the Chief Medical Officer and the National Clinical Director (PHS/265 INQ000320631[8] The email stated that 'the guidance aligns extremely well with the stated Scottish Government policy position on testing.' Notwithstanding this, PHS was asked by the three senior Scottish Government clinicians to make the following three changes by 12.30pm that day:

- Changing the testing of residents and staff when resources permit to testing being necessary regardless of resources.
- Being clear that appropriate contingency plans should be developed in advance of any outbreaks.
- Adding clarity to the introduction around the expectation on the care sector that appropriate preparations were made, including drawing on wider support and resource from others including the NHS.

2.1.11 It was following this that the Policy Alignment Check (PAC) process was put into operation (see paragraphs 4.4.4 – 4.4.12 of the main PHS corporate statement in response to Module 2A). The PAC process involved a range of Scottish Government

[7] PHS and SG email exchange. Interim Guidance. 15.05.20 - 16.05.20.

[8] Email from Chief Nursing Officer, the Chief Medical Officer and the National Clinical Director. Interim guidance on testing in care homes. 16.05.20.

policy and clinical leads, and in some instances Ministers and Cabinet Secretaries, reviewing PHS guidance to certify it was in alignment with Scottish Government policy whilst implementing sound health protection principles and processes. The PAC process was in operation from 22nd May 2020 until the emergency powers came to an end in May 2022.

Further guidance for care homes

2.1.12 Further guidance for care home settings published by PHS, including revisions to the care home testing guidance referred to above, were also subject to discussion between PHS and the Scottish Government. Operationalising policy intent in guidance whilst maintaining scope for local HPTs to use their professional judgement to assess how best to manage an outbreak was a recurring challenge. It was – and continues to be – PHS's view that guidance must be applied using clinical and professional judgement on the basis of an assessment of local and particular circumstances. The Scottish Government twice queried the necessity of this approach in relation to care home guidance between July and September 2020 (PHS/266 INQ000320629 [9] Agreement was reached following a series of discussions and version 1.7 of the guidance (PHS/267 INQ000320627 [10] published on 17th September 2020, included the following clear description of the role of risk assessment in providing care for residents during the pandemic:

'On identification of a new suspected or confirmed COVID-19 case, the care home must immediately contact the local HPT who will undertake an assessment of the situation including the adequacy of IPC measures and will advise on the need for testing of residents and staff. Based on a risk assessment of the case and the home circumstances, testing of all residents and staff may be considered necessary at this point.

Upon receipt of a positive result a HPT conducts a public health risk assessment to decide if whole home testing is appropriate. There is discretion for local HPTs to assess whether whole home testing is appropriate where, for example, a weak PCR positive turns out to be negative upon re-testing or there is a false positive result for another reason. If for whatever reason the HPT decided not to go ahead with whole home testing

[9] PHS and SG email exchange. Answer re: risk assessment process question from cab Sec today. 24.07.20 – 10.09.20

[10] PHS. Information and guidance for care home settings v 1.7. September 2020.

after one case only (e.g. a false positive test), if there was a second case then they must consider it.

An outbreak will be declared by the local HPT following identification of 2 linked cases, at least one of which has been laboratory confirmed. At this point, if whole home testing of all residents and staff has not already been carried out, it must be actively considered. A number of other measures will follow as guided by the HPT.'

3. Supplementary question two: herd immunity

3.1.1 PHS set out in its main corporate statement in response to Module 2A that to PHS's knowledge, the concept of 'herd immunity' did not at any time form part of the Scottish Government's strategy for the management of COVID-19. PHS was not involved in any discussions with the Scottish Government around the implementation of a herd immunity strategy, and nor was any data or analysis requested or provided relating to such a strategy. The UK Public Inquiry asked a follow-up question as to whether PHS provided any advice to the Scottish Government on 'herd immunity', and if not whether it was considered at all.

3.1.2 To answer this supplementary question, PHS draws on the World Health Organization's (WHO) distinction between achieving herd immunity through vaccination as opposed to allowing a disease to spread through a population. It is the latter that did not – to PHS's knowledge – form part of the Scottish Government's strategy for the management of COVID-19. Achieving population immunity through vaccination, whilst protecting the vulnerable and avoiding unnecessary cases and deaths, was discussed both in PHS and in the Scottish Government. Like the WHO, PHS supports achieving herd immunity through vaccination, but not by exposing the population to the virus.

3.1.3 Discussions around achieving herd immunity through vaccination took place at the Scottish Government's COVID-19 Advisory Group, of which PHS colleagues were a member. This includes the meeting of 30th December 2020 and a Deep Dive held on 4th February 2021 that focussed on scenario planning.

3.1.4 Herd immunity featured in a joint piece of work PHS undertook with the Directors of Public Health (DsPH) in July 2020. 'Minimising health harms during the COVID-19 pandemic: highlighting future strategic options, and underlying assumptions, to facilitate assessment of trade-offs for decision-making' (PHS/268- INQ000147542)[11] set out eight strategic options for managing the next stage of the pandemic as lockdown eased. The options included 'population immunity by natural infection, whilst protecting the most vulnerable', which is noted as 'sometimes being referred to as herd immunity'. The paper notes that 'Under this strategy there is a need to reliably identify vulnerable groups and prevent them from becoming infected (i.e. through 'shielding') whilst the rest of the population become infected and then immune.'

[11] Baird E, Ramsay C, Mackie P, et al. Minimising health harms during the COVID-19 pandemic: highlighting future strategic options, and underlying assumptions, to facilitate assessment of trade-offs for decision-making. July 2020.

3.1.5 The paper did not constitute advice to the Scottish Government. Rather it set out possible strategic options, the assumptions underlying them, and the main trade-offs to be considered.

3.1.6 The paper was shared with the Scottish Government's Scientific Advisory Group on Testing on 20th July 2020. The paper was then further worked-up and prepared for publication. It was shared with PHS's sponsors in the Scottish Government and the Convention of Scottish Local Authorities (COSLA) on 25th August 2020 and was discussed at the tripartite PHS/DsPH/Chief Medical Offer (CMO) meeting the following day. The paper was not published following advice from the Scottish Government that publication was not necessary as it was already under consideration by key decision-makers.

3.1.7 A proposal to explore the assumptions and trade-offs of the high-level strategic options set out in the paper (PHS/269 - INQ000147542)[12] was taken to the Strategic Insights Group, a subgroup of the National Incident Management Team (NIMT), in September 2020. The intention was to achieve a clearer understanding of the trade-offs in terms of direct COVID-19 health impacts, health service impacts, wider social impacts and economic impacts (the Scottish Government's 'four harms'). This work was not progressed under the auspices of the NIMT but work continued within PHS as part of the organisation's Social and Systems Recovery work described in PHS's main corporate statement in response to Module 2A.

[12] McCartney G. Proposal to explore the assumptions and trade-offs of high level strategic options for managing the pandemic. September 2020.

Statement of Truth

The facts provided in this statement are true and accurate to the best of my knowledge and belief.

Signed:

PD

Designation: Chief Executive Officer

Date: 23/10/23

Signed:

PD

Designation: Director of Data and Innovation

Date: 23/10/23

Signed:

PD

Designation:

Director of Public Health Science

Date:

23/10/23