

Witness Name: Fiona Rutherford

Statement No.: Second

Exhibits: FR/1 - FR/7

Dated: 6 December 2023

## **UK COVID-19 INQUIRY**

### **WITNESS STATEMENT OF FIONA RUTHERFORD, CHIEF EXECUTIVE, JUSTICE**

1. I, Fiona Rutherford, will say as follows in response to the Rule 9 request dated 27 September 2023, reference **M2A/JS/01**.

#### **A. Structure, people and processes**

2. JUSTICE Scotland is the banner under which JUSTICE carries out its work in Scotland (together, "**JUSTICE**"). JUSTICE is a cross-party law reform and human rights organisation which aims to create a UK justice system that is fair, accessible and respects the rights of all. We are a values-led organisation and work transparently and with intellectual rigour. We are pragmatic and considered in our approach to address some of the most urgent issues facing the United Kingdom's legal framework. We are a membership organisation, drawn primarily from the legal profession with a common commitment to the rule of law and the fair administration of justice.
3. JUSTICE is a registered charity (no. 1058580) and is a company limited by guarantee. JUSTICE Scotland is registered with the OSCR under charity no. SC043518 but is not a separate corporate entity.
4. The organisation is governed by JUSTICE's Board which is chaired by Peter Binning. Peter was chair of the Board throughout the relevant period. JUSTICE also has an advisory Council, the president of which is Baroness Helena Kennedy KC. Baroness Kennedy was president of the Council throughout the relevant period. The Council provides advice and guidance to the organisation but does not have a governance function.
5. From January 2020 to October 2021, JUSTICE's Director was Andrea Coomber KC (Hon). She was responsible for the day to day running of the organisation. I took over in that role (renamed as Chief Executive) in February 2022. From April 2015 to January 2022, I worked for the Ministry of Justice. My last role was Access to Justice Policy

Director, which included a range of responsibilities including policies and legislation to tackle the consequences of the pandemic. This witness statement covers the knowledge and work undertaken by JUSTICE during the relevant period.

6. The JUSTICE policy team is led by the Legal Director, who oversees the organisation's policy output. The Legal Director between January 2020 and August 2021 was Jodie Blackstock. Stephanie Needleman took over as Acting Legal Director on 30 August 2021 and was made Legal Director on a permanent basis on 16 February 2022.
7. JUSTICE Scotland has a Chair and Vice-Chair, who oversee JUSTICE's work in Scotland. From January 2020 until June 2021 these positions were held by Shelagh McCall KC and Catherine Smith KC respectively. They are now held by Almira Delibegović-Broome KC (Chair) and Seonaid Stevenson-McCabe (Vice-Chair). JUSTICE Scotland does not have any separate staff – JUSTICE staff are also JUSTICE Scotland staff.
8. Between the 21 January 2020 and 30 April 2022 (the “**Specified Period**”) JUSTICE engaged with the Scottish Government's response to the Covid-19 pandemic by providing advice, information, and recommendations, for example by providing briefings on proposed legislation. Such work focused almost exclusively on the operation of the courts and tribunals in light of the national lockdowns and circuit breakers, and consequential inability to hold in person public hearings in the majority of cases.

## **B. Liaison and communication with the Scottish Government**

9. As JUSTICE's advice, information and recommendations to the Scottish Government in relation to its response to the Covid-19 pandemic focused almost exclusively on the operation of the courts and tribunals in light of the national lockdowns and circuit breakers, JUSTICE provided limited advice in relation to NPIs and their impact on at-risk and vulnerable groups and/or those with protected characteristics, and in relation to the consideration of the impact on human rights or civil liberties of the key decisions made by the Scottish Government in its response to Covid-19. To the best of my knowledge this advice comprised:

- a. **A briefing on the Coronavirus (Scotland) Bill circulated to all MSPs on 31 March 2020 [FR/1 - INQ000343880].** It focused exclusively on the justice proposals contained in Schedule 4 of the Bill:

- i. whilst supporting the use of video as an alternative to in-person hearings and trials, the briefing urged that careful consideration must be given to ensure that digitally excluded individuals and people who are vulnerable are not disadvantaged by its application;
- ii. called for the removal of the extension of custody time limits from the Bill, arguing these breached Article 5 of the European Convention on Human Rights and in some instances the release (on temporary licence or otherwise) of specific categories of prisoner where cases could not go ahead;
- iii. called for greater safeguards around the possibility of solemn trials being conducted by a judge alone, including a right of appeal – the plans to hold more trials without juries were subsequently dropped from the Bill; and
- iv. additional safeguards to the exception to the normal rule that hearsay evidence is inadmissible.

b. **A response in April 2020 to the Scottish Government's discussion paper 'Covid-19 and Solemn Criminal Trials Scottish Government Discussion Paper – April 2020 [FR/2 - INQ000343881]** which, amongst other things, argued that during lockdown it was not realistic to conduct solemn trials by requiring the physical presence of persons in the court room. It was also sent to Stephen Imrie, Clerk to the Justice Committee by Shelagh McCall on 25 May 2020.

10. Although, as noted above, plans to hold more trials without juries were subsequently dropped from the Coronavirus (Scotland) Bill, it is to the best of my knowledge following JUSTICE's review of the Act that the recommendations set out in paragraphs 9(a)(i)-(iv) were not acted upon by the Scottish Government. In relation to JUSTICE's response to the Scottish Government's discussion paper noted at paragraph 9(b) above, it is my understanding that all trials were conducted remotely.

11. Paragraph 8 of the Rule 9 request asks that I provide JUSTICE's view on the compatibility of the key decisions made by the Scottish Government in imposing NPIs as part of its response to Covid-19 with human rights or civil liberties. Given that JUSTICE's engagement with the Scottish Government was almost exclusively in relation to the operation of courts and tribunals, which does not form part of

module 2A, I am not able to respond to this question in any detail within the scope of module 2A.

**C. Public health communications and public confidence**

12. As far as I am aware, JUSTICE did not play any role in the development of public health messaging, nor present any views as to the accessibility or clarity of the public health communications or messaging disseminated by or on behalf of the Scottish Government over the course of the Specified Period.

**D. The public health and coronavirus legislation and regulations**

13. Some of the advice and briefings prepared by JUSTICE Scotland on the public health and coronavirus legislation, regulations and guidance that were proposed by the Scottish Government and by the Scottish parliament are set out in section B above.

14. In addition to those set out in section B above, on 19 March 2020 JUSTICE Circulated a **briefing on the emergency Coronavirus Bill [FR/3 - INQ000343882]** ahead of its Second Reading in the House of Commons on 23 March 2020. The briefing set out three concerns with the Bill aimed at ensuring the proposed emergency powers were used appropriately:

- i. The sunset and review provisions were too long and should be shortened. This view was reached through a comparison of the sunset and review provisions of the bill against a number of pieces of legislation including the Civil Contingencies Act 2004;
- ii. Powers that may restrict events, gatherings and use of premises must only be exercised when it is necessary and proportionate to do so; and
- iii. Every effort should be made to ensure the legal cases can proceed through the courts and tribunals, with a preference for fully video trials in the alternative to in-person trials. Although the briefing stressed that careful consideration must be given to ensure that digitally excluded individuals and people who are vulnerable by circumstance or disability are not disadvantaged in the use of video hearings.

15. As far as I can tell from JUSTICE's records, this briefing was circulated only to Baroness Shami Chakrabarti (then Shadow Attorney General), Joanna Cherry KC (then SNP Spokesperson for Justice) and Baroness Sarah Ludford (Liberal

Democrat peer and then member of the Joint Committee on Human Rights). I do not know if other individuals including core political and administrative decision makers saw the document.

16. The briefing was subsequently circulated to Sir Bob Neill MP as chair of the Justice Select Committee on 24 March 2020 in advance of the Committee's evidence session with the Lord Chancellor on the same date.
17. Whilst the briefing referred to the Civil Contingencies Act 2004, as noted at paragraph 14 above, JUSTICE did not carry out any work relating to the appropriateness of the Coronavirus Bill 2020 being used as the legal framework governing the UK Government's response to covid-19 rather than other legislation, including the Public Health (Control of Disease) Act 1984.
18. On 22 May 2020, JUSTICE provided a briefing to the Justice Select Committee entitled 'Ensuring fairness in socially distanced trials' **[FR/4 - INQ000343883]**, which argued against the use of social distancing for trials in the majority of cases, and in favour of the use of fully remote trials instead.
19. In addition, on 23 March 2020 then Legal Director, Jodie Blackstock emailed Baroness Chakrabarti **[FR/5 - INQ000343884]**, Joanna Cherry KC **[FR/6 - INQ000343885]**, and Baroness Sarah Ludford **[FR/7 - INQ000343886]**, with suggestions for safeguards to the powers contained in the Coronavirus Bill. In summary these were:
  - i. police powers must afford exceptions for rough sleepers; victims of domestic abuse; and other vulnerable people such as victims of modern slavery, trafficking, or asylum seekers – all who may be permanently or temporarily homeless, and will not be able to respond to an order to return to their home;
  - ii. there must be significant increase in assistance to people who will not have a home to return to – making suitable shelters available and police assistance to enable people to get to these shelters;
  - iii. the methods of providing reasons for being outside the home must be practicable – oral explanation should be sufficient;
  - iv. powers should in the first place be to direct or escort a person to their home;
  - v. the issuance of fines will have to be a last resort and then only when necessary and proportionate in the circumstances;

- vi. any proposal for detention powers would be wholly inappropriate – a strain on resources and a disproportionate interference with the right to liberty;
- vii. there should be a requirement of reasonable grounds to suspect that the person is not outside for one of the exempted reasons; and
- viii. powers should be reviewing weekly (3 weeks was being proposed and the emails argued this was too long).

20. Paragraph 15 of the Rule 9 request asks that I outline any work carried out and/or views reached by JUSTICE relating to the public health and coronavirus legislation, guidance, and regulations, including their proportionality, enforcement, compatibility with human rights and civil liberties, clarity, and effectiveness. To the best of my knowledge, JUSTICE carried out minimal work in relation only to their enforcement and compatibility with human rights and civil liberties, as noted in section B and paragraphs 13 to 19 above.

21. Paragraphs 14, 16, 17 and 18 of the Rule 9 request pose a number of questions relating to the public health and coronavirus legislation and regulations, including (i) the appropriateness of the level of public scrutiny of such legislation and regulations, (ii) the impact of such legislation, guidance and regulations on the people of Scotland and the likely effects of earlier or different decisions/interventions, (iii) the role of police Scotland in terms of police powers and enforcement and (iv) advice, regulations and representations prepared by JUSTICE for Scottish local authorities. Given that JUSTICE's engagement with the Scottish Government was almost exclusively in relation to the operation of courts and tribunals, which do not form part of Module 2A, I am not able to comment on these requests in any detail within the scope of this module. To the best of my knowledge, the only work carried out by JUSTICE in relation to police powers and enforcement are detailed in paragraph 19 above.

## **E. Lessons learned**

22. Paragraphs 19, 20, and 21 of the Rule 9 Request pose a number of questions relating to lessons learned i.e. (i) what worked well and difficulties or challenges encountered by JUSTICE in making representations or providing advice or support to the Scottish Government; (ii) whether at-risk and vulnerable groups and/or those with protected characteristics were adequately considered; (iii) whether there was sufficient regard for human rights and civil liberties; and (iv) JUSTICE's views as to the lessons that can be learned. Given that JUSTICE's engagement with the

Scottish Governments was almost exclusively in relation to the operation of courts and tribunals, which do not form part of Module 2A, I am not able to comment on these questions in any detail within the scope of this module.

23. In relation to the Coronavirus Bill I know that there was some debate in Parliament of the issues JUSTICE raised in respect of the Coronavirus Bill including in relation to the length of the sunset and review provisions, however no changes were made to these provisions.

24. As far as I am aware, JUSTICE did not provide any oral or written evidence to any committee of the Scottish Parliament in relation to the response to Covid-19 during the Specified Period.

#### **F. Documents**

25. The seven documents referred to and provided alongside this witness statement are as follows:

- i. **[FR/1 - INQ000343880]** - JUSTICE briefing on the Coronavirus (Scotland) Bill (31 March 2020);
- ii. **[FR/2 - INQ000343881]** - JUSTICE response to the Scottish Government's discussion paper 'Covid-19 and Solemn Criminal Trials Scottish Government Discussion Paper - April 2020' (16 April 2020);
- iii. **[FR/3 - INQ000343882]** - JUSTICE briefing on the emergency Coronavirus Bill (19 March 2020);
- iv. **[FR/4 - INQ000343883]** - JUSTICE briefing to the Justice Select Committee 'Ensuring fairness in socially distanced trials' (22 May 2020);
- v. **[FR/5 - INQ000343884]** - email from Jodie Blackstock to Baroness Chakrabarti (23 March 2020);
- vi. **[FR/6 - INQ000343885]** - email from Jodie Blackstock to Joanna Cherry KC (23 March 2020); and
- vii. **[FR/7 - INQ000343886]** - email from Jodie Blackstock to Baroness Ludford (23 March 2020).

I am not aware of any further key materials held by JUSTICE relating to its involvement in the response to the Covid-19 pandemic during the Specified Period.

#### **Statement of truth**

I believe that the facts stated in this witness statement are true. I understand that proceedings may be brought against anyone who makes, or causes to be made, a false statement in a document verified by a statement of truth without an honest belief of its truth.

Signed:

**PD**

Dated: 6 December 2023