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1. Having spent over 46 years in public service, I am currently Executive Director of Scrutiny and Assurance at the Care Inspectorate and have held this position since 17 August 2015.

2. I have been employed at the Care Inspectorate since its formation on 1 April 2011. I was initially employed as a Strategic Inspector when I transferred under TUPE (Transfer of Undertakings (Protection of Employment) Regulations) arrangements from the then Her Majesty's Inspectorate of Education (HMIE) where I was also a Strategic Inspector and Lead Inspector (Child Protection).

3. On 1 March 2013, I was appointed Head of Analysis and Business Planning at the Care Inspectorate leading on the development and delivery of all analysis and business planning functions, including corporate and business improvement planning, corporate performance management, research/information analysis, risk and intelligence. I remained in that post until January 2015 when I was appointed Temporary Deputy Director of Inspection (Children's Services and Criminal Justice) with overall responsibility for the leadership and direction of children's services and criminal justice of what was then known as the Inspection Directorate. This included the scrutiny, regulation, and improvement support work for the majority of regulated care services for early learning and childcare (ELC) and residential childcare, as well as the joint strategic inspection programmes for children's services and criminal justice.

4. On 17 August 2015 I was appointed Acting Director of Inspection at the Care Inspectorate with overall responsibility for the regulation and inspection of all care and support services for children and adults, the scrutiny of social work services, including justice social work and joint strategic inspections with scrutiny partners of services for adults and children. As Acting Director of Inspection, I had overall responsibility for the leadership and direction of the Inspection Directorate. This included the scrutiny, regulation, and improvement support work for almost 12,000 regulated care services and the joint strategic inspection programmes for children and adults. On 22 February

2016, I was appointed to the permanent post of Director of Scrutiny and Assurance as it came to be known following an internal re-structuring.

5. In 2017, following an internal restructuring within the Care Inspectorate I became the Executive Director of Scrutiny and Assurance and also assumed responsibility for the Care Inspectorate's complaints, registration and inspection planning functions which previously sat under the Director of Strategy and Improvement.

6. I have been involved in inspection for that past 18 years having joined the then Her Majesty's Inspectorate of Education (HMIE) in 2005, initially as a secondee from the then Lothian and Borders Police, to develop and deliver the multi-disciplinary joint inspections of child protection led by HMIE. When I joined HMIE on secondment in 2005, I held the substantive rank of Superintendent. Most of my career in Lothian and Borders Police was in the Criminal Investigation Department and latterly as Detective Superintendent based in Edinburgh where I had responsibility for developing and implementing force policy in relation to child protection, major crime investigation, sexual offences, youth crime, information technology and firearms incident investigation. I retired from Lothian and Borders Police in June 2009 having completed 30 years police service and was appointed Strategic Inspector with HMIE and lead inspector for child protection across the organisation, which was a full-time permanent post, technically part of the civil service.

7. In July 2014, I graduated MSc in Advanced Practice Child Protection from Edinburgh Napier University. I was also trained as a European Foundation for Quality Management (EFQM) accredited assessor.

Introduction

8. From the outset, it is important for me to say that we recognise the human tragedy of the Covid pandemic resulting in the loss to people of loved ones and to those who have borne that loss we extend our deepest sympathies. It is also important for us to recognise the unprecedented nature and scale of the Covid pandemic and despite that, and all the uncertainties and unknowns it brought, the extraordinary professionalism and commitment of health and social care workers generally. It was undoubtedly the most challenging time for all of them and us in dealing with the impact. We very much welcome this public inquiry and are firmly committed to helping and supporting it in any

way we can and to learn any lessons for the future. I have no doubt there is much for all of us to learn from it and that can only be a good thing.

The Care Inspectorate

9. The Care Inspectorate is the independent scrutiny and improvement support body for social care and social work services in Scotland.

10. The Scrutiny and Assurance Directorate provides that independent assurance and supports improvement across integrated health and social care, social work, early learning and childcare and justice social work. We have responsibility for regulating and inspecting almost 12,000 care services and lead responsibility for the scrutiny of services for children, justice and protection. We also carry out joint inspections of integrated health and care services and services for adults.

11. We also have a statutory duty to deal with complaints about registered care services. In the Scrutiny and Assurance Directorate we currently deal with around 6,000 complaints about regulated care services each year. We are uniquely positioned to report on the impact of strategic level planning and commissioning at a service level, and on the experiences of, and outcomes for, people who use services and their families and carers.

12. We also play a significant role in supporting improvement in the quality of care, and reducing health and social inequalities, in Scotland. Through section 44(1)(b) of the Public Services Reform (Scotland) Act 2010, we have a general duty of furthering improvement in the quality of social services. We also have a general duty to ensure that good practice in the provision of social services is identified, publicised and promoted (section 45(5)).

13. We play a key role in influencing and advising on the development, implementation and review of national policy, including, for example, the expansion of funded early learning and childcare, the integration of health and social care and public protection and in time through the creation of a National Care Service.

The Care Inspectorate and Legal Framework

14. The Care Inspectorate's predecessor body was the Care Commission which was formed on 1 April 2002. The functions of former Social Work Inspection Agency (SWIA), the child protection functions of the then Her Majesty's Inspectorate of Education (HMIE) and the former Care Commission were brought together on 1 April 2011 to form the Care Inspectorate.

15. Although commonly known as the Care Inspectorate, its legal name is Social Care and Social Work Improvement Scotland (SCSWIS). It was established as a non-departmental public body by Section 44(1) of the Public Services Reform (Scotland) Act, 2010. Occasionally people, including the media, still refer to us as the Care Commission albeit that organisation ceased to exist in 2011.

16. In terms of section 45(1) of the 2010 Act, the Care Inspectorate must exercise its functions in accordance with the principles set out in sections 45(2) to (5).
Those principles are: -

- the safety and wellbeing of all persons who use, or are eligible to use, any social service are to be protected and enhanced.
- the independence of those persons is to be promoted.
- diversity in the provision of social services is to be promoted with a view to those persons being afforded choice.
- good practice in the provision of social services is to be identified, promulgated and promoted.

17. The Care Inspectorate employers around 640 staff (FTE). It has a budget of about £42M. We are funded by a mixture of grant from the Scottish Government and fees paid by service providers. Grant represents 65% of our funding and fees 35%.

Service Definitions and Numbers

18. The Care Inspectorate's duties and powers are mainly provided for by the Public Services Reform (Scotland) Act 2010 ("the 2010 Act") and secondary legislation made thereunder.

19. In broad terms the Care Inspectorate is responsible for: -

- registering care services.
- inspecting services.
- investigating complaints about care services.
- taking enforcement action when the quality of care in care services is not good enough.
- helping services to improve.

20. Social Care and Social Work Improvement Scotland (SCSWIS) or the Care Inspectorate as it is commonly known, was established by section 44(1) of the 2010 Act. In general terms, care services cannot operate unless they are registered by the Care Inspectorate (section 59 of the Act). The types of care services we regulate and inspect, and their definitions are covered in section 47 and schedule 12 respectively of the 2010 Act. These include: -

    (a) a support service.
    (b) a care home service.
    (c) a school care accommodation service.
    (d) a nurse agency.
    (e) a child care agency.
    (f) a secure accommodation service.
    (g) an offender accommodation service.
    (h) an adoption service.
    (i) a fostering service.
    (j) an adult placement service.
    (k) child minding.
    (l) day care of children.
    (m) a housing support service.

    Our responsibilities for social work services are outlined in section 46 and schedule 13 of the 2010 Act. We support and regulate 11,762 services: -

    - 38 adoption services
    - 71 adult placement services
    - 3,886 childminders
    - 17 childcare agencies
    - 3,559 day care of children services

- 59 fostering services
- 5 offender accommodation services
- 62 school care accommodation services
- 4 secure accommodation services
- 1,058 housing support services
- 1,392 care home services (255 adults, 336 children and young people, 801 older people)
- 121 nurse agencies
- 1,489 support services (1095 care at home, 394 other than care at home)

Powers to Inspect

21. In terms of the 2010 Act, we inspect care and social work services (section 46) and, together with other scrutiny bodies, including Healthcare Improvement Scotland (HIS), His Majesty's Inspectorate of Constabulary in Scotland (HMICS), His Majesty's Inspectorate of Prisons for Scotland (HMIPS) and Education Scotland (formerly HMIE) we carry out joint strategic inspections of services for children and adults in local areas, including local authorities and integration authorities/health and social care partnerships (HSCPs). Some of these inspections are provided for by sections 114 and 115 of the 2010 Act, or, where services are provided under the health service or services provided by an independent health care service are provided in pursuance of an integration scheme approved under Section 7 of the Public Bodies (Joint Working) (Scotland) Act 2014 ("the 2014 Act"), the planning, organisation or co-ordination of those services may also be inspected (section 53 of the 2010 Act).

    Social work services that we may inspect are defined at schedule 13 of the 2010 Act by reference to a range of statutory provisions.

Complaints

22. The Care Inspectorate is required to have a complaints procedure where people can make a complaint about the provision of care to a person or about a care service generally (sections 79 and 97 of the 2010 Act). This is an unusual role for a regulator and not one that is undertaken by our counterparts in England, Wales or Northern Ireland. We do not have any powers to investigate complaints about social work

services. Such responsibility rests with individual local authorities / integration authorities / HSCPs.

23. Anyone can complain to us about a registered care service. People who experience care services, care staff, and members of the public all have a right to complain about the performance of the services we regulate.

24. Where we find that a care service is not operating to the required standards, we have the powers to:

- make recommendations.
- make requirements.
- take enforcement action which may lead to the service's registration being cancelled if required improvements are not made.
- apply to the sheriff for emergency cancellation of the service's registration.
- attach a condition to the registration of the service.

25. The Care Inspectorate has no powers to take enforcement action in relation to health or social work services. Neither do we have any powers to take enforcement action against any local authorities, health boards or integration authorities / HSCPs unless they are the registered provider of a care service. Further information on each of these areas is provided later in this statement.

Scottish Regulators' Strategic Code of Practice

26. In discharging our regulatory functions, the Care Inspectorate must have regard to the Scottish Regulators' Strategic Code of Practice. The code requires regulatory functions to be exercised in accordance with the principles of better regulation considering economic and business factors appropriately. The better regulation principles are that regulatory functions should be exercised in a way that is transparent, accountable, proportionate, consistent and targeted only where necessary.

27. The following summarises the Scottish Regulators' Strategic Code of Practice:

- it was brought in by the Scottish Ministers under section 5 of the Regulatory Reform (Scotland) Act 2014.
- the Care Inspectorate must have regard to the code (a) in determining any general policy or principles by reference to which the regulator exercises any regulatory functions to which the code applies, and (b) in exercising any such regulatory functions.
- the Code provides that regulators should adopt the following high level operational approaches.
- adopt a positive enabling approach in pursuing outcomes that contribute to sustainable economic growth.
- in pursuing their core regulatory remit be alive to other interests, including relevant community and business interests. taking business factors appropriately and proportionately into account in their decision-making processes. and protecting public health and safety.
- adopt risk and evidence-based protocols which help target action where it's needed and help to ensure the achievement of measurable outcomes.
- develop effective relationships with those they regulate and have clear two-way communication in place.
- tailor their approach depending on the nature of the sector they are regulating and the desired outcomes. This includes a commitment to advice and support for those who seek to comply, allied with robust and effective enforcement when justified.
- recognise, in their policies and practice, a commitment to the five principles of better regulation: regulation should be transparent, accountable, consistent, proportionate and targeted only where needed.
- pursue continuous improvement in regulatory practice based on the principles of better regulation.

28. The Code states that it should not be interpreted as a justification for non-compliance or a signal that regulators will tolerate that.

29. When the Code was introduced, the Care Inspectorate's Board directed that the organisation would not allow the promotion of economic growth to prevail over the safety, health or wellbeing of persons receiving care services. In other words, the safety and protection and wellbeing of people is paramount.

Statutory duties of furthering improvement, user focus and provision of information and advice

30. Primary responsibility for improvement rests with the services. However, the Care Inspectorate has a number of statutory duties under the 2010 Act. We have a general duty of furthering improvement in the quality of social services (section 44(1)(b) of the 2010 Act). In addition, in terms of section 45(1), the Care Inspectorate must exercise its functions in accordance with the following principles:

- the safety and wellbeing of all persons who use, or are eligible to use, any social service are to be protected and enhanced.
- the independence of those persons is to be promoted.
- diversity in the provision of social services is to be promoted with a view to those persons being afforded choice.
- good practice in the provision of social services is to be identified, promulgated and promoted.

31. The Care Inspectorate also has a duty of user focus in discharging its scrutiny and complaints functions (section 112 of the 2010 Act). This means that we must involve users of the services we scrutinise in the design and delivery of our scrutiny functions in relation to those services and our governance arrangements (subsection (2)). We involve people in the design of our inspection frameworks and place a strong emphasis on gathering their views during inspections. As part of inspection, our inspectors and inspection volunteers will talk to people who experience care services, their carers, and their families. We also talk to staff and managers in services, although this was more challenging to do during the pandemic. We also have members of our Board with care experience.

32. The Care Inspectorate also has a statutory duty in relation to the provision of information. It must provide information to the public about the availability and quality of social services (section 51(1) of the 2010 Act). We do that primarily through our website and the publication of inspection reports. We must provide, when asked to do so, advice to Scottish Ministers (subsection (3)(a)). We must also, when asked to do so provide advice to the following (subsection (3)(b)):

- persons who provide, seek to provide or may seek to provide social services,

- persons, or groups of persons, representing those who use, or are eligible to use, social services,
- persons, or groups of persons, representing those who care for those who use, or are eligible to use, social services,
- local authorities,
- health bodies,
- integration joint boards established under Section 9(2) of the Public Bodies (Joint Working) (Scotland) Act 2014,
- such other persons, or groups of persons, as may be prescribed.

Independence

33. The Care Inspectorate is an independent body governed by our Board which is appointed by and accountable to Scottish Ministers (schedule 11 of the 2010 Act). It operates at arm's length from Scottish Ministers, but in certain circumstances Scottish Ministers may give direction to the Care Inspectorate, including in relation to inspection (section 55 of the 2010 Act).

Governance

34. The Board is led by its Chair and is responsible for setting the strategic direction of the Care Inspectorate, taking into account legislation and policy guidance set by the Scottish Government. Our Chair also sits on the Scottish Social Services Council (SSSC) Board and the Board of Healthcare Improvement Scotland (HIS). Similarly, the Chairs of Scottish Social Services Council Board and the Board of Healthcare Improvement Scotland sit on the Care Inspectorate Board. Paul Edie chaired the Care Inspectorate Board from 2013 until he demitted office on 31 August 2022. Douglas Moodie was appointed Chair of the Care Inspectorate Board on 1 September 2022.

35. The Care Inspectorate Board has put in place Standing Orders and a Reservation of Powers and Scheme of Delegation. The Board currently has a single Committee – Audit and Risk.

Executive Team

36. The Care Inspectorate is led by the Chief Executive. Between February 2019 and February 2022, the Chief Executive was Peter Macleod. In February 2022 Peter

Macleod retired and Edith Macintosh, Deputy Chief Executive, took over as Interim Chief Executive until a replacement for the Chief Executive could be appointed. Jackie Irvine was appointed Chief Executive from 19 September 2022. The Chief Executive is the 'accountable officer' for the Care Inspectorate. That means the Chief Executive is responsible for the propriety and regularity of the finances under their stewardship and for the economic, efficient and effective use of all related resources. The accountable officer is personally answerable to the Scottish Parliament for the exercise of their functions.

37. The Chief Executive is supported by a Strategic Leadership Team currently comprising four Executive Directors: -
    - The Executive Director of Strategy and Improvement - Edith Macintosh (substantive from August 2020)
    - The Executive Director of Scrutiny and Assurance - myself (Kevin Mitchell)
    - The Executive Director of Corporate and Customer Services - Jackie Mackenzie
    - The Executive Director of IT, Transformation and Digital - Gordon Mackie

    Edith Macintosh was appointed Deputy Chief Executive during the pandemic on 5 November 2020.

38. At the start of 2020 there were only three Executive Directors. A fourth, the Executive Director of IT, Transformation and Digital (Gordon Mackie), was appointed to the substantive post in August 2021. Prior to that Gordon Mackie was Interim Executive Director of IT, Transformation and Digital from around June 2020. Prior to Gordon Mackie being appointed Interim Executive Director his portfolio was split between the Executive Director of Strategy and Improvement (Edith Macintosh) and the Executive Director of Corporate and Customer Services (then Gordon Weir and now Jackie Mackenzie). Essentially, the Executive Director of Strategy and Improvement (Edith Macintosh) had responsibility for business transformation and the Executive Director of Corporate, and Customer Services (Gordon Weir) had responsibility for IT and Digital.

39. Broadly speaking, the Executive Director of Strategy and Improvement (Edith Macintosh) now has responsibility for improvement support, the Chief Nurse, involving people, professional standards and practice, complaints against the Care Inspectorate,

information governance, use of data and intelligence, market oversight, the policy team and the communications team.

40. The Executive Director of Corporate and Customer Services (Jackie Mackenzie) has responsibility for finance, legal services, the Care Inspectorate contact centre, estates, health and safety, risk management, internal audit, facilities, HR, business support and shared services.

41. The Executive Director of IT, Transformation and Digital (Gordon Mackie) has responsibility for digital transformation, data – technical support, business transformation and change management and cyber security.

42. When the Chief Executive (Peter Macleod) retired on 10 February 2022 and Edith Macintosh become Interim Chief Executive, responsibility for Intelligence (including market oversight), information governance and the professional adviser finance was temporarily moved to the IT and Digital Transformation Directorate under Gordon Mackie and Craig Morris was appointed as Interim Director of Strategy and Improvement with a significantly reduced portfolio.

43. When Jackie Irvine was appointed Chief Executive, Craig Morris returned to his substantive post as did Edith MacIntosh although responsibility for Intelligence (including market oversight), information governance and the professional adviser finance has remained temporarily with the IT and Digital Transformation Directorate under Gordon Mackie.

    The six attached organograms, [Senior Management Team 2020, CI/1 – INQ000320093, Senior Management Team 2021, CI/2 – INQ000320156, Corporate and Customer Servies Directorate, CI/3 – INQ000320167, Scrutiny and Assurance Directorate, CI/4 – INQ000320178, Strategy and Improvement Directorate, CI/5 – INQ000320194 and IT and Transformation Directorate, CI/6 – INQ000320195] provide a pictorial depiction of the above.

Scottish Government Sponsor Team

44. As an independent public body operating at arm's length from Scottish Ministers, we need to be aligned to Scottish Government. Although our work covers social work and social

care services for children, adults, older people and justice, historically we have been aligned to the Health and Social Care Directorate and more recently the Social Care and National Care Service Development Directorate. We liaise with our Scottish Government 'Sponsor Team' on an almost daily basis. That means that when we brief Scottish Government on particular aspects of our work, regardless of the sector to which it relates we generally do so through our Sponsor Team who then share as appropriate with the various policy interest/leads/officials and Ministers in the Scottish Government. We meet regularly with them formally and informally at various levels in our organisation and did so before and throughout the pandemic. In the period January – March 2020, beyond formal correspondence, this was probably the main communication route between the Scottish Government and the Care Inspectorate. We have always enjoyed a very positive and constructive relationship with our Scottish Government Sponsor Team and with other officials who work closely with them, and we continue to do so.

45. We provide regular briefings to our Scottish Government Sponsor Team about significant inspection findings in individual care services, including care homes and on any enforcement action we are taking. These are often shared with Ministers and discussed at meetings we have with them. We also receive regular requests for information from our Sponsor Team to help them respond to Ministerial correspondence or parliamentary questions. Information is also requested/provided to support policy development, implementation, and review. We have both regular and ad-hoc meetings with our sponsor team.

46. During the pandemic we also met regularly with officials from the Scottish Government Chief Nursing Officer Directorate (CNOD). We also attended a variety of Scottish Government-led meetings to support the care sector.

47. During the pandemic, on 8 October 2020 we agreed with our Scottish Government Sponsor Team new thresholds for triggering briefings to SG as follows:

- a care home with five or more confirmed cases of COVID (either staff or residents).
- death of a staff member.
- death of a resident in a care home either confirmed or suspected due to COVID.

48. Naturally and quite rightly, our work during the pandemic came under close scrutiny from the general public, media, cross-party parliamentarians and across Scottish

Government departments, including those with whom we had not had much interaction with prior to the pandemic, for example, the Chief Nursing Officer's Directorate (CNOD). Overall, I would say that our interactions with the Scottish Government in relation to the management of the pandemic were mutually beneficial and effective although on occasions we felt that some parts of Scottish Government and others did not appear to have a sufficiently clear understanding of our role and responsibilities or the legislative framework under which we operated. For a while, the impression we had was that we were not trusted to inspect health related issues in care homes despite that being our remit for many years and many of our inspectors being qualified nurses. Part of that we felt was due to standards and expectations more applicable to clinical environments / hospitals being expected by some in care homes. This was particularly evident from some meetings we attended as well as the nature and tone of some of the requests for information we received and requests for supplementary information to those briefings we had provided earlier. Although, it is fair to say that we picked up no such negative impression whatsoever from our regular meetings with the then Cabinet Secretary for Health and Sport (Jeane Freeman). Indeed, our regular meetings with the Cabinet Secretary were quite the opposite. They were very focused, detailed and appropriately challenging, but mutually respectful, and in my opinion mutually beneficial (see also section on Meetings with the Cabinet Secretary Health and Sport below).

49. We provided a huge amount of information to the Scottish Government on a daily basis and over many months. We made ourselves available seven days a week, including in the evenings and at weekends to do this. This included the provision of data and information in relation to individual care homes and providers covering amongst other things Covid outbreaks, deaths of residents and staff members, staffing shortages and efforts to address those. Sometimes we were providing this information proactively and on other occasions responding to specific requests. Information was often required urgently in very tight timescales - quite regularly as short as within 10-15 minutes - to support Ministers and officials with the crisis response, including the Scottish Government / First Minister's daily media briefings.

50. We responded to every request quickly and rarely missed a deadline. All of this was in addition to regular reporting and the provision of briefings on our contacts with services and providers, inspections, enforcement activity, complaints we received about care services and responding to complaints Scottish Government and others had received about care services. We also answered many queries relating to our registration function and ongoing liaison / work with local authorities and Health and Social Care

Partnership (HSCPs) and others. For many months it was intense, unrelenting and exhausting.

The Scrutiny and Assurance Directorate

Structure, Roles and Responsibilities

51. The Care Inspectorate employs around 640 staff (FTE) of which 392 (FTE) or 63% are in the Scrutiny and Assurance Directorate with the remaining spread across the other three directorates / support functions. Of the 392 (FTE) staff in the Scrutiny and Assurance Directorate, there are around 294 care service inspectors, including those in our complaints and registration teams and 36 Strategic Inspectors. However, throughout the pandemic, like many other organisations, we carried a significant number of inspector vacancies and others had underlying health conditions or caring responsibilities that we had to take account of. There was also notable staff sickness absence, including with Covid.

52. Our inspectors are qualified professionals with substantial experience of the services they inspect. In adult services, we have inspectors from a range of relevant professional backgrounds, including social workers, nurses, allied health professionals and former managers of regulated care services, all of whom are registered with the appropriate professional regulator. We employ a large number of nurses as inspectors (currently around 60), who are registered with the Nursing and Midwifery Council. After joining the Care Inspectorate, inspectors also receive additional training in regulation, inspection and improvement support. Inspectors of social care services are registered as 'authorised officers' by the Scottish Social Services Council (SSSC), with a condition to complete the Professional Development Award in Scrutiny and Improvement. The award is a postgraduate level qualification approved by the Scottish Qualifications Authority and delivered internally by the Care Inspectorate.

53. Section 56 of the 2010 Act makes provision for inspections to be carried out by "authorised persons" – inspectors who are issued with a "Letter of Authority" for that purpose.

54. Section 56(3) provides a power to enter and inspect premises which are used, or which the person has reasonable cause to believe are used, for the purpose of providing the social service which is subject to inspection.

55. The Scrutiny and Assurance Directorate is led by me. I am responsible for the leadership, direction and development of strategic inspections and oversee all regulated care scrutiny and regulation activities ensuring that the Care Inspectorate meets its responsibilities as defined by the Public Services Reform (Scotland) Act 2010 and other relevant legislation, to inspect and improve the quality of care in Scotland in a collaborative way.

56. I am supported by four Chief Inspectors:

The Chief Inspector (Regulatory Care – Adults and Complaints) - Marie Paterson
The Chief Inspector (Regulatory Care – ELC and Registration) - Catherine Agnew
The Chief Inspector (Strategic Scrutiny - Adult Services) – This was Fidelma Eggo and is now Kirsteen Maclennan
The Chief Inspector (Children and Young people) - Helen Happer

57. The Scrutiny and Assurance Directorate broadly comprises the following functions:

- Registration
- Adult Care Inspection
- Enforcement
- Early Learning and Child Care Inspection
- Residential Care for Children and Young People Inspection
- Strategic Inspection Adult Services / Integration
- Strategic Inspection of Children's Services
- Strategic Inspections of Justice Services
- Strategic Inspection - Protection (including adult and child protection)
- Complaints about Care Services
- Methodology (from February 2021)
- Inspection Planning

Registration

58. Any person who seeks to provide a care service must apply to the Care Inspectorate for registration (section 59 of the '2010 Act'). The Care Inspectorate must consider the application against the statutory test for registration which is set out in section 60(3) of the 2010 Act i.e. whether the Care Inspectorate is satisfied that the requirements of applicable regulations made under the 2010 Act and of any other enactment which appears to the Care Inspectorate to be relevant, will be complied with.

59. The Care Inspectorate may grant or refuse registration and if granting registration, may do so subject to conditions as it thinks fit (section 60(2) of the 2010 Act); for example, as to the number of service users who may be cared for, parts of the building which may or may not be used in the provision of the service etc. It is unusual for a registration to be granted without conditions of some kind.

60. There are regulations relating to registration:
[CI/7 - INQ000320196] The Social Care and Social Work Improvement Scotland (Registration) Regulations 2011 (SSI 2011/28), and to applications for registration - [CI/8 - INQ000320197] The Social Care and Social Work Improvement Scotland (Applications) Order 2011 (SSI 2011/29) .

61. The Chief Inspector (Regulatory Care – ELC and Registration) - Catherine Agnew leads the registration functions and would be able to provide more detailed information relating to it. Catherine is supported in this regard by a Service Manager, three Team Managers and 23 Inspectors.

Information and Notifications

62. The Care Inspectorate maintains a current register of all care homes in Scotland. This is the definitive register of care services (including care homes) operating in Scotland. The register includes details on maximum places which gives the potential maximum number of residents in a care home at any point in time. A live, searchable version of the register of care services is publicly available on the Care Inspectorate's website. In addition, a monthly snapshot of services currently registered is publicly available via a monthly "datastore" file on our website. Both sources include information about the type, size, location and quality of care homes.

63. Every year, the Care Inspectorate ask services to complete an Annual Return. This includes numbers of residents by 10-year age band, and number of residents with particular care and support needs; for example, those with dementia, visual impairment or hearing impairment. This data is only supplied at an aggregate level by each service – not at an individual resident level. The Care Inspectorate uses this data to inform our scrutiny at an individual service level, and it is not routinely published externally. Annual returns from care homes for the year to 31 Dec 2019 were available to internal staff from Monday 17 Feb 2020.

64. The Scottish Care Home Census is an official statistics publication. This is the main source of public data about the numbers of residents in care homes for adults and older people on 31 March each year. This publication includes summary data about the total number of residents as well as some breakdown on the overall characteristics and support needs of long stay residents. It also includes numbers of care homes services and places.

65. In early 2020, this publication was produced by the NHS Scotland Information Services Division (ISD) and published on its website. Its successor body, Public Health Scotland, took over publication from 1 April 2020 and all the relevant publications are available on the Public Health Scotland website, including those published by ISD. In early 2020, the most recent publication provided data up to 31 March 2017, with the 2018 and 2019 data published on 27 Oct 2020. I understand the usual data collection for the year to 31 March 2020 did not go ahead to ease the administrative burden on care home managers and staff.

66. The Care Inspectorate collects this data on behalf of the Scottish Government who then pass the data on to Public Health Scotland for publication. The Care Inspectorate's role is as a data processor, and there is a data processing agreement in place with the Scottish Government which is available on our website. Other than for the purposes of processing the data and sharing the data as agreed, the Care Inspectorate does not have access to the data collected about individual residents of care homes.

67. The Care Home Census includes data from the Care Inspectorate's register of services about the main type of client using the care home; for example, older people, those with learning disabilities, the number of registered places and the geographical location of the care home. The Care Inspectorate shares this information from its register alongside the specific data about residents.

68. In terms of regulation 4 of the [CI/54 - INQ000320183] Social Care and Social Work Improvement Scotland (Registration) Regulations 2011 (SSI 2011/ 28):

"(1) on granting registration of a care service under Chapter 3 or 4 of Part 5 of the Act (Public Services Reform (Scotland) Act 2010), [the Care Inspectorate] must, in addition to issuing a certificate of registration, notify the provider of the care service of—

(a) the records the provider must keep and where they must be kept.

(b) any matters the provider must notify from time to time to [the Care Inspectorate] whilst the care service is registered. and…..

(2) [The Care Inspectorate] may, from time to time, make reasonable variations to the information required under paragraph (1)."

This is the basis upon which we publish lists of matters to be notified / records to be kept, and the basis on which we were able to add notification requirements at the beginning of the pandemic.

69. In terms of the [CI/9 - INQ000320198] - Regulation of Care (Requirements as to Care (Scotland) Regulations 2002 (SSI 2002/114), providers are required to maintain certain records and notify certain things to the Care Inspectorate. This includes death, illness or other events (regulation 21). These are commonly referred to as 'Notifications' and are usually submitted to the Care Inspectorate electronically via the Care Inspectorate's 'e-forms' system. 'E-Forms' is a secure online system used by care services. The information captured is subsequently stored as a record under the relevant service. Notifications are reviewed, assessed and acted upon in a variety of different ways by inspectors and team managers which may include following up with services and others including providing advice and guidance, which can sometimes be resource intensive. From these, we may also identify child and adult protection matters that we need to refer to police and/or social work services who have the statutory responsibility for investigating these. Our risk assessment process also takes account of the notifications we receive. In addition, data can be accessed in order to aggregate and analyse patterns and trends. Only regulations 19 to 24 of the Regulation of Care (Requirements as to Care Services) (Scotland) Regulations 2002 (SSI 2002/114) currently remain in force.

70. In early 2020, notifications included those about outbreaks of infectious diseases, accidents and incidents, deaths, amongst other things. From the outset of the

pandemic, and in the intervening time period, the Care Inspectorate added some additional notifications, and amended others, to ensure it had sufficient information about the impact of Covid-19 on staff and residents. For example, we:

- amended the notification of a death to capture where that death related to Covid-19.
- initially modified an existing notification about outbreaks of infectious disease to indicate where that included Covid-19. Later, new notifications about each individual suspected or confirmed case involving a resident, and in time a staff member, were added.
- for a short while in the first wave of Covid-19, we added a notification for registered services to let us know if they needed urgent support with staffing, which was shared with SSSC who at the time were matching available staff to services most in need (See also Section on RAG System below). This notification was stopped when this was no longer needed after the first wave.
- subsequently we set up a weekly notification from services to inform us of staff absences, which extended over time to staff vacancies.

71. Internally, the Care Inspectorate used this data to monitor the impact of Covid-19 and identify emerging concerns at a service level. The use of this data evolved over time and latterly, around the end of October 2020, including providing an interactive dashboard for managers of our scrutiny teams. This dashboard provided daily updates about new cases and deaths in each service and over time. The Care Inspectorate regularly shared data with the Scottish Government about care homes, including numbers of notifications of new cases, services with outbreaks and deaths of care home residents. Our initial report was by email on 16 March 2020 and in time, around June 2020, we created a dashboard that SG colleagues could access themselves for daily updates.

72. Early in the pandemic, around March 2020, the Scottish Government set up a webpage as a focal point for all Covid-19 related statistical data. The Care Inspectorate contributed to that until it was stood down in 2022.

73. The Care Inspectorate routinely shared detailed data at a care home level with the directors of public health, although not all requested this. This included numbers of

Covid-19 notifications and deaths as well as other regulatory information; for example, quality grades and numbers of complaints.

74. Later in 2020, the Scottish Government provided the Care Inspectorate with access to the new Safety Huddle Tool, which captured data daily for care homes, and Care Inspectorate scrutiny teams had access to the data within that in addition to internal Care Inspectorate data sources. The Care Inspectorate ensured that the team in NHS Education Scotland that developed the huddle tool had access to the Care Inspectorate's register of care homes (via the monthly data-store extract) upon which to base the tool. However, I understand we did raise strong concerns from the outset that this involved duplication of data provision which would impact on care service providers who would experience it as duplication of effort on their part (Heather Edwards and Marie Paterson can provide more detail on this if required).

75. The Care Inspectorate publishes on its website guidance on records that all registered care services (except childminding) must keep and guidance on notification reporting. The original publication is dated February 2012, but is amended periodically, most recently on 10 March 2020 (Covid-19. Notifying all and any suspected or confirmed cases or outbreaks of coronavirus – Covid-19), 2 April 2020 (Notifying of critical staff shortages during Covid-19), and 30 April 2020 (New and updated categories of notifications of Covid-19) in relation to Covid-19 notifications. Copies of these can be made available if required.

76. In 2021, we received in excess of 324,000 notifications compared to around 71,000 in 2017 representing almost a 500% increase. It will be noted from the table below that the number of notifications received increased substantially during the period of the Covid-19 pandemic. Additional notifications around deaths, staffing and outbreaks in care services accounted for most of the increase. The number of notifications received from care home services varies greatly and depends on many factors, including the size of the care home.

77. **Number of notifications submitted by services, by year and notification type, 01 April 2017 to 31 March 2022**

Notification Type	Number of notifications	Number of notifications	Number of notifications	Number of notifications	Number of notifications

	submitted in 2017-18, up to 31st March 2018	**submitted in 2018-19, up to 31st March 2019**	**submitted in 2019-20, up to 31st March 2020**	**submitted in 2020-21, up to 31st March 2021**	**submitted in 2021-22, up to 31st March 2022**
Total	71,713	75,698	92,525	343,784	453,831
Total minus Covid related notifications	71,713	75,698	84,785	88,940	82,929

78. The Care Inspectorate continued to have access to its usual sources of data during the course of the pandemic. This included the register of care homes, annual returns data and data from notifications made by care services (all described above).

79. We interpret the use of data modelling as a way of using historic trends to predict possible future trends and scenarios. Under this definition, the Care Inspectorate did not undertake data modelling. However, we understand that some of the data the Care Inspectorate has shared with Scottish Government has been used to model future scenarios, in particular the data captured about staff absences and vacancies.

80. The Care Inspectorate did use its data, in particular from the first wave of Covid-19, to identify some key features of care homes that were affected by the pandemic to a greater extent. This analysis was shared internally, and via slides at meetings with the then Cabinet Secretary for Health.

81. The Executive Director of Strategy and Improvement, Edith Macintosh, led on intelligence covering notifications during the pandemic and can provide more detailed information if required.

Staffing

82. The scrutiny and inspection of adult care services, including care homes for adults / older people and care at home services is led and overseen by the Chief Inspector (Regulatory Care – Adults and Complaints) - Marie Paterson. Marie is supported by four Service Managers and 18 Team Managers. The fourth Service Manager was an

additional temporary post from 20 April 2020 but made permanent from 1 March 2021. There is an establishment of 117 inspectors for adult care and 40 for inspectors for complaints. However, over the past few years we have experienced significant challenges in recruiting inspectors, and we often carry a significant number of vacancies together with long and short-term sickness absence which was compounded by Covid.

Inspecting

83. The Care Inspectorate must carry out inspections of social services in accordance with an annual inspection plan agreed with Scottish Ministers (Sections 53 and 54 of the 2010 Act). The plan must be kept under review and may from time to time be reviewed, with the approval of Scottish Ministers. In addition, Scottish Ministers may 'request' that the Care Inspectorate inspect specific social services, or services in the whole of Scotland or any part of it, or specified services in the whole or any part of Scotland, or such of the services provided to a particular individual or individuals as may be specified. The Care Inspectorate must comply with such a request (section 55 of the 2010 Act).

83. Section 53 of the 2010 Act empowers the Care Inspectorate to inspect social services and sets out what the purposes of an inspection may be, namely:

(a) reviewing and evaluating the effectiveness of the provision of the services that are the subject of the inspection.
(b) encouraging improvement in the provision of those services.
(c) enabling consideration of the need for any recommendations to be prepared as to any such improvement to be included in the report prepared under section 57.
(d) investigating any incident, event or cause for concern.
(e) in the case of care services, enabling consideration as to the need for—
    (i) an improvement under section 62,
    (ii) a condition notice under section 66 or a local authority condition notice under section 85.
(f) reviewing and evaluating the extent to which the social service is complying with the integration delivery principles and contributing to achieving the national health and wellbeing outcomes.
(g) reviewing and evaluating the extent to which the planning, organisation or co-ordination of social services, services provided under the health service and services provided by an independent health care service is complying with the integration

delivery principles and contributing to achieving the national health and wellbeing outcomes.

(h) reviewing and evaluating the effectiveness of a strategic plan prepared under section 29 of the 2014 Act in complying with the integration delivery principles and contributing to achieving the national health and wellbeing outcomes.

(i) encouraging improvement in the extent to which implementation of a strategic plan prepared under section 29 of the 2014 Act complies with the integration delivery principles and contributes to achieving the national health and wellbeing outcomes.

(j) enabling consideration as to the need for any recommendations to be prepared as to any such improvement to be included in the report prepared under section 57.

84. There are regulations relating to inspection, namely the [CI/11 - INQ000320084] - Public Services Reform (Social Services Inspections) (Scotland) Amendment Regulations 2012 (SSI 2012/45).

85. In addition, when inspecting a care service the Care Inspectorate takes account of relevant legislation, particularly the [CI/12 - INQ000320085] - Social Care and Social Work Improvement Scotland (Requirements for Care Services) Regulations 2011 (SSI 2011/210), as amended, which are relied upon heavily in relation to inspection (and additionally in relation to complaint investigation and enforcement work) as they set out the principal legislative expectations of care services in their day to day operation. We also rely heavily on the Health and Social Care Standards (2017) (see below).

86. Section 50 of the 2010 Act requires the Scottish Ministers to prepare and publish standards, currently the [CI/13 - INQ000320086] Health and Social Care Standards (see also separate section below), and outcomes applicable to care services and social work services (section 50(1)).

87. Section 50(4) of the 2010 Act provides that these standards and the [CI/14 - INQ000320087] - Scottish Social Services Council Codes of Practice must be taken into account by the Care Inspectorate in making decisions under Chapters 1, 2, or 3 of Part 5 of the 2010 Act, in any appeal proceedings under section 75(1) and in any proceedings for an offence in relation to registration under Chapter 3 of Part 5 of the 2010 Act.

88. The [CI/10 - INQ000320083] - Public Services Reform (Social Services Inspections) (Scotland) Regulations 2011 (SSI 2011/185), as amended by [CI/11 - INQ000320084]

The Public Services Reform (Social Services Inspections) (Scotland) Amendment Regulations 2012 (SSI 2012/45), provide that some types of care services (care homes, secure accommodation services and support services providing personal care or personal support to persons within their homes) must be inspected at least once per year and that inspections of services of these types must be unannounced. In practice, unless there is a good reason (for example it is necessary to ensure that a member of staff will be present at premises which are not staffed full-time) to give short notice of an inspection, all inspections are carried out on an unannounced basis.

89. Section 57 of the 2010 Act requires that inspections must be reported and makes provision for the issuing of draft reports and for the provider of the care service concerned to have the opportunity to comment upon the draft report.

The Health and Social Care Standards

90. The [CI/13 - INQ000320086] Health and Social Care Standards (June 2017) are published by the Scottish Government and set out the standards of care that people using care services should expect. They are focussed on the experiences of people and their outcomes and apply across health and social care. They aim to ensure that people experiencing care are treated with dignity and respect and that their basic human rights are upheld. They also aim to drive improvement, promote flexibility and encourage innovation in how people are cared for and supported. The Care Inspectorate began to take account of these in inspections and in the registration of care services from 1 April 2018. The Standards do not replace or remove the need to comply with legislation which sets out requirements for the provision of services. The Standards are intended to be used to complement relevant legislation and best practice that support care services to ensure high quality care and continuous improvement. Current best practice guidance can be found on the Care Inspectorate website.

Evaluating / Grading

91. Once we have carried out our inspections, we evaluate quality themes using a six-point scale: -

- Excellent (Grade 6)
- Very good (Grade 5)
- Good (Grade 4)
- Adequate (Grade 3)
- Weak (Grade 2)
- Unsatisfactory (Grade 1)

Inspectors use an evaluation tool and quality frameworks, which I will describe in more detail below, to describe what we find during our inspections.

Quality Frameworks

92. We publish Quality Frameworks for different services and different care settings. The frameworks are based on the EFQM (European Foundation for Quality Management) model which focusses on key outcomes, stakeholder needs, delivery of services, management, leadership and capacity for improvement. They firmly focus on experiences and outcomes for people and take account of the [CI/13 - INQ000320086] Health and Social Care Standards (2017) and promote human rights-based care. The primary purpose of the quality frameworks is to support services to self-evaluate themselves. The quality frameworks outline quality indicators that sit under a series of key questions. Each quality indicator has related illustrations describing what very good and weak practice looks like. Our inspectors use the same frameworks to make judgements and evaluate the quality of care during inspections which helps achieve greater consistency and supports an open, transparent and collaborative inspection process.

93. We have always used Quality Frameworks on our strategic inspections but began to develop these frameworks for care settings in 2018 beginning with care homes for older people, which was published in July 2018. The responsibility for developing our Quality Frameworks rests with the Care Inspectorate's Methodology Lead (I say more about this later).

94. At the core of our scrutiny approaches is a belief that external scrutiny is best applied in conjunction with robust, evidenced-based self-evaluation by those providing care. This means managers and leaders consider their own evidence about the extent to which their services are meeting people's needs and rights as well as those of

communities - supported by constructive challenge from inspectors and other specialists.

95. So far, the Care Inspectorate has published quality frameworks for:

- Care homes for adults.
- Care homes for children and young people and school care accommodation (special residential schools).
- Care homes for adults and older people.
- Children and young people in need of care and protection.
- Daycare of children, childminding and school-aged children
- Fostering, adoption and adult placement services.
- Housing support services.
- Mainstream boarding school and school hostels.
- Nurse agencies
- Secure accommodation services.
- Support services (care at home, including supported living models of support).
- Support services (not care at home).
- Appropriate adult services
- Adult support and protection
- Community Justice

All current inspection frameworks are available to download from the publications and statistics area of the Care Inspectorate website on the Care Inspectorate HUB.

96. For regulated care services, these frameworks replace the previous practice of inspecting against themes and statements. Inspectors select a number of quality indicators from a number of key questions.

97. On 27 October 2020 we published a revised version of our [CI/15X - INQ000320088] *A Quality Framework for Care Homes for Older People* Quality Framework for Care Homes for Older People and the [CI/16 - INQ000320089] *A Quality Framework for Care Homes for Adults* to include CI/17 - INQ000320090] Key Question 7 - '*How good is our care and support during the Covid-19 pandemic*?' (2020).' which we published initially on 10 June 2020. We did this to meet the duties placed on us by the Coronavirus (Scotland) (No. 2) Act 2020 and subsequent guidance that we must

evaluate (grade) infection prevention and control and staffing. We did the same for our Quality Framework for Care Homes for adults.

98. On 15 February 2022 we published a revised quality framework for care homes for adults and older people taking account of learning from Covid-19. This replaced previous versions published on 27 October 2020 when we had separate versions for care homes for adults and care homes for older people. In 2021, following internal and external consultation we took the decision to combine these documents into a single document. We implemented it from 1 April 2022.

99. During the Covid-19 pandemic we introduced an additional key question to the framework. Key question 7 (I refer to this later see Inspection and Scrutiny During the Pandemic – Additional Key Question 7 below) focused on 'how good is our care and support during the Covid-19 pandemic?'. From February 2022, this key question was subsumed by one of the quality indicators 1.5, which was developed to ensure that where there are outbreaks of any infectious diseases, people's health and wellbeing continues to be supported and safeguarded by infection prevention and control practices. This reflects our learning from issues relating to infection prevention and control that arose during the pandemic, and takes into account the *National Infection Prevention and Control Manual for older people and adult care homes.*

Framework structure

100. The frameworks better reflect the Health and Social Care Standards and provide more transparency about what is expected of care services. They set out key questions about the difference a care service makes to people's wellbeing, and the quality of the elements that contribute to that. These include:

1. How well do we support people's wellbeing?
2. How good is our leadership?
3. How good is our staff team?
4. How good is our setting?
5. How well is our care and support planned?

101. Under each key question, there are three or four quality indicators, covering specific areas of practice. Each quality indicator has illustrations of what 'very good' quality

would look like, and what 'weak' quality would look like. These illustrations are drawn from the Health and Social Care Standards but are not checklists or definitive descriptions. Rather, they are designed to help people understand the level of quality the Care Inspectorate is looking for.

102. A sixth question, 'What is our overall capacity for improvement?' is included in the framework to help care services in planning their improvement journey.

103. Each quality indicator includes a scrutiny and improvement toolbox. This includes examples of how the Care Inspectorate might evidence the quality of care provided. It also contains links to practice documents that will help services in their own improvement journey.

Reporting

104. At the conclusion of each inspection, the Care Inspectorate must prepare an inspection report on the matters inspected following the statutory procedure which requires that the provider of the care service must have the opportunity prior to publication, to comment on the draft report (section 57(1) of the 2010 Act). In terms of section 57(2) of the 2010 Act, it is important to note that we are also required to make copies of the report available for inspection at our offices by any person at any reasonable time, and we must take such other steps as we consider appropriate to publish the report. We publish our reports on the Care Inspectorate website.

Self-Evaluation

105. We believe that self-evaluation is central to quality improvement. It is a learning process through which individual services, community planning partnerships and strategic planning groups responsible for improving services for children, young people and adults get to know how well they are doing and can identify the best way to improve their services. Establishing how to deliver quality improvement in experiences and outcomes for vulnerable people and what to measure them against is the central aim of self-evaluation. The involvement of people who experience care should be a central focus of self-evaluation. Whatever the planning structures for taking forward quality improvement, a key focus should be on those areas of most concern that are having the most negative impact upon people.

Core Assurances

106. In the same way that we do not expect services to self-evaluate themselves against the whole quality framework at once, neither do we inspect services against the whole framework at each inspection. Instead, we take a targeted, proportionate, intelligence-led and risk-based approach. I will say more about this later. However, we do have 'core assurances' which are the things inspectors will look at on every inspection, for example protection policies, infection prevention and control (IPC), medication systems and records, accident / incident records, amongst other things, but we now list these in our Framework in the interest of openness and fairness. These existed prior to the pandemic outbreak. Marie Paterson, Chief Inspector (Regulator Care – Adults and Complaints) would be able to provide more detail on this if required.

Responsive Regulation

107. In 1998 the Better Regulation Task Force published a set of basic principles of 'Better Regulation' - transparency, accountability, targeting, consistency, proportionality - which were later endorsed by the government. In recent years responsive regulation has been a key factor in our approach. There are many well-researched theories and concepts for regulation. We have drawn on these and worked with partners, for example universities, to develop our Professional Development Award (PDA) which we require our inspectors to achieve. These theories and concepts have also informed the development of our methodology to ensure we are regulating and inspecting to support quality improvement and not simply checking compliance.

Supporting Improvement

108. Whilst primary responsibility for improvement rests with services, we believe that scrutiny and improvement support are two sides of the same coin and not mutually exclusive. Our approaches to inspection that we use are designed to support services to improve by signposting, providing professional advice and encouraging the sharing of experience and good practice. We believe that through every single inspection, visit or contact by our inspectors we are supporting services to improve as well as providing the necessary independent assurance about the quality of care thereby discharging our responsibility and general duty of furthering improvement in the quality of social services (Section 44(1)(b) of the 2010 Act). This enables them to adapt, learn and improve practice. This is in preference to wholly compliance-based approaches to

regulation, where no advice or support is given, and they do not support quality improvement or better outcomes for people as they fail to educate or enable change to happen.

109. We continuously develop our approaches to ensure regulation and inspection are powerful tools to improve outcomes for people experiencing care. Responsive regulation enables us to assess risk, use professional judgement and be proportionate in our response and action. Identifying risk enables us to spend more time in those services that need to improve rather than doing the same in all services regardless of their performance and outcomes for people. We also work closely with our colleagues in the Care Inspectorate's Strategy and Improvement Directorate, and where necessary and appropriate our other scrutiny and delivery partners, to share our scrutiny findings to enable them to target improvement support in other ways.

Policy Drivers

110. In developing our approaches, we have taken account of the relevant legislation and Scottish Government policy. For example, we take account of:

- the Health and Social Care Standards (Scottish Government, 2017)
- the Crerar Review: the report of the independent review of regulation, audit, inspection and complaints handling of public services in Scotland (Scottish Government, 2007)
- the Better Regulation Taskforce (1998)
- the Scottish Regulators' Strategic Code of Practice (Scottish Government, 2015), which places duties on named regulators.

111. The Crerar Report and Better Regulation Taskforce support responsive and proportionate regulation rather than a 'one size fits all' approach. Crerar focuses predominantly on 'risk' and targeting external scrutiny, but also talks about using information and assessment (intelligence) as well as the importance of consistency and accountability.

112. The Scottish Regulators' Strategic Code of Practice, which is enshrined in law, places duties on regulators to consider the impact on services and people and to support

them. If we did not work in a responsive way and adopted a purely compliance-based approach, we would be in breach of this code.

113. Responsive regulation does not mean we will not act if we identify poor outcomes for people. It means we will implement proportionate approaches relative to the risk. Where the risk to people is high and outcomes poor, we do not hesitate to take robust and decisive action as we have demonstrated repeatedly before and throughout the pandemic.

114. Key to delivering responsive regulation is the professionalism, skills, knowledge and experience of our staff. We employ people who are registered and regulated professionals with a proven track record in leading, managing and effecting quality improvement in care.

Targeted, Proportionate, Intelligence-Led and Risk-based Scrutiny

115. We are committed to ensuring our work aligns to the Crerar Review report, the Better Regulation Taskforce principles and the Scottish Regulators' Strategic Code of Practice which urged scrutiny bodies to ensure activities are targeted, proportionate, intelligence-led, and risk-based. From the early days of our predecessor body, we have moved from a largely compliance-based approach to a more collaborative model of working with service providers.

116. We are committed to increasingly taking an intelligence-led, risk-based, targeted and proportionate approach to scrutiny, assurance, and quality improvement. We use data and information from scrutiny and other data and intelligence we gather to use our resources effectively and efficiently. We rigorously monitor services, gathering and analysing intelligence, including from complaints and notifications. The data and information we gather helps target our scrutiny approaches as well as helping to shape and influence local and national policy and practice.

RAD/SAT

117. Responsiveness in our scrutiny of care services is closely linked to proportionality and targeting, with risk assessment playing a crucial role in determining our inspection approach. We capture the risks to a degree in the risk assessment document (RAD)

we hold for every single service. We used to use the RAD system to determine which services needed the most scrutiny and support. Since 2020, as part of our methodology review, we have adapted that method and use a new system called the Scrutiny Assessment Tool (SAT). In simple terms, it is a way for the Care Inspectorate to assess which services are in greatest need of a scrutiny and/or improvement support intervention, which can mean an inspection, or it could mean other action. It should not be confused with grades awarded following an inspection, which are based on the evidence detailed in inspection reports, which are all published on our website.

118. The SAT is developed through a dynamic process of gathering information and intelligence about care services, including complaints we receive about services and notifications services make to us as well as the outcomes from inspections and information we receive from others including from the various oversight groups in health and social care partnerships. We also incorporate what is reported to us about adult support and protection or child protection concerns, incidents within services, change of manager and note any marked deviation/variation from national trends for that particular service type e.g., on complaints, medication administration/errors etc. A service's overall regulatory history, how they respond to complaints and our assessment of their capacity to make improvements is another consideration.

119. The SAT has been developed as a tool to identify early possibility of potential service failure. The SAT is based on the University of Hull's early indicators of concern (University of Hull, 2012). The Chief Inspector (Regulatory Care – Adults and Complaints) - Marie Paterson can provide more detail of the specifics if required.

Enforcement Overview

120. Prior to the pandemic, we had carried out a review of our enforcement activity. This highlighted early indicators of concern that we needed to consider as part of our risk assessment process. We thought these would help us to identify those services at risk of failing. The work was finalised and shared within the Care Inspectorate, including with the executive management group and the children's management team in November 2019 and with the Board in February 2020. The new procedure at this time was agreed by the executive team and the Board. However, this was put on hold with Covid, as it needed to be rolled out with training for staff.

121. Notwithstanding, throughout the pandemic we made use of the revised procedures when taking significant enforcement action. This allowed us to 'test' them and on 13 April 2022 after incorporating learning from the pandemic into a final version, they were approved by our Senior Leadership Team.

122. During the pandemic, we have significantly strengthened our intelligence gathering, particularly in adult services. The importance we attach to this intelligence-led, risk-based approach was already increasing at pace before the pandemic as a fundamental strand of our new business model as outlined in our Corporate Plan 2019-22. This is reinforced in our current Corporate Plan 2022-25.

123. We have continually strengthened our focus on experiences and outcomes for people, their carers, families and communities. Ensuring that scrutiny primarily focuses on evaluating experiences, outcomes and impact, rather than a disproportionate emphasis on checking inputs, is a central feature of our business model.

124. We believe that approaches that are risk-based, outcome-focused, proportionate, and intelligence-led will provide the strongest assurance and protection for people and have the greatest impact on improving the quality of care. In this context, the value of scrutiny is realised by the extent to which inspectors add value to care services and local partnerships through a cycle of self-evaluation, scrutiny and improvement support (or regulatory action where required). Robust, evidence-based scrutiny acts as a diagnostic tool and key driver of improvement in the quality of care. In turn, this supports the safety, protection and wellbeing of people, with additional improvement support resources being deployed as indicated by initial scrutiny.

125. So that the Care Inspectorate can protect people who use care services, the 2010 Act gives it legal powers to take enforcement action. In broad terms, this means that the Care Inspectorate can change existing conditions of registration or impose new conditions. It can also serve an Improvement Notice on a service to require it to improve within a set timescale. If the service does not make these improvements, the Care Inspectorate can cancel its registration. The Care Inspectorate also has the power to make an application to the sheriff court for the cancellation of the registration of the care service, if any person would otherwise be at serious risk to their life, health or wellbeing. I say more about enforcement powers later under the section headed Enforcement.

Relationship and Link Manager Roles

126. In Scotland there are 32 local authorities (councils), 31 health and social care partnerships (HSCPs) and 14 regional Health Boards. Each HSCP has a unique set of integration arrangements. All of the partnerships have a common purpose - to deliver better health and wellbeing outcomes for the people of Scotland.

127. We allocate to each integration authority / health and social care partnership and local authority a link inspector and a relationship manager. They link with health and social care partnership colleagues in relation to practice and quality issues in care services. They work with social work teams and commissioning, contracts and quality assurance staff where there are quality issues with services, or where they are seeking advice on possible options for future developments for services that may need to be registered.

128. The relationship manager for each health and social care partnership area manages a team of inspectors of the care services in that area. This relationship manager liaises with partnership staff in relation to service provision and quality, emerging issues and intelligence about areas for improvement that informs local planning and commissioning of services.

Complaints Overview

129. Almost uniquely among health and social care regulators, the Care Inspectorate has a statutory duty to deal with complaints about registered care services (section 79 of the 2010 Act). In November 2017, we introduced a new procedure for handling complaints designed to be open, transparent, risk-based and focussed on people's experiences. It brought together best practice in complaint handling and introduced a pathway for us to consider different approaches for resolving complaints based on an assessment of risk. It complies with the Scottish Public Services Ombudsman's (SPSO) model complaints handling procedure (MCHP). The Scottish Public Services Ombudsman's MCHP sets out complaints handling processes for public bodies, including Local Authorities, Integration Joint Boards (IJBs), NHS, and Social Work.

130. The revised approach is intended to enable us to be more proportionate in our response and to prioritise complaints that have caused, or have potential to cause, negative outcomes for people's health, safety, or wellbeing. It also strongly

supports a shift towards a more targeted, proportionate, intelligence-led, and risk-based approach to our scrutiny, assurance and improvement work.

131. Complaints are one of the most important ways we can support rapid improvement in care quality. A complaint investigation can result in recommendations and requirements, and occasionally in enforcement action. Complaints also help us build an intelligence profile of what is happening in care services and where we need to target resources.

132. In 2020, we enhanced our frontline triage teams, who answer calls and receive complaints about services, to ensure we supported people raising concerns and could act quickly and effectively. We have strengthened our risk assessment process for all complaints to determine the most appropriate response. This helps us to quickly identify the most urgent and serious concerns and take robust action.

133. Following an assessment, there are a number of ways we can deal with concerns when they are raised with us and we may use multiple methodologies for one concern. It is important that each concern is dealt with through the most appropriate route to ensure that concerns are resolved as quickly and effectively as possible.

134. We currently deal with almost 6,000 complaints a year. Once we decide to proceed, there are four pathways we can take to reach a complaint resolution.

135. **Intelligence** - where we receive and record information about a care service and highlight that to the inspector for that service. This approach would only be used for lower-risk complaints and/or complaints where we may not have enough information. This helps our inspectors develop a broader overview of concerns about a service, which in turn informs the timing and focus of our inspections. We may use the information as intelligence about the service to help inform our scrutiny and improvement support activity. For example, bringing forward a full, unannounced inspection of a service.

136. **Direct service action** - when issues are straightforward and suitable for quick or immediate action, we contact the service and ask that they engage directly with the person making the complaint to resolve the issues directly with the person. Typically, this is used for straightforward or simple matters where people are unsatisfied with their experiences to intervene quickly and achieve a positive result.

137. **Investigation by the care provider** - when issues are suitable for the complaint to be investigated via the service's own complaint procedure, we obtain consent to share the person's contact details with the service and we contact the service provider and ask them to investigate the concerns and respond to the complaint.

138. **Complaint investigation by the Care Inspectorate** – following assessment, we investigate serious complaints about failings in care that have led to or are likely to lead to poor outcomes from an individual or individuals.

139. **Adult and Children support and protection** – any concerns which require to be assessed as adult or child protection concerns are referred to the lead agency, the social work department. We keep in touch with the social work department until a decision is made about if an investigation will take place. If a decision is made that no investigation is required by them, the issues will be re-assessed and investigated by the Care Inspectorate if this is appropriate.

140. We assess all complaints for protection issues, acting swiftly and robustly and making referrals to partner agencies including Police Scotland and local authority social work services as required, to ensure people are protected.

141. We view complaints as an opportunity to improve services. They are a valuable source of intelligence. They can help us decide whether an inspection should take place and they help us regulate services effectively. Complaints inspectors work closely with inspection teams to share intelligence and agree what actions services need to take to improve the care that people experience. We share the outcome of a complaint investigation with the complainant and the service provider. When we uphold a complaint, we publish the outcome on our website. We also share complaint outcomes with local health and social care partnerships and public health teams through our relationship managers. Where we make requirements following a complaint investigation, we follow them up quickly to make sure the safety and wellbeing of people using the care service improves. We take all complaints seriously including those made anonymously. Most anonymous concerns are used as intelligence that help us decide how and when to inspect services. We assess each anonymous complaint and will only investigate if we think that there may be substance to the complaint and that investigation is likely to be in the best interests of the people using the service. With anonymous complaints, full investigation may not be possible

because there may not be enough information provided in the complaint to enable us to make further enquiries. However, we will share this information with the relevant inspection team to use at the next inspection where appropriate.

142. On 19 March 2020 the Care Inspectorate's 'Gold Group' took a decision to ask providers to be the first line resolution for all complaints.

143. On 9 April 2020 the Care Inspectorate Gold Group agreed to adopt the [CI/18 - INQ000320091] *Coronavirus – COVID 19, supporting, safeguarding and assuring – re-purposing our scrutiny responses* including changes to inspection, relationship management, staff notifications and complaints. This provided that each week teams would receive information from our intelligence team on those services with more than one complaint. For services with three or more complaints the case holding inspector would review the complaints, risk assessments, previous inspection grades, notifications and any other source of intelligence and use a Decision-Making Tool Covid 19 to determine any action we should undertake, including liaison with the relevant HSCP oversight team and regular monitoring and contact with the service (see also section on Clinical and Care Oversight below). The Chief Inspector (Regulatory Care – Adults and Complaints), Marie Paterson, can provide more detail of the specifics if required.

144. During the period between 19 March 2020 and when we restarted onsite inspections on 4 May 2020, we continued to use complaints information to assess the risks to people using the service and determine the most appropriate course of action.

145. During the period 1 April 2020 to 31 March 2021, we received 4,618 complaints. Of these, 787 were revoked (cancelled) because:

a) they were not in our remit and referred to other agencies to investigate, for example police or local authorities, or
b) the complainant decided not to proceed with the complaint.

The remaining 3,831 were assessed by our complaints triage team. They assessed the risks of each individual complaint and assigned them to the most appropriate resolution pathway described above. Of those, 2,097 were about care homes for adults and older people.

146. Of those complaints actioned as Intelligence, the majority were anonymous. This means we are unable to get any further information on these complaints. The majority of complaints assigned to Intelligence were about infection prevention and control related to Covid-19, including a large proportion about PPE. Another major area related to staffing levels.

147. The protocol for complaints about Covid-19 was to discuss the complaint with the lead inspector and pass it to them to action. In all cases we immediately contacted services to get assurance, for example that adequate staffing was in place, and where there were problems, we would escalate to the Health and Social Care Partnership to get additional staff and support. We also shared our intelligence with the local HSCP oversight groups (see also section on Clinical and Care Oversight below).

148. Of those complaints actioned as direct service action, the majority were in relation to communication with service users, such as not receiving any contact from the service, or being able to get in touch with the service, as well as supporting people to stay in touch with loved ones.

149. Complaints about staff training and staffing levels were often referred to the service for direct action, when complainants were seeking assurance that there was enough staff, or that staff were appropriately trained.

150. In these cases, most were complainants who needed reassurance and information from the service, and services were able to respond to this quickly.

151. For complaints actioned for investigation by the provider, these included concerns about the healthcare received. For example, this could be care which was not in line with assessed needs detailed in the care plan, or instances where relatives were concerned about the healthcare provided.

152. Communication and staffing issues requiring further investigation to establish facts were often actioned for provider investigation. We investigated those that posed a significant risk to people, and almost half were about healthcare issues.

153. On 29 July 2020 while I was on annual leave (26 July to 9 August 2020), there was some adverse media reporting of how the Care Inspectorate dealt with complaints during the pandemic which I understand arose from a misunderstanding of a report to

our Board which appeared on our public website. From subsequently reviewing e-mails that I was able to retrieve, it appears that our Chief Executive, Peter Macleod immediately instructed a review of all the complaints we had received during the pandemic (4,618 in total). Reporting to Peter Macleod and Edith Macintosh and co-ordinated by Claire Neary (a former Senior Policy Advisor in the Strategy and Improvement Directorate) a team of seven - comprising staff from the Scrutiny and Assurance Directorate (inspection and complaints) as well as our Intelligence Team and business support - undertook a review of all the complaints. This was a very significant and time-consuming piece of work.

154. On 5 July 2023 Marie Paterson, Chief Inspector (Regulatory Care – Adults and Complaints) told me that the review team were under specific instruction from Peter Macleod to review all the complaints from a quality assurance perspective to ensure that they had been dealt with correctly in terms of the complaints procedures and Care Inspectorate Covid policy decisions, which Marie said the review confirmed was the case. The Chief Inspector (Regulatory Care – Adults and Complaints), Marie Paterson has contemporaneous notes of the meetings she had with Peter Macleod and others regarding this and can provide further information if necessary.

155. During the pandemic we strengthened the risk assessment of complaints and where we identified a visit to the service was needed, complaints inspectors met with inspection teams and a Covid-19 inspection was undertaken. We also strengthened our overall approach to complaints and inspection work. When we visited a service to undertake a complaint investigation, we also inspected infection prevention and control (IPC) practice. As well as writing a complaint report and responding to the complainant, the complaint inspector evaluated IPC practice in the service. This enabled us to increase the number of care homes where we were able to provide assurance that they were demonstrating effective IPC practice to protect people.

156. We shared the outcome of a complaint investigation with the complainant and the service provider. When we upheld a complaint, we published the outcome on our website. We also shared complaint outcomes with local health and social care partnerships and public health teams through our relationship managers.

157. Where we make requirements following a complaint investigation, we follow them up to make sure the safety and wellbeing of people using the care service improves. We also gathered intelligence from anonymous complaints to inform our regulation of the

service. The information we have received from complaints during the pandemic has helped inform our overall strategic response.

Enforcement

158. Enforcement is an essential and powerful element of the Care Inspectorate's core responsibilities. It is central to our aim of protecting service users and bringing about an improvement in the quality of care services.

Conditions of Registration

159. Condition Notice – conditions may be added to the registration of a care service, varied, or removed. There is a statutory process for this, culminating in a right of appeal to the sheriff.

160. Under the 2010 Act, the Care Inspectorate has the following enforcement powers: section 66 of the 2010 Act makes provision for notices of proposal to impose, vary or remove conditions of registration. The notice states that we propose to vary or remove a condition or impose an additional condition and why. Such a notice will be issued when considered necessary to make the service safe or otherwise comply with the 2010 Act and the regulations. The provider may make written representations to us within 14 days after service of the notice, setting out any matter they want to dispute.

161. Section 73(3) of the 2010 Act says we where we have given notice that we are proposing to vary, impose or remove a condition, and after considering any written representations we decide to go ahead with the variation, imposition, or removal, we must give notice that we have taken this decision.

162. A decision does not take effect until the 14-day time limit for appeal to the sheriff has elapsed without an appeal being lodged or the date the provider advises us in writing there shall be no appeal. If an appeal is lodged, the decision does not take effect until the appeal is determined or abandoned, which could be many months after the decision has been made.

Emergency Conditions

163. Emergency Condition Notice – this is similar to Condition Notice, but the condition takes effect immediately. The test for use of the Emergency Condition Notice is that the Care Inspectorate believes that the absence of the condition in relation to the registration of the service poses a serious risk to the life, health or wellbeing of persons. Again, there is ultimately a right of appeal to the sheriff.

164. Section 67 of the 2010 Act gives us power to impose an Emergency Condition on the registration of a service where we believe the absence of the condition poses a serious risk to the life, health or wellbeing of persons. They take effect immediately on receipt by the provider. The emergency condition notice must explain the provider's right to make written representations within 14 days of the notice and confirm the right of appeal to the sheriff. We must consider any representations and then either serve a notice to vary, or remove the condition, or notify the provider that we do not intend to serve such a notice and, again, advise of the right of appeal to the sheriff. The provider can appeal to the sheriff within 14 days of service of the notice if no representations are made, or within 14 days following our decision, following representations being made. The Sheriff can confirm that the notice is effective, direct that it shall be ineffective, vary it or add a further condition.

Improvement Notices

165. Improvement Notice – an Improvement Notice sets out that a significant improvement of a specified nature must be made within a specified time, failing which a proposal may be made to cancel registration, and ultimately, the registration may be cancelled, effectively requiring that the care service concerned must close. If a registration is cancelled, there is a right of appeal to the sheriff.

166. Improvement Notices are provided for by section 62 of the 2010 Act. They set out actions which the provider must take to bring about improvement, with timescales for compliance, and state that in the event of non-compliance, the Care Inspectorate may propose to cancel the care service's registration. An improvement notice would only be issued in respect of matters where there is a failure to comply with a legal duty and where that is actually or potentially impacting on outcomes for people receiving the service.

167. When an Improvement Notice is assessed by Inspectors as having been met, it is effectively discharged. This means that if improvements are not sustained over time, the process has to start again from the beginning i.e., through an inspection, the issuing of a new Improvement Notice and, if not met, a proposal to cancel the registration in which we cannot carry forward evidence from the previous Improvement Notice. This means that we see some services with successive Improvement Notices without or before proceeding to a proposal to cancel the registration. We believe this is a weakness in the current legal framework and for a long time now we have been advocating with Scottish Government to recognise in legislation the need for sustained improvement by services to rectify this situation.

Proposal to cancel registration.

168. If an improvement notice has been issued, the timescale provided for compliance has expired and the improvements required have not been made, a notice of proposal to cancel registration may be issued. The notice must advise the provider that they have 14 days in which to make written representations if they want to dispute any matter.

169. If, notwithstanding the terms of any written representations received in response to a proposal to cancel, we decide to cancel the registration, we must issue notice of our decision under section 73(3) of the 2010 Act. This notice must explain the provider's right of appeal to the sheriff. The decision to cancel does not take effect until the 14-day period for appeal to the sheriff elapses or until any appeal is determined or abandoned, which could be many months after the decision has been made.

Emergency Cancellation of Registration

170. If there is a serious risk to the life, health or wellbeing of persons unless an order for cancellation is made, section 65 of the 2010 Act provides that an application can be made to the sheriff for emergency cancellation of the registration. The Sheriff may (but does not have to) grant the application. We may (and invariably do) seek an interim order suspending registration to protect service users pending a full hearing on the application, which will not take place until sometime after the application has been made.

171. Note:- Where local authorities provide services that they are obliged to provide by statute, these are registered under Chapter 4 of Part 5 of the 2010 Act (local authority

adoption and fostering services etc.,) enforcement arrangements are generally similar to those for other care services, save that non-compliance with an Improvement Notice would be reportable to the Scottish Ministers and there is no scope to propose cancellation of registration where an Improvement Notice is not complied with. The Care Inspectorate has no power to seek emergency cancellation of these services in the sheriff court.

Onset of Covid 19 - Repurposing

172. As far as I recall, we first became aware of Covid -19 in media reports that began to emerge around Christmas 2019 with specific reference to reports of a virus in Wuhan, China. These reports continued to build throughout January and February 2020. During this period concerns within the UK and abroad grew, particularly in relation to the most vulnerable, including those in care homes. This was the principal means by which the Care Inspectorate became aware of Covid-19 and its potential threat to care homes and the care sector more widely. Both the UK and Scottish Governments' subsequent media briefings, sometimes daily, communicated the latest scientific advice they had received and on which any formal guidance issued was said to be based.

173. The first confirmed cases of coronavirus (Covid-19) in Scotland emerged at the beginning of March 2020, with the World Health Organization (WHO) declaring a global pandemic on 11 March 2020. As the month went on, initial social distancing and public health measures were introduced by the UK and Scottish Government. Lockdown was announced on 23 March 2020, however, many care homes had already locked down earlier.

174. Older people, those with weak immune systems and those with long-term health conditions were identified as being at higher risk of developing severe illness with coronavirus. During this period, issues such as the supply and use of personal protective equipment (PPE), testing and staffing became prominent as the Scottish Government, national agencies and care homes and the wider care sector worked to reduce the spread and impact of the virus.

175. Other care services were also significantly impacted by the pandemic. Along with schools, early learning and childcare services either closed or refocused their provision to support the children of keyworkers, while local authorities were asked to put in place

appropriate arrangements to support vulnerable children. Furthermore, the Scottish Government confirmed that the expansion of early learning and childcare provision to 1140 hours a year, due to apply from August 2020, was delayed.

176. On 18 March 2020 the Care Inspectorate's 'Gold Group' took the decision for all staff to work from home where possible recognising its duty of care for staff and to support them to maintain their health and wellbeing. This was implemented with immediate effect. A decision was also taken to suspend all current recruitment campaigns and to close all of its 14 public offices.

Scrutiny and Assurance Directorate Intermediate Response

177. On Monday 9 March 2020 because of escalating concerns I met with the Chief Inspector (Regulated Care – Adults and Complaints) - Marie Paterson and The Chief Inspector (Children and Young people) - Helen Happer at our Hamilton Office where, together, we developed the [CI/20 - INQ000320094] - *Scrutiny & Assurance Directorate Intermediate Response* paper.

178. This outlined the approach we proposed to take in scrutiny and assurance when it was considered no longer tenable to adhere to business as usual processes, Essentially, it provided for the postponement of inspections of low/medium risk care services and only carrying out on-site inspections of '*core assurances'* (Appendix C [CI/19 - INQ000320092] - of *Scrutiny & Assurance Directorate Intermediate Response pape*r [CI/20 – INQ000320094]) where there were specific concerns, or the risk was assessed as 'high' and the process to be followed. We also produced a decision-making tool for staff (*Care Inspectorate Decision Making Tool During Coronavirus (Covid-19) (Regulated Care and Complaints* - Appendix B of [CI/21 - INQ000320095] - *Scrutiny & Assurance Directorate Intermediate Response* paper) to support staff and help ensure a consistent approach. Also attached as an appendix to the Intermediate Response document was *A short practitioners guide to proportionate scrutiny of core assurances* (Appendix C of [CI/19 - INQ000320092] - *Scrutiny & Assurance Directorate Intermediate Response* paper). At this time ceasing on-site inspections was not being contemplated and it was envisaged that the application of the policy would be for a *'… temporary / strictly time-limited basis…* '

179. Proposals were also made regarding curtailing some strategic inspection activity (Appendix D of [CI/22 - INQ000320096] - *Scrutiny & Assurance Directorate Intermediate Response* paper). Appendix A of [CI/23 - INQ000320097] - *Scrutiny & Assurance Directorate Intermediate Response* paper was a draft letter template.

180. On Thursday 12 March 2020 I received an email from our Scottish Government Sponsor Team advising me that their expectation was that Scottish Ministers had sight of our intermediate response paper and have an opportunity to comment on it before implementation.

181. On Thursday 12 March 2020 the Care Inspectorate 'Gold Group' (see below) met and agreed our Intermediate Response Paper for implementation when Scotland moved from the *'containment'* to the *'delay'* phase of the pandemic. This was recorded in the Gold Group policy file (see below) and a copy was thereafter sent same day to our Scottish Government Sponsor Team for agreement (emails refer).

182. At 11.20 am on Friday 13 March 2020, given the urgency of the situation and having heard nothing from our Scottish Government Sponsor Team, I emailed them to 'chase' the ministerial response to our intermediate response paper. Having heard nothing, I emailed them again at 12.31pm advising them that this was needed urgently in order to issue details to providers before the weekend. At 12.36 pm our Scottish Government Sponsor Team advised that they had contacted 'private office again' but they were understandably very busy and our sponsorship team had suggested to 'private office' that implementation goes ahead and that the Care Inspectorate will review the documents if necessary following any comments from Ms Freeman (the then Cabinet Secretary for Health and Sport) or Ms Haughey (the then Minister for Mental Health). That enabled me to begin wider dissemination of the document. However, at 1.45 pm same day our Sponsor Team advised me Ms Haughey (the then Minister for Mental Health) had approved our intermediate response paper '*…with no comment to make…*' (emails refer). Note. This was subject to minor revision and further ratification at the Care Inspectorate Gold Group meeting on 31 March 2020. The Chief Inspector (Regulated Care – Adults and Complaints) - Marie Paterson can provide further detail of this if required.

183. On 13 March 2020 through our communications team (led by Edith Macintosh) we announced this to our staff and to care providers (see also ceasing onsite inspections of care homes below).

184. On 31 March 2020 the Care Inspectorate's 'Gold Group' decided that only Chief Inspectors can make the decision for inspectors to carry out an onsite inspection in order to maintain a consistent approach across the organisation and to ensure that a full risk assessment is completed and that visits to services are only undertaken in extremis.

185. On 9 April 2020 the Care Inspectorate Gold Group agreed to adopt the [CI/18 - INQ000320091] *Coronavirus – COVID 19, supporting, safeguarding and assuring – re-purposing our scrutiny responses* including changes to inspection, relationship management, staff notifications and complaints. The Chief Inspector (Regulatory Care – Adults and Complaints) - Marie Paterson can provide more detail of the specifics if required.

Gold Group

186. Following a suggestion I made on Sunday 8 March 2020 to Peter Macleod our Chief Executive, a Care Inspectorate Gold (Strategic) and Silver (Tactical) command structure to manage the Care Inspectorate's response to the Coronavirus (Covid-19) was established by him on Monday 9 March 2020. The Silver (Tactical) Group was established on 31 March 2020. This was a model I was used to, and can be implemented flexibly depending on the issue or event being managed. We later learned that the Care Quality Commission (CQC) in England were also using this structure. I provided Peter with a suggested structure in diagrammatic form on Sunday 8 March 2020.

187. Initially the Gold Group was chaired by the Chief Executive and comprised Executive Directors. Heather Edwards, then the Care Inspectorate's acting Head of Quality Improvement Support, was appointed to coordinate matters relating to the Coronavirus and support the Gold Group assisted by an Inspector (Karen Penman) and Claire McGrath now known as Claire Brown (Business Support). Heather Edwards also attended 'Gold Group' meetings as did a representative from the Care Inspectorate's communications team. It was initially decided that the Gold Group would meet at least weekly, but it was recognised that there may, at times, be the need for more frequent

meetings when key decisions were required to be made urgently. It was also agreed that others may be invited to attend Gold Group meetings for specific issues.

Silver Group

188. The Silver (Tactical) Group comprised key senior managers from across the organisation as well as a representative of the Partnership Forum. It also included a representative of the Scottish Social Services Council (SSSC). It was agreed that the Silver Group would also meet at least weekly to begin with, but as with the Gold Group there may, at times, be the need for more frequent meetings. The Chief Inspector (Children and Young people) - Helen Happer was asked to chair the 'Silver Group'. It was agreed that others may be invited to attend or join the Silver Group as necessary.

189. It was recognised for both groups that good communication was essential. In general terms it was agreed that the Gold Group would make key policy decisions and provide strategic direction to individual members of the Silver Group or the Silver Group collectively. It was agreed that individual, members of the Gold Group may provide that direction to their direct reports on the Silver Group or Heather Edwards may provide it at the request of the Gold Group. A key role for the Silver Group was to implement the key policy decisions of, and to provide advice to, the Gold Group. Similarly, individual members of the Silver Group would provide such advice or guidance through their direct reports who are members of the Gold Group or through the coordinator (Heather Edwards).

190. The Gold and Silver Groups were stood down on 12 May 2021 and strategic decision-making regarding Covid-19 related matters reverted to the Strategic Leadership Team. The Gold Group was re-established for a period of several weeks from 15 December 2021 in response to the increase in the prevalence and transmission of the Omicron variant and the impact that was expected to have on the care sector.

Policy File

191. In addition to suggesting the Gold / Silver command structure I also recommended that we maintain a CI/24 - INQ000320098] Policy File for any decision we made, and I provided a template for this to the Gold Group. Heather Edwards was responsible for maintaining this for a considerable period of time although others stepped in to do that later or when Heather was unavailable.

Chronology

192. Recognising from the outset the potential for later investigation and/or a public inquiry of some description, I maintained a [CI/25 - INQ000320151] Chronology of Key Events linked to source documents. I started this on the week commencing 2 March 2020. This was not something that I was asked to do. It was done of my own volition and simply intended to help me in my particular role. However, as time progressed others became aware that I was doing this and relied on it for information they needed. Copies were later taken, and an amended version reviewed by the Audit and Risk Committee of our Board.

193. I usually completed this on a daily basis and did so personally for the period 2 March 2020 to 12 April 2021. Throughout the pandemic, like many others, I worked very long hours sometimes up to 16 hours a day, and sometimes seven-day weeks. Maintaining this on top of the day-to-day demands was extremely onerous and challenging, but I considered it necessary and was convinced that it would be enormously helpful and of great value later on, when things settled down.

194. However, in April 2021, which was around end of the first wave of the pandemic, I indicated that the time commitment from me to continue to do this was too much and with the agreement of the Chief Executive, Peter Macleod, the task was allocated to someone else within the Strategy and Improvement Directorate led by Edith Macintosh.

195. I tried also to keep a similar chronology for Covid-19 Testing from 13 March 2020 to 29 June 2020 recognising its potential to become a key 'issue' after things settled down. However, maintaining it along with the main chronology proved too much therefore I stopped doing it and the record I have is incomplete, but available if required. I started something similar for PPE but never got beyond the first two entries. A copy of this chronology I maintained [CI/25 - INQ000320151] - Chronology has been provided.

Standing down strategic inspections

196. On 12 March 2020 with the onset of the Covid pandemic, we made the decision to pause our strategic inspection programmes. We did so for three important reasons:

1. Conducting an inspection of a local authority, integration authority, or strategic partnership is a highly collaborative activity which requires significant input and resourcing from the partnership being inspected. We quickly recognised the need for partnerships to focus all their energy and attention on direct delivery of support to vulnerable people during this incredibly challenging time.

2. Our methodology for strategic inspections has been dependent on engagement with many people in local areas, both staff delivering services and people experiencing care and social work support, individually and in groups. It has involved teams of inspectors visiting different areas of the country. It was not safe to do this during the pandemic.

3. Our strategic inspection programmes aim to assess the impact of services and joint working under normal circumstances. During the height of the pandemic, some key services could not operate, and support had to be provided in alternative ways.

4. This decision was shared with our Scottish Government Sponsor Team on 12 March 2020, to inform Scottish Ministers (e-mail dated 12 March refers).

197. However, putting our planned inspection programme on hold allowed us to do the following:

We used our link strategic inspectors to maintain close contact with chief social work officers and with HSCPs. In this way, we were able to: provide support and advice, signpost services to appropriate guidance and help ensure understanding, communicate key messages, and gather information about the challenges facing services and how HSCPs and local authorities were meeting them. We were able to temporarily redeploy some of our strategic inspectors to areas of Care Inspectorate business that were under most pressure. We also agreed three temporary secondments to roles in local authorities to support them in delivering critical support to families. Temporarily suspending our strategic inspection programme also allowed our scrutiny partners to redeploy their staff to where they were most needed in response to the crisis.

Ceasing on-site inspections of care homes

198. The decision to scale-back our inspections was taken by our Gold Group on 13 March 2020 in light of the risk of our staff transmitting or spreading the Covid-19 virus.

199. When the pandemic took hold in Scotland in early March 2020, the Care Inspectorate focused its resources to support services to manage the crisis. In the early stages, following public health advice, we changed our routine inspection programme because of the risk of virus transmission, and this was supported by advice from public health. We intensified our oversight of services and rapidly put in place a raft of measures to monitor and support services across Scotland as the impact of the pandemic spread.

200. We significantly increased our levels of contact with those services that remained open, offering advice and support through professional dialogue with managers and providers. A key element of this contact was to support services to understand and implement national Covid-19 guidance. We also set up a national Covid-19 flexible response team within our organisation to help relay information and inform services about the emerging and rapidly developing situation (See separate section below headed – Covid-19 Flexible Response Team). We also developed an interim registration procedure to enable services to adapt quickly to provide essential services for children and their families.

201. We significantly increased levels of contact with adult services, contacting every care home weekly to carry out checks, and sometimes daily depending on individual risk and support needs. Between 1 April 2020 and 31 March 2021, inspectors made over 51,000 separate contacts with individual adult social care services.

202. We operated these oversight arrangements seven days a week to carry out scrutiny checks and effect swift responses for care homes. We checked whether infection prevention and control (IPC) measures were being followed, levels of personal protective equipment (PPE) were adequate and staffing levels were appropriate. This oversight included contact with services by telephone and, for the first time, through 'Near Me' video consultation and observation that enabled us to examine services' environments, systems and practice.

203. A similar approach was taken with other care service types, including early learning and childcare (ELC) and residential childcare.

204. On 13 March 2020, through our communications team (led by Edith Macintosh, Director of Strategy & Improvement), we announced to our staff and care providers our decision (see Scrutiny and Assurance Directorate Intermediate Response section above) to '…. *scale down our inspections at this time and put in place arrangements which will involve gathering information, assessing the level of risk in care services and establishing assurances about the quality-of-care people experience...[and] we are only making visits to services when that is absolutely necessary. We are also planning to operate in a similar manner around complaints and we will be prioritising our registration work that supports the national response to the Coronavirus (COVID 19 outbreak) and the sustainability of services…'* (Chronology)

This appeared on our public website as a '*Care Inspectorate. Update for care service providers on coronavirus'* with a link to relevant guidance as it emerged.

205. On 13 March, by coincidence, the Care Quality Commission in England (CQC) announced publicly the scaling down of inspections, which I believe effectively stopped from that date (chronology).

RAG System

206. On 3 April 2020, we introduced an additional notification incorporating a Red, Amber, Green (RAG) assessment to enable care services to very simply inform us of their assessment of their staffing levels, particularly when this was reaching crisis point. Care Inspectorate staff monitored and responded to these daily, including over the weekends to ensure that services got the support they need from HSCPs, Public Health Teams or others as appropriate. From 10 April 2020, we agreed to share the information we received with Scottish Government on a daily basis and with the Scottish Social Services Council (SSSC) from 23 April 2022.

207. Linked to this, we worked with the Scottish Government and the Scottish Social Services Council (SSSC) to support the development and implementation of a national database from which services could source staff to supplement their own shortages.

208. The Red, Amber, Green (RAG) system was unique across the UK regulators and meant we were immediately alerted to issues and could provide scrutiny, guidance and support to services directly, as well as directing resources to services from other key agencies where needed. We operated these oversight arrangements seven days a week to carry out scrutiny checks and effect swift responses for care homes.

209. The RAG process continued to operate until Friday 19 June 2020 after the Gold Group agreed on 17 June 2020 to stand it down by removing the requirement for care services to submit a red, amber, green staffing notification. This was to coincide with the move to phase 2 of the Scottish Government's recovery plan which was to be announced on 18 June 2020. In doing so we agreed also to continue to monitor staffing levels in care services through the weekly staffing shortages return as we moved towards the winter months. This would allow us to monitor and share information with Scottish Government and key stakeholders on the impact on staffing of any new Covid outbreaks alongside any incidences of winter flu. We communicated this decision to Scottish Government and the SSSC. Ingrid Gilray our Intelligence and Analysis Manager can provide further information on this if required.

Notifications

210. The need to rapidly provide additional support to care services and to gather intelligence meant our systems had to change quickly. We put in place systems and processes to allow us to gather intelligence, analyse it and take action to support services as appropriate.

211. As stated earlier, Care services are routinely required to notify us of a wide range of information, such as significant incidents and allegations, so we can provide appropriate support, scrutiny and assurance.

212. To support the response to the pandemic, these notifications were enhanced. New electronic notifications were developed and rapidly rolled out, including: -

- RAG (red, amber, green) notifications about staffing levels.
- Covid-19 – outbreak in a service (from Friday 13 March 2020)
- Covid-19 – death of someone in a service
- Covid-19 – death of a staff member

213. In terms of the RAG (red, amber, green) notifications about staffing levels, Inspectors monitored these twice daily, seven days a week, and we rapidly responded to amber and red notifications to support access to additional staffing from HSCPs and the SSSC staffing portal.

214. These notifications, which we monitored rigorously, gave us regular information that allowed us to identify when services had outbreaks, those who needed additional support and where services may be in crisis and in need of further support from local public health teams and HSCPs. The collation of this information also gave us essential intelligence to inform our risk-based approach to scrutiny activity and our decisions about the most appropriate scrutiny and support for each service during the pandemic. The information we gathered was also shared with the Scottish Government in a variety of ways.

215. At the beginning of the pandemic, we recognised the need to share our notifications and intelligence with local health protection teams and we ensured that they received a copy of all notifications we received from services on a daily basis. This ensured health protection teams in health and social care partnerships had information on outbreaks, including those where an outbreak was suspected, and could take appropriate action.

216. Between 11 March 2020 and 31 March 2021 we received and dealt with 159,826 Covid-19 related notifications for adult services. This compares to a total of 59,770 notifications we received from adult services between 1st April 2019 and 31 March 2020.

Enhanced Monitoring

217. On adapting our work to respond to Covid-19, we put in place enhanced monitoring of adult services and inspectors took action accordingly. On notification of an outbreak, the allocated inspector would contact the service affected to carry out several checks, including: -

- ensuring the service was using up-to-date guidance from Health Protection Scotland.

- checking that the service had informed local public health teams of an outbreak and sought appropriate support.
- checking that PPE was being used correctly.
- checking that staff were supported and understood correct IPC measures and that guidance was being followed.
- asking the service how they were managing public and communal spaces and what measures they had put in place.
- checking that staff deployment ensured that those working in areas of a service with an outbreak were being appropriately cohorted in order to avoid cross-contamination with other staff.
- asking what end-of-life care procedures and protocols were in place to facilitate relatives being with someone at the end of their life.
- checking services' enhanced cleaning routines.

218. These contacts were documented, and intelligence shared with health and social care partnership (HSCP) colleagues and other stakeholders. Relevant information was also used when providing the many briefings to the Scottish Government on individual services throughout the pandemic. We held meetings with HSCPs and Public Health colleagues to discuss intelligence and agree support to services in order to protect people using services.

219. In order to be able to respond to services and monitor new notifications, inspection teams realigned their work to ensure they had capacity to contact every care home and care at home service at least weekly, and sometimes daily as required. We moved inspectors from our strategic and early learning and childcare inspection teams and also had support from Healthcare Improvement Scotland (HIS) inspectors to effectively support the sector. I say more about the involvement of HIS later.

220. Frequent contact with services was vital and was an opportunity to discuss notifications services made to us, allowing us to quickly build a reliable and accurate picture of the situation in every care service.

221. We developed new electronic systems so that inspectors were able to record the contacts they made. This record was a valuable source of information especially when providing information to health and social care partnership oversight groups and others.

222. The feedback we received from services was that these contacts provided critical support in extremely challenging circumstances.

Emergency Covid-19 Legislation

223. The Coronavirus (Scotland) Act 2020 received Royal Assent and came into effect on 7 April 2020. The Act introduced temporary changes to the way essential public services operated and are regulated during the pandemic. Provisions included various temporary extensions to prescribed deadlines for freedom of information requests, child protection measures and placements, and guardianships and treatments in relation to adults with incapacity.

224. The Bill for the Coronavirus (Scotland) (No.2) Act 2020 received Royal Assent on 26 May 2020. This further Act introduced new powers for some public bodies and placed additional duties on the Care Inspectorate (all set out in schedule 1, part 9), namely:

- the Care Inspectorate must lay a report before the Scottish Parliament every two weeks, setting out which care homes it inspected during these two weeks and the findings of those inspections.

- care home providers must report daily to the Care Inspectorate on numbers of deaths (suspected or confirmed Covid-19) and total number of deaths irrespective of Covid-19. The Care Inspectorate must report this information weekly to Scottish Ministers.

- formal notices issued by the Care Inspectorate to providers, can now be transmitted electronically.

- notices are taken to have been received on the day of transmission unless the contrary is shown.

225. By 12 August 2020, 19,126 people in Scotland had tested positive for Covid-19. According to the National Records of Scotland, 4,213 deaths had been registered where Covid-19 was mentioned on the death certificate. 1,938 (46%) of Covid-19 registered deaths related to deaths in care homes for adults and older people (Source:

Scottish Government daily Covid-19 data for Scotland, 12 August 2020 and NRS Covid Deaths Report Week 32).

226. We were in the midst of a global tragedy. Many people had died, including people experiencing care and particularly in care homes. Some care homes in Scotland saw multiple deaths, each one causing heartbreak to families and staff. Many care homes had an outbreak of Covid-19 and others had no cases at all.

227. The Scottish Government did not, as a matter of routine, formally seek our advice in relation to legislation enacted in relation to the pandemic. That said, we were usually made aware of what was proposed and were afforded an opportunity, where that legislation would have impacted upon the Care Inspectorate as an organisation, to comment upon relevant aspects. That was not done by way of requests for advice or for formal briefings, but by way of email requests for input and / or informal meetings, often at short notice utilising Microsoft Teams and, as far as I am aware, not minuted. Where we did make representations on the potential impact of legislation, we are not aware of the extent to which those were shared within the Scottish Government. Examples included:

- directions under section 44(2)(a) of the Public Services Reform (Scotland) Act 2010 to the Care Inspectorate to provide information regarding risks to persons at a care home.

- paragraph 22 in Part 9 of Schedule One to the Coronavirus (Scotland) (No.2) Act 2020, where we were required to lay before Parliament a report every two weeks (see section headed Parliamentary Reports below).

- section 5, Schedule 4, Part 4 of the Coronavirus (Scotland) (No 2 Act) 2020 which allowed us to issue formal notices by electronic means.

228. Periodically, we were asked for our view on the implementation of the various provisions, for example the number of times we had used them (e.g., serving notices by electronic means) and for our thoughts on how long some provisions should remain in force (e.g., the provision relation to the parliamentary reports).

Parliamentary Reports

229. In accordance with Paragraph 22 in Part 9 of Schedule One to the Coronavirus (Scotland) (No.2) Act 2020, which came into force on 27 May 2020, we were required to lay before Parliament a report every two weeks setting out:

(a) which care home services for adults it inspected during those two weeks.
(b) the findings of those inspections.

230. To meet the duties imposed by the Act and to comply with associated guidance, the Care Inspectorate had to ensure that in each report there was a particular focus on infection prevention and control, PPE and staffing. We also included a focus on wellbeing (see section on Additional Key Question 7 below). We reported on infection prevention and control and PPE in particular circumstances prior to the pandemic, but not on every inspection or through the particular lens of a pandemic. We can provide further information on this if required. Most of our reports before the pandemic would reference staffing.

231. Producing the fortnightly parliamentary reports was resource-intensive but generally well received. The requirement to produce these reports ended on 30 September 2021. We published the first parliamentary report on 10 June 2020 and the final one on 29 September 2021. In total, we published 35 parliamentary reports. Copies of these can be made available if required. Although we were never entirely clear why they were required, the parliamentary reports essentially allowed for a short summary of the inspection findings to be published quicker than the associated full report, and it was this that seemed to meet with the approval of parliamentarians. These reports by their nature were easier and quicker to read and, with a number of inspections appearing in one report, the reader was able to compare and contrast the main findings across different inspections / services / geographic areas. It was also easier to track follow-up inspections to determine whether improvements were made and how long it took to achieve those. However, it is important to note that during this time we decided which care homes to inspect based on intelligence and risk. Therefore, the overall findings of these reports were not representative of the care home sector as a whole.

232. In addition to the fortnightly report to Parliament, we continued to publish full inspection reports for individual care home services as we did prior to the pandemic. For these full reports, the average turnaround time for issuing a draft report following

an inspection was six days to meet the new reporting requirements placed upon us. For care homes, we published the full inspection reports generally within 10 days.

233. We are not able to say what reliance the Scottish Government placed on our parliamentary reports beyond these being the focus of discussion at our regular meetings with the Cabinet Secretary for Health and Sport (See section Meetings with the Cabinet Secretary Health and Sport below).

The Scottish Parliament – Health and Sport Committee

234. On 30 June 2020, the Care Inspectorate received an invitation [CI/26 - INQ000320152] by email to give evidence to the Scottish Parliament's Health and Sport Committee on 25 August 2020. The Committee had agreed to undertake pre-budget scrutiny of the Scottish Government's 2021-22 budget while considering the impact of Covid-19 on the Health and Social Care 20/21 settlement. It had been agreed by the committee to invite the Care Inspectorate to give evidence in relation to the budget, but also on the Care Inspectorate's response to the Covid-19 pandemic.

235. On 25 August 2020, our then Chief Executive, Peter Macleod, and I appeared before the Health and Sport Committee. Our evidence is recorded in the official transcript of the meeting [CI/27 - INQ000320153].

236. On 3 September 2020, we received a letter from the Convener of the Health and Sport Committee [CI/28 - INQ000320154], seeking clarification of certain areas covered and not covered during our evidence session on 25 August 2020. Our formal reply to that is contained within a letter from our then Chief Executive, Peter Macleod to the Convener of the Health and Sport Committee dated 24 September 2020 [CI/29 - INQ000320155].

237. On 11 November 2020, we received a letter from the Convener of the Health and Sport Committee [CI/30 - INQ000320157], in relation to the publication of our report entitled *Delivering care at home and housing support services during the COVID-19 pandemic* [CI/31 - INQ000320158] which we published on 24 September 2020. The committee acknowledged and welcomed the report but asked us for some further information, including an early response and update on the progress that has been made in relation to the recommendations contained in the report. Our formal reply to that is contained within a letter from our then Chief Executive, Peter Macleod to the

Convener of the Health and Sport Committee dated 27 November 2020 [CI/32 - INQ000320159].

Supporting services with staffing

238. In partnership with the Scottish Social Services Council (SSSC), we agreed how services could recruit and deploy staff to take account of the need for people to be supported in services.

239. It was also agreed that staff registered by the SSSC for one service type could be temporarily allowed to work in another service type to fill staffing gaps caused by Covid-19.

240. The SSSC is the regulator for social work, social care and early years workforce in Scotland. They register social workers, social care and early years workers, setting standards for their practice, conduct, training and education and by supporting their professional development. Where people fall below the standards of practice and conduct they can investigate and take action. Their main obligations are to:

- publish the national codes of practice for people working in social work, social care and early years services and their employers.
- register people working in social work, social care and early years and make sure they adhere to our codes of practice.
- promote and regulate their learning and development.
- are the national lead for workforce development and planning for the social work, social care and early years workforce in Scotland.

Covid-19 Flexible Response Team

241. On 25 March 2020 we established a national Covid-19 flexible response team to support services and to help share and explain guidance as understanding of the virus developed. This included guidance in relation to social distancing, PPE, including face coverings, and Covid testing. The Flexible Response Team acted as a central resource to provide advice and guidance on Covid-19 and ensure that our staff and the care sector were able to access guidance that was regularly updated as learning about the virus developed. The key functions of the team were to:

- support our responses to Covid-19 enquiries from people providing and experiencing care, and members of the public.
- maintain up-to-date knowledge of policy and guidance in relation to Covid-19 for people providing services, our staff and members of the public.
- analyse information and intelligence about services to help direct support where it was needed.
- provide specific support in relation to IPC issues, such as PPE and testing.
- identify policy and practice concerns affecting social care services and escalate these as necessary to the Scottish Government.

242. The Covid-19 flexible response team was made up of staff from across the Care Inspectorate, reflecting the breadth of work undertaken. These staff possessed a range of specialist experience and expertise, including nurses with up-to-date IPC knowledge as well as lead practitioners in PPE, dementia and end-of-life care. The team worked closely with colleagues at Health Protection Scotland (which became Public Health Scotland – see below) and met regularly with them to share intelligence and clarify guidance. The team provided support and information to people who experienced care and their families, the general public, registered services, social care workers, health and social care partnerships and other stakeholders. Their focus at all times was on the health and wellbeing of people experiencing care, with the following principles underpinning their approach:

- sharing and referring to national guidance and good practice advice that helps care providers and Care Inspectorate staff make informed decisions.
- interpreting national guidance in a person-centred way for use within social care settings.
- responding with sensitivity and empathy, especially when dealing with particularly difficult situations.
- balancing the need for clinical approaches with a focus on human rights and health and wellbeing.

243. Note. I understand that Health Protection Scotland (HPS) was established in 2005 and was formerly known as Scottish Centre for Infection and Environmental Health (SCIEH). I also understand that from 1 April 2020 Public Health Scotland brought together parts of NHS National Services Scotland – Health Protection Scotland (HPS)

and the Information Services Division (ISD) – with NHS Health Scotland to form Public Health Scotland.

244. From their website, I am aware that Public Health Scotland are responsible for planning and delivering effective and specialist national services which co-ordinate, strengthen and support activities aimed at protecting the people of Scotland from infectious and environmental hazards. They do this by providing advice, support and information to the following groups:

- health professionals
- national and local government
- the general public
- a number of other bodies that play a part in protecting health

245. During the pandemic, guidance was often referred to as being produced by Health Protection Scotland (HPS) when technically it was, by then, Public Health Scotland. Any confusion amongst staff and services is likely to be associated with the structural change occurring just as the pandemic was taking hold. We had an established relationship with Health Protection Scotland before, and during, the pandemic particularly in relation to sharing intelligence and clarifying guidance. There was also potential confusion when people referred to Health Protection Teams in local Health and Social Care Partnerships (HSCPs) who worked closely with Directors of Public Health (DsPH).

246. The scale and complexity of the Scottish and UK Government's response to the Covid -19 pandemic was such that I feel unable to give a professional and informed opinion about how effective the overall system for the provision of advice/information to the Scottish Government/Parliament about infection and its control in the care sector in Scotland was, or how complete and timely it was beyond the points covered here and elsewhere in this statement.

247. One of the Covid-19 flexible response team's most important roles was to signpost services to the most relevant and current guidance. As learning about Covid-19 developed, good practice guidance was regularly updated, and the team identified the need to actively manage the volume of guidance on behalf of services. They maintained Frequently Asked Questions for different service types, including care

homes for older people and care at home services. As the pandemic continued, guidance from official sources was accumulating. In response, the team created a Covid Compendium, which streamlined and separated relevant guidance for different service types. This enabled services to find the most relevant and up to date guidance for their setting more easily.

248. We also enhanced our communication to providers with daily Provider Update email newsletters, a Covid-19 area on our website, and information on social media. We made our well-established provider update process available to Scottish Government to facilitate them sharing information and guidance quickly with care services and care providers. In such a rapidly changing context, guidance changed frequently and it was not unusual for us to be doing this late afternoon/early evening, particularly on a Friday which often meant our communications staff working late to accommodate this.

249. Note. We have provided a table detailing the key materials the Care Inspectorate holds relating to its involvement in the response to the Covid-19 pandemic (See Appendix 1 to this statement).

250. The formulation of the Scottish Government's overall communications strategy was not something we contributed to. Neither were we involved in the Scottish Government's approaches to behavioural management or public communications beyond the role described herein.

251. One such example of our own information that we shared with providers was the provider update we issued on 16 April 2020 entitled *"Care Inspectorate. An update on our support activity – what it means for your service and care across Scotland"*.

252. This particular update advised services of what we were doing in terms of increasing our levels of contact with services and offering advice and support to help them understand and implement national Covid-19 guidance. It also highlighted the new notifications we had introduced and how we were dealing with particular challenges relating to the media (see sections on Ceasing onsite inspections and Information and Notifications above). This was one of many such updates we issued. We can provide further details on these if required.

253. I genuinely believe that information we shared with Scottish Government officials, Ministers and others through the various briefings we provided and in meetings we

attended informed some of their decisions and guidance, but that did not extend to being asked to formally approve or agree such guidance. On many occasions we were asked to comment on draft guidance for example 'Open with Care' visiting guidance, testing arrangements and emergency Covid-19 legislation intentions. That would be consistent with our role as an independent public body.

254. In terms of non-pharmaceutical interventions (NPIs) such as social distancing, working from home, lockdowns, local restrictions, face coverings, test and protect approaches and public health messaging generally, we understood that the Scottish Government decisions and advice pertaining to these, as with those of the UK Government, were informed by the best available scientific advice and guidance, including clinical, health and legal advice at the highest level far beyond that to which the Care Inspectorate had access. Therefore, we were, for the most part not in a position to agree or disagree with particular aspects of that save for recording our disagreement on a number of occasions at CPAG (Clinical and Professional Advisory Group on Care) about the unintended consequences of the visiting guidance. In our view it did not achieve the correct balance of managing risks with the rights of individuals and did not sufficiently consider the unintended consequences of the visiting restrictions (Marie Paterson and Heather Edwards can provide more detail on this if required). I cannot recall any other specific example where Scottish Government did not follow our advice.

255. On 22 May 2020 we published [CI/33 - INQ000320160] *Dementia care during Covid-19 pandemic* guidance to support people living with dementia. This has been used by Scottish Government to promote good practice in care homes. On 24 September 2020 we published an [CI/34 - INQ000320161] update to 'Dementia care during Covid-19 pandemic' to take into account changes in guidance and best practice.

256. We expressed some concern at CPAG about the unintended consequences of the prolonged uses of face masks in care homes impacting on communication with residents. We also expressed some concern about adults with learning difficulties and mental health issues who were not able to routinely leave their care home for visits with families or communities and the impact of that on their wellbeing.

257. As far as I recall, we were not asked to provide any specific advice to the Scottish Government regarding the impact of NPIs on 'at risk' or other vulnerable groups.

258. The scale and complexity of the Scottish and UK Government's response to the Covid -19 pandemic was such that I feel unable to give a professional and informed opinion about how responsive the Scottish Government was to the advice of other bodies or their overall management of the pandemic response beyond the points covered elsewhere in this statement. For the same reason I feel unable to give an overall professional and informed view on the extent to which decision-making by the Scottish Government contributed to the spread of the Covid-19 virus or deaths in care homes or residential care beyond the points covered elsewhere in this statement. Similarly, and again for the same reasons, I feel unable to give a professional and informed view of the likely effect of earlier or different decisions/interventions by the Scottish Government relating to the management of care homes and the social care sector more widely. We have done no analysis on this.

259. The Covid-19 Flexible Response Team sat under the Strategy and Improvement Directorate led by Edith Macintosh, Executive Director of Strategy and Improvement who can provide further detail on this if required.

Relationship Management

260. Prior to the pandemic, every Health and Social Care Partnership (HSCP), Local Authority and large providers with over 10 services had a relationship manager. On 6 April 2020 we decided that during the period of Covid-19 all providers with two or more services were allocated a relationship manager. This enabled us to provide support to providers and services and enhance the intelligence we hold. All Inspectors had additional relationship manager roles during this period of Covid-19.

261. In response to the pandemic, we enhanced the relationship manager role with providers. We put in place regular contact and sharing of intelligence across providers' services. We met to discuss the intelligence on findings from scrutiny, provider governance and to support quality improvement in provider organisations. The development of provider-level scrutiny has led to quality improvements across services. The Chief Inspector (Regulatory Care – Adults and Complaints) - Marie Paterson can provide more detail of the specifics of the enhanced responsibilities that we put in place from 6 April 2020 if required.

262. For example, we helped a provider to support visiting from family and friends across all their services. The inspector worked with the provider to identify areas of concern,

resolve problems and stress the importance of people having meaningful contact with loved ones. This resulted in the provider changing their policy, providing training for staff, and establishing procedures to implement and support meaningful contact for residents with people important to them.

263. We have further developed the relationship manager role with providers based on a risk assessment to share intelligence with them and support implementation of a joint action plan to address issues. We have supported development sessions for managers, shared intelligence with directors and quality managers of services, and supported providers to put in place action plans across all their services.

Clinical and Care Oversight

(The care home clinical and care oversight groups (safety huddle meetings)

264. On 17 May 2020, the Scottish Government issued a directive [CI/35 - INQ000320162] (letter from the Cabinet Secretary Health and Sport to Chief Officers, Health Boards and Executive Nurse Directors) that arrangements must be made to ensure appropriate clinical and care professionals across health and social care partnerships take direct responsibility for the clinical support required for each care home in their board area. On 15 June 2020 the Chief Nursing Officer (CNO) issued a letter to Chief Officers and Chief Social Work Officers to clarify accountabilities and responsibilities of Executive Nurse Directors for care homes and care at home services but made no mention of the Care Inspectorate's role and responsibilities.

265. Health boards and local authorities provided support to the care home clinical and care oversight group, of which we are a member. Assurance visits to services began and the oversight groups began to hold daily discussions about the quality of care in each care home in their area, with particular focus on: -

- care needs of individual residents
- infection prevention and control measures, including PPE and cleaning requirements
- staffing requirements, including workforce training and deployment
- testing arrangements for outbreak management and ongoing surveillance.

266. This allowed our inspection team managers and inspectors to use the intelligence gathered from oversight groups to inform the planning of our scrutiny visits. We also played an important role in providing intelligence and information to the oversight groups as well as working collaboratively to identify how to support homes through scrutiny or improvement support. The daily safety huddle meetings in each area were responsible for:

- assessing the quality of care within registered services (particularly care homes with a particular focus on infection prevention and control, including access to PPE, and care
- the needs of individual residents, staffing requirements in the homes and the overall management of any outbreaks
- working with public health colleagues to assess risk ratings of each service
- working collaboratively to undertake any required programme of visits
- ensuring the collective understanding and implementation of the latest guidance
- oversight of both local and national data and reporting.

267. Our team managers and senior inspectors took part in these meetings alongside health and social care partnership staff, including nurse directors and associate nurse directors, contracts and commissioning staff, public health staff, clinical leads, chief officers, chief social work officers and social work service managers. They shared intelligence to ensure that all agencies were aware of outbreaks, staff shortages and where additional support may be needed due to staff absences.

268. We have seen many good examples of information sharing leading to us arranging inspection visits at short notice, which has resulted in us developing an improvement agenda or taking enforcement action. Intelligence received by team managers in these meetings helped inform our own risk assessments of each care service and allowed us to be targeted and responsive in our inspection planning. It also enabled other services to identify the best support for care services.

269. However, approaches to assurance visits were not always undertaken consistently across the country, sometimes blurring their role with that of the Care Inspectorate. In some areas, they were perceived by service providers to be a secondary form of inspection. There were instances where feedback provided following assurance visits contradicted feedback from Care Inspectorate inspections. Sometimes that was

because of the different focus of staff and standards expected in clinical environments being applied in care homes without sufficient recognition of the difference in settings i.e., care homes essentially being someone's home. Invariably, any disagreements were clarified and reconciled through discussions although there was no doubting some providers' frustrations at what they sometimes experienced. This was latterly resolved by the Scottish Government who issued a letter dated 14 December 2022 [CI/36 - INQ000320163] clarifying roles and responsibilities, in particular making clear that Collaborative Care Home Support Teams (re-named from Care Home Assurance Teams) should not replicate inspection or regulation, which is the clear statutory responsibility of the Care Inspectorate. It was clarified that Collaborative Care Home Support Teams should focus on improvement support.

270. The huddle meetings also discussed care home data submitted by all registered services through the NHS Education for Scotland (NES) TURAS system (Safety Huddle Tool). This enabled stakeholders to be sure that we are all receiving the same information from relevant services and had the most recent data on numbers of residents and staff affected by an outbreak. staff available to work in the service. and people tested weekly within each service. Having access to this information again allowed us to update the risk rating for each service and ensured we focused our resources appropriately.

271. Outside these regularly scheduled meetings, our team managers also connected regularly with health and social care partnerships about specific pieces of intelligence resulting from inspections, complaint investigations or any adult support and protection large-scale investigations (LSIs) that were taking place. This means when concerns were raised, we could respond and make decisions quickly about who is best placed to provide support or take necessary action.

Police Scotland / Crown Office and Procurator Fiscal Service (COPFS)

Investigation of Deaths in Care Homes

272. On 13 May 2020, the Lord Advocate announced in the Scottish Parliament a change in the requirement for certifying doctors to report all deaths in a care home setting where the death is due to Covid-19 (presumed or confirmed) to the Crown Office and Procurator Fiscal Service (COPFS).

273. The Lord Advocate directed that from 21 May 2020, services should report confirmed or presumed Covid-19 deaths to COPFS where the deceased might have contracted the virus in the course of their employment or occupation, or where the deceased was resident in a care home when they contracted the virus. That decision applied to deaths within this category that had already occurred before that date. The Lord Advocate also directed that any deaths due to Covid-19 or presumed Covid-19 where the virus may have been contracted in the course of the deceased's employment should also be reported to the Procurator Fiscal.

274. COPFS established a dedicated Covid-19 death investigation team (CDIT) which worked closely with Police Scotland to obtain the information it required to identify and investigate these deaths. This was code-named 'Operation Koper' by Police Scotland.

275. We undertook considerable work to establish a reporting process and from 9 July 2020, we implemented this as agreed with Police Scotland and COPFS. For each enquiry we received from Police Scotland, we completed a template outlining all the information we held on our various systems, including death and outbreak notifications, complaints, concerns and scrutiny interventions and their outcomes, together with our overall assessment. Various staff across the organisation were involved in gathering the information as well as team managers, service managers and chief inspectors. This work remained a key priority for us and is resource intensive.

276. As of 7 January 2022, we had completed reports in respect of 4,029 individuals. We continued to provide such reports for as long as they were required. As of 26 August 2022, the process was still ongoing and continued until the submission on 1 June 2023 when we submitted the final template. We've completed close to 5,000 reports in the period between 9 July 2020 and 1 June 2023– a week short of three years.

277. On completion of phase 1 of 'Operation Koper' Police Scotland and COPFS moved into a second phase focussed on more detailed evidence gathering on individual cases / services. We first became aware of this through Police Scotland approaching our staff (inspectors and business support) directly gathering information and in some cases taking statements from them.

278. We met with Police Scotland / COPFS on 3 May 2023 and again on 5 June 2023 and they agreed with us that we needed a managed / coordinated process similar to that

we developed and implemented for phase 1, which we subsequently developed, and it was agreed by our Strategic Leadership Team on 15 June 2023 and implemented.

Enhanced System of Assurance / Oversight / Leadership

279. Following the SG 'Deep Dive' (SG Resilience Room – SGoRR)) on 14 April 2020 which our former Chief Executive Peter Macleod attended, the Care Inspectorate and the Directors of Public Health (DsPH) put in place an enhanced system of assurance assessment, intelligence gathering and sharing arrangements. I understand there is a Director of Public Health in each of the 14 regional health board areas in Scotland. As I understand it, SG Resilience Room (SGoRR) is the Scottish Government's equivalent of the UK Government's COBR (Cabinet Office Briefing Room) meetings.

280. On 17 April 2020 a letter [CI/37 - INQ000320164] from Malcolm Wright, Chief Executive of NHS Scotland and Director General of Health and Social Care was sent to: -

- Health Board Chief Executives
- Directors of Public Health
- Chief Officers
- Chief Executive of Local Authorities

advising that: -

The First Minister and Cabinet Secretary for Health and Sport have requested that:

'…**Directors of Public Health take immediate action to deliver an enhanced system of assurance around the safety and wellbeing of care home residents and staff…**'

'…Directors of Public Health are uniquely well placed to **lead, plan, initiate and co-ordinate this work locally…**'

… those directors and your health protection teams to undertake the necessary action, **working with local Infection Prevention and Control Teams, the Care Inspectorate**, primary care teams and others….

'… I am **asking Directors of Public Health to oversee the provision of local support and assurance** to all care homes…'

'…However, in all cases it will need to involve early **substantial contact between DsPH and their teams** and every care home in their area…

…The principal purpose of such contact will be to **provide multi-disciplinary support and assurance** to enable each home to follow in practice the range of national guidelines on Covid 19…'

'…As a minimum, this work must cover an assessment in respect of each home of: -

- knowledge and implementation of **infection prevention and control measures** (NHS guidance 1234).
- knowledge and observance of **social distancing** measures, both for staff and residents.
- **staffing levels** at all times and for all functions
- the availability and quality of **training** for all staff in particular on infection control and the safe use of PPE (NHS guidance 5678)
- the effective use of **testing**

'…DsPH should report on a **weekly basis** providing an update on the progress of the assessment outlined above…'

'…This work will involve considerable joint working between teams and disciplines. Whilst I am tasking DsPH with particular responsibilities, there will be important roles for other teams, such as nursing and other staff including GPs. It will also be very important to collaborate closely with other local partners, in particular Chief Officers and **care inspectorate** (CI) teams…

281. On 17 May 2020 Scottish Government published 'new arrangements' to significantly strengthen oversight of Scotland's care homes. '…From tomorrow (18.5.20), clinical and care professionals at NHS boards and local authorities will have a lead role in the oversight for care homes in their area…'

282. On 20 April 2020 a letter [CI/38 - INQ000320165] from John Connaghan CBE, Chief Performance Officer, NHS Scotland and Director of Delivery and Resilience to:-

- Health Board Chief Executives
- Directors of Public Health
- Chief Officers
- Chief Executive of Local Authorities

referencing, and as a follow up to, Malcolm Wright's letter of 17 April 2020, advised :

'…**Firstly, Boards should undertake an initial assessment of every care home in your area, either by telephone or direct visit by 24 April, against the criteria from the above referenced letter…**'

a) knowledge and implementation of infection prevention and control measures.
b) knowledge and observance of social distancing measures, both for staff and residents.
c) staffing levels at all times and for all functions.
d) availability and quality of training for all staff in particular on infection control and the safe use of PPE. and
e) the effective use of testing.

'…Secondly, Boards should undertake a programme of associated visits to each local care home on a risk prioritised basis…
'…as informed by the assessments carried out under the initial request. These visits should be carried out as quickly as practicable, drawing upon all the appropriate resources in your Board. I would be grateful if you could provide your outline, initial programme of visits by 24 April. Thereafter, **I would expect weekly updates** on the local programme.

Note: In my view this wholly reinforced that the DsPH were leading on this work

Thirdly, on testing, '…I would be grateful if you could also provide assurance in the response by 24 April that, within your area, there is: a robust pathway for workers, or people in their households, to testing with a single point of access. and that has been clearly communicated to all employers in social care. both within the care home setting and employers providing care at home….'

'…It will of course be important to work closely with relevant partners including HSCPs and the Care Inspectorate….'

283. **Note**: Again, this wholly reinforced that the DsPH were leading on this work although the Care Inspectorate's intelligence, professional knowledge and expertise of the care home sector was a critical part of the assurance assessment. Although physical visits to care homes had not taken place up to this point, we had a clear assessment of the position pertaining to care homes and that would have been updated/reported to SG on a weekly basis with associated actions resulting from these.

284. We received a subsequent letter dated 20 April 2020 from John Connaghan CBE Chief Performance Officer, NHS Scotland and Director of Delivery and Resilience reiterating this plus expanding it to include a programme of associated visits by the [Health] Boards ….working closely with others including the CI was stressed] and requesting an outline, initial programme of visits by 24 April, thereafter weekly updates.

285. On 21 April 2020 after chasing a response earlier in the day, our Chief Executive, Peter Macleod, received an email from a senior official in our Scottish Government Sponsor Team (Jamie MacDougall, cc'd to two other senior officials Frank Strang and Elinor Mitchell). This was in response to Peter's email to Jamie McDougall dated 19 April 2020 (referred to in more detail in the section below headed **Re-starting On-site Inspections of Care Homes)** seeking guidance and direction from Scottish Ministers on their expectations for us to resume inspections and on-site in the context of safety and advice from Directors of Public Health and expectations arising from the SGoRR deep dive on care homes.

In this email Jamie MacDougall stated: -

'…*We've discussed and appreciate the difficult around care home visits. We are going to brief the Cab Sec about the issue* ***and propose that Directors of Public Health sign off any visit to a care home during the emergency period…***'

'…Therefore, for the Cab Sec, we will be suggesting that **visits to care homes will happen under the clinical direction of Directors of Public Health**….'

'…**visits will be minimal,** and a judgement will be made on a case-by-case basis on whether anyone needs to physically enter a care home and if so, who the right people would be …' (Chronology and Email refers)

286. This provided a clear indication that we could not, for the time being at least, decide unilaterally on an unannounced inspection and must consult with the relevant Director of Public Health.

287. On the same day, 21 April 2020 the Cabinet Secretary for Health and Sport briefed the Scottish Parliament and announced: -

'…I have required **NHS Directors of Public Health** to take enhanced clinical leadership for care homes…'

'…*This will, for the first time, see these NHS directors reporting on their initial assessment of how each home is faring in terms of infection control, staffing, training, social distancing and testing and the actions they are taking to rectify – and rectify quickly – any deficits they identify…*'

'…*In addition, we're equipping the* ***Care Inspectorate*** *for an enhanced role of assurance across the country, including greater powers to require reporting…*'.

'…*Testing* ***for staff and residents is being expanded, including all symptomatic residents of care homes…* '.

'…Covid-19 patients ***discharged from hospital*** *to a care home should have given 2 negative tests before discharge…'*

*'…****new admissions to care homes*** *to be tested and isolated for 14 days in addition to the clear social distancing measures the guidance sets out…'*

'…To ensure staff have the PPE they need we're ***increasing access to NHS PPE to care homes****….'*

288. On 22 April 2020 a media report of a daily press briefing given by the First Minister, said that in response to a question on care homes :- '… She repeated these measures were all in addition to requirements from the Care Inspectorate, which **would be conducting inspections to give additional reassurance…**'

289. From this, it will be clearly seen that we were required to get agreement from directors of public health before going into services because of the risks around transmission and spread.

290. On 24 April 2020 information was shared with me to the effect that the Chair of DsPH (Gabe Docherty) emailed Dr Gregor Smith, the then Scottish Government's Interim Chief Medical Officer (CMO) to formally communicate concerns as regards the Care Inspectorate visiting care homes stating ' ….Further to our communication on Thursday 16th April 2020, and also my subsequent discussion with Derek Grieve later that day, regarding the concerns raised by Peter MacLeod…..*that undertaking physical visits by individuals or small assessment teams, that are not immediately necessary,* ***could exacerbate the risk of introducing COVD-19 into a previously unaffected care home.*** *As such, at this time of heightened risk,* ***we recommend that care home visits should be considered very judiciously. Instead, risk assessments will be used drawing on a variety of formal and informal data sources including telephone assessment. Where a visit to an individual care home may potentially be of benefit, consideration should initially be given to use of a virtual visit (face time, etc) either as a precursor to, or instead of, a physical visit. Any decision to physically visit a home will be based on a robust risk assessment…'.***

291. On 27 April 2020 Dr Gregor Smith's (Interim CMO) reply to the Chair of DsPH (Gabe Docherty) was shared with me. It said '… *thanks for alerting me to the concerns that the SDsPH have raised in relation to undertaking physical visits to inspect care homes. Specifically, this relates to the concern that such a visit may introduce COVID-19 into a previously unaffected care home. Clearly this would be counter to the intent of the visits in the first place.*

I note that in the letter from John Connaghan he emphasises that any visit programme should be underpinned by an assessment of risk. This risk involves the delicate balance of providing adequate assurance that all measures necessary are being followed whilst not increasing the risk of introduction.

I know that SDsPH are well equipped to undertake this assessment in the way that you have described, and I support the adoption of this risk-based approach…'

292. On 29 April 2020 our Chief Executive, Peter Macleod received a letter [CI/39 - INQ000320166] from the then Cabinet Secretary for Health and Sport (Jeane Freeman) asking if the Care Inspectorate could share our planned schedule of inspection visits and advise on where any have been undertaken since 14 April 2020 (Date of the SGoRR Deep Dive on Care Homes – see above) See also [CI/40 - INQ000320168] CI Letter of Response 1 May 2020

293. On 1 May 2020 Peter Macleod replied (drafted by Edith Macintosh) outlining, amongst other things, the position taken by DsPH and endorsement of the interim CMO (described above) and that DsPH were leading on an enhanced system of assurance with us comprising assessment, an intelligence gathering and sharing framework. He also highlighted the completion by DsPH (with CI support and support from HSCPs and others) of an initial assessment (by Friday 24 April) of each care home in Scotland (as per letter from Malcom Wright and John Connaghan of 17 and 20 April respectively).

294. Importantly, Peter Macleod highlighted that, although physical visits [to care homes] had not taken place, we now had a clear assessment of the position pertaining to care homes and that will be updated on a weekly basis with associated actions resulting from that. He pointed out that these assessments had been done in line with public health advice and utilising clinical expertise, to ensure the safety of people experiencing care, and those who care for them. In particular, and importantly, the assessment process has been undertaken to minimise the risk of the spread of Covid-19 through all, but absolutely necessary visits, to care homes across Scotland.

295. Peter also illustrated that, during the two-week period (16 – 29 April) immediately after the SGoRR deep dive on care homes (16 April 2020), and for a range of care services registered by us, our inspectors made in excess of 5,835 separate contacts with 3865 individual services.

He also highlighted what we had done in relation to: -

- Virtual meetings

- Complaint handling
- RAG Assessment introduced in April (4.4.20)
- Use of 'Near Me'
- Meeting strategically with all DsPH twice weekly as well as at least weekly local meetings
- Collaborative approach by DsPH, Health Protection Scotland (HPS), HSCPs, GPs, Community Nursing and other clinical groups and the Care Inspectorate.

Peter concluded by saying that the weekly assurance assessment for each care home now developed with DsPH, HSCPs and others, and the use of the Red, Amber, Green (RAG) system in each locality will then determine the need for visits, inspections and enforcement activities and inform an iterative programme of activity, moving forward, during this period, and he offered a follow-up meeting with the then Cabinet Secretary.

Supply, Distribution and Use of Personal Protective Equipment (PPE)

296. Due to the significant requirement for PPE as an infection prevention and control measure, we put in place a professional lead who responded to more specialist enquiries about PPE. The lead liaised closely with Health Protection Scotland and the National Services Scotland (NSS).

297. NSS had a national procurement, supply and distribution role across the health and social care sector including PPE. Our data, and close working, supported NSS hubs for PPE being set up across the country. We provided responses and escalated areas of concern where a national response was needed.

298. On 3 April 2020 through work undertaken by our Heather Edwards, Allied Health Professional (AHP) Consultant who led for us on PPE, we obtained a small stock from the Social Care Triage and this was retained by Heather and Gordon Mackie our Executive Director of IT, Transformation and Digital at their home addresses to send out to our inspectors as required in extremis. We had agreed with the NHS National Service for Scotland (NSS) that it would be better for the Care Inspectorate to hold a small stock of PPE and then to send out to staff as needed.

299. On 23 April 2020 the Care Inspectorate Gold Group made a decision to escalate issues relating to PPE through Sponsor Team and Jamie McDougall (Senior Scottish Government official) if shortages are impacting people experiencing care

300. Between 8 April and 17 July 2020, we directed 339 issues related to PPE on to NSS. For example, a care home had an emergency with its PPE supplies. We intervened and ensured that the home received its supplies on the same day. The main areas of concern for services were: -

- access to sufficient PPE to provide adequate infection prevention and control
- initially, the new system for accessing PPE was not set up to respond to providers who had services registered over multiple sites
- access to face masks that could be used by people who lip read
- access to PPE for early learning and childcare services and childminders.
- access to PPE for Care Inspectorate staff (inspectors)
- guidance, knowledge and understanding of use of PPE in children's services and community settings e.g., care at home services

301. In addition to the number of PPE issues addressed as above, many other enquiries were responded to directly by the PPE lead, either through contact with operational staff or the contact centre.

302. Heather Edwards Allied Health Professional (AHP) Consultant led on PPE on behalf the Care Inspectorate Gold Group. She can provide further details on this if required.

Hospital Discharge - transfer of residents to or from care homes

303. At the start of the pandemic, there were fears that the health system and hospitals could be overwhelmed with cases, and an effort was made to prepare hospitals by clearing delayed discharges for older people who had no clinical reason to be in hospital but were unable to return home with social care support or unable to get into a care home. It has subsequently been stated that over 1000 patients were discharged into care homes in Scotland in March and April 2020 without being tested, which may have contributed to the impact and spread of Covid-19 in care homes. The issue only

became clear iteratively through the increase in deaths in care homes from Covid and questions raised with government and in the media.

304. The Care Inspectorate has no involvement in the discharge of individuals from hospitals to a care setting when such decisions are made. This is a clinical decision resting with the medical practitioner in conjunction with the Health and Social Care Partnership, which has the role of assessing the needs of the individual. The care home also has a responsibility to assess whether they can meet the needs of the individual they are admitting into their home.

305. The Coronavirus Act 2020 made provision to respond to an emergency situation and manage the effects of the Covid-19 pandemic. The Act allowed local authorities to dispense with particular assessment duties where complying would not be practical or would cause unnecessary delay in providing urgent care and support to people. The Scottish Government provided statutory guidance to local authorities and health and social care partnerships in line with this.

306. I understand Scottish Government Guidance issued on 13 March 2020 said that discharges did not routinely need a negative Covid-19 test. The guidance stated:- '…individuals being discharged from hospital do not routinely need confirmation of a negative COVID test….". This was subsequently updated 15 May 2020 requiring 2 negative tests. The Guidance issued on 15 May 2020 stated: - "The presumption should be that all residents being admitted to a care home should have a negative test before admission unless it is in the clinical interests of the person to be moved and then only after a full risk assessment". I include further detail on testing below.

307. As part of its pre-budget scrutiny, the Scottish Parliament Health and Sport Committee issued a call for evidence to care providers which closed on 10 August 2020. Views were sought on two key questions: -

1. Considering the pandemic, and its impact on social care services, what role should the Care Inspectorate have in ensuring those receiving adult care and support services are better protected?

2. What role should the Care Inspectorate have in creating a more resilient and sustainable adult social care sector?

308. A small proportion of responses referred to the issue of discharging patients from hospital into a care home setting. Some suggested the Care Inspectorate could have played a greater, more proactive role, in communicating with local healthcare settings on transfers. Professor Barbara Fawcett, University of Strathclyde, suggested we could have provided a mediating role "with determining authority" in resolving disagreements on movement of residents.

309. Roger Livermore, responding on behalf of the Action for a Safe and Accountable People's NHS campaign group, suggested the Care Inspectorate failed to uphold the law in relation to health and safety at work, infection control and reporting of incidents. With regard to discharge, his submission goes on to claim: -

"The CI should have objected to the government's unlawful policy. If CI knew the law on safety in care homes then it should have done. For example the government failed to carry out the legally required competent assessment of the risks to patients transferred from the NHS to care homes. It did not assess the risk to care homes from patients, to its residents, to staff, or to their families. It did not have in place a system of health surveillance (including testing) for patients, residents or staff. It did not make the required competent check that care homes had the matching precautions in place to be able to deal with the extreme hazards and risks from a pandemic. The government failed to follow due legal process. It breached UK-wide safety law, and possibly the Public Health etc (Scotland) Act 2008."

310. The Care Inspectorate was not asked by the Scottish Government for its view on the discharge of individuals from hospitals to a care setting nor did we offer a view. The Scottish Government informed us that hospital beds would be needed for people who contracted Covid. Even with the benefit of hindsight, it is difficult to see how the Care Inspectorate could have done this effectively with the knowledge we had at that time and having no legal powers to do so, and mindful that Scottish Government decisions, as with the UK Government's, were said to be informed by the best available scientific advice and guidance, including clinical, health and legal advice at the highest level, and far beyond that to which the Care Inspectorate had access.

311. On 27 May 2020, in the Scottish Parliament Jackson Carlaw MSP (Con) questioned the First Minister about the over 900 patients discharged to care homes form hospitals in March 2020.

312. In response the First Minister, Nicola Sturgeon, admitted that patients should not have been discharged to care homes and more testing should have been done. Jackson Carlaw referred to a case of a resident in Almond Court Care Home in Glasgow, suggesting that people with Coronavirus symptoms were discharged without testing. Nicola Sturgeon stated she could not comment on individual cases but that the guidance at the time was that nobody who had symptoms of Covid-19 or should have been in hospital, should not have been discharged to care homes, and that the Care Inspectorate ensures that any concerns about care homes are considered. I cite this because in my view it is factually incorrect / open to misinterpretation as I have explained above.

313. In addition, Richard Leonard MSP (Lab) commented that Scottish Government guidance until 22nd April 2020 stated that individuals being discharged from hospitals didn't routinely need confirmation testing.

314. On 15 January 2021, we were copied into a communication from David Williams, Scottish Government to chief executives of health boards and health and social care partnerships about support for care homes and further actions on delayed discharges, including Leadership at a local level and IPC and care standards and practice in care homes

315. It said that supportive joint assurance visits **must** take place in January/February 2021 to every care home in Scotland. Nurse Directors and Chief Social Work Officers (their delegated leads) should lead these visits.

316. On 22 January 2021, this was reiterated in a letter from John Connaghan and Donna Bell (Scottish Government) headed '**Promoting Partnership – Support for Care Homes and Delayed Discharge Winter 2021'** and covered issues around delayed discharge planning, supportive joint assurance visits take place in January/February 2021 to every care home,

Testing

317. Throughout the main part of the pandemic Heather Edwards, Allied Health Professional (AHP) Consultant, led on testing on behalf of the Care Inspectorate Gold Group. However, as mentioned above, of my own volition I tried also to keep a

chronology for Covid-19 Testing from 13 March 2021 to 29 June 2020 recognising its potential to become a key 'issue' with any anticipated public inquiry. However, maintaining it along with the main chronology proved too much, therefore I stopped doing it and the record I have is incomplete but available if required. The following are key points that I noted which may be of relevance to the Care Inspectorate's position and evidence although might be better spoken to by Heather Edwards. Its relevance may be to testing regimes in relation to care homes and testing of our Inspectors.

318. In a report of a briefing by the then Cabinet Secretary Health and Sport to the Health and Sport Committee on 27 May 2020 the then Health [Cabinet] Secretary [Jeane Freeman] began by noting that testing is not the only precautionary measure that can be taken, pointing out that guidance had been issued to care homes on 13 March [2020] and that '…*specific requirements on testing in advance of admission had been introduced as knowledge of the virus had increased…' and '…said it was possible that that the approach to testing and mobilising capacity may have been different in hindsight but she had to make a judgement based on advice and knowledge available at the time…*' (See also section on Hospital Discharge - transfer of residents to or from homes above).

319. On 26 March 2020, the then Cabinet Secretary for Health announced to Scottish Parliament that '… *guidance for care homes issued early March [see 13 March above] was updated on 26 March and again on 15 May. Each iteration reflects our growing understanding of the virus and the situation on the ground in some of our care homes…*'

320. On 9 April 2020, the then Cabinet Secretary for Health wrote to Integrated Joint Boards (IJBs) to review arrangements. All staff in health and social care were to access testing.

321. On 15 April 2020, the First Minister announced that all symptomatic patients in care homes would be clinically assessed and where appropriate offered testing.

322. On 15 April 2020, the Scottish Government announced the expansion of testing to include all care home residents who develop symptoms. Therefore, Scotland will move to a system where any symptomatic patient in a care home will be clinically assessed and, where appropriate, offered testing for Covid-19.

323. On 21 April 2020, in a Ministerial Statement by the Cabinet Secretary for Health and Sport, it was announced that new admissions to care homes to be tested and isolated for 14 days.

324. On 22 April 2020, the then Cabinet Secretary Health & Sport wrote to all HBs and IJBs to review arrangements in place to enable all staff in health and social care to access testing and reminding them that social care staff must be prioritised along with NHS staff. The letter stated that on 15 April FM [First Minister] announced that all symptomatic 'patients' in care homes would be clinically assessed and where appropriate offered testing. It referred to additional guidance issued by HPS [Health Protection Scotland] on 17 April 2020 for those working in social or community care and residential]

'…*If you believe your care home has a resident or residents consistent with COVID-19 you should contact your local Health Protection Team who will be able to support you in putting in place arrangement for testing…*'

'…*staff who have symptoms consistent with COVID-19, or where a member of their household has system, should self-isolate in accordance with guidance ….*'

'…The testing of staff working in locations where there have been multiple of COVID-19 is being kept under review and further advice will be issued in due course…'

325. I understand that Public Health Scotland published guidance for care homes on 26 April 2020 which advised minimum use of bank or agency staff and if used they should only be used in one facility. This guidance also covered staff cohorting, minimum use of external staff, self-isolation, staff who have contact with Covid, staff who have recovered from Covid and staff with symptoms of Covid themselves or in their household. It also covered staff with underlying health conditions and those shielding and visitors to care homes. Such information would be shared with Inspectors and others.

326. I am also aware that section 12.9 of the Scottish Government's National Clinical and Practice Guidance for Adult Care Homes in Scotland during the Covid-19 Pandemic (Updated 15 May 2020) stated : "…*Staff who work across a number of locations including community nurses and temporary staff e.g. "bank" /agency staff can leave care homes particularly vulnerable to transmission of COVID-19. Where temporary*

staff need to be used, it is advised that their employment is restricted to one care home as the movement of staff between care homes can increase transmission…"

327. It is important to note that guidance evolved over time and there was earlier guidance and subsequent updates to these.

328. Clearly, anyone entering a care home, including staff, temporary staff, visiting professionals, or visitors, posed a risk of transmitting or spreading the virus but this risk could be mitigated through effective infection prevention and control measures and adherence to relevant national guidance. While this risk was recognised, the need in many homes with large staff outbreaks meant that outside staff had to be used to ensure people received care. However, the scale and complexity of the Scottish and UK Government's response to the Covid-19 pandemic was such that I feel unable to give a professional and informed opinion about whether the risk was adequately appreciated and controlled. It is worth noting that some services remained Covid free.

329. On 25 April 2020, the Scottish Government announced the expansion of Covid-19 Testing. This included the testing of key workers and family members to get them back to work and was tying into UK Government. This programme was said to operate separately to the existing NHS testing programme in Scotland of NHS and social care staff. It described a new online portal had been established where employers can register and refer self-isolating staff or members of their household. Eligibility was described as:-

'*…staff delivering NHS services, providing social care to protect and care for the most vulnerable…*'

'*…Staff with face-to-face roles in residential institutions with people in the care of the state e.g. prisons…*'

'*…Essential workers in critical national infrastructure fundamental for safety and security, and life-line services…*' .

'*…Staff directly involved in delivering other essential services…*'

'*…Staff involved in volunteering…*'

330. At this point testing was conducted in drive-through sites operating at:

- Glasgow Airport
- Edinburgh Airport
- Aberdeen Airport
- University of the Highlands and Islands campus in Inverness

Employers could obtain a login for the employer referral portal or through a self-referral portal. Therefore, at this point it was far from clear what the position was in relation to our inspectors.

331. On 1 May 2020, the First Minister announced enhanced outbreak investigations in care homes meaning that all residents and staff would be offered testing, whether they are symptomatic or not, in homes where there has been a confirmed case. There would also be sample testing in care homes where there are no cases

332. On Friday 15 May 2020, Clinical and practice guidance for care homes was published by the Scottish Government on its website.

333. At this time, the Cabinet Secretary for Health and Sport announced to the Scottish Parliament that guidance [for care homes issued early March – see 13 March above] was updated on 26 March and again on 15 May. Each iteration reflected our growing understanding of the virus and the situation 'on the ground' in some of our care homes (See also section on Hospital Discharge - transfer of residents to or from homes above).

334. Note. As far as I can see, the original guidance (published on 13 March) was withdrawn but has obviously been referred to many times by politicians challenging the Scottish Government on this.

335. There was an updated version from 26 March 2020, which referred to Health Protection Scotland guidance on the circumstances for admission from hospital and stated that "*individuals being discharged from hospital do not routinely need confirmation of a negative COVID test*".

336. The guidance was updated on 15 May, to include a lot more information in relation to admissions/testing and the following statement: "*The presumption should be that all residents being admitted to a care home should have a negative test before admission unless it is in the clinical interests of the person to be moved and then only after a full risk assessment.*"

337. The corresponding webpage states that the 15 May guidance was updated by the Care Homes Clinical and Professional Advisory Group (CPAG), of which the Care Inspectorate was a member.

338. It was not clear to me how the original guidance was developed, but I would presume it was led by either Health Protection Scotland (HPS) or the CPAG. As far as I am aware, no one from the Scrutiny & Assurance Directorate was involved in this.

339. It was reported in the media that on 17 May 2020 that '…following calls from Scottish Care for all staff and residents to be tested regardless of whether there were cases of coronavirus in care homes, Jeane Freeman [the then Cabinet Secretary for Health & Sport] reiterated all residents and staff would be tested if there was a case in the home. She said those without a case would receive sample testing and assured the clinical advice on this was being assessed…'

340. On 18 May 2020, Public Health Scotland published an updated version of Interim guidance on Covid-19 PCR testing in care homes and the management of Covid-19 PCR test positive residents and staff version 2.6.

341. It highlighted that there was no change to the previous advice regarding 'in extremis' situations. such that there is a possible need for some test positive staff having to remain temporarily in a care home on a very short-term basis while replacements are brought in.

342. It clarified further the existing SG policy with respect to residential Care Homes, by quoting the FM statement of 1st May verbatim.

343. It emphasised that all care Homes are expected to have adequate plans in place well in advance of an outbreak occurring (or a possible proactive screening programme for Covid-19) are emphasised.

344. It stated, and sought to clarify, that as per the original FM [First Minister] statement (now quoted verbatim), in respect of a Covid-19 affected care home where a PCR test positive staff member also works in another care home or care setting, the expectation will be that testing will be carried out in a second care setting.

345. On 18 May 2020 It was announced by the then Cabinet Secretary Health & Sport at the daily press briefing that '*…all care home staff will now be offered repeat testing, regardless of symptoms or whether there is a case in their workplace..*' She said she would set out further details to Parliament on this tomorrow (19 May 2020).

346. From 18 May 2020, testing became available to everyone in Scotland over the age of five years who was symptomatic.

347. On 19 May 2020, the then Cabinet Secretary for Health & Sport, in a statement to Parliament, reiterated that all care home staff would be offered testing regardless of whether there is a case in the facility. She confirmed testing would occur every seven days.

348. On 21 May 2020, Health Protection Scotland published updated guidance for care homes, social, community and residential settings and domiciliary care (care at home) on their website.

349. On 28 May 2020, the Scottish Government launched the Test & Trace System.

350. On 24 June 2020, the then Cabinet Secretary for Health and Sport issued a letter to all care home staff regarding the commencement of weekly testing of a-symptomatic staff i.e., those who may be carrying a virus but had no symptoms.

351. On 2 November 2020 a five-level system of Covid restrictions was introduced in Scotland consisting of levels 0 to 4 which would be applied in different areas depending on virus transmission rates.

352. On 25 November 2020 a letter from Donna Bell, Scottish Government Director for Mental Health and Social Care, intimated :-

- from 7th December a roll out of care home testing for visitors – rapid / lateral flow tests.

- to all care homes by week beginning 11.1.21.
- non NHS visiting professionals from 11 Jan 2021, what was discussed today was anyone who visits a service twice or more in a week and where physical distancing of 1 m occurs.
- care at home staff from 18th January 2021

353. Following an announcement of further restrictions by the First Minister on Saturday 19 December 2020, on 22 December 2020 in a letter from the CNO [Chief Nursing Officer] and others, it was announced that as a consequence of Scotland moving to level four restrictions from 26 December 2020, further visiting restrictions would apply.

354. All inspectors for older people care homes were required to test negative before physically entering a care home from 11 January 2021.

355. Consequently, the Care Inspectorate's Gold Group agreed on 4 December 2020 that:

- inspectors in adults, registration and complaints fall within the definition of 'visiting professionals' that need to be tested from 11 January 2021
- we would provide numbers to Scottish Government Testing directorate asap
- we would develop guidance for staff
- the Testing Pathways would be forwarded to us within the next 2 weeks by the Scottish Government Testing Directorate
- Care Inspectorate Partnership Forum (trade unions) would be advised
- we would develop a process for recording
- we would develop a comms message

356. On 9 December 2020, we were advised by Scottish Government that as a matter of urgency, in response to omicron and emerging concerns around *transmission* and *prevalence,* they are now asking staff in the adult and older people care home sector to carry out a LFD test on a daily basis (in addition to weekly PCR testing).

357. They said they were taking this step to protect residents as clinical evidence suggests there is an additional risk of Covid spreading within care home settings.

358. They said they were also encouraging all social care staff to consider taking a LFD test on a daily basis, and particularly on the days they are working with potentially vulnerable people.

359. Associated correspondence from the Deputy Chief Medical Officer Graham Ellis and the Deputy Chief Nursing Officer Anne Armstrong reinforced this as well as reinforcing the important impact that meaningful contact and socialising with family and friends has on health and wellbeing and asking care homes to use the protective measures outlined to continue to facilitate and support residents to meet in person with their family and friends, including encouraging and supporting family and friends to test prior to their visit. They also reinforced the expectation that visiting should have increased from the minimum of twice weekly, to more normalised visiting, unless an outbreak is suspected or has been declared.

360. They highlighted how important the festive period could be to staff, residents and their friends and family and said they wanted all individuals living in care homes to have the opportunity to celebrate the festive period in a way that was meaningful to them. They consider symptom awareness, testing, correct use of personal protective equipment (PPE) and face coverings (as appropriate), hand hygiene, increased ventilation and the IPC measures as detailed in the winter respiratory guidance to be effective at minimising the risk of Covid-19 transmission. This means that gifts did not need to be wiped down or isolated, decorations could be hung and residents could spend quality time with family and friends, during the festive period, as long as excellent hand hygiene practice was followed. The exception to this was that, where there was an outbreak in the home, limitations on visiting would apply as per local HPT's considerations based on the Public Health Scotland's adult care home settings guidance. At this time, Public Health Scotland's guidance regarding visits from community groups, was that they were still not advised to attend inside the premises.

First Involvement with Directors of Public Health / Burlington Care Home

361. As the crisis grew, our first involvement with Directors of Public Health (DsPH) happened over the weekend of Saturday 4 / Sunday 5 April 2020 when I was on duty. It involved Burlington Care Home in Glasgow - registered to provide care for 90 older people. It was owned and operated by Guthrie Court Limited, a member of the Four Seasons Healthcare Group.

362. On Thursday 2 April 2020 one of our Inspectors had contacted the service because she was concerned at the absence of notifications to us, and it was a poorer performing service. It was good that she did so on this basis and this perhaps evidences the value of the approach we had put in place from 13 March 2020. The situation might have been much worse had they not 'spotted' the lack of notifications from Burlington House, which resulted in us uncovering the terrible and distressing circumstances that unfolded as detailed below. Consequently, through our Gold Group on 2 April 2020, we instructed contact to be made with care homes that had not returned notifications twice a week, and contact with larger providers to check their contingency plans for notifying us of management and staff absence.

363. Through that call we established that the manager had been off sick or in isolation and they now had a temporary manager in place for cover. We were also informed that over 30 staff had been off in isolation within the last week or so, and there had been admissions to hospital and deaths of residents with confirmed or suspected Covid-19 infection.

364. The service was using agency staff to cover, and it was anticipated by the temporary manager that staff isolating may start to return that coming week. At that time, we had been formally notified of 8 deaths. We were continuing to liaise with the service on a daily basis.

365. Seventeen people in the care home had suspected Covid-19 infection and nine of those were receiving end of life care. There had been a further death overnight. There had been media interest from 'The Sun' newspaper and further notifications to us were said to be in the 'pipeline'. Multiple news outlets had also picked up on this. We established that the death notifications had not been made to us earlier as the staff were unable to access the code to the Care Inspectorate notifications system in the absence of the manager. We responded to this quickly on the Thursday by establishing an alternative means of services reporting this information to us through the public website to cover for such a situation in any other service.

366. On Saturday 4 April 2020, we were contacted by Dr Linda de Caestecker, Director of Public Health, NHS Greater Glasgow and Clyde seeking information on how the home was implementing appropriate infection control guidance. We provided information on that, and I proposed further discussion with Dr de Caestecker on how we might do that

jointly and share our notifications information with them, as they appeared unsighted on the full extent of the situation in this service until reported by the media.

367. I spoke to Dr Linda de Caestecker on the evening of Saturday 4 April 2020 to discuss the possibility of a site visit to the home by or with Public Health and she agreed to get back to me about that on Sunday 5 April 2020. At that time, we were considering whether we should go onsite, and a service manager had volunteered if required, and I said that I was prepared to go with her. The Chief Executive, Peter Macleod was concerned about me volunteering and asked if I was sure I wanted to do this and I said yes although I was not an 'authorised officer '

368. On Saturday 4 April 2020 we subsequently received 15 death notifications from Burlington House with 11 being suspected Covid-19. The first death was 27 March and last one was that day 4 April 2020.

369. On Sunday 5 April 2020 after being updated by me, Peter Macleod our Chief Executive decided he would speak to Dr Linda de Caestecker. At 9.43 am on Sunday 5 April 2020 I received an email form Dr de Caestecker informing me that Sandra Devine, Head of Infection Control at NHSGGC, was able to visit the home that morning, provide support and give us a report. She asked us to let the home know and provide the home Manager details for Sandra to make arrangements for the visit. We did so by 1030am same day.

370. We contacted the care home again at 10am on Sunday 5 April 2020 and learned from the deputy manager that overnight two more people had died in the home one of which was due to suspected Covid-19. Two people had been admitted to hospital not linked to Covid-19.

371. The Depute Manager confirmed the home had adequate supplies of PPE, had in place infection control practices in line with guidance from Health Protection Scotland, that there was enough staff to care for people and the home was being supported by GP practices and externally by the provider with the regional manager being present in the home daily. All of this was also confirmed by a company Director who was also spoken to.

372. The Depute Manager also explained that staff were distressed over press coverage and the perceived blaming of them in the media. She told us about the behaviour of

press the day before (Saturday) when they were trying to take pictures in people's windows, hiding in bushes and taking pictures of staff which, all of which they found distressing. She said that all families had been contacted the day before due to press interest and that the families have been very supportive. She advised us that Public Health were visiting the home today (which we already knew) to offer support and the home were appreciative of this. She was aware also that following this visit public health would provide a report to the Care Inspectorate. We later learned that public health had decided not to visit the home.

373. On Sunday 5 April 2020, through Peter MacLeod our Chief Executive, we received email confirmation from Dr de Caestecker that they would not be visiting the home following discussion between their health protection and infection control teams. However, their on-call consultant in public health had spoken at length to the home's regional manager to receive assurances. The email has more details of this, if that is required.

374. This engagement triggered further discussion around sharing information recognising that there would likely be more such incidents which regrettably there were.

375. We also liaised with the Police on Sunday 5 April 2020 regarding the media intrusion.

376. As the pandemic progressed, we recognised the need for flexibility in our approaches to take account of the impact on frontline health and social care services. For example, the emergence of a new variant of Covid-19 towards the end of 2020 which was spreading more quickly. This resulted in the announcement on Saturday 19 December 2020 by the First Minister of a series of new measures in response to the Omicron variant with Scotland moving to level 4 restrictions from 26 December 2020.

377. On 8 January 2021, in light of the new variant of Covid-19 and rapid spread together with a stay-at-home order that came into effect on 5 January for mainland Scotland, the Care Inspectorate Gold Group took a decision to revise our inspection plans.

378. As explained above, we use a process of dynamic risk assessment to decide where, when and what we inspect and from what area of the country we 'draw' our inspectors. This also includes the context of the area we are inspecting. By that we mean taking account of all the environmental risks as we did throughout the pandemic, particularly when areas have gone into different 'tiers' of restriction.

379. Taking cognisance of the new variant and its rapid spread, we recognised the need to balance the risks we identified in a particular service against the risks of inspecting and our staff potentially spreading/transmitting the virus. By this time our inspectors of care homes for older people were being tested using Lateral Flow Tests (LFTs) twice a week as with other essential professional visitors. Our Inspectors of care homes for older people were also beginning to receive Covid-19 vaccinations having been categorised in the same way as front-line health and social care workers.

380. Nevertheless, we decided we would reflect this change and the current "lockdown" that came into effect on 5 January 2021 for mainland Scotland by: -

- only carrying out on-site inspections and visits of any service (including registration and complaints) when the risks are assessed as 'High'
- Not using inspectors who reside in a 'lockdown' area to inspect in a lower risk area (currently Island authorities all which have been placed in tier 3) unless absolutely essential and all other options have been explored and discounted.
- All scrutiny activity needs to be agreed with the relevant service manager before a physical visit takes place.

This decision was shared with Directors of Public Health (DsPH).

Involvement of Healthcare Improvement Scotland (HIS) in Care Inspectorate Inspections

381. From mid-April 2020, HIS agreed to a request from the Care Inspectorate for mutual aid support, which initially focussed on case-holding a group of care home services, engagement with providers and intelligence gathering. This involved a HIS manager and small team of six HIS inspectors working alongside Care Inspectorate staff.

382. As a result of the Covid-19 pandemic, the Scottish Government asked for urgent additional whole system support to protect residents and staff in care homes. This additional support was to be provided by the Scottish Government, Local Authorities, NHS Boards, and the regulatory and improvement support bodies, including the Care Inspectorate and Healthcare Improvement Scotland (HIS).

383. *The enhanced professional clinical and care oversight of care homes* was announced by the Cabinet Secretary for Health and Sport on 17 May 2020 (see CI/41 – [INQ000320169] SG Paper Re oversight dated 17 May 2023. mentioned above). This requested that '*Joint inspection visits (of care homes) are undertaken as required by the Care Inspectorate and Healthcare Improvement Scotland, working together, to respond to priorities and concerns'*. We received a letter [CI/42- INQ000320170] from the then Cabinet Secretary Health and Sport on 17 May 2020 to this effect.

384. HIS had already begun accompanying us on some inspections of care homes from around the beginning of May 2020.

385. On 23 December 2020, at a time when there were significant concerns about the impact of a second wave of Covid-19, the Scottish Government requested that the Care Inspectorate and HIS strengthen further these joint arrangements, which included HIS extending their supportive role to be part of all inspections rather than the 30% they were doing.

386. At around the same time, an independent review of the Care Inspectorate / HIS joint working arrangements, which was commissioned jointly by the Chief Executives of the Care Inspectorate and HIS was being concluded. A recommendation arising from that review was that:

The Care Inspectorate and Healthcare Improvement Scotland should consider seeking a legal opinion to clarify the legislative basis for the joint inspections of care homes and for Healthcare Improvement Scotland's contribution to the inspection activity.

387. The Care Inspectorate as a non-departmental public body (NDPB) sought and obtained legal opinion from Counsel who provided an initial opinion around the beginning of March 2021, and further clarification on 29 March 2021. Having considered the advice obtained, our view was that, while what was done at the height of the pandemic could be reasonably regarded as our having acted with good intent and in direct response to an unprecedented national crisis, as we eased out of the pandemic that became more problematic to explain and justify in the context of the existing legal framework.

388. Our view, having considered the advice we had, is that although the matter is untested, to continue as we had would mean that our actions would be increasingly

likely, if challenged, to found to be *ultra vires*. Against that background, given that, like any responsible public body, we would wish to remove so far as possible, any prospect that our actions may be held unlawful, it was necessary to take immediate steps to make it absolutely clear (including making it clear to those providing the care services we were inspecting) that the function of inspection (including reporting thereon) was being carried out solely by the Care Inspectorate, that HIS colleagues may not act as inspectors nor inspect and their role was no more than advisory, and that they exercised no statutory authority (such as a right to enter premises) in the context of the inspection process. Whilst the Care Inspectorate remains appreciative of the support provided by HIS, we considered that continuation of the approach we took from mid-April 2020 represented a significant risk to the Care Inspectorate. Having shared, in general terms, the thrust of the advice we have received, it was suggested to us that this also represented a risk to HIS, although we pointed out it was entirely a matter for HIS to determine that through their own legal advice if that was considered necessary.

389. In light of this advice, it was recommended that we pause to allow the Care Inspectorate, Scottish Government and HIS to reflect on the way forward for the medium and longer-term, and in the short-term the care Inspectorate proceeded with these inspections without involving HIS. The Chief Executive of the Care Inspectorate, as sole accountable officer for the regulation and inspection of care homes was firmly of the view that pausing and reflecting would not increase the risk to care home residents at a time where the situation had significantly improved from the period when joint working arrangements commenced. Moreover, the Care Inspectorate had recently appointed its own Chief Nurse, a Service Manager who is a registered nurse and public health qualified to lead on IPC for the Care Inspectorate and its circa 60 inspectors with a nursing qualifications/background.

390. On Friday 9 April 2021, we paused HIS's involvement in our inspections planned for the following week (w/c 12 April 2021) and our Chief Executive, Peter McLeod, made a senior official of our Scottish Government sponsor team aware of this decision.

391. On Monday 12 April 2021 I was informed by HIS (Ann Gow) that their sponsor team had told them that the Cabinet Secretary for Health and Sport had agreed to a pause for 10 days and that Scottish Government would advise next steps.

392. Between around 17 May 2020 and Friday 9 April 2021, HIS worked collaboratively with the Care Inspectorate on around one third of the total number of inspections undertaken by the Care Inspectorate.

Re-starting On-site Inspections of Care Homes

393. The recommencement of onsite inspections by the Care Inspectorate was triggered by the serious concerns we had around Home Farm Care Home that were shared with us over the course of Friday to Sunday, 1-3 May 2020. Home Farm Care Home is situated on the Isle of Skye and the provider was HC One Healthcare. The decision to carry out an on-site inspection was taken by me with the agreement of the relevant Director of Public Health for NHS Highland.

394. The NHS Highland Public Health Team had carried out a telephone assessment of the home on Friday 24 April 2020 as part of the enhanced level of assurance led by Directors of Public Health as directed by the Scottish Government (described in more detail above). The home was assessed by NHS Highland Public Health as 'green' following completion of the telephone assessment. The home management were able to give satisfactory answers to NHS Highland Public Health team that indicated knowledge and understanding of management of Covid-19 and relevant guidance and application of this. Following our inspection we concluded that there was a serious risk to life, health or wellbeing and we decided to make application to the Sheriff Court for emergency cancellation of the service's registration under Section 65 of the Public Services Reform (Scotland) Act, 2010 (PSRA). I can provide much more detailed information on this if required.

395. However, just prior to that weekend, 1-3 May 2020, we had begun working more systematically with Directors of Public Health (DsPH) on the enhanced system of assurance they had been asked to lead - firstly with the initial assessment of every care home by 24 April 2020 and secondly, arising from that and ongoing weekly assurance assessments, a programme of associated visits. (See section headed Enhanced System of Assurance / Oversight / Leadership detailed above)

396. We had been developing contingency plans for our Inspectors to undertake an on-site inspection so when the concerns around Home Farm arose, albeit on a Saturday and Sunday, we were well placed to be able to act quickly. For example, Heather Edwards had developed a Protocol for inspectors going into care services during the

Covid-19 outbreak, regarding the use of PPE, which was agreed by our Gold Group on 20 April 2020. As well as PPE, it also covered travelling arrangements for inspectors.

397. On the Sunday 3 May 2020, after I took the decision to undertake an inspection, we managed to identify and brief inspectors, arrange delivery of PPE (see also section above on Supply, Distribution and Use of PPE), train them in putting it on and taking it off, identify and secure key worker accommodation, make travel arrangements, complete a comprehensive risk assessment, and secure agreement from the Director of Public Health as we are required to do – and all on a Sunday night, which allowed us to go into the service quickly on the Monday 4 May 2020.

398. In summary, in accordance with the previous agreement reached between Directors of Public Health and the Chief Medical Officer about relevant risk assessments and necessary visits by the Care Inspectorate, agreement was eventually reached between me and the Interim Director of Public Health and Associate Director of Medical Education, NHS Highland (Dr Ken Oates) on Sunday 3 May 2020 to conduct an inspection. It is fair to say that Dr Oates was initially very reluctant to agree / support my proposal. I think it is important to make clear that the drive and decision to carry out this on-site inspection, the first since mid-March 2020, was led entirely by the Care Inspectorate and the decision was mine although our Chief Executive, Peter Macleod gave me his full support on Monday 4 May 2020 after I briefed him. I also briefed our Gold Group on the Monday morning so that the decision could be recorded retrospectively in the policy file.

399. I have referred above to the Scottish Government Resilience Room 'Deep Dive' around the impact of the Covid-19 outbreak on the care home sector, the considerations arising therefrom, and the escalation of concerns around Home Farm that led to the first onsite inspection of a care home during the pandemic.

400. On Thursday 16 April 2020 at a point where the situation at Home Farm care home was escalating, our Chief Executive, Peter Macleod, attended a Directors of Public Health (DsPH) meeting. During that meeting a point of discussion arose regarding [Care Inspectorate] visits to/inspections of care homes. Peter shared with me that all 14 Directors of Public Health (or their representatives) *had '…**expressed significant concern about the prospect of anything but absolutely essential visits to care homes as a result of the onward transmission risk of Covid 19 this is likely to***

pose…' . *T*he chairperson of the meeting, the Director of Public Health from Lanarkshire (Gabe Docherty), was going to immediately raise this concern with the Chief Medical Officer and the group had written it in to their framework response document to Covid-19 and care homes.

401. In an email dated Sunday 19 April 2020 to a senior official with our Scottish Government Sponsor Team (Jamie MacDougall cc'd to Frank Strang). Peter Macleod shared the same information in the paragraph above with him reminding him that:

'…we had not inspected services since mid-March due to Covid19, the risk that our staff could transmit the virus through visits and also to relieve the pressure on services and that this had been agreed with Scottish Government colleagues at the time and also reflected the position of all the other regulators in the UK and Ireland, who stood down inspections for the same reasons at the same time…' Peter also advised him that '*…..Having spoken with the CEO's of RQIA in Northern Ireland, HQIA in Ireland, Care Inspectorate Wales and the Care Quality Commission in England last week, I am aware that none have recommenced inspections for the same reasons as they ceased…'*

402. On 25 April 2020, **Gregor Smith, CMO emailed Chair of DsPH (Gabe Docherty): -**

He thanks Gabe Docherty for alerting him to the concerns that the SDsPH have raised in relation to undertaking physical visits to inspect care homes. Specifically, this relates to the concern that such a visit may introduce Covid-19 into a previously unaffected care home. *'…**Clearly this would be counter to the intent of the visits in the first place….'***

Refers to John Connaghan letter of 20 April (see above) and any visit programme:

'… should be underpinned by an assessment of risk…' This risk involves the delicate balance of providing adequate assurance that all measures necessary are being followed whilst not increasing the risk of introduction.

*'… I **know that SDsPH are well equipped to undertake this assessment in the way that you have described and I support the adoption of this risk-based approach**…'*

403. It seems that the primary purpose of Peter's email was to solicit thoughts and guidance in relation to visits and inspections in the context of the risk of transmission and the spread of disease these posed, balanced against the need for us to provide assurance. Also, to seek clarity of expectations arising from the earlier SGoRR 'deep dive' and advice from DsPH. In particular, Peter seemed to be seeking guidance and direction from Scottish Ministers. The subsequent reply Peter received is referred to above in the section headed Enhanced System of Assurance / Oversight / Leadership.

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404. On 4 May 2020, an Email from Dr Gregor Smith (Interim CMO) to a senior official in our Scottish Government Sponsor Team (Frank Strang) was shared with me. It related to the signing off of a parliamentary question (PQ) being led from our side by Edith Macintosh, Executive Director of Strategy & Improvement. Edith co-ordinates and signs off all PQs for the Care Inspectorate. This email exchange referenced the role of the DsPH (described above).

405. The Care Inspectorate draft had apparently read *'… The Care Inspectorate have not inspected services in the normal way since around mid-March 2020 due to the Covid-19 outbreak and the significant risk of our staff transmitting and spreading the virus to multiple sites. This decision is consistent with public health advice that we follow routinely in any outbreak of infection in services and agreed with Scottish Government. It is also a position that has been adopted by care regulators throughout the United Kingdom…'*

406. In the exchange, Frank Strang highlights: -

CI draft '…*The Care Inspectorate have not inspected services in the normal way since around mid-March 2020 due to the Covid-19 outbreak and the significant risk of our staff transmitting and spreading the virus to multiple sites*…'
And, on the basis of what he describes as '…*Cab sec's sensitivity on this subject*…'

Suggested redraft: '…*The Care Inspectorate's normal programme of inspecting services has changed since around mid-March 2020 due to the Covid-19 outbreak and the significant risk of our staff transmitting and spreading the virus to multiple sites*…'

Asking whether the CMO content, Dr Gregor Smith responds:

'...*Yes – the emphasis should be on risk assessment here and that it was judged physical inspection may increase risk to residents*…'

Again, this simply serves to show that the Scottish Government was fully aware of the position we had adopted with their agreement, particularly as the draft that Edith Macintosh prepared, that was included in the email exchange between Frank Strang and the CMO, went on to say: -

'……This decision is consistent with public health advice that we follow routinely in any outbreak of infection in services **and agreed with Scottish Government**…'

407. On 14 May 2020, at the First Minister's daily briefing, the Cabinet Secretary for Health and Sport responded to a question about Home Farm care home and stated that the Care Inspectorate had not yet published its report but highlighted Scotland's "*robust inspection regime*". She added that updated clinical guidance regarding testing and admission to care homes would be released by tomorrow.

408. Significantly, on 6 May 2020, our Human Resources Department (HR) and Health and Safety Section put in place key processes to support inspectors who need to go out into services during Covid-19. These processes included:

- registering all Care Inspectorate staff who may be going into services, including inspectors, Team Managers and Chief Inspectors on the key worker testing portal.
- establishing a process for key worker accommodation recognising also that accommodation may also be needed until test results come back in before inspectors return home if they have concerns for their families.
- a process for booking essential worker accommodation.
- a risk assessment process.
- maintaining a volunteer list of inspectors ensuring no health concerns or risks and a process for sending PPE and 'scrubs' to inspectors' home addresses.
- as inspectors were now to wear 'scrubs', sourcing these from NSS and establishing a distribution centre / process at our headquarters in Dundee. Initially, we were going to be accessing PPE from local hubs, but in order to meet Public Health advice regarding requirements for Inspectors washing their clothes, Inspectors required to use scrubs. The decision was that these would be combined with the

other PPE and sent out directly to inspectors to ensure availability over weekends on an 'as needed' basis.

409. On 13 May 2020, it was agreed by our Gold Group that the PPE to be supplied to all inspectors going into care homes would include the option of wearing full body white coveralls even though the national guidance did not include this as necessary - this option would be available for those inspectors who wanted to wear them.

410. The Executive Director of Corporate and Customer Services - Jackie Mackenzie - and/or the Head of HR should be able to provide further information if required.

411. During the week commencing 11 May 2020 (the week after the Inspection of Home Farm), we undertook a further 7 on-site inspections, including a follow up inspection of Home Farm (12 and13 May) and on 14 May 2020, we finalised plans to inspect 6 other care homes over the weekend of Friday to Sunday 15 – 17 May 2020) where we had significant concerns. The Care Inspectorate led all of these inspections with support from Healthcare Improvement Scotland (HIS) and with the prior agreement of the relevant Director of Public Health.

412. This was, essentially, the restarting of a more routine programme of on-site inspections.

413. I submitted a briefing to our Scottish Government Sponsor Team on Sunday 17 May 2020 on the outcome / findings of these inspections (email of 17 May 2020 refers) having briefed them by email on 15 and 16 May of the plans and progress made.

414. On 19 May 2020, Cabinet Secretary for Health (Jeane Freeman) announced to the Scottish Parliament the steps that they had taken, including the additional action that we had taken (detailed directly above) to support residents and staff in care homes across Scotland as they dealt with the impact and challenges of Covid-19.

415. Ms Freeman briefly mentioned steps taken to increase clinical oversight in care homes. She noted that the Care Inspectorate and HIS were engaged in direct inspections of individual care homes, providing support and guidance.

416. She added that, since 20 April 2020, directors of public health had taken enhanced leadership roles in care homes, working with the Care Inspectorate and others. She

emphasised the Care Inspectorate was largely independent but continued to engage with the Scottish Government.

417. During this period, it is important to note that In order to limit the transmission and spread of Covid-19, the Care Inspectorate Gold Group took a decision on 20 May 2020 that if a care home did not have a current outbreak or case of Covid-19 then the Care Inspectorate will only inspect in that service with the consent of the Director of Public Health.

418. On 22 May 2020, the Care Inspectorate Gold Group agreed that we would work closely with the DsPH and whilst we would not routinely proceed with an inspection in a care home without the consent and agreement of the DsPH for the Health Board, we recognised that there may be situations or events in extremis where the risk was judged too great not to go into a Care Home and inspect the service.

419. However, on 3 June 2020 the Care Inspectorate Gold Group reviewed the policy decisions of 20 May 2020 and agreed that this was still relevant, but reinforced the amended decision of 22 May 2020 - that we reserved the right to inspect/visit without agreement of DsPH, but only if the risk is so high that this clearly justifies overriding the DsPH and the circumstances when this could happen are likely to be in the territory of *'…serious risk to life or wellbeing' of people…'*. In making this decision we recognised that there may be occasions where the Care Inspectorate was unable to obtain consent from a Director of Public Health to go into a care home for inspection purposes. If this was the situation the decision to continue with the inspection must be taken by a Chief Inspector and a Director.

420. On 3 September 2020, we were advised that Directors of Public Health (DsPH) did not wish to be individually advised on inspections of early years establishments or to be involved in giving approval in advance.

421. In terms of Inspection planning (alluded to above in the section head **'Inspections')**, each year, in accordance with Section 54 of the Public Services Reform (Scotland) Act 2010 (the 2010 Act), the Care Inspectorate must prepare a plan for carrying out inspections in line with best regulatory practice and the agreed budget. The plan must set out arrangements for inspections to be carried out (including inspections of those services subject to self-evaluation (s.54-(2)-(a)). It may make different provision for different purposes (s. 54(2)-(b)). In preparing the plan, we must have regard to any

guidance issued by Scottish Ministers. We must keep the plan under review, and we may revise it from time to time to reflect risk. We will seek ministerial approval for this plan and any updates to it. This explains why we had to keep ministers abreast of changes we were making at the start of the pandemic and as we progressed through it.

422. Scottish Ministers approved our Scrutiny, Assurance, and Improvement Plan for 2020-21 in February 2020 just prior to the start of the pandemic. In October 2020, we submitted a revised plan for 2020-21 to outline how we had responded effectively to the Covid-19 pandemic. Scottish Ministers / the Cabinet Secretary for Health and Sport approved this on 5 November 2020.

423. On 18 November 2020 a decision was agreed at our Care Inspectorate Gold Group regarding re-calibration of on-site inspections following the Scottish Government's announcement on 17 November 2020 that a number of areas in the central belt (11) would be placed on 'tier 4' restrictions effective from Friday 20 November. These restrictions are more closely aligned to the 'full lockdown' imposed between March and June 2020. We needed to consider how we responded to this and how to reflect that in our scrutiny, assurance and improvement support work. There was an added complexity to the situation by virtue of the fact that some of our staff resided in 'tier 4' areas but inspected in areas with lower-level restrictions i.e., areas at tiers 1-3.

424. The 'tier 4 areas' referred to above were:

- East Ayrshire
- East Dunbartonshire
- East Renfrewshire
- Glasgow City
- North Lanarkshire
- Renfrewshire
- South Ayrshire
- South Lanarkshire
- Stirling
- West Dunbartonshire
- West Lothian

425. I proposed, and the Gold Group agreed, that:

- 'on-site' scrutiny work of services/proposed services located in 'tier 4 areas' will continue, but only in circumstances where a 'high risk' to people who use the services is identified and 'on site' scrutiny is considered necessary to ensure their safety, wellbeing and protection and alternative 'remote' scrutiny approaches have been considered and discounted. Agreement of the relevant Chief Inspector for any 'on-site' scrutiny in tier 4 areas **must** be sought in advance and that agreement recorded through the decision-making tool. In reaching any such decision for 'on-site' scrutiny', account will be taken of the views of the local oversight multi-professional groups for adult services, including Directors of Public Health for the area where the service is located.
- we will continue to engage with services using 'virtual visits' where appropriate and the risk is not high.
- where staff reside in tier 4 areas, they will **not** travel to undertake scrutiny in other areas with lower-level restrictions i.e. areas at tiers 1-3, unless this is absolutely essential and no other options are available. This must also be agreed by the relevant Chief Inspector in advance.

426. On 8 January 2021, in light of the new variant of Covid-19 and its rapid spread, together with current 'lockdown 'that came into effect on 5 January for mainland Scotland, the Care Inspectorate Gold Group approved that we would: -

- only carry out on-site inspections and visits <u>of any service</u> (including registration and complaints) when the risks are assessed as 'High'.
- not use inspectors who reside in a 'lockdown' area to inspect in a lower risk area (currently Island authorities all which have been placed in tier 3) unless absolutely essential and all other options have been explored and discounted.

427. Scottish Ministers approved our Scrutiny, Assurance, and Improvement Plan for 2021-22 on 3 September 2021. On 23 September 2021, we submitted proposed changes to this plan in light of high rates of community transmission of Covid-19, the impact on staffing and on service delivery and emerging winter pressures.

428. We submitted a revised plan covering the period from 1 April 2022 to 31 March 2023 to Scottish Ministers on 12 April 2022. At the time of its initial development in November

/ December 2021, Covid-19 transmission rates were still high and pressures on services, local authorities and HSCPs were escalating with some areas at a critical level. Additional restrictions to ease pressures on hospitals and protect the public were under consideration along with a framework for prioritisation for the delivery of social work and social care "in extremis". However, by early February 2022, the situation was improving, although significant concerns remained that the context in which we were planning was not yet predictable.

429. This Scrutiny and Assurance Plan covers the period from April 2022 to 31 March 2023 and builds on the previous plan for 2021/22, taking into account learning during the previous two years, including revised approaches to scrutiny and assurance developed during the pandemic.

430. On 16 September 2020, the Scottish Government published an FOI (Freedom of Information) release about its communications with the Care Inspectorate regarding the suspension of care home inspections. Having been asked specifically for '… *The dates on which the Scottish Government had any form of communication with the Care Inspectorate about the suspension of inspections of care homes, who was present, and copies of any letters, minutes and emails from February 2020 to date…*', the Scottish Government replied '…*While you asked for information about communications with the Care Inspectorate about the suspension of inspections in care homes, you may wish to be aware that a programme of on-site inspections was reintroduced by the Care Inspectorate from 4 May 2020.* and attached a copy redacted e-mails.

431. On 10 June 2020, at a meeting of the Scottish Parliament Covid-19 committee, Donald Macaskill, Chief Executive of Scottish Care described the Care Inspectorate's response as extremely supportive - [they] intervened when necessary, were in frequent contact with services offering practical advice and guidance , developed a staffing alert in the early days of the pandemic (see RAG System above) and has undoubtedly helped and prevented some of the worst excesses that have been seen, for example in Spain and parts of France. Scottish Care is a membership organisation representing the independent social care sector in Scotland. We meet regularly with them at various levels in the Care Inspectorate both formally and informally and did so before and throughout the pandemic.

432. In terms of contextualising the Care Inspectorate's recommencement of on-site inspections in relation to other UK scrutiny bodies, around this time, on 12 June 2020

The Times (Scotland) press / media article criticised Scotland's health watchdog – Healthcare Improvement Scotland (HIS) for not inspecting any of the hospitals linked to the 1800 Covid-19 cases in 'clean wards'.

433. Similarly, on 15 June 2020 we learned that to date CQC had only undertaken 10 on-site inspections since the start of the Covid-19 pandemic and Care Inspectorate Wales (CIW) had not undertaken any based on public health advice, but views on whether they should be inspecting were split.

434. In my opinion all of this highlighted some ambiguity and misalignment of advice by the CMO and Directors of Public Health with the wishes of Ministers. On the one hand, the CMO and Directors of Public Health had significant concerns about the risk of transmission and spread of the virus by inspectors. Repeatedly, they counselled against anything but absolutely essential on-site visits and required the Care Inspectorate to obtain permission from the relevant Director of Public Health before undertaking an on-site visit. Even then, this permission proved very difficult to obtain - as we found out in relation the inspection of Home Farm care home on 3 May 2020. On the other hand, Ministers appeared to be reluctant to acknowledge this position and seemed to be pushing for the re-commencement of routine on-site inspections.

435. Whilst we eventually adopted a policy reserving the right to carry out an onsite inspection without the agreement of the relevant Director of Health, that would have been a very difficult decision for us to take when weighing up the potential consequences of ignoring such advice. In addition, in terms of our preparedness to recommence on-site inspections, other logistical arrangements needed to be made, including PPE requirements for inspectors. Taking all that into account, we were only, just, able to achieve that at the time we decided to carry out the inspection at Home Farm care home. Even then, PPE requirements for inspectors were still unclear and varied between geographic areas, and initial stocks had only just been received by the Care Inspectorate and distributed to be available for inspectors should the need arise.

Meetings with the Cabinet Secretary for Health and Sport

436. Our first formal meeting with the then Cabinet Secretary Health and Sport, Jeane Freeman took place on 28 May 2020. It was attended by our Chief Executive, Peter Macleod, Paul Edie (Chair of the Care Inspectorate Board), Ingrid Gilray (Intelligence and Analysis Manager, Care Inspectorate) and me. Paul Gray, one of our Board

members and previously Director General Health and Social Care and Chief Executive of NHS Scotland, met separately with the Cabinet Secretary later the same day.

437. Thereafter, we met regularly with the Cabinet Secretary for Health and Sport until the latter part of 2021 when the meetings were delegated to the Minister for Mental Wellbeing and Social Care, Kevin Stewart.

438. Our meetings with the Cabinet Secretary were initially every two weeks. Our discussions usually focussed on the latest Covid-19 data and trends, including deaths and outbreaks in individual services and geographic areas. We usually discussed the latest parliamentary report we had produced and also provided an update on particular care homes and providers featuring in that or in briefings we had submitted to our Scottish Government Sponsor Team which had been passed to the Cabinet Secretary. From a Care Inspectorate perspective, these meetings were very helpful and allowed us to communicate directly with the Cabinet Secretary rather than through other meetings or individuals. Our impression was that the Cabinet Secretary also found them useful for the same reason. She was able to ask us about wider matters that clearly were coming across her desk from other parts of Scottish Government or other bodies. The fact that these meetings continued on a regular basis for so long in the face of what were no doubt considerable demands on the Cabinet Secretary's time, in my view confirms that.

Inspection and Scrutiny During the Pandemic

Adults

439. This was done in a number of ways and consistent with our new business model, outlined in the 2019-22 Corporate Plan, which we were planning to implement prior to the pandemic taking hold. What we have effectively done during the pandemic is tested at pace a number of different approaches that bring tangible benefits. These include, but were not limited to:

- planning and delivering intelligence-led and risked based scrutiny
- hybrid scrutiny (short on-site visits supported by virtual inspections)
- virtual / remote scrutiny
- self-evaluation

- planning inspections

The approaches we took were adapted and sometimes applied differently to different service types.

Revised SAT

440. As previously stated, our approach to inspection planning during the pandemic was based on intelligence and risk to ensure we targeted resources where they were needed most. To help with this, we created a new scrutiny assessment tool (SAT) which identified risk factors such as Covid-19 outbreaks, experiences of people, leadership, concerns raised and notifications from services. The inspector gathered the intelligence about the service and made a professional judgement based on good practice which was added to the Covid-19 SAT. Inspectors also used information gathered from contact with services, complaints, risk ratings of homes by Directors of Public Health, and wider intelligence gathered from daily huddle or multi-agency oversight groups in HSCP, including health board areas. Once completed, it gave a risk rating of low, medium or high. We used the resulting risk level to determine the scrutiny actions that were took such as making contact with the service, carrying out an inspection or providing improvement support. The risk level was shared with the health and social care partnerships (HSCPs) and public health colleagues. This ensured we identified those services based on highest risk. The plan was dynamic and responsive to changing levels of risk within services

Liaison with Directors of Public Health

441. . Once a decision was taken to inspect, we informed the local Director of Public Health to advise of our intention. This was to ensure that we worked in collaboration with other agencies and that our visits only took place when safe and necessary. We also informed the oversight teams for care homes.

442. As previously stated, we use a suite of quality frameworks, tailored to service types, to set out what we expect services to achieve in terms of performance. These are aligned to the Health and Social Care Standards and each framework has a set of key questions.

Additional Key Question 7

443. On 27 October 2020 we published a revised version of our [CI/15 - INQ000320088] *A Quality Framework for Care Homes for Older People* and the [CI/16 - INQ000320089] *A Quality Framework for Care Homes for Adults* to include: - [CI/17 - INQ000320090] Key Question 7 - '*How good is our care and support during the Covid-19 pandemic*?', which we formally published initially on 10 June 2020.

444. In May 2020, we added key question 7 to our '*Quality Framework for Care Homes for Older People'*, which asks '*How good is our care and support during the Covid-19 pandemic*?'. This was done in response to the pandemic and in recognition that services had to adapt and operate differently. It ensured that services implemented relevant practice in line with Health Protection guidance. We developed key question 7 in consultation with Health Protection Scotland and Healthcare Improvement Scotland. The development of the framework enabled us to meet the duties placed on us by the Coronavirus (Scotland) (No. 2) Act 2020 and subsequent guidance that we must evaluate and report on IPC, and staffing. The new question allowed us to assess services against the principles of the *Covid-19: Information and Guidance for Care Home Settings (Adults and Older People) and Care Home Outbreak Checklist* produced by Health Protection Scotland.

445. Key question 7 had three quality indicators associated with it that we assess when inspecting: -

- 7.1 People's health and wellbeing are supported and safeguarded during the Covid-19 pandemic.
- 7.2 IPC practices support a safe environment for people experiencing care and staff.
- 7.3 Staffing arrangements are responsive to the changing needs of people experiencing care.

446. Useful links and references to best practice and national guidance were included in the quality frameworks to inform improvement. We also devised a new 'record of inspection' tool to ensure a consistent application of standards in care homes and gathering of inspection evidence linked to good practice.

447. In February 2022, this was incorporated into a revised quality framework for care homes for adults and older people taking account of learning from Covid-19. This replaced previous versions published on 27 October 2020 (see also Section above The Scrutiny and Assurance Directorate – Quality Frameworks).

448. Marie Paterson, Chief Inspector (Regulator Care – Adults and Complaints) would be able to provide more detail on this if required.

How Inspectors Adapted to Covid-19

449. The way we inspected had to change. Our inspectors inspected care homes with active outbreaks as well as those with no outbreak or where an outbreak had ended. They had to wear appropriate PPE during visits and limit the time they spent in a service and people's bedrooms. This can greatly reduce the amount of interaction possible with those living in care services. Since 4 January 2021, inspectors were also required to be regularly tested for Covid-19.

450. Collecting and verifying evidence while using PPE can be challenging and inspectors followed specific guidelines on how to do this safely. In order to overcome some of the challenges we faced, we increased our use of technology so we could safely carry out our scrutiny work. We used technology to continue to speak to staff, relatives, people who use services, and other professionals working with services. I say more about this below.

Letters of Serious Concern

451. For Covid-19 inspections, greater use was made of letters of serious concern to identify urgent action needed to be taken in services although these are not a legal document forming part of our formal enforcement procedures. We issued these while we are still inspecting. Services had 48 hours to comply with them and we then went back to check that the improvements had been made. Similarly, we followed up all requirements when the timescale for meeting these has been reached. This ensured improvements were made in the care people experienced, that these were sustainable and made a difference to people's lives. Where we identified serious concerns, we took immediate and robust action by issuing an improvement notice or applying to the courts for cancellation of the service's registration.

Liaison with HSCPs

452. On the completion of the inspection, the team manager immediately informed the health and social care partnership (HSCP) of the outcome and when we issued letters of serious concern or an improvement notice, copies of these were provided to the HSCP and the Director of Nursing in Health Boards to allow them to provide support to the service. During the pandemic, we developed virtual inspection methods and used these on a strictly risk-assessed basis. This use of technology meant that we could monitor the environment, talk to people experiencing care, their relatives and staff, as well as other professionals who had direct contact with the service. Before introducing virtual scrutiny, we met with and learned from other regulators in Scotland and further afield who had put in place virtual inspections. We also ensured that practice guidance and quality assurance were in place.

New Reporting Obligations

453. To meet the new reporting obligations placed upon us by coronavirus legislation, inspectors produced a brief record of their findings within 24 hours of completing an inspection and gave initial feedback to the care provider. In addition to the fortnightly report to Parliament mentioned above, we continued to publish full inspection reports for individual services. While our scrutiny activity was reprioritised, largely to focus on care homes for older people, we continued to monitor other types of care services for adults. Most adults in need of care and support, including people with complex health and social care needs, are supported in their own homes and Covid-19 also had a significant impact in those settings, so we maintained oversight of those services too.

454. In addition to carrying out a limited number of inspections, we conducted a specific inquiry into care at home and housing support services. This involved virtual meetings with more than 100 senior officers from all 31 health and social care partnerships and more than 300 care at home and housing support service providers including those in the public, third and private sectors. As a result of this inquiry, we published on 24 September 2020 a report, [CI/31 - INQ000320158] entitled '*Delivering care at home and housing support services during the COVID-19 pandemic: Care Inspectorate inquiry into decision making and partnership working*.'

Number of Inspections Completed

455. Between 1 April 2020 and 31 March 2021 we carried out 657 inspections of regulated care services for adults. This comprised the following: -

- 572 inspections of care homes for older people
- 31 inspections of care homes for other adults
- 4 inspections of nurse agencies
- 28 inspections of combined housing support and care at home services
- 16 inspections of care at home services
- 4 inspections of housing support services
- 1 inspection of an offender accommodation service
- 1 inspection of a support service other than a care at home

456. In addition to inspections, in the same period we carried out a further 176 additional visits to services. Additional visits are undertaken to carry out a focused task such as checking that a requirement has been met, investigating a complaint, or providing specific improvement support to a service.

457. The action we took during the pandemic both in terms of when we ceased onsite inspection and when we resumed was broadly consistent with other UK and ROI regulators. In response to questions in the Scottish Parliament on 19 January 2022 from conservative MSP Alexander Burnett, Kevin Stewart the Minister for Mental Wellbeing and Social Care (from April 2021) confirmed that the Care Inspectorate had scaled down inspections in the early stages of the pandemic in recognition of the risk of contributing to the spread of Covid-19 with the agreement of Scottish Ministers, and that this was the right thing for the Care Inspectorate to do and it reflected the action taken by regulators across the UK and Ireland. He went on to say that it had not been possible for the Care Inspectorate to inspect all care homes in the conventional manner during the pandemic, so the Care Inspectorate had adopted a more targeted, intelligence-led and risk-based approach and had prioritised onsite inspections where an immediate risk was identified.

Inspection Findings

458. In the period May 2020 to September 2020, for those services where we identified concerns about practice, the following were common themes: -

- cleaning of environment and enhanced cleaning of touch areas/ using the correct cleaning material.
- cleaning of equipment that people use after use.
- laundry management.
- consistency of social distancing.
- consistent and correct use of PPE.
- staffing levels to meet caring for people in rooms and ensuring meaningful interactions.
- personal Planning - ensuring these are updated and meet people's needs.
- management oversight and quality assurance.

459. During the pandemic, we wrote to all care homes detailing the findings from our scrutiny activity, and signposted best-practice and improvement documents. This allowed services to develop practice and have access to improvement resources.

460. One such [CI/43 - INQ000320171] letter was sent on 30 September 2020 and another one [CI/44 - INQ000320172] on 2 December 2021. Marie Paterson, Chief Inspector (Regulator Care – Adults and Complaints) can provide more detailed information if required.

Visiting

461. Families and friends visiting loved ones in care homes became a key issue during the pandemic.

462. On 13 March 2020 we became aware that many care homes had taken the decision to limit access to visitors prior to national guidance changing in order to reduce the risk to their residents. Scottish Care had produced guidance to clarify a consistent approach while maintaining access for those at end of life. At this time, the Care Inspectorate's position was to be supportive of services while ensuring the safety of residents was maintained.

463. On 13 March 2020 the first version of the Covid-19 Health Protection Scotland Guidance for Social or Community Care and Residential Settings was issued. This

provided for essential visitors only and PPE. This was followed quickly by Clinical Guidance for Nursing Homes reinforcing essential visits only (Chronology refers).

464. On 13 March 2020, the then Scottish Government's Cabinet Secretary for Health and Sport issued a letter to the Care Inspectorate and others suggesting that *'…long term care facilities should be subject to social distancing to reduce the risk of infecting residents and carers. This should operate at 2 levels …1. Reducing visits to care homes to essential visits. and 2. Social isolation in rooms…'*

465. On 26 March 2020, guidance was issued to care homes stating that routine visiting should be suspended.

466. In March 2020, as restrictions began, we recognised the potential poor outcomes for people experiencing care when in-person visiting was stopped. We developed and published, on 30 March 2020, [CI/45 - INQ000320173] the document *'Supporting People to keep in touch when care homes are not accepting visitors'* which contained guidance for care homes, in order to support them maintaining contact for people using virtual means.

467. On 25 June 2020, a letter was issued by the then Cabinet Secretary for Health and Sport that visiting could resume in care homes that are Covid-19 free for 28 days + and guidance was published.

468. On Saturday 8 August, the Scottish Government published updated guidance on the further relaxing of visiting in adult care homes. From 10 August 2020, care home residents were able to have up to three outdoor visitors from no more than two households provided their home meets strict criteria, with infection control measures remaining in place.

469. On 21 August 2020, a further letter was issued to all care home managers about planning for the introduction of indoor visiting from 24 August 2020.

470. On 12 October 2020, the Scottish Government updated visiting guidance, to better balance the risks of Covid-19 with important considerations such as time with loved ones. They said this should be implemented as soon as care homes had planned and prepared to do so safely. Local oversight boards were to give support and advice to

help implement this safely. Updates include (all with safety and infection prevention recommendations to be in place):

- indoor visiting to up to four hours.
- outdoor visiting to up to one hour, with up to six visitors from up to two households. Children and young people can also be supported to attend.
- increased flexibility around the circumstances and definition of essential visiting, to include visits to prevent or respond to a decline in residents' health and wellbeing, to help with communication and distress and in end of life care.
- children and young people can be supported to attend essential visits.
- no upper time limit for essential visits.
- changes to the designated visitor and circumstances when these should be supported.
- support for touch, and greater involvement with daily routine, to happen safely.
- spiritual and faith representatives supported to visit indoors and outdoors, at all stages of the pandemic, and not regarded as 'designated visitors'.
- hairdressers supported to visit care homes.
- selected gifts and resident belongings can be brought in.
- arrangements for pets and 'therapets' to be brought in safely.

471. On 17 November 2020, the then Cabinet Secretary for Health and Sport wrote to care home providers to update them on Scotland's Strategic Framework, care home visiting and on travelling to visit people in care homes in Levels 3 and 4. The advice outlined that:

- current visiting guidelines continue to be recommended for areas in levels 1-3, unless advised otherwise by local Directors of Public Health.
- areas in level 0 will see visiting become closer to normal, with precautions, and as advised by the Director of Public Health.
- for level 4, only essential, window and garden visits are recommended.
- visiting people in care homes is exempt from national travel restrictions. People can travel into and out of Levels 3 and 4 to see loved ones in care homes, because this is essential travel.

472. Following an announcement of further restrictions by the First Minister on Saturday 19 December 2020, on 22 December 2020 in a letter from the CNO, it was announced

that as a consequence of Scotland moving to level four restrictions from 26 December 2021, the following would apply and was covered in revised guidance:

- indoors: essential visits only.
- outdoors: visits to the care home to see loved ones via garden or window visits, arranged with the care home in advance.
- as a result of the additional risk posed by the new variant, garden visits should now be limited to one visitor and visits by children and young people should be suspended.

(see also section headed Re-starting On-site Inspections of Care Homes above for how we responded to this operationally)

473. On 24 December 2020 we received a copy of a Letter from Donna Bell, Scottish Government Director for Mental Health and Social Care intimating enhanced testing of care home staff, visiting professionals and outbreak management.

474. As a result of the announcement on Saturday 19 December 2020 by the First Minister of a series of new measures in response to a new variant of Covid-19, the evidence for which suggested that this strain of the virus spreads more quickly than the other strain, we received formal notification that, in order to protect vulnerable care home residents, the Scottish Government had urgently brought forward expanded Covid-19 testing for visiting professionals to care homes (including Care Inspectorate Inspectors). This pathway was due to be rolled out from 11 January 2021 but was implemented from Monday 4 January 2021.

475. On 28 January 2021, in our provider update, we confirmed that in terms of the Scottish Government guidance during the current restrictions, garden and window visits to adult care homes were still possible and we expected services to support and facilitate this appropriately, pointing out that it was essential that people were able to see and connect with loved ones. We expected garden and window visits to be available in all care homes. We clarified that while areas were in Level 4 restriction, indoor visiting should be limited to essential visits. There was guidance on what constituted an essential visit, and this was in the Scottish Government guidance which, to which we provided a link.

476. By January 2021, families were becoming more concerned about visiting in care homes. We had met with the families' action group (later known as Care Home Relatives' Group) and the then Cabinet Secretary for Health and Sport.

477. At this time, in stage 4, the national guidance stated only essential indoor visiting was allowed although people should still be able to do garden/window visits. Homes should also have, within personal plans, regular contact for people with families through use of technology.

478. Other than through our Inspection reports, we did not gather information on visiting but the NES Huddle tool (see sections on Information and Notifications and Clinical and Care Oversight above) did, and we managed to download this information. This showed three services that were not allowing essential visits and 113 services were not allowing window/ garden visits.

479. We had completed the following to promote visiting:

1. Included visiting in Records of Inspection and staff ensuring systems are in place for those services we inspected.
2. We contacted the three services identified from Huddle tool as not allowing essential visits and ensured these were in place
3. We produced a statement that went out to all services reminding them of visiting and guidance.
4. We began to plan to work on visiting guidance and sharing of good practice
5. We met with family's action group and went along to a meeting chaired by the then Cabinet Secretary Health & Sport
6. We met regularly with Scottish Government to discuss

480. There was guidance for care homes on visiting and this included use of testing, PPE and the need for staff to observe visits. The guidance was straightforward but services were saying that this was a resource issues for them due to the impact of Covid-19 on staffing.

481. Providers were also citing concerns about visiting due to the police investigations that were ongoing and, that if they allowed visiting and Covid-19 was introduced to the home, they would be held accountable (see also section on Police Scotland / Crown Office and Procurator Fiscal Service (COPFS) - Investigation of Deaths in Care Homes

above). They also stated that the application to the relevant Director of Public Health to allow indoor visiting was not straight forward and could take time.

482. Homes could not open to visiting without the Director of Public Health agreement and this included submitting information and risk assessments. Homes could not allow visiting if any of their staff tested positive. For some homes with a large staff group, this could mean that just as one staff member finished their period of isolation, another member of staff could test positive and the home remained closed to visiting.

483. We recognised the need for services to follow national guidance and for us to support that and the need to consider the issues above, but we also recognised and felt strongly that we must work to support people to have meaningful contact with those that they love. This is important for people's wellbeing and not to do so might be a breach of their human rights.

484. Consequently, on 29 January 2021, our Gold Group agreed a policy in this regard in that (quoting verbatim): -

1. We issue a statement on visiting, signposting people to guidance but also our expectation that people promote visiting and have window/garden visits in place.
2. We contact all services not allowing window/garden visits and work to understand issues and to put these in place.
3. We ask Scottish Government for visiting to be a key aspect of oversight groups to ensure that these are in place in areas and that were issues are identified these are addressed.
4. We work with Directors of Public Health (DsPH) on the classification of an outbreak and consider a change to guidance. This could mean that if only one staff member has tested positive the home is not in outbreak and visiting could continue.
5. We need legal advice on us using our powers to enforce visiting as to do this would mean we should take to enforcement / closure if services do not comply.
6. The Covid team (Flexible Response Team) move forward with the plan to write guidance on visiting and sharing good practice with services.

485. All of this was recorded in the Care Inspectorate's Covid-19 Policy File, and we put out a statement to that effect. We also updated the Scottish Government on the action that we had taken.

486. It is important to note that we had had 'connecting with loved ones and visiting' in Key Question 7 of our inspection framework since May 2020. However, we strengthened this further in line with the above. Where we identified visiting not being undertaking, we explored this with the care home and if, on advice of the relevant DsPH or home, the home was not allowing visiting we took that to the local oversight groups to enable all partners to discuss and work together to support a change in practice in the home. We also decided to comment on visiting in every inspection report. We also contacted the 113 homes not allowing outdoor or window visiting many of which were due to outbreaks and under the instruction of public health.

487. On 10 February 2021, our Gold Group agreed a policy to support the Scottish Government Guidance '*Open with Care'* – which was supporting care homes to open to family and friends. Following consultation with Scottish Government, we agreed to continue to risk assess all complaints around visiting through the Care Inspectorate's well-established complaints process. Once again, this was recorded in the Care Inspectorate's Covid-19 Policy File. *Open with Care - supporting meaningful contact in care homes:* guidance was published by the Scottish Government on 24 February 2021

488. On 17 May 2021 the Scottish Government published *Open with Care Additional advice and guidance: activities and outings away from the care home*. At this time general restrictions around meeting up indoors and outdoors were relaxing as Scotland planned to move to Level 0 around the end of June. Following publication of *Open with Care* in February 2021, this document provided further guidance around care home residents leaving the care home for meaningful contact or activities.

489. At the time this guidance was published, the aim was for Scotland, in the main, to move to Level 2 on 17 May 2021, to Level 1 in early June 2021 and Level 0 by the end of June 2021. From 17 May 2021, socialising in other people's homes was to be permitted in areas in Levels 0-2, including overnight stays. However, whilst travel across Scotland would be permitted, no-one would be able to enter a Level 3 or 4 area (where applicable) unless for a permitted reason (e.g., being part of an extended household).

490. On 21 June 2021 the Scottish Government published Open with Care – supporting people in adult care homes to have meaningful contact with others: Progress with implementation. This reported highlighted that by late March 2021, over 90 per cent

of care homes supported contact for residents indoors and at 14 June 2021, 97 per cent of all responding care homes reported indoor visiting was underway. Over the same time period, the number of confirmed care home outbreaks had fallen.

491. On 17 December 2021, with some isolated issues around visiting persisting, the Care Inspectorate revised its position on visiting. Although cases had begun to spike again due to the Omicron variant, by this time services should have been allowing regular visits from up to two households at a time to ensure people who lived in care homes had access to their family and friends in line with their rights and wishes, which should have been at the heart of all decision making. Our Gold Group agreed that where we take regulatory action in support of visiting as requirements, regrading, letters of serious concern and improvement notices, this could be dealt with by the Inspector and Team Manager. Where we were proposing to take further action beyond that, it was agreed this would come to Gold Group or the Strategic Leadership Team (SLT).

492. The position on visiting was updated and a media statement prepared to support this. We agreed (as per verbatim record):

- we use Human Rights, Health and Social Care Standards (HSCS) and our own regulations as the basis for our decision-making and making requirements.
- we use 'Open with Care' as the guidance that enables people to have visiting in place and do this safely.
- wWe do a statement promoting the rights of people and the importance of contact with people to them and the importance for this for individuals' health and wellbeing. We should note in this legislation that underpins this. We offer support for services in this and provide link to Open with Care that ensures they can do this safely. We must be clear on the importance of human contact. Any communication will recognise the concern of services.
- we only accept the position of no visiting if this is on explicit advice of public health and even then this must be for shortest period and must include visits where people are distressed or at end of life.
- where we become aware of visiting policies that restrict the rights of people that we address this directly with the provider to support them to change this.
- where a provider refuses to change policy we consider regrading them to reflect the position they have taken and impact on people and place requirements on the service. This will only be done after we try to resolve situation with provider.

- where we have complaints about visiting these are investigated and when upheld complaints we will assess regrading of the service in line with our procedures.
- where we have providers not allowing visits for people at all and no human contact including when people at end of life we will consider placing a condition on their registration to ensure this takes place.
- where providers refuse to meet requirements and conditions we will use our enforcement policy as appropriate
- where faced with taking the highest level of enforcement action, this will be referred to the GOLD group.

493. Our stated aim was specifically to '… *support the rights of people in care homes during the pandemic …*'. All of this detail is recorded in the Care Inspectorate's Covid-19 Policy File.

494. On 21 January 2022 in the Scottish Parliament, Paul O'Kane (Labour MSP) said that a third of care homes were restricting visits due to interpretation of a managed outbreak by public health authorities, suggesting visiting should be maintained if the correct testing regime and precautions are in place. He asked whether the Care Inspectorate could take on a key role in monitoring and reporting on this to ensure care homes remain open for visitors.

495. The Minister said the Care Inspectorate was already looking at homes where visiting is not what it should be, and thanked it for its help in this regard. He said updated Public Health Scotland guidance would make a difference in ensuring relatives have access to loved ones in care homes but added that he and colleagues at the Care Inspectorate would follow up if particular issues were brought to him.

496. On 9 March 2022 there was a debate in Scottish Parliament on 'Anne's Law' - protecting the right of care home visiting. This was following a petition from Natasha Hamilton who was not able to see her mother, Anne Duke, for prolonged periods during the height of the pandemic. At this time, Kevin Stewart, Minister for Mental Wellbeing and Social Care said that the Scottish Government had chosen to deliver this through strengthening the Health and Social Care Standards using legal powers under the Public Services Reform Act and to further strengthen rights through primary legislation.

497. The Minister also announced that the Care Inspectorate, under its existing legal powers, would have a strengthened role to ensure that the new standards are implemented and, more importantly, upheld. He also indicated that the Scottish Government would provide further support and dedicated resource to enhance the Care Inspectorate's role in supporting visiting rights.

498. On 31 March 2022, the Scottish Government published changes to the national Health and Social Care Standards. Two new Standards set out the expectation that people living in care homes should have the right to see someone who is dear to them, even during a Covid-19 outbreak, and be able to name a person, or persons, who could directly participate in meeting their care needs.

499. The two new Standards were: -

- If I am an adult living in a care home and restrictions to routine visiting are needed to prevent infection, I can nominate relatives/friends (and substitutes) to visit me. My nominated relatives/friends will be supported by the care home to see me in person day-to-day and to be directly involved in providing my care and support if that is what I want.
- If I am an adult living in a care home, I can nominate relatives/friends (and substitutes), who will be supported by the care home to be directly involved in providing my day-to-day care and support if that is what I want.

500. We supported the Scottish Government in developing the standards and, on 31 March 2022, we published [CI/46 - INQ000320174] *The new Health and Social Care Standards for visiting and staying connected: Guidance for providers*.

501. Since then, and as a result of additional funding from Scottish Government two inspectors commenced in seconded posts on 31 October 2022, supporting the sector in readiness for Anne's Law implementation. To support the work of the project, an appreciative inquiry methodology has been adopted, allowing us to build on what works well, while not underestimating the impact on people experiencing care and their loved ones when things have not.

502. To date, the Anne's Law project has completed the following work:

- developed the content for a '*Visiting - meaningful connection'* webpage on the existing Care Inspectorate website. This provided a landing page for both professionals and members of the public, with information tailored to each audience. The overarching content helps set expectations in relation to connection and visiting, and provides links to useful resources. This went 'live' during week commencing 17 April 2023.
- completed and published a literature review on meaningful connection. This sets out findings from a range of research papers on the health and wellbeing outcomes associated with connection, relationships experienced by people who live in care homes and why they matter, the roles and involvement of family carers and why they matter, the role of technology in facilitating connection, gaps in the research, and recommendations. To increase credibility, a peer review of this was completed by the University of Edinburgh.
- we have developed a new self-evaluation tool for services. This not only sets expectations aligned to meaningful connection and visiting but also allows services to independently review how well they are performing and what actions they require to take to enhance outcomes for people experiencing care.
- we have developed and implemented a new core assurance which is incorporated into our existing inspection methodology. Core assurances are the things we look at in every inspection. These allow inspectors to assess how well services are performing in relation to meaningful connection and visiting during the inspection process. They state:

    a. people are actively supported with digital and/or traditional forms of communication to stay connected with those important to them and to maintain social and community connections. This is clearly documented in people's personal plans.
    b. practice is strengthened by a policy which outlines how meaningful connection will be supported, including visiting arrangements. It details how any restrictions will be managed, including ensuring these are for the shortest time and that essential visiting is always in place.
    c. staff demonstrate they understand and apply the principles of meaningful contact and how to support people with this.

- we have supported the Scottish Government's exploration of their draft directions, which will sit under the proposed National Care Service Bill and set legislative

expectations aligned to meaningful connection and visiting. In so doing, we have made the case for a balance between the right to life and right to family.

- we have developed and delivered webinars to the sector on meaningful connection, which were well attended. Through this, we have discussed the main findings from our literature review, set expectations, and provided easy to implement solutions to commonly faced challenges.
- we set up a dedicated mailbox and mailing list for services, people experiencing care and family carers to remain up-to-date with the work of the project.

Further work is ongoing in this regard and continuing to develop.

503. The Anne's Law campaign was created by Natasha Hamilton, whose mother Anne Duke was diagnosed with early onset dementia and living in a care home. Ms Hamilton launched the campaign after being unable to spend time with her mother due to care home visiting restrictions during the first wave of the Covid-19 pandemic.

504. Ms Hamilton, a member of Care Home Relatives Scotland, lodged a Scottish Parliament petition in November 2020 calling on the Scottish Government to allow a designated visitor into care homes to support loved ones. The petitioner noted in the petition that she had met with the Cabinet Secretary, Scottish Care and the Care Inspectorate.

505. The petition raised a number of questions about closing care homes to visitors due to Covid-19 and noted that agency staff had been allowed to enter care homes. The petition asked for one designated visitor per resident, raising concerns that relatives in care homes are forgetting who their loved ones are and declining in health.

506. On 24 March 2021, the Committee agreed to close the petition on the basis that the Scottish Government was actively considering how it can best support visiting in care homes, is regularly updating its advice to reflect the evolving evidence base, and has recently published updated guidance on visiting care homes during the Covid-19 pandemic.

Care Inspectorate Developments During or arising from the Pandemic

Quality Frameworks

507. During 2021-22, we merged the quality frameworks for care homes for adults and older people and refreshed the content. We developed a self-evaluation tool for providers aligned to this and published it. We are considering how we develop a self-evaluation approach across all services that we will align with our wider scrutiny and assurance approaches.

Human Rights

508. The health and social care standards are already prominent in our quality frameworks. In order to strengthen further our approaches to human rights and rights-based care, we are focussing more on the standards on human rights and wellbeing. We will continue to focus on the rights of people as we ease out of the pandemic and support services to establish these where restrictions on visiting have been in place. We will work closely with others, including the Mental Welfare Commission for Scotland, to ensure the rights of people are maintained and where these are restricted, the correct legal frameworks are in place. In all decisions that we make about risk we will consider the individual's rights and wishes. This ensures that people experiencing care are at the heart of decision making and we will support services to work in a risk-enabled way rather than a risk-averse way. Central to this is good personal planning and we will publish a resource to support services with that.

509. We are also fully committed to the promotion and realisation of human rights and actively engaging with Scottish Government officials how we can further strengthen our approaches in accordance with the Human Rights (Scotland) Bill. (See also references on pharmaceutical interventions (NPIs) in section above headed Covid--19 Flexible Response Team).

Building Better Care Homes

510. Our registration Team took responsibility for updating our 2018 guide *Building Better Care Homes for Adults* to include learning from Covid-19. It was ready for publication by October 2021, but publication was delayed because of a 'spike' in Covid towards the end of 2021. It was eventually published on 29 March 2022 as the [CI/47 - INQ000320175] *Care Homes for Adults – The Design Guide: Design, planning and construction considerations for new or converted care homes for adults*

511. The aim of this publication is to describe and illustrate what good building design looks like for care homes for adults. It provides guidance for those designing a new building, or registering premises not previously registered as a care home.

512. We recognise that some new care homes were already in the design process at the point that this guidance was published. Therefore, new build care homes will only be expected to comply with this guidance where the design and planning phase commenced following the publication of this document. In circumstances where the design and planning phase commenced prior to the publication of this guidance, applicants must be able to provide evidence of this.

513. This publication is also relevant when planning to improve the environment of existing premises, seeking to change the legal entity of the provider, take over an existing care service, or vary an existing condition of registration. In these circumstances, we work with providers and applicants to agree a reasonable position on what improvements are feasible whilst ensuring that the care home is still financially viable.

514. This document describes the environment people should expect in care home services which supports positive experiences and outcomes in a homely environment. High-quality design, planning and refurbishment is vital in creating a safe environment which supports high quality care.

515. We previously had one document which covered both care homes for children and adults. Whilst there are many similarities between the two, there are some significant differences. We therefore took the decision to publish two separate documents.

516. The Registration Team also took responsibility for developing a revised version of Building Better Care Homes for Children and Young people which is now entitled CI/48 - INQ000320176] *Care Homes for Children and Young People – The Design Guide: Design, planning and construction considerations for new or converted care homes for children and young people* which was also published on 29 March 2022. This also takes account of learning from Covid-19.

The Chief Inspector (Regulatory Care – ELC and Registration) - Catherine Agnew would be able to provide more detail on this, if required.

Learning from the Pandemic

517. We have not been involved by Scottish Government in the formulation of any specific recovery plan in relation to care homes or the social care sector more broadly in the aftermath of Covid-19 beyond that which is described in this statement. However, we hope that our completed and ongoing work, and the learning we have identified, will make a positive contribution to that recovery.

Adults

518. On 21 August 2020, we published a report entitled [CI/49 - INQ000320177] ***The Care Inspectorate's role, purpose and learning during the Covid-19 pandemic***, to report on the breadth of activity we undertook in the first stages of the pandemic. The report outlined: -

- The Care Inspectorate's role and purpose
- Our workforce
- Composition of adult social care services
- Impact of Covid-19
- The Care inspectorate's initial response to the pandemic
- Oversight arrangements we put in place
- Our contact with care homes
- The RAG Notifications System
- Enhanced communication with providers
- Re-commencing onsite inspections
- Early lessons learned

Much of this is referenced throughout the statement but in more detail.

519. The following year, on 12 July 2021 we published a report entitled [CI/50 - INQ000320179] *The Care Inspectorate's Scrutiny and Support of Adult Social Care during the COVID-19 Pandemic* report, which described in more detail the scrutiny activity and support interventions we carried out throughout the pandemic. At that time, we were continuing to reflect on the learning from the pandemic, and we were also continuing to make and support changes and improvements as a result. Both reports are available on the Care Inspectorate's website.

520. For example, we augmented our inspection framework to focus much more rigorously on infection prevention and control. We worked closely with Directors of Public Health in making decisions about what was required in individual services and what was required for inspection, and we continued to strengthen joint working with them and health and social care partnership oversight groups.

521. By this time the vaccination programme had been rolled out in adult care homes across Scotland and there were grounds for cautious optimism.

522. We know that Covid-19 has had a significant impact on adult social care, and in particular care of older people in Scotland. We had already identified a number of key learning points including:

- Keeping people safe while enabling them to have a good quality of life, including connection with families and people who are important to them.
- Balancing people's rights and wishes when making decisions about risk.
- Paying closer attention to the design of the buildings in which people live to help keep them safe but in homely environments.
- Recognising the importance of care homes having staff with the right skills, knowledge and experience and in the correct numbers.
- The importance of a multi-disciplinary approach to providing the right care and support to care homes from social work, nursing, allied health and social care professionals.
- The importance of having multi-agency oversight of our care homes and the benefits different professionals bring to that through their combined skills, knowledge and experience.
- The importance of staff in services having the right support, guidance and tools to maintain and develop the right skills and knowledge.
- The importance of working collaboratively with all stakeholders to identify key aspects of essential care for people.
- The importance of social care services in supporting people in our communities and how this helps them to remain well in their in their own homes and close to their families.
- The benefits of collaborative working where professionals share experiences and learn from each other.

- The importance of collecting high quality information from services that supports self-evaluation and oversight of services.
- The development of the safety huddle tool for care homes helping to provide a national picture of care home support in Scotland.
- The importance of organisations working together to gather information from services, so this is provided once and shared thereby reducing the burden on services.
- Regulation needs to be responsive to the needs of the sector and, where improvement is needed, support is provided and followed up quickly to ensure improvement is achieved and sustained.
- The importance of continuing to build relationships between scrutiny bodies and services, including provider organisations to support improvement.
- The importance of continuing to adapt our scrutiny and improvement support approaches to help services improve.
- Everyone, regardless of where they live in Scotland, must have access to good health and social care support.

523. Although playing a crucially important role, taking forward the learning we have identified from inspections and our other scrutiny work during the pandemic is not the sole responsibility of the Care Inspectorate. Through publishing this report, it enabled us to share this with other key stakeholders. Incorporating some of this learning into our publication CI/47 - INQ000320175] *Care Homes for Adults – The Design Guide: Design, planning and construction considerations for new or converted care homes for adults,* is one example where we have used this learning ourselves.

524. The publication by Scottish Government on 22 June 2022 (almost a year later) of a *Healthcare framework for adults living in care homes: My Health - My Care - My Home* has, as its primary purposes, the support of care homes to work with wider multi-disciplinary community health teams. Key elements of this framework reflect our earlier findings, in particular those relating to person centeredness, support and guidance to staff in care homes, collaboration, multi-disciplinary approaches, professional relationships and visiting rights. This is an example of how we hope our report has informed other key stakeholders.

525. On 12 September 2023 we published our [CI/51 - INQ000320180] *Care Home Report: Key themes from our work completed in registered care home services for*

adults and older people between 1 April 2020 and 31 December 2022. This is available on the Care Inspectorate's public website.
This included:

- sector Profile (service numbers and spread, map of services, staffing vacancy rates and occupancy rates).
- registration (variations to registration conditions and cancellation).
- inspection (evaluations (grades) profile December 2018 to December 2022, requirement themes (from inspection), collaborative improvement (oversight groups) and good practice.
- complaints (complaint handling pathways and requirement themes (complaints)).
- enforcement (themes from enforcement action and new policy and procedure link to risk).
- improvement support (meaningful connection in care homes, near me, enriched model of psychological needs, Anne's Law, Covid-19 Flexible Response Team , Personal Planning Guide, Covid-19: Right Choice, Right Time, Right Reason webinars, Safe Staffing programme and other improvement initiatives carried out to support the care home sector) and commitments .

Early Learning and Childcare (ELC)

526. On 23 March 2021, we published our report CI/52 - INQ000320181] *Early Learning and Childcare: Role, Purpose and Learning during the COVID-19 Pandemic.* This report sets out how we adapted our support and monitoring of ELC settings, including childminders and out of school care, during the pandemic.

527. It includes real-life examples from providers across Scotland to highlight how we supported different settings as they continued to provide children with safe, engaging and stimulating care and learning experiences in difficult circumstances. Through these stories we also demonstrate the ways in which our inspectors modified and developed their activities.

528. The report includes a number of key reflections, namely:

- keeping children safe and offering stimulating care and learning experiences is a delicate balance to achieve, made more challenging by the pandemic.

- it is important that staff in services have the right support and guidance to ensure they have the skills and tools to confidently provide care and learning.
- close collaboration with all stakeholders is essential to identify key aspects to support the development of high-quality and supportive Covid-19 guidance.
- there are benefits to working with a range of stakeholders to share experiences and learn from each other.
- it is important to collect high-quality information from notifications and services to have a national picture of how the pandemic impacted on services and localities.
- effective regulation needs to be responsive to the needs of the sector and help providers meet the needs of children and families.
- it is important that as an organisation we continue to adapt our approach and models of support and scrutiny.

529. We have learned lessons from the impact of the pandemic on the ELC sector and have planned / delivered the following actions: -

- we reviewed our inspection and scrutiny priorities as the ELC sector fully reopens to provide continued public assurance during Covid-19.
- we have launched in June 2022 our new quality framework for ELC reflecting the [CI/53 -INQ000320182] Health and Social Care Standards.
- we completed a pilot exercise to grade self-evaluation key question 5 to support continued improvement for the sector operating during Covid-19.
- we have begun a review of our design guidance document *Space to Grow* in light of learning around practice issues during Covid-19.
- we have launched in partnership with Scottish Government our practice document My Active World. It recognises the importance of increased levels of physical activity throughout the Covid-19 experience.
- we have published our ELC personal plans document as a key link to several Health and Social Care Standards.
- we have concluded with Scottish Government the evaluation and impact of the ELC equality and excellence leads across Scotland.

Summary of findings from inspections of day care of children and childminders during the Covid-19 pandemic

530. Between 1 April 2020 and 30 April 2021, we completed a total of 204 inspections in day care of children (54 inspections) and childminding services (150 inspections).

531. Based on data taken from inspection reports published up to 21 May 2021, we made requirements at 45 inspections and identified areas for improvement in 97 inspections:

- the most common reason for a requirement being made was around care planning, in particular personal plans for each child, including key information about the child that is up to date and how often these should be updated.
- the next most common reasons for a requirement were around infection control, including hand washing procedures. Around 1 in 6 of all requirements made were along these lines.
- around 1 in 10 requirements made were around written policies on managing the Covid-19 pandemic, whether that be the need to have one or a need to review and improve the existing policy.
- the most common area for improvement identified was around infection prevention and control, with a large proportion of these focussing on hand washing.
- the next most common area for improvement identified was around care planning and children's personal plans, almost equal to the number around infection control.
- the next most common area identified was in staff skills. In particular, where the service should review and identify staff training needs and in ensuring that staff are deployed to the role they have been recruited for.

Children and Young People Services

532. During the pandemic, we were unable to undertake on-site inspection activity other than when the risk of not inspecting was sufficiently great as to outweigh the risk of travelling to, and entering, the service. Inspectors focused on maintaining contact with services via Teams, Near Me and telephone, thereby providing advice, guidance and signposting to sources of support. Notifications (mostly not directly related to Covid-19), of which there is always a high number generated by these services, but which increased during the pandemic, were followed up promptly.

533. We saw a low incidence of Covid-19 infection in children's services during the first wave. Covid-19 notifications increased during the second wave where we saw a handful of significant outbreaks. Routine testing of staff also had an impact. Services

were unable to use their normal strategies to manage staff shortage such as moving staff between different houses (residential units). Staffing pressures make it more difficult for children to get the quality of care and support that they need and increase the risk of incidents including children going missing.

534. There has been a significant impact on children's services and the children and young people themselves during the pandemic. There have been a number of key learning points that we are reflecting on when planning our future scrutiny, assurance, and improvement support interventions.

- overall, services responded well to the challenges facing them and have been as creative as possible in providing support for children, including support for learning and maintaining contact with family.
- national data shows a rise in the proportion of children entering care on an emergency, rather than a planned, basis. This may be a consequence of the way in which the children's hearing system has had to operate in prioritising urgent hearings, making Place of Safety warrants and Child Protection Orders a more common route to becoming looked after.
- to be useful, Covid-focused guidance needs to be easily applicable in services for children and young people. Services have found it very challenging trying to implement guidance written primarily for older people's settings with just a few small amendments. Having conflicting sets of guidance issued by different parts of Scottish Government or different bodies is unhelpful.
- we benefitted greatly from the experience of our colleagues regulating care homes for older people, which were so badly impacted in the first wave. We were better informed as a result of their learning and therefore able to provide tips to managers about issues to be aware of in order to keep everyone as safe as possible and act quickly in response to risks.
- while children are significantly less at risk of death or serious illness from Covid-19, there have been concerns about the risk of developing long Covid and the medium to long-term consequences of exposure to the virus. We should be particularly concerned about the impact of Covid-19 and of the associated disruption to health care systems on groups of children who already have poorer health outcomes than their peers.
- while the risk of serious illness is less, the harms to children and young people resulting from the pandemic are likely to be considerable and to emerge over time

- widening inequalities and the impact of a loss of formal teaching time for more vulnerable children. setbacks to progress in tackling child poverty. and restricted employment opportunities. We do not know what the impact on children's mental health may be or the longer-term impact on children who have lived with increased domestic abuse over the course of the last year. The Scottish Government-led Covid-19 children's strategic leadership group has been a useful forum supporting joint working on a number of these issues and one which is liable to remain in place after the pandemic.

- foster carers as a group have raised concerns about a lack of recognition and value. Many have felt overlooked, without the recognition given to paid health and care staff. They have expressed concerns about increased risks to their safety due to the need to have ongoing contact with birth families. Fostering agencies have expressed real concern about carers leaving their role in the context of a year-on-year decline in foster carer numbers.
- families with children with disabilities have faced particular challenges due to the suspension of key supports, coupled with restricted face to face teaching.
- despite us believing that digital communication is a young person's medium, it is not the way in which children would choose to communicate with us. Face to face contact is proving a more effective vehicle for understanding the child's experience.
- in contrast, many care staff have welcomed the opportunities afforded by virtual communication to speak in confidence to inspectors rather than the visibility involved in engaging with us in the service.

Enforcement

535. During the pandemic, we identified benefits in following up requirements quickly to ensure services made improvements and sustained them. While we always took robust action promptly when we identified serious failings, for some services we had to make repeated visits over a period of weeks and in some cases months before the service made the necessary improvements. While that was a necessary and proportionate response at the height of the pandemic when many services were impacted by staffing shortages and the absence of a dedicated manager, this is resource-intensive for us and impacts on the overall number of inspections that we can undertake.

536. As we ease out of the pandemic, we intend to recalibrate our enforcement action and make clear to providers that our expectation is that they act quickly and effectively to

make the necessary improvement. The time we allow for that will be relative to the nature and extent of the improvement required.

Health and Social Care Improvement Team

537. In 2021 the Care Inspectorate was given additional resource to set up a Health and Social Care Improvement Team as a result of the increased awareness of health and wellbeing in social care during the pandemic. This is a multi-disciplinary team, including nursing, pharmacy, social work and allied health professions (AHP) and is based within the Strategy and Improvement Directorate under Edith MacIntosh and aligned with the Quality Improvement Support Team. They provide professional skills and knowledge in specific topic areas, along with general health and wellbeing support across the life span of people experiencing care.

538. These posts will lead and develop aspects of our health and social care quality improvement support functions. We will base this on current and emerging models of delivery that will facilitate improvements in practice in care services and improve the outcomes for people experiencing care. Senior improvement advisers will also work closely with inspectors, supporting learning and development in specific topic areas, and keep the evidence base of practice current. Further information can be provided by Edith MacIntosh, Director of Strategy & Improvement, if required.

539. From 2021-22, where we are issuing letters of serious concern or improvement notices, we are consulting with our improvement support team, including our chief nurse, to agree a reasonable timescale for making the improvements and to identify who is best placed to provide specialist quality improvement support. The most appropriate quality improvement support experts in areas such as end of life care, tissue viability, infection prevention and control, medication management, nutrition and hydration, and dementia may be identified to provide targeted quality improvement support to the service during the period between the initial and follow-up inspections.

Early Learning and Childcare (ELC)

540. Within ELC, the team will support specific areas such as medicines management and infection prevention and control. Links have already been made with the Lead AHP for Children and Young People at the Scottish Government and good practice resources and local pathways to access AHP support will be shared both with inspectors and

services. Bitesize learning sessions bringing together the contribution of speech and language, physiotherapy and occupational therapy on the wellbeing of children and young people are to be developed and offered both to the sector and inspectors.

541. The Scottish Government has funded the ELC Improvement Programme to support early learning and childcare settings who offer funded places and are not currently meeting the quality criteria of the National Standard. The aim of the programme is to support funded settings to make the improvements they need to meet the quality criteria.

542. The ELC Improvement Programme team have created learning communities, project clinics and offer one-to-one support to ensure services focus on areas for improvement which will have the biggest impact on outcomes for children and their families. In addition to this, a suite of online universal resources is available to support all settings with an improvement focus.

543. ELC inspection teams, local authority ELC leads and their associated teams, also have a role in supporting the quality and improvement of ELC settings. This project will help to build skills and capacity to support them in this through training and learning events.

Other Lessons Learned Exercises

544. We have provided a chronology of lessons learned (see Appendix 2 to this statement). The following reports appear in that chronology:

1. The Care Inspectorate Learning from the Pandemic: Insight Report June 2021 [CI/55 - INQ000320184]
2. Covid-19 Flexible Response Team – End of Term report 3 August 2021 [CI/56 - INQ000320185]
3. Responding to a national incident: Reflections on the experience of the COVID-19 Flexible Response Team [CI/57 - INQ000320186]
4. Collation of Leaning from the Pandemic and Key Changes Taken Forward: March 2020 – December 2021 [CI/58 - INQ000320187]
5. Psychoactive Medication Report [CI/59 - INQ000320188]

The Executive Director of Strategy and Improvement - Edith Macintosh led on these aspects and can provide more detailed information, if required.

Pandemic Planning and Exercises Carried out by the Scottish Government

545. As far as I know, the Care Inspectorate, from its formation in 2011, has never been involved in any dialogue, consultation or exercise on pandemic planning by the Scottish Government.

546. However, as part of our own internal improvement work, we are planning a 'lessons learned' session in the spring 2024 to focus on what more we can do and we will be taking account of any emerging findings from the Scottish or UK Covid 19 Inquiries.

The Inquiry statement

547. This statement was required specifically in relation to Module 2A of the UK Covid-19 Public Inquiry. In particular, it is in response to the request for information and answers to specific questions under Rule 9 of the Inquiry Rules 2006 as outlined in the letter to the Care Inspectorate from the Inquiry Team dated 7 September 2023, and annexes A to D thereto. I have included more than was asked for by way of context, hoping that this may be helpful to the inquiry team. I have prepared this statement in a short time-frame and there is considerably more information beyond what is noted here, covering all of our work during the pandemic, which we would be happy to provide, if it is required.

548.I declare that the contents of this statement are, to the best of my knowledge, true and accurate.

Personal Data

18 December 2023

APPENDIX 1 TO THE STATEMENT OF KEVIN NOLAN MITCHELL

This is a table detailing the key materials the Care Inspectorate holds relating to its involvement in the response to the Covid-19 pandemic. However, the Care Inspectorate is still in the process of collating documents, and as such the numbers provided are approximate and may ultimately differ to that set out in the table.

The following should be noted however: -

1. **Email correspondence: -** The Care Inspectorate holds thousands of emails for the relevant period, both internal and external, some of which may relate to matters the Inquiry is considering. In common with many other public bodies, the Care Inspectorate automatically incorporated certain Covid-19 messaging into all its email signatures. As such, any search of its systems to find emails relating to the pandemic, will inevitably capture multiple emails which are of no relevance to the Inquiry since the only reference to Covid-19 may fall within the email footer and not the substance of the email itself. Consequently the Care Inspectorate has not collated any potentially relevant email correspondence (with the exception of some specific documents referred to in entry number 8) as this task would be exceptionally onerous and would involve manually sifting thousands of documents. As a result, if there is any particular matter potentially captured in emails held by the Care Inspectorate and which the Inquiry believes may be relevant, it would be helpful if the Inquiry could be as specific as possible as regards its requirements, so any searches we undertake will be targeted and capable of being undertaken more quickly and efficiently.

2. **Notifications:-** As a matter of routine, the Care Inspectorate requires services it regulates to make certain notifications to it, for example if there is a change of service manager, an accident or an allegation of abuse. At the outset of the pandemic, the Care Inspectorate required care services to make additional notifications relating to specifically to Covid-19, outbreaks, such as Covid deaths and staff absences, although some of these notifications are no longer required. We have not collated these notifications because manual sifting of notifications would be very time consuming, particularly as the notifications are held on a legacy system which does not lend itself to external sharing and from which they have to manually extracted and exported to PDF format. As a result, if there are any particular notifications the

Inquiry believes may be relevant, it would be helpful if the Inquiry could be as specific as possible as regards its requirements, so any searches we undertake will be targeted and be capable of being undertaken more quickly and efficiently.

	TYPE OF DOCUMENT	APPROXIMATE NUMBER	COMMENTS AND FURTHER DETAILS
1.	Board and Board Sub-Committee papers	100	Papers relating to meetings of the Care Inspectorate Board and its Audit and Risk Sub-Committee including minutes and action records.
2.	Bulletins	125	Care Inspectorate news bulletins issued weekly to subscribers including many care services, people who use services and their relatives. They collate key news, research and policy developments for either care services relating to children and young people or adult social care and health. During the pandemic, they would also have signposted services to relevant guidance and provided advice about how to access PPE, for example. Bulletins were not issued between approximately April 2020 and June 2020 during which period they were replaced by rolling policy briefings described at point 23 below. The estimated figure relates only to adult and social care bulletins.
3.	Care home visiting	10	Documents relating to consideration of the issue of care home visiting including guidance.

		100's	There will also be emails relating to care home visiting which are likely to be numerous but we have not collated these at this stage.
4.	Chronologies and decision making logs	<10	Chronologies and logs setting out key developments in the pandemic and decisions made by the Care Inspectorate during it.
5.	Complaints about registered care services	<10	General information (for example statistics) relating to complaints made to the Care Inspectorate about registered care services (for information about some individual complaints please see point 13 below). These statistics relate to complaints received about all care service types and not just care homes. Separate information specifically about care home complaints can be provided if required.
6.	Consultation responses	<10	Responses made by the Care Inspectorate to Covid-19 consultation exercises carried out by other public bodies. The Care Inspectorate responded to multiple consultations over the relevant period but most will not be of direct interest to the Inquiry.
7.	Corporate documents	<10	Care Inspectorate corporate documents such as corporate plans or inspection plans. These do not relate specifically to the Inquiry Terms of Reference but can be provided if background information about the Care Inspectorate is needed.
8.	Correspondence with third parties	30	Certain key correspondence sent to and received from third parties. Please see Note 1 above for specific information about email correspondence.
9.	Email correspondence	1,000s	Please refer to Note 1 above.
10.	External guidance	50	Copies of, and links to, relevant external guidance, for example, The NHS National Infection Prevention and Control Manual, which

			the Care Inspectorate promulgated to its staff and care services through electronic bulletins. The number is not known as the links and copies are embedded in the communications and there will be multiple references to the same core pieces of guidance. We have not yet undertaken manual sifting to extract copies of the individual guidance documents. In addition, some documents linked or referred to may no longer be accessible but the Care Inspectorate has no control over the content of third party websites or databases. It may therefore be more efficient for the Inquiry to request specific guidance from the original authors of it, but the Care Inspectorate is happy to provide what it can.
11.	Freedom of information documentation	80	Information relating to freedom of information requests received including summaries and statistics.
12.	Human Resources documentation	10	Documents relating to HR issues and decisions made regarding Care Inspectorate staff during the Covid-19 pandemic, for example changes to the flexible working policy.
13.	Information pertaining to specific named care home services	5,000	Information relating to individual care home services such as inspection reports, details of complaints received and enforcement action taken.
14.	Internal policies, procedures and methodologies	30	Internal policies and procedures adopted by the Care Inspectorate, including changes to inspection methodology protocols.
15.	Internal reports	<10	Reports prepared by the Care Inspectorate relating to its response to the pandemic.
16.	Joint Working	10	Documents relating to joint working and information sharing with other public bodies.
17.	Media releases	400	Statements issued to the media by the Care Inspectorate. We issued around 700 in the

			relevant period but not all will be of interest to the Inquiry (for example those relating to daycare of children services). Therefore we have estimated a figure of 400 although without manual sifting we cannot give exact numbers.
18.	Notifications	1,000s <10	Notifications made by care home services to the Care Inspectorate – please refer to note 2 on pages 2-3 above. Also documents containing general information about notifications
19.	Operational decision making documentation	100	Papers relating to meetings of the Care Inspectorate Operational Leadership Team and Silver Group including minutes and action records.
20.	Parliamentary reports	35	Fortnightly reports relating to inspection activity laid before the Scottish Parliament by the Care Inspectorate as required by paragraph 22(2) of Schedule 1 to the Coronavirus (Scotland) (No.2) Act 2020 (now repealed).
21.	PowerPoint Presentations	40	Presentations made by Care Inspectorate staff to Scottish Government relating to Covid-19 statistics and trends, for example numbers of notifications of Covid-19 deaths made to the Care Inspectorate.
22.	Repurposing documents	10	Documents relating to changes in Care Inspectorate staff roles, responsibilities and priorities in response to the Covid-19 pandemic.
23.	Provider updates	400	Updates issued to providers of care services relating to either adults and older people, childminding services, or children and young people. There are around 600 documents for the relevant period but we believe that not all will be of interest to the Inquiry, for example those relating solely to childminding. We have

			therefore estimated 400 documents, although without manual sifting we cannot give exact numbers.
24.	Rolling policy briefings	35	Briefings issued, primarily to Care Inspectorate staff, which collate national guidance and announcements relating to Covid-19 between approximately 25 March 2020 and 2 July 2020. Thereafter, briefings related to Covid-19 were incorporated into the Bulletins described at point 2 above.
25.	Section 44 Direction	20	Documents relating to and correspondence with Scottish Government in relation to a direction issued by Ministers under s44(2) of the Public Services Reform (Scotland) Act 2010 in July 2020 about providing information in relation to people at risk in care homes.
26.	Strategic decision making documentation	100	Documents relating to meetings of the Care Inspectorate Strategic Leadership Team and Gold Group including minutes and action records.
27.	Training Records	300	Documents relating to training events, training materials and online training delivered to or accessible by Care Inspectorate staff and which related to Covid-19 or associated matters such as Infection Prevention and Control (some identical sessions were delivered on multiple occasions to different staff teams and cohorts). There are over 2300 documents for the relevant period but most will not be of interest to the Inquiry (for example many relate to new staff inductions). We have therefore estimated 300 documents, although without manual sifting we cannot give exact numbers.

Personal Data

APPENDIX 2 TO THE STATEMENT OF KEVIN NOLAN MITCHELL

CARE INSPECTORATE (CI) CHRONOLOGICAL LIST OF LESSONS LEARNED EXERCISES

NUMBER	DATE	EVENT
1.	July 2020	Finalisation of internal CI report "Responding to a national incident: Reflections on the experience of the COVID-19 Flexible Response Team".
2.	21 August 2020	Publication of "The Care Inspectorate's role, purpose and learning during the Covid-19 pandemic" report.
3.	23 March 2021	Publication of CI report "Early Learning and Childcare: Role, Purpose and Learning during the COVID-19 Pandemic" report.
4.	July 2021	Finalisation of internal CI report "Learning from the Pandemic – Insight Report".
5.	12 July 2021	Publication of CI report "The Care Inspectorate's Scrutiny and Support of Adult Social Care during the COVID-19 Pandemic" report.
6.	31 August 2021	Finalisation of internal CI report "COVID-19 Flexible Response Team End of Team Report".
7.	December 2021	Finalisation of internal CI report "Collation of Learning from the Pandemic and Key Changes Taken Forward, March 2020 – December 2021".
8.	29 March 2022	Publication of "Care Homes for Adults – The Design Guide: Design, planning and construction considerations for new or converted care homes for adults" guidance.
9.	29 March 2022	Publication of "Care Homes for Children and Young People – The Design Guide: Design, planning and construction considerations for new or converted care homes for children and young people" guidance.
10.	June 2022	Publication of "New quality framework for ELC".

11.	12 September 2023	Publication of CI report "Care Home Report: Key themes from our work completed in registered care home services for adults and older people between 1 April 2020 and 31 December 2022."
12.	October 2023	Publication of CI Psychoactive Medications Project Report.

Personal Data