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STATEMENT TO THE UK COVID-19 INQUIRY ON BEHALF OF THE NORTHERN  
IRELAND HUMAN RIGHTS COMMISSION

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## **1.0 Role of the NIHRC**

### **Overview**

- 1.1 I, David Russell, am the Chief Executive (Grade 5, SCS) of the Northern Ireland Human Rights Commission (NIHRC) and am authorised to make this witness statement, to the COVID-19 Inquiry, on behalf of the NIHRC.
- 1.2 We are a statutory body, established by the Northern Ireland Act 1998. We became operational on 1 March 2000. Our governing legislation is the Northern Ireland Act 1998, as amended by the Justice and Security (NI) Act 2007 and the European Union (Withdrawal Agreement) Act 2020.
- 1.3 We are also a National Human Rights Institution with A status accreditation from the United Nations (UN), operating in full compliance with the UN General Assembly Resolution 48/134 (the Paris Principles). Established on the basis of the Belfast (Good Friday) Agreement 1998, we play a central role in supporting a society that, as it rebuilds following conflict, respects and upholds human rights standards and responsibilities.
- 1.4 Our mission is to champion and guard the rights of all those who live in NI. Our role is to ensure government and other public bodies protect the human rights of everyone in NI. We also help people understand what their human rights are and what they can do if their rights are violated.

### **Statutory functions**

- 1.5 Our primary role is to make sure government and public authorities protect, respect and fulfil the human rights of everyone in NI. We also help people understand what their human rights are and what they can do if their rights are violated or abused. To pursue this objective, we consider the full range of civil, political, social, economic and cultural rights. Our work is based on the international human rights treaties

ratified by the UK Government, domestic legislation and other relevant human rights standards.

1.6 Our statutory functions, in accordance with the Northern Ireland Act 1998, are:

- keeping under review the adequacy and effectiveness in NI of law and practice relating to the protection of human rights. To do so we may provide advice to the UK Government and international human rights bodies [section 69(1)].
- advising the Secretary of State and the Northern Ireland Executive of legislative and other measures which ought to be taken to protect human rights—as soon as reasonably practicable after receipt of a general or specific request for advice; and on such other occasions as the Commission thinks appropriate [section 69(3)].
- advising the NI Assembly whether legislative Bills are compatible with human rights [section 69(4)].
- providing legal assistance to individuals and initiating strategic cases, including own motion legal challenges [section 69(5)].
- promoting understanding and awareness of the importance of human rights in Northern Ireland. To do so, we may undertake or support research and educational activities [section 69(6)].
- conducting investigations on systemic human rights issues. To do so, we may enter places of detention, and can compel individuals and agencies to give oral testimony or to produce documents [section 69(8)].
- Monitoring the implementation of Article 2(1) of the Protocol on Ireland/Northern Ireland in the EU Withdrawal Agreement [section 78A].

1.7 We are mandated in accordance with Article 2(1) of the Protocol on Ireland/Northern Ireland of the European Union Withdrawal Agreement to ensure there is no diminution of rights protected in the 'Rights, Safeguards and Equality of Opportunity'

chapter of the Belfast (Good Friday) Agreement as a result of United Kingdom's withdrawal from the European Union. It is also mandated to ensure that, if certain European Union equality laws are changed after 1 January 2021 to improve the protection of human rights, then Northern Ireland will keep pace with those changes. We exercise this mandate alongside the Equality Commission for Northern Ireland, and through the Joint Committee of representatives of the Human Rights Commissions of NI and Ireland.

- 1.8 We are also designated, along with the Equality Commission for NI and the other UK National Human Rights Institutions, under Article 33(2) of the UN Convention on the Rights of Disabled Persons, as the independent mechanism tasked with promoting, protecting and monitoring implementation of the Convention in Northern Ireland.
- 1.9 We work in partnership with the Irish Human Rights and Equality Commission as mandated through the Joint Committee, created in accordance with the Belfast (Good Friday) Agreement.
- 1.10 We also regularly engage with the other National Human Rights Institutions of the UK, the Equality and Human Rights Commission and the Scottish Human Rights Commission, on issues of common interest, and through our engagement with international human rights mechanisms.

## **Budget**

- 1.11 We are a non-departmental public body. We are funded by the United Kingdom (UK) Government but are an independent public body that operates in full accordance with the UN Paris Principles. We receive our grant-in-aid from the UK Government through the NI Office, reporting to the UK Parliament through the Secretary of State for NI.
- 1.12 Our core resource budget for the financial year 2019/2020 was £1,142,500 (plus additional funding of £374,563 in-year); in 2020/2021 was £1,169,000 (plus £225,253 for the Dedicated Mechanism); and in 2021/2022 was £1,678,887 (plus £838,000 for the Dedicated Mechanism). A proportion of our budget, as indicated in parenthesis for 2020/21 and 2021/22, is ringfenced for our work on the Dedicated Mechanism.

- 1.13 For some time, our monetary resources have been insufficient for the purposes of fulfilling our core statutory mandate. Most recently, this has been recognised by the UN Sub Committee on Accreditation, which has now deferred our reaccreditation application on two occasions, in October 2022 and March 2023, due to ongoing concerns about the adequacy of our funding and ability to fulfil the core mandate of a National Human Rights Institution [DR/130 - INQ000184739].

### **Governance and staffing**

- 1.14 We have seven Commissioners – a full time Chief Commissioner (Grade 5, SCS) and six part-time Commissioners. The Chief Commissioner (Grade 5, SCS) and Commissioners are appointed for a period of five years and three years respectively, by the Secretary of State for NI. Appointments comply with the Code of Practice of the Office of the Commissioner on Public Appointments and the Cabinet Code of Practice of Corporate Governance in central government departments. As far as practicable, the Commissioners, as a group, are representative of the community in NI.

- 1.15 Our current Commissioners are as follows:

- Alyson Kilpatrick BL – Chief Commissioner (Grade 5, SCS) (appointed 1 September 2021);
- Helen Henderson (appointed 1 September 2020);
- Jonathan Kearney (appointed 1 September 2020);
- Justin Kouame (appointed 1 September 2022);
- David Lavery CB (appointed 1 September 2020);
- Eddie Rooney (appointed 1 September 2020); and
- Stephen White OBE (appointed 1 September 2020).

- 1.16 Prior to September 2021, and during the specified period for the Inquiry, our former Chief Commissioner (Grade 5, SCS) was Les Allamby. Mr Allamby took up this post on 1 September 2014 and completed his term on 31 August 2021.

- 1.17 Our current Senior Management Team consists of the following:

- The Chief Executive (Grade 5, SCS), who has responsibility for our operational management. The Chief Executive is also the Accounting Officer.

- The Director (Communications, Information and Education, Public and Political Affairs) (Grade 6), who is responsible for leading our role to promote understanding and awareness of human rights in Northern Ireland, including communications, information services and educational activities.
- The Director (Finance, Personnel and Corporate Affairs) (Grade 7), who is responsible for leading the Commission's financial, personnel and corporate affairs functions.
- The Director (Research and Investigations, and Advice to Government) (Grade 6), who is responsible for overseeing the development of statutory advice to the UK Government, UK Parliament, NI Executive and NI Assembly. The Director oversees our engagement in the international and regional human rights system. In addition, the Director is responsible for any statutory investigations conducted by the Commission. During the specified period for the Inquiry, this role also encompassed our legal function. The current Director took up post in November 2022.
- The Director (Legal) (Grade 6) has responsibility for the management of our legal function, including the exercise of legal powers through strategic litigation and the provision of legal advice to individuals, NI and UK Government and other public bodies. This post was originally merged with the research, investigations and advice to government function and the legal role was formally separated in November 2022.
- The Director (Human Rights after EU Withdrawal) (Grade 6) manages delivery of our statutory oversight role relating to the UK Government's commitment in Article 2 of the Windsor Framework, to ensure no diminution of certain rights, safeguards and equality of opportunity protections in Northern Ireland, as a result of Brexit.

1.18 Our current staff structure is set out in Annex 1. Between January 2020 and February 2022, the organisation experienced several changes. From January 2020 we have experienced particular challenges with respect to our staff complement, due to the number of vacancies we were experiencing, the adequacy of our budget to recruit to

vacant posts and grading concerns that have affected retention. This had a real impact on the ability of us to respond to the unanticipated and unprecedented challenges posed by the advent of the COVID-19 pandemic.

- 1.19 In terms of our policy team, this should have included as a minimum, in addition to the Director (Legal, Research and Investigations, and Advice to Government), one Senior Policy and Research Officer, two Policy and Research Officers and two Policy and Research Assistants. Between January 2020 and March 2020, the Senior Policy and Research Officer, one Policy and Research Officer and one Policy and Research Assistant posts were vacant. In March 2020, the vacant Policy and Research Assistant post was filled. In September 2020, the two Policy and Research Assistants were promoted to Policy and Research Officers, removing the research assistant posts. However, between September and November 2020, two of the now three Policy and Research Officer posts became vacant. This reduced the policy team to the Director (Legal, Research and Investigations, and Advice to Government) (Grade 6) and one Policy Officer (SO).
- 1.20 Additionally, the legal function was also impacted due to maternity leave of the Senior Legal and Research Officer commencing in November 2019 and the resignation of our Legal and Research Officer in December 2019. This reduced the legal team to the Director (Legal, Research and Investigations, and Advice to Government) (Grade 6) and one Paralegal (EOII). Due to budgetary constraints, it was not possible to recruit for a new in-house solicitor and the then Chief Commissioner (Grade 5, SCS) took over responsibility for ongoing litigation, until January 2021.
- 1.21 As a direct consequence, the provision of human rights advice to members of the public was, with approval from the Board of Commissioners, suspended from our full operations and operating at reduced capacity from January to August 2020. As the staffing situation continued with no resolution in sight, the advice clinic was suspended completely in August 2020, following a decision of the Board [DR/60 – INQ000184787]. Requests received by us for advice were still signposted to relevant agencies during this time. The suspension of the advice clinic was kept under review by the Board [DR/74 – INQ000184801; DR/75 – INQ000184802; DR/79 – INQ000184806; DR/80 – INQ000184807; DR/101 – INQ000184707; DR/102 – INQ000184708]. The advice clinic became fully operational again in March 2021, following the recruitment of legal staff [DR/79 – INQ000184806].

- 1.22 The reason for outlining these internal structural and staffing issues is to demonstrate the significant pressure that we were under, which was exacerbated not only by the effect of COVID-19 on staff's day-to-day roles, but also in terms of the spike in volume of work that fell within our mandate during the pandemic. The staff that were on pay roll during this period worked long hours, often far exceeding their contracted hours with very little annual leave taken and were delivering a volume of work at pace that was well beyond what could have been expected of the number of staff members involved. However, much of this work was proactive with very little advice sought from us at the initiative of the UK Government or NI devolved institutions.

### **External groups**

- 1.23 We are a fee-paying member of the:
- European National Human Rights Institutions (ENNHRI); and
  - Global Alliance of National Human Rights Institutions (GANHRI).
- 1.24 We are a member of a range of international working groups, such as the:
- Commonwealth National Human Rights Institutions Forum;
  - ENNHRI Artificial Intelligence Working Group;
  - ENNHRI Business and Human Rights Working Group;
  - ENNHRI Climate Working Group;
  - ENNHRI Communications Working Group;
  - ENNHRI ESCR Working Group;
  - ENNHRI Legal Working Group;
  - ENNHRI Older Persons Working Group; and
  - ENNHRI UN CRPD Working Group.
- 1.25 We have observer status on a range of governmental groups such as:
- DE, Restraint & Seclusion Reference Group;
  - DfC Gender Equality Strategy Co-Design Group;
  - DfC Disability Strategy Co-Design Group;
  - DfC Irish Language Strategy Co-Design Group;
  - DfC LGBTQI+ Strategy Co-Design Group;
  - DfC Ulster Scots Strategy Co-Design Group;
  - DH, Regional Care & Justice Programme Stakeholder Reference Group;

- Education Authority, Joint Consultative Forum;
- Health and Social Care Trusts, Joint Regional Equality, Human Rights and Good Relations Forum;
- NIO Non-Jury Trial Working Group;
- NIHE Travellers' Accommodation Forum;
- TEO Ex Prisoner Working Group;
- TEO Racial Equality Sub Group;
- TEO Thematic Roma Sub Group; and
- TEO Thematic Travellers Sub Group.

1.26 We also act as Secretariat to the:

- IMNI Disability Forum, with the Equality Commission for NI;
- NI Business and Human Rights Forum;
- NI Sport and Human Rights Forum; and
- NI Faith Communities Forum, with the Equality Commission for NI.

## **2.0 Summary of the NIHRC's work**

2.1 Between January 2020 and February 2022, the NI Executive and UK Government was dealing with an unprecedented public health challenge that led to difficult decisions being made in real time with limited contemporary experience to draw on. Unparalleled powers and sweeping measures, unheard of in peace times, were taken. Long-cherished freedoms were curtailed including seeing families and friends, moving freely, opening and running businesses, attending workplaces and engaging in social and civic activities. Many of these rights can be restricted during a public emergency, such as the pandemic. However, the question is whether the restrictions were necessary, proportionate, had a legitimate aim and were only used for as long as required to meet that aim. Also, that the restrictions were no more than required by the circumstances of the situation. Some issues that we are aware of include visitation in health and social care settings, how powers were being applied to public protests, the lack of protection afforded to people in care homes particularly during the initial months of the pandemic and the significant delays in providing appropriate personal protective equipment to everyone that needed it. It was often those that were most at risk or from protected groups that felt the consequences of any shortcomings most and it is our view that this was not always taken into account in the NI Executive and UK Government's decision making.



- 2.2 The week of 16 March 2020 was the first time when it became apparent that COVID-19 was going to significantly impact our work in the short-term and have a knock-on effect in the long-term. We were one of the first statutory bodies to put health and safety measures in place and to enforce working from home for all staff, which officially commenced on 18 March 2020 [DR/1 – INQ000184696]. At a meeting with the then Deputy Director of the NI Office to discuss Covid secure offices, on 21 September 2020, it was confirmed that our staff were designated as Essential/Key Workers. We did not permit staff to return to the office until August 2021, whereby a hybrid working model was initiated.
- 2.3 We were not granted any additional role or access to government in respect of the design or implementation of COVID-19 measures, relying on our existing statutory duties to help guide the NI Executive and UK Government on a human rights compliant approach to their COVID-19 measures. While we do question whether we would have had adequate resource to fulfil such a role, in particular regarding the pace at which measure were introduced, such dedicated human rights guidance would have assisted in preventing or remedying any of the shortcomings that did result from the NI Executive or UK Government's response to COVID-19. Under our general competency, under section 69(1) of the Northern Ireland Act 1998, we are empowered to advise the UK Parliament in respect of the adequacy and effectiveness of law in NI. We are also required to provide advice to the Secretary of State for NI and the NI Executive Committee on legislative or other measures which ought to be taken to protect human rights, on request [s.69(3), NI Act 1998]. Pursuant to sections 69(3) and 69(4), we can also offer such advice, including to the Secretary of State, Executive or the NI Assembly in respect of a Bill's compatibility with human rights at such times as we feel appropriate.
- 2.4 Between January 2020 and March 2020, we were not approached by the UK Parliament or NI devolved institutions for advice on our proposed COVID-19 measures. The NI Assembly Speaker is required to provide us with the copy of NI Assembly Bills as a form of notification. However, there is no formal or statutory requirement for the NI Assembly or Government Departments to consult with us in respect of human rights compliance, or in respect of any Human Rights Impact Assessment that is conducted regarding new policy or legislation. We are empowered, under section 69(1), to keep under review the adequacy and effectiveness of law and practice and may issue advice. Advanced copies, or

knowledge of the detail of proposed law and policies are helpful to enable us to develop such advice of our own initiative. Such advanced copies were not shared with us between January 2020 and February 2022.

- 2.5 The first piece of work that we produced in relation to COVID-19 was a 'COVID-19 Human Rights Statement' [DR/2 – INQ00018497], which was published on 25 March 2020. This statement was published of our own initiative, as was much of our COVID-19 related work. This stressed the importance of following Government guidance in order to protect the fundamental human rights to life and health. We further recognised the unprecedented emergency powers being used and our advisory role to review measures against international human rights standards.
- 2.6 On occasion we were approached by the NI devolved institutions for advice on specific COVID-19 measures specific to NI. Often, these requests were informal in nature, or initiated after the introduction or commencement of the relevant Regulations. We also had opportunities from UK Westminster select Committees to provide written evidence on the UK Government's response to COVID-19, with the focus on decisions already taken. The lack of consultation with us or the broader public by the UK Government and NI devolved institutions in respect of restrictions, particularly in advance of a decision being taken, was a continuing source of concern. A chronological list of COVID-19 related reports, letters and evidence issued or received by us is attached at Annex 2.
- 2.7 We also engaged with Ministers, elected representatives and civil servants in NI, often at our initiative. A chronological list of meetings attended by Commissioners and/or senior staff with Ministers, elected representatives and civil servants in Northern Ireland is attached at Annex 3.
- 2.8 While we recognised that the nature of the pandemic required the adoption of extraordinary measures in order to safeguard the health and wellbeing of the population, we were often concerned in respect at the speed of the passage of such legislation under emergency provisions, the arrangements for monitoring any negative impact and the continuing necessity of interferences with human rights. For both the UK Government and devolved institutions in NI, the engagement of stakeholders and relevant agencies, such as us, was limited as was detailed communication of decisions to the general public. Examples to illustrate this point are provided throughout this section.

- 2.9 I set out below a summary of the COVID-19 related advice and communications that we undertook, in the specified period between January 2020 and February 2022. The information provided in this statement, and relevant exhibits may be limited by the policies that we have in place for GDPR compliance. For example, our data retention schedule requires that documentation relating to legal casework files are disposed of one year following closure [DR/131 – INQ000184740]. In addition, our IT system only retains emails for 365 days and so we do not have complete access to all email correspondence in the specified period.

### **Department of Education**

- 2.10 Between April 2020 and August 2020, we were inconsistently notified by the Department of Education of publication of the Coronavirus Act 2020 Temporary Modification of Duties Notices that applied to education in NI [DR/9 – INQ000184704, DR/10 – INQ000184705, DR/12 – INQ000184727, DR/13 – INQ000184738, DR/27 – INQ000184754, DR/28 – INQ000184755, DR/49 - INQ000184776, DR/50 - INQ000184777]. These notifications were sent for the purpose of notifying us of the legal changes and were issued at least five days after these changes came into operation. Thus, we were not provided with an advance copy to provide advice.
- 2.11 On 6 November 2020, we met with the Department of Education for the purposes of discussing new Special Educational Needs Regulations and Code of Practice, during which the notices were touched on, but they were not discussed in detail. We made a written submission to the Expert Panel on Educational Underachievement, which we used as an opportunity to include our concerns about the effect that COVID-19 measures were having on education with a particular focus on academic selection, school closures, home schooling and self-isolation [DR/68 – INQ000184795]. This included highlighting key human rights standards to take into consideration, particularly in relation to ensuring restrictive measures are proportionate. Our former Chief Commissioner (Grade 5, SCS) also provided further oral evidence to the Expert Panel on 3 December 2020, which reflected what was set out in our written submission.
- 2.12 In December 2020, we provided advice to the UN Committee on the Rights of the Child in response to its call for evidence to inform its monitoring of the UK Government's compliance with the UN Convention on the Rights of the Child [DR/77

- INQ000184804]. This submission included reference to COVID-19 related issues, including the risk of exacerbating known educational inequalities, the digital divide and concerns relating to mental health of children. It was shared with the Department of Education as the coordinating government department for NI.

### **Department of Communities**

- 2.13 Between April 2020 and June 2021, there was some dialogue with the Department of Communities on COVID-19 measures. We initiated this dialogue with a letter on 15 April 2020 raising concerns on COVID-19 measures and no recourse to public funds [DR/11 - INQ000184716]. The Department of Communities responded with a letter on 1 May 2020, which provided information, but did not include any request for advice from us [DR/21 – INQ000184748].
- 2.14 In February 2021, we responded to the Department of Communities' public consultation on its Equality Impact Assessment of the Draft Budget 2021-2022, which raised COVID-19 related issues specifically highlighting the economic impact and the differential impact of measures on women, carers and minority ethnic groups [DR/78 - INQ000184805].

### **Department of Health**

- 2.15 Between March 2020 and February 2021, we initiated most of the correspondence with the Department of Health on COVID-19 related matters. We made first contact with the Department of Health on COVID-19 related issues with a letter on 31 March 2020, which raised concerns regarding the effect of COVID-19 restrictions on access to reproductive healthcare services in NI [DR/3 – INQ000184698].
- 2.16 On 11 May 2020, we wrote a joint letter with the Commissioner for Older People for NI to the Department of Health regarding the role and practice of RQIA in light of COVID-19 measures [DR/26 – INQ000184753]. The Department of Health responded on 19 May 2020 providing information but did not request further advice [DR/31 - INQ000184758].
- 2.17 On 9 June 2020, the Department of Health initiated correspondence identifying us as a target stakeholder for initial views on rebuilding Health and Social Care services, which included consideration of COVID-19 [DR/37 - INQ000184764]. The response time was restrictively short, but we issued a letter of response as required on 16 June

2020 with our advice particularly focused on ensuring the Management Board was adopting a human rights based approach [DR/38 – INQ000184765]. Our former Chief Commissioner (Grade 5, SCS) had one meeting with the then Minister of Health, Robin Swann MLA, on 9 July 2020, during which COVID-19 measures were briefly discussed in the context of termination of pregnancy [DR/42 – INQ000184769] and the COVID-19 tracing app [DR/43 – INQ000184770] (see also paragraph 2.19 below).

2.18 On 15 May 2020, our former Chief Commissioner (Grade 5, SCS) attended the Public Health Agency's Contact Tracing App Steering Group for the purposes of providing a presentation on human rights considerations for the app, with a particular focus on the need for privacy safeguards. Our former Chief Commissioner (Grade 5, SCS) was subsequently invited by the Belfast Telegraph and CAJ to write commentary articles on rights and privacy considerations that should be taken into account in the development of the app. These were published on 27 May 2020 and in June 2020 respectively [DR/34 – INQ000184761; DR/35 - INQ000184762]. A meeting between our Director (Legal, Research and Investigations, and Advice to Government) (Grade 6) and Policy Officer (SO) and the Department of Health followed on 27 June 2020 for the purpose of discussing the app [DR/40 - INQ000184767].

2.19 In early July, the discussions with us up to this point were portrayed in the media by the Department of Health as legal advice from us. We wrote to the then Minister of Health, Robin Swann MLA, on 6 July 2020 clarifying that this was not the case [DR/41 – INQ000184768]. We also raised in the 6 July letter our concerns that the fundamental human rights issues with the app, particularly in relation to safeguarding privacy, raised during our discussions to that point had not been addressed. The Department of Health responded through the Chief Digital Information Officer, Dan West, in a letter on 10 July 2020 [DR/43 - INQ000184770; DR/44 – INQ000184771], which commenced a period of fruitful dialogue with the Department of Health regarding our advice on the app. However, the timing of the dialogue at times was not conducive to meaningful engagement. For example, we received a copy of the draft Data Protection Impact Assessment less than one working day before the app was due to go live on 31 July 2020 [DR/45 - INQ000184772; DR/46 - INQ000184773]. Nevertheless, we did publicly acknowledge that we found the engagement on the app meaningful overall and commend the Department of Health on the pace at which it was able to deliver the app [DR/47 - INQ000184774].

- 2.20 Following this engagement, we were again requested by Department of Health officials to join a stakeholder group in respect of its ongoing work on a digital solution to the issue of vaccination certification. The initial meeting of the group on 18 March 2021, attended by the Director (Legal, Research and Investigations, and Advice to Government) (Grade 6), took place in a context where there was no policy position at the NI Executive on the use of domestic certification [DR/83 - INQ000184809]. Further engagement with the relevant Department of Health officials responsible for developing the policy position was requested by us. A final meeting of the group took place on 25 October 2021, in which the details of the operation of the app were presented, ahead of the planned launch on 1 November 2021 [DR/109 - INQ000184715]. No formal written advice was sought by the Department of Health.
- 2.21 On 27 October 2020, the Department of Health notified us of the Children's Social Care (Coronavirus) (Temporary Modification of Children's Social Care) Regulations (Northern Ireland) 2020 [DR/67 - INQ000184794]. No formal advice from us was sought by the Department of Health, however we did provide ongoing advice to the Committee of Health on these Regulations, as set out from paragraph 2.39 below.
- 2.22 On 6 May 2021, the Department of Health wrote to us providing a copy of the Draft Human Rights Impact Assessment for the Health Protection (Coronavirus, International Travel) Regulations (Northern Ireland) 2021 [DR/89 – INQ000184815, DR/90- INQ000184816]. The request for our views came after the Regulations had been laid, negating the utility of our scrutiny and recommendations. Despite the timing, we responded with our views on the Regulations on 2 June 2021 [DR/96 – INQ000184822], given the importance of Human Rights Impact Assessments for future proposals by the Department. We highlighted the potential impact on the rights of children and individuals with specific needs, vulnerabilities or disabilities, advising that the Human Rights Impact Assessment should detail the potentially detrimental impact of isolation on particular groups.
- 2.23 On 26 November 2021, we wrote to the Minister for Health in respect of concerns about the decision of the NI Executive to introduce mandatory Covid Status Certification for the hospitality sector [DR/110 - INQ000184717]. At this point the Regulations were unpublished and due to come into effect from 29 November 2021, and we raised our concerns about the lack of consultation. The Department of Health wrote to us, on 1 December 2021, providing a copy the Draft Human Rights Impact

Assessment for the Health Protection (Coronavirus, Restrictions) Regulations (Northern Ireland) 2021 (Amendment No 19) Regulations (Northern Ireland) 2021 [DR/112 - INQ000184719]. This was received after the Regulations came into effect. We provided our views in writing on 15 December 2021 [DR/114 - INQ000184721] identifying the need for further scrutiny in respect of the impact of the Regulations on vulnerable groups, as protected by Article 14 of the European Convention on Human Rights, including those experiencing homelessness, disability as well as refugees and migrants.

2.24 Between January 2020 and February 2022, the majority of our engagement with the Department of Health was focused on our monitoring project on reproductive healthcare provision in NI [DR/79 - INQ000184806]. This involved discussion of COVID-19 measures and their effect on access to reproductive healthcare services in NI with representatives for the purposes of information gathering. These meetings included:

- Meeting with Department of Health on Abortion Regulations on 31 March 2020;
- Meeting with Northern Trust on 14 August 2020 [DR/54 – INQ000184781];
- Meeting with Meeting with PHA [DR/63 - INQ000184790], Royal College of Midwives, Western Trust, and BPAS on 25 August 2020;
- Meeting with Royal College of Obstetricians and Gynaecologists on 26 August 2020;
- Meeting with Belfast Trust on 28 August 2020 [DR/64 – INQ000184791];
- Roundtable with civil society on 2 September 2020;
- Meeting with Southern Trust on 7 September 2020;
- Meeting with Royal College of Nurses on 9 September 2020;
- Meeting with Department of Health on 29 September 2020 [DR/66 - INQ000184793];
- Meetings with Brook and Women Help Women on 30 September 2020;
- Meeting with Women on the Web on 14 October 2020;
- Meeting with Cara Sanquest on 28 October 2020; and
- Meeting with Pharmaceutical Society NI on 5 November 2020.

2.25 On 23 July 2021, the former Chief Commissioner wrote to the Minister for Health in relation to the restrictions around visitation to care homes [DR/99 - INQ000184825].

This was in response to ongoing concerns raised by members of the public to us. No response was received during the specified period. We have not received an explanation from the Department of Health or the former Minister of Health as to why this correspondence has not been responded to. We continue to follow up on this issue with the Permanent Secretary of the Department [DR/124 - INQ000184732] and await a response.

### **Department of Justice**

- 2.26 Between January 2020 and February 2022, our former Chief Commissioner (Grade 5, SCS) and subsequently our current Chief Commissioner (Grade 5, SCS), met on a biannual basis with the then Minister of Justice, Naomi Long MLA. COVID-19 was briefly discussed in the meeting that took place on 22 May 2020, which included the Director (Legal, Research and Investigations, and Advice to Government) (Grade 6) and a Policy Officer (SO) [DR/32 – INQ000184759].
- 2.27 We were copied into correspondence between the Department of Justice and Committee for Justice, on 9 January 2022, in respect of its proposed SL1 The Coronavirus Act 2020 (Extension of Live Links in Legal Proceedings) Order (Northern Ireland) 2022 [DR/116 – INQ00018473; DR/117 - INQ000184724]. This was provided for information and no advice was sought from us by either the Department or the Committee for Justice. I understand that this may have been the only SL1 in respect of COVID-19 measures received by us from the Department of Justice during the specified period.

### **The Department of Economy**

- 2.28 On 30 March 2021, we wrote to the Minister for Economy in respect of the waiting times for cases to be heard at the Office of the Industrial and Fair Employment Tribunals [DR/84 - INQ000184810] following concerns raised by legal representatives. We highlighted the right to a fair and public hearing in a reasonable time and the impact of delays on vulnerable claimants, such as those groups disproportionately impacted by COVID-19 related job losses such as women, those with disabilities and from minority ethnic groups. We received a response on 9 April 2021 [DR/85 – INQ000184811] highlighting the reopening of the building and use of video conferencing equipment.



## **The Executive Office**

- 2.29 On 24 June 2021, the TEO Director of COVID Recovery wrote to us seeking our views on the Draft Consolidated COVID Recovery Plan [DR/97 - INQ000184823]. We understood that this was a targeted, rather than public consultation and were asked not to share the draft outside the organisation. Consultees were given eight days to provide a written response. We responded in writing with our views on 1 July 2021 [DR/98 - INQ000184824] highlighting our concerns regarding the adequacy of the consultation period in enabling meaningful stakeholder participation. We further emphasised the need to limit the negative impact of emergency measures taken as a consequence of the COVID-19 pandemic, ensuring that their use is monitored and that restrictions are kept under review.
- 2.30 During the course of the pandemic, we only met with the First Minister and the deputy First Minister together on one occasion. The former Chief Commissioner (Grade 5, SCS) met with Arlene Foster and Michelle O'Neill, on 3 November 2021, in respect of the general work of the NIHRC.

## **NI Parties**

- 2.31 In August 2020, May 2021 and September 2021, we contacted the leaders of the five main parties in NI requesting a meeting to discuss a range of issues, including COVID-19 [DR/52 - INQ000184779; DR/53 – INQ000184780; DR/55 - INQ000184782; DR/56 - INQ000184783; DR/91 - INQ000184817; DR/92 – INQ000184818; DR/93 - INQ000184819; DR/94 – INQ000184820; DR/95 - INQ000184821; DR/103 – INQ000184709; DR/104 - INQ000184710; DR/105 - INQ000184711; DR/106 – INQ000184712; DR/107 - INQ000184713].
- 2.32 Subsequently several meetings were set up, which included:
- Meeting between the former Chief Commissioner (Grade 5, SCS) and Carla Lockhart MP on 26 August 2020;
  - Meeting between the former Chief Commissioner (Grade 5, SCS) and Chris Hazzard MP on 2 September 2020;
  - Meeting between the former Chief Commissioner (Grade 5, SCS) and Stephen Farry MP on 8 September 2020;
  - Meeting between the former Chief Commissioner (Grade 5, SCS) and Steve Aiken MLA on 5 November 2020;

- Meeting between the former Chief Commissioner (Grade 5, SCS) and First Minister, Arlene Foster MLA and Deputy First Minister, Michelle O'Neill MLA on 3 November 2020;
- Meeting between the former Chief Commissioner (Grade 5, SCS), Chief Executive (Grade 5, SCS) and Doug Beattie MLA on 4 February 2021;
- Meeting between the former Chief Commissioner, Naomi Long MLA, Stephen Farry MP and Paula Bradshaw MLA on 4 June 2021;
- Meeting between the former Chief Commissioner (Grade 5, SCS), Chief Executive (Grade 5, SCS) and Doug Beattie on 19 July 2021;
- Meeting between the former Chief Commissioner (Grade 5, SCS), Chief Executive (Grade 5, SCS) and the Alliance Party on 17 September 2021;
- Meeting between the former Chief Commissioner (Grade 5, SCS) and Jeffery Donaldson MP on 27 September 2021;
- Meeting between the former Chief Commissioner (Grade 5, SCS) and Colm Eastwood MP on 11 October 2021;
- Meeting between the former Chief Commissioner (Grade 5, SCS), Chief Executive (Grade 5, SCS) and Doug Beattie MLA on 18 January 2022; and
- Meeting between the former Chief Commissioner (Grade 5, SCS), Chief Executive (Grade 5, SCS) and Alliance Party on 21 January 2022.

2.33 However, the handwritten notes that we have been able to obtain for these meetings indicate that despite our best intentions, given limited meeting time available, the focus was on other issues such as the legacy of the conflict and Brexit.

2.34 We also provided COVID-19 related advice to parties or independent MLAs at their request. In August 2020, we provided advice to Sinn Féin on the human rights obligations relevant to grading pupils during COVID-19, which provided an overview of the right to education and commentary on COVID-19 measures by UN human rights experts [DR/57 - INQ000184784]. We also provided advice to Claire Sugden MLA on mandatory vaccinations, in September 2020, which provided an overview of relevant European Court of Human Rights a caselaw and any known precedent [DR/65 - INQ000184792].

### **Speakers' Office**

2.35 Under the Standing Orders of the NI Assembly, and section 13(4)(a) of the NI Act 1998, we are to be provided with a copy of each Bill that is introduced into the NI

Assembly. Between January 2020 and February 2022, we received notifications from the Speakers' Office in relation to the following Bills:

- Pension Schemes Bill (23 June 2020);
- Criminal Justice (Committal Reform) Bill (3 November 2020);
- Financial Reporting (Departments and Public Bodies) Bill (1 June 2021);
- Integrated Education Bill (1 June 2021);
- Parental Bereavement (Leave and Pay) Bill (1 June 2021);
- Climate Change (No.2) Bill (6 June 2021);
- Justice (Sexual Offences & Trafficking Victims) Bill (6 June 2021);
- Political Appointments Bill (6 June 2021);
- Budget (No. 2) Bill (7 June 2021);
- Defamation Bill (8 June 2021);
- Charities Bill (22 June 2021);
- Autism (Amendment) Bill (6 July 2021);
- Organ and Tissue Donation (Deemed Consent) Bill (6 July 2021);
- Private Tenancies Bill (6 July 2021);
- Small Scale Green Energy Bill (6 July 2021);
- Adoption and Children Bill (21 September 2021);
- Period Products (Free Provision) Bill (11 October 2021);
- Hospital Parking Charges Bill (18 October 2021);
- Trade Union and Labour Relations (Amendment) Bill (1 December 2021);
- Fair Employment (School Teachers) Bill (19 January 2022);
- Employment (Zero Hours Workers and Banded Weekly Working Hours) Bill (2 February 2022);
- Motor Vehicles (Compulsory Insurance) Bill (7 February 2022); and
- Preservation of Documents (Historical Institutions) Bill (9 March 2022).

2.36 Specific to COVID-19, on 21 April 2020, we received notification from the Speakers' Office of the Private Tenancies (Coronavirus Modifications) Bill 2020 [DR/14 – INQ000184741; DR/15 – INQ000184722; DR/16 – INQ000184743]. There was no formal request for advice regarding this proposed legislation. However, we provided a response to the Speakers' Office confirming that we had no human rights concerns with the Bill given its purpose and the safeguards contained within [DR17 – INQ000184744]. Drawing from this legislation, we also provided advice calling for all evictions to be prohibited during the COVID-19 crisis and for homeless individuals

with adequate accommodation that meets their needs. This advice was published in our annual statements and advice to the House of Commons and House of Lords Joint Committee on Human Rights [DR/18 - INQ000184745; DR/19 - INQ000184746; DR/76 - INQ000184803; DR/113 – INQ000184720, DR/125 – INQ000184733].

### **NI Assembly Committee of Health**

- 2.37 Our advice was specifically sought by the NI Assembly Committee of Health regarding COVID-19 measures on two occasions. The Committee of Health was the only NI Assembly Committee to specifically seek our advice on COVID-related issues between January 2020 and February 2022.
- 2.38 On 4 May 2020, the Committee of Health wrote to us requesting our views on the then Draft Children's Social Care (Coronavirus) Regulations (NI) 2020 [DR/22 – INQ000184749; DR/23 – INQ000184750; DR/24 – INQ000184751]. We published a briefing setting out recommendations we suggested regarding the then Draft Children's Social Care (Coronavirus) Regulations (NI) 2020 in May 2020, which we provided to the Committee of Health, which considered the approach in other jurisdictions, monitoring and the effect of measures in specific scenarios such as foster care and secure accommodation [DR/30 – INQ000184757]. The Committee of Health sought additional advice specifically on the Department of Health's intention to extend of the Children's Social Care (Coronavirus) (Temporary Modification of Children's Social Care) Regulations (NI) 2020 on 6 November 2020 [DR/69 – INQ000184796]. We provided our written response on 9 November 2020, advising that the measures taken must be proportionate [DR/70 – INQ000184797]. On 23 November 2020, the Committee of Health responded stating its thanks for our advice and confirming that it would not object to the regulations being extended [DR/72 - INQ000184799]. On 22 April 2021, we also responded to a Department of Health public consultation on extending these regulations reiterating the importance of effective monitoring, best interests of the child, respect for privacy and independence of inspections [DR/86 - INQ000184812].
- 2.39 On 26 May 2020, the Committee of Health wrote to us seeking advice on COVID-19 testing in care homes [DR/33 - INQ000184760]. We provided our response in the form of written advice on 23 June 2020, which considered protecting life, invasive procedures and data protection from a human rights perspective [DR/39 – INQ000184766]. We publicly raised concerns regarding the treatment of older

persons, including in care homes from April 2020 through to February 2022 such as in relation to lack of testing, lack of personal protective equipment, the use of triage decision making and restrictions on visitors [DR/18- INQ000184745; DR/19 - INQ000184746; DR/25 - INQ000184752; DR/26 - INQ000184753; DR/33 – INQ000184760; DR/39 – INQ000184766; DR/48 - INQ000184775; ; DR/76 – INQ000184803; DR/113 - INQ000184720; DR/125 - INQ000184733]. This work was both through our own initiative and through joint working with the Commissioner for Older People for NI.

### **Westminster Government**

- 2.40 Our statutory mandate refers to the promotion and protection of human rights in NI. It also does specifically provide for the provision of advice to the Secretary of State for Northern Ireland pursuant to section 69(3). We routinely provide advice to the UK Government in respect of excepted matters in so far as they apply to NI. The Secretary of State for NI did not request any specific advice on COVID-19 related matters from the us between January 2020 and February 2022.
- 2.41 On 1 April 2020, we wrote to Secretary of State for the Home Department, Priti Patel MP, raising concerns regarding COVID-19, including the likelihood that those subject to the No Recourse to Public Funds condition will not be able to access further government support and the risk of exposure to the virus in places with high density populations such as immigration detention [DR/6 – INQ000184701]. On 4 June 2020, we received a response from the Secretary of State for the Home Department setting out the safety measures in place in immigration detention and the support options that are available to migrants that are subject to No Recourse to Public Funds [DR/36 – INQ000184763]. The Secretary of State for the Home Department did not seek any further dialogue with us on these matters.
- 2.42 On 28 April 2020, in response to a public call for evidence, we provided written evidence to the House of Commons and House of Lords Joint Committee on Human Rights' Inquiry into the human rights implications of the UK Government's response to COVID-19 [DR/18 – INQ000184745; DR/19 - INQ000184746]. This advice provided an overview of the restrictions in place and our recommendations regarding healthcare, deprivation of liberty, school closures, social security and protection, housing, data retention and movement restrictions. It also considered the specific effect on certain groups including those experiencing poverty, domestic violence,

migrants, children, carers and individuals living in remote rural areas. We indicated that we were available to provide oral evidence, but this was not requested by the Joint Committee.

- 2.43 In April 2020, in response to a public call for evidence, we provided written evidence to the House of Commons Women and Equalities Committee's Inquiry into the human rights implications of the UK Government's response to COVID-19 [DR/29 – INQ000184756]. While recognising that it was too early to fully understand the extent of the impact of COVID-19 and the governmental response, we identified a range of issues already emerging which impact on the most vulnerable groups in society, exacerbating existing inequalities. For example, the lack of access to reproductive healthcare and inadequate personal protective equipment affecting women; palliative care and do not resuscitate orders impacting older people; and the effects of the closure of schools on children. We made it clear to the Women and Equalities Committee that we were available to provide oral evidence, but this was not requested by the Committee.
- 2.44 In July 2020, in response to a public call for evidence, we jointly with the Equality Commission for NI (as the Independent Mechanism for Northern Ireland under Article 33(2) of the UN Convention on the Rights of Persons with Disabilities) provided written evidence to the House of Commons Women and Equalities Committee's Inquiry into the unequal impact of COVID-19 regarding disability and access to services [DR/48 – INQ000184775]. In this we highlighted, among other issues, concerns around accessibility of public health information, the prevalence of food poverty for both adults and children with disabilities, access to healthcare and education, and the effect on mental health.
- 2.45 On 24 August 2020, in response to a public call for evidence, we submitted written evidence to the House of Commons Treasury Committee's inquiry into tax after coronavirus, which highlighted the need for cumulative impact assessments and effective participation of individuals and groups affected by any changes [DR/59 – INQ000184786]. This submission is not available on the inquiry's website, which indicates that it was not accepted as evidence. We have not been notified why this is the case.
- 2.46 In April 2022, we also responded to the UK Government's consultation on the terms of reference of the present inquiry, in which we advised that the inquiry should adopt

a human rights based approach that considered the NI context, specific groups and the transition from emergency measures [DR/121 – INQ000184729].

### **Broader Advice**

- 2.47 We did not have an assigned role in specifically assessing or advising about the potential or actual impact of key decisions made by the NI Executive or UK Government, including on groups at greater risk or groups with protected characteristics. We did provide advice on COVID-19 related matters, often of our own initiative, by virtue of our broader statutory advisory functions set out in sections 69(1) and 69(3) of the Northern Ireland 1998, which have been referred to above.
- 2.48 However, between January 2020 and February 2022, we did publish bespoke research that considered the impact of key decisions made by the NI Executive and UK Government, particularly on groups at greater risk and groups with protected characteristics.
- 2.49 In April 2020, we issued a briefing on the Coronavirus Act of our own initiative which provided an overview of the initial powers and safeguards, with a particular focus on NI [DR/8 – INQ000184703]. In March 2021, we issued an updated briefing which provided an overview of the powers and safeguards in place at that point in time.
- 2.50 On 29 April 2020, we wrote to the Chair of the Policing Board, Doug Garrett, raising our concerns on the potential extension of the use of spit and bite guards by Police Service NI officers, which had originally been introduced as a COVID-19 safeguarding measure [DR/20 – INQ000184747]. On 30 May 2022, we further wrote to the Chief Constable of the Police Service NI, Simon Byrne QPM, raising similar concerns [DR/122 – INQ000184730]. On 5 August 2020, our former Chief Commissioner (Grade 5, SCS) and Director (Legal, Research and Investigations, and Advice to Government) (Grade 6) met with Inspector at the Operational and Tactical Development Protective Services Branch, Collette Pike, and other representatives of the Police Service NI to discuss our concerns and to talk through specifics of the draft operational guidance that was being developed. On 6 August 2020, we followed this meeting with a letter setting out an overview of the concerns or matters for further consideration that we raised during the meeting [DR/51 - INQ000184778]. On 23 November 2020, the Police Service NI wrote to us confirming that it intended to issue spit and bite guards more widely across police officers [DR/73 -

INQ000184800]. In May 2021, we made a written submission to the Police Service NI's consultation on its equality impact assessment on the use of spit and bite guards, which reiterated our concerns on extending the use of spit and bite guards beyond COVID-19 safeguarding [DR/88 - INQ000184814].

- 2.51 On 6 May 2020, our former Chief Commissioner (Grade 5, SCS), Director (Legal, Research and Investigations, and Advice to Government) (Grade 6) and Policy Officer (SO) met with the Legacy Branch of the Police Service NI to discuss the effect of COVID-19 on progressing legacy cases.
- 2.52 In September 2021, we published a tendered cumulative impact assessment on the impact of public spending changes in NI, which considered COVID-19 and the effect on specific groups [DR/108 - INQ000184714]. In November 2021, we published a tendered cumulative impact assessment on the impact of COVID-19 on public services in NI, which considers the effect on specific groups [DR/111 - INQ000184718]. These two pieces of research were commissioned with the intention of being a basis on which lessons can be learned. They have been shared with the Department for Communities and also published on our website.
- 2.53 In November 2020, the NI Sport and Human Rights Forum hosted a webinar on the impact of COVID-19 on children's access to sport [DR/71 - INQ000184798]. This included presentations from the NSPCC and Ulster University.
- 2.54 In December 2021, we published across our online platforms a guide on your human rights during the COVID-19 pandemic [DR/115 – INQ000184722]. This was prompted by an increase in public concern around mandatory vaccination and certification. The guide set out the basic framework of human rights during an emergency and provided additional detail in respect of the application of Article 8 of the European Convention on Human Rights to the issues of mandatory vaccination and certification of vaccine process.
- 2.55 On 24 August 2020, our former Chief Commissioner (Grade 5, SCS) wrote a blog post on responding to COVID-19 in a post-conflict society that was published by the European Network of National Human Rights Institutions [DR/58 - INQ000184785]. It is also worth re-referencing our work on the rights of older persons [DR/7- INQ000184702; DR/25- INQ000184752; DR/26 - INQ000184753]. Additionally, we highlighted rule of law changes in NI relevant to COVID-19 in the 2020, 2021 and



2022 editions of the European Network of National Human Rights Institutions' Rule of Law Report [DR/81 - INQ000184808; DR/118 - INQ000184725; DR/129 – INQ000184737]. This focused primarily on highlighting COVID-19 related legislative changes and confirming the retention or removal of restrictive COVID-19 measures for the given year.

- 2.56 We also tracked COVID-19 issues, as they remain relevant, on an annual basis through our Annual Statements 2020, 2021 and 2022 [DR/76 – INQ000184803; DR/113 – INQ000184720; DR/125 – INQ000184733].

### **Legal function**

- 2.57 We received 1,009 complaints over the specified period; however, we are not able to further disaggregate which were specifically due to COVID-19 measures. Due to staffing, our advice clinic was partially suspended between January 2020 and August 2020. It was fully suspended from September 2020 until March 2021 (see also paragraph 1.21), restricting the functioning of our advice function during this period. Therefore, during this time, individuals were signposted to other relevant organisations.

- 2.58 However, where possible and subject to capacity, we did support individuals through the provision of information and advice. We only retain details of our casework engagement for one year following closure of the case [DR/131 – INQ000184740], and so most information relating to specific individual cases would no longer be retained. As a summary, we dealt with queries related to:

- visiting relatives in care homes and hospitals;
- access to food parcels;
- impact of COVID-19 on standard medical treatments (eg cancer);
- alternative support for those affected by service closures due to COVID-19 (eg persons with learning disabilities);
- managed quarantine facilities;
- restrictions on right to protest;
- certification requirements;
- requirements to wear face masks; and
- human rights compliance of government's powers to introduce COVID-19 related restrictions [DR/62 - INQ000184789].

- 2.59 We did not exercise our legal powers, under section 69(5) of the Northern Ireland Act 1998, in respect of measures relating to the COVID-19 pandemic. The discharge of our legal powers was solely focused on our ongoing litigation, relating to legal challenges to pension discrimination and rehabilitation of offender's legislation, which were initiated prior to the commencement of the pandemic. These cases were subject to delays due to the restricted operation of the NI Courts and Tribunals Service.

### **Investigations function**

- 2.60 We did not exercise investigatory powers, under section 69 of the Northern Ireland Act 1998, in response to the COVID-19 pandemic or related restrictions. One of the main reasons for this was that we did not have the staff capacity or sufficient resources to conduct a statutory investigation of this nature on any human rights issue during the specified period for the Inquiry. We had not considered, in advance of the pandemic, how investigatory powers could be exercised in the circumstances of such an emergency.

### **Other UK National Human Rights Institutions**

- 2.61 We maintain a working relationship with the Equality and Human Rights Commission (EHRC) and Scottish Human Rights Commission (SHRC) in respect of issues of mutual concern. Such issues often relate to UK-wide areas of concern, often non-devolved issues, that cut across the mandate of all three organisations. As independent institutions, each National Human Rights Institution has its own specific statutory mandate which does not overlap with the others.
- 2.62 The working relationship with the EHRC and SHRC is relatively informal. The UK National Human Rights Institutions typically come together on an annual basis, together with the Irish Human Rights and Equality Commission (IHREC), at Chief Commissioner (Grade 5, SCS) and Chief Executive (Grade 5, SCS) level, to discuss issues of joint concern. Meetings between the three National Human Rights Institutions, and the Equality Commission NI, took place on 20 July 2020, 21 January 2021 and 20 January 2022. Individual organisational responses to issues relating to the COVID-19 were highlighted for the purposes of information sharing.
- 2.63 Furthermore, given the focus on devolved decisions and the speed at which responses to calls for evidence from UK Westminster Committees were required, we

did not engage with the UK Government jointly with the other UK National Human Rights Institutions in respect of the advice provided in response to COVID-19 restrictions.

- 2.64 In engaging with the international human rights mechanisms, the UK National Human Rights Institutions will cooperate in the provision of written reports and oral statements, the extent of this cooperation varies depending on the treaty involved – for example, the three UK National Human Rights Institutions and the Equality Commission for NI act as the UK’s Independent Mechanism for the UN Convention on the Rights of Persons with Disabilities and collaborate closely for this purpose. Yet for other treaty monitoring processes it is more of a cooperative process focused on sharing of information and confirming logistics with Committee Secretariats.
- 2.65 Between January 2020 and February 2022, the UN Treaty Bodies halted most of their activities for safety and logistical reasons due to the pandemic. In December 2020, our written evidence to the UN Committee on the Rights of the Child on the UK Government’s compliance with the UN Convention on the Rights of the Child included reference to COVID-19 related issues [DR/77 – INQ000184804]. The EHRC and SHRC also provided their own written evidence to the UN Committee, which raised a number of similar issues in respect of their specific jurisdictional mandates.
- 2.66 Between January 2020 and February 2022, our work as part of the UK’s Independent Mechanism for the UN Convention the Rights of Persons with Disabilities maintained a devolved focus. This was in agreement with the Equality and Human Rights Commission and the Scottish Human Rights Commission. Consequently, while we maintained open lines of communication for the purposes of information sharing, our collaboration for this purpose focused on working closely with the Equality Commission for NI only during this period.
- 2.67 Our main focus in this regard was undertaking research jointly with the Equality Commission for NI to establish the effect of COVID-19 measures on persons with disabilities in NI. This included holding COVID-19 specific roundtables with key stakeholders on 23 and 25 June 2020. It also involved discussing and receiving direction from the two Commissioners on each of our respective Boards that have been nominated as IMNI Board representatives on steps for us to take during our IMNI Joint Committee meetings on 6 May 2020 and 2 December 2020.

- 2.68 Consequently, we made a joint written submission to the House of Commons Women and Equalities Committee's Inquiry into the Unequal Impact of COVID-19 focused on Disability and Access to Services [DR/48 – INQ000184775]. We also highlighted the issues raised in our annual statements [DR/76 – INQ000184803; DR/113 – INQ000184720; DR/125 – INQ000184733]. The information we gathered was also useful for informing the broader COVID-19 advice and meetings that we have set out above.
- 2.69 As the UN Treaty Bodies have started to reinstate their monitoring of States, the delayed monitoring processes concerning the UK are gradually being worked through. In December 2022, we made written submissions to the UN Committee on the Rights of the Child as part of its final examination of sixth and seventh monitoring cycle of the UK [DR/126 - INQ000184734]. Our submission to the UN Committee on the Rights of the Child included reference to COVID-19 in the context of spit and bite guards, education, use of hotels as contingency accommodation, special educational needs, health and social care, and short breaks service. In December 2022, we also made written submissions in the first stage of the UN Committee on Economic, Social and Cultural Rights' new monitoring cycle of the UK [DR/127 – INQ000184735; DR/119 - INQ000184726]. Our submissions to the UN Committee on Economic, Social and Cultural Rights included reference to COVID-19 in the context of access to sports, carers, domestic abuse and violence, visitation in health and social care settings, and National Health Service waiting lists.

### **Internal Reflections**

- 2.70 In August 2020, an internal paper setting out our work on COVID-19 to date was presented to the Board at the Commission meeting [DR/62 - INQ000184789]. This provided a high-level overview of the domestic legal framework for COVID-19 restrictions and how these fit within the human rights framework. It provided a summary of our work on COVID-19 including publications, requests for assistance and advice to public authorities. It provided an overview of the human rights concerns raised by us in respect of health and social care, increased powers, education, childcare, social security and assistance, housing, food, independent and safe living, data and financial recovery. It also identified some areas where it would be beneficial for us to continue to monitor in relation to COVID-19. The Board reflected on this information and the lessons learned. The Board agreed that there was a need for

continued engagement around the rights issues engendered by COVID-19 [DR60 - INQ000184787]. This continued work is reflected above.

- 2.71 We have continuously called for an inquiry into the handling of the COVID-19 pandemic, with a focus on the NI Executive, in order that lessons can be learned which may inform the response to a future emergency [DR/98 - INQ000184824; DR/113 - INQ000184720; DR/121 - INQ000184729; DR/125- INQ000184733].
- 2.72 Our strategic plan for 2022-2025 commits our organisation to reviewing our response to the COVID-19 pandemic in order to learn lessons and improve our future performance [DR/119 - INQ000184726]. Prior to finalising the Strategic Plan, and to assist with our internal planning, we commissioned a report by Cognisense [DR/100 - INQ000184706]. One specific issue which was put to the survey participants related to priorities in respect of recovery from the COVID-19 pandemic.
- 2.73 However, due to the ongoing budgetary concerns set out at the beginning of this statement, our business plan 2022-23 [DR/120 – INQ000184728] and business plan 2023-24 (in draft) have focused primarily on core statutory duties.

### **3.0 Statement of Truth**

- 3.1 I declare that the contents within this statement are true and accurate to the best of my knowledge and belief.

**Name:** Dr David Russell

**Signature:**

**Personal Data**

**Date:** 07.07.2023

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NIHRC WITNESS STATEMENT: INDEX OF EXHIBITS

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DR/1 – INQ000184696	18 March 2020	Press Statement: Closure of NIHRC
DR/2 – INQ000184697	25 March 2020	COVID-19 Human Rights Statement
DR/3 – INQ000184698	31 March 2020	Letter from NIHRC to Minister of Health on Access to Reproductive Healthcare Services in NI
DR/4 – INQ000184699	30 March 2020	Minutes for the 222 <sup>nd</sup> Commission meeting on 30 March 2020
DR/5 – INQ000184700	20 March 2020	Paper for March Commission meeting: HRC222.05 Overview of Coronavirus Bill 2020
DR/6 – INQ000184701	1 April 2020	Letter from NIHRC to Secretary of State for the Home Department, Priti Patel, on COVID-19, No Recourse to Public Funds and Immigration Detention
DR/7- INQ000184702	6 April 2020	Article in Belfast Telegraph – We Will All Be Judged on How We Treat the Elderly and Vulnerable
DR/8 - INQ000184703	April 2020	Briefing: Coronavirus Act 2020
DR/9 – INQ000184704	April 2020	Letter from Department of Education to NIHRC giving notice of Coronavirus Act 2020 Temporary Modification of Duties (No 2) Notice (NI) 2020
DR/10 – INQ000184705	April 2020	Annex to letter from Department of Education to NIHRC giving notice of Coronavirus Act 2020 Temporary Modification of Duties (No 2) Notice (NI) 2020
DR/11 - INQ000184716	15 April 2020	Letter from NIHRC to Minister for Communities on COVID-19 and No Recourse to Public Funds
DR/12 – INQ000184727	15 April 2020	Letter from Department of Education to NIHRC giving notice of Coronavirus Act 2020 Temporary Modification of Duties (No 3) Notice (NI) 2020
DR/13 – INQ000184738	15 April 2020	Annex to letter from Department of Education to NIHRC giving notice of Coronavirus Act 2020 Temporary Modification of Duties (No 3) Notice (NI) 2020
DR/14 – INQ000184741	21 April 2020	Letter from NI Assembly Speaker to NIHRC Providing Copy of Private Tenancies (Coronavirus Modifications) Bill 2020

DR/15 – INQ000184742	21 April 2020	Annex A to letter from NI Assembly Speaker to NIHRC Providing Copy of Private Tenancies (Coronavirus Modifications) Bill 2020
DR/16 – INQ000184743	21 April 2020	Annex B to letter from NI Assembly Speaker to NIHRC Providing Copy of Private Tenancies (Coronavirus Modifications) Bill 2020
DR/17 – INQ000184744	21 April 2020	Letter from NIHRC to NI Assembly Speaker in response to the Private Tenancies (Coronavirus Modifications) Bill 2020
DR/18 – INQ000184745	28 April 2020	Letter from NIHRC to JCHR on Inquiry into the Government's Response to COVID-19
DR/19 - INQ000184746	28 April 2020	Response to the JCHR Inquiry into the Government's Response to COVID-19: Human Rights Implications
DR/20 – INQ000184747	29 April 2020	Letter from NIHRC to Chair of NI Policing Board on use of spit and bite guards
DR/21 - INQ000184748	1 May 2020	Letter from Department for Communities to NIHRC in Response to 15 April 2020 letter
DR/22 – INQ000184749	4 May 2020	Letter from Committee of Health to NIHRC on Draft Children's Social Care Regulations
DR/23 – INQ000184750	4 May 2020	Annex A to Letter from Committee of Health to NIHRC on Draft Children's Social Care Regulations
DR/24 – INQ000184751	4 May 2020	Annex B to Letter from Committee of Health to NIHRC on Draft Children's Social Care Regulations
DR/25 - INQ000184752	6 May 2020	Belfast Telegraph - Joint Statement from Chief Commissioner and Commissioner for Older People on COVID-19
DR/26 – INQ000184753	11 May 2020	Letter from NIHRC and Commissioner for Older People for NI to Minister of Health on Role and Practice of RQIA
DR/27 – INQ000184754	13 May 2020	Letter from Department of Education to NIHRC giving notice of Coronavirus Act 2020 Temporary Modification of Duties (No 5) Notice (NI) 2020
DR/28 – INQ000184755	13 May 2020	Annex to Letter from Department of Education to NIHRC giving notice of Coronavirus Act 2020 Temporary Modification of Duties (No 5) Notice (NI) 2020
DR/29 - INQ000184756	May 2020	Response to the Women and Equalities Committee Inquiry into the Government's Response to COVID-19: Human Rights Implications
DR/30 - INQ000184757	May 2020	Children Social Care (Coronavirus) (Temporary Modification of Children's Social Care) Regulations (NI) 2020
DR/31 - INQ000184758	19 May 2020	Letter from Minister of Health to NIHRC in Response to Query on the Role and Practice of RQIA
DR/32 - INQ000184759	22 May 2020	Notes from Meeting with Naomi Long, Minister for Justice
DR/33 - INQ000184760	26 May 2020	Letter from Committee of Health to NIHRC on COVID-19 testing in care homes
DR/34 - INQ000184761	27 May 2020	Article in Belfast Telegraph – Why Coronavirus tracing app needs privacy safeguards
DR/35 - INQ000184762	June 2020	CAJ Just News – What are the implications of a contact tracing app for rights and privacy?

DR/36 – INQ000184763	4 June 2020	Letter from Secretary of State for the Home Department, Priti Patel, to NIHRC on COVID-19, No Recourse to Public Funds and Immigration Detention
DR/37 - INQ000184764	9 June 2020	Letter from Department of Health to NIHRC on Rebuilding HSC Services
DR/38 – INQ000184765	16 June 2020	Letter from NIHRC to Department of Health in Response to Rebuilding HSC Services
DR/39 - INQ000184766	23 June 2020	Letter from NIHRC to Health Committee regarding Covid-19 testing in care homes
DR/40 - INQ000184767	27 June 2020	Notes from a Meeting with the Department on Health on the Covid App
DR/41 - INQ000184768	6 July 2020	Letter from NIHRC to Minister of Health regarding Contact Tracing App
DR/42 - INQ000184769	9 July 2021	Notes from Meeting with Robin Swann MLA, Minister for Health
DR/43 - INQ000184770	10 July 2020	Letter from Chief Digital Information Officer to NIHRC regarding StopCOVID NI contact tracing app
DR/44 - INQ000184771	10 July 2020	Annex to letter from Chief Digital Information Officer to NIHRC regarding StopCOVID NI contact tracing app
DR/45 - INQ000184772	30 July 2020	Letter from Chief Digital Information Officer to NIHRC regarding StopCOVID NI contact tracing app
DR/46 - INQ000184773	30 July 2020	Annex to letter from Chief Digital Information Officer to NIHRC regarding StopCOVID NI contact tracing app
DR/47 - INQ000184774	31 July 2020	Letter from NIHRC to Chief Digital Information Officer regarding DPIA for Covid App
DR/48 - INQ000184775	July 2020	IMNI Evidence to the Women and Equalities Committee's Inquiry into the Unequal Impact of COVID-19: Disability and Access to Services
DR/49 - INQ000184776	4 August 2020	Letter from DoE to NIHRC giving notice of Coronavirus Act 2020 Temporary Modification of Duties (No 10) Notice (NI) 2020
DR/50 - INQ000184777	4 August 2020	Annex to Letter from DoE to NIHRC on Coronavirus Act 2020 Temporary Modification of Duties (No 10) Notice (NI) 2020
DR/51- INQ000184778	6 August 2020	Letter from NIHRC to Inspector at the Operational and Tactical Development Protective Services Branch of the Police Service NI on the use of spit and bite guards
DR/52 - INQ000184779	13 August 2020	Letter from NIHRC to Arlene Foster, Leader of DUP and First Minister
DR/53 - INQ000184780	13 August 2020	Letter from NIHRC to Michelle O'Neill, Vice President of Sinn Féin and Deputy First Minister
DR/54 - INQ000184781	14 August 2020	Notes from Meeting with Northern HSCT on reproductive healthcare
DR/55 - INQ000184782	19 August 2020	Letter from NIHRC to Colm Eastwood, Leader of SDLP
DR/56 - INQ000184783	19 August 2020	Letter from NIHRC to Steve Aiken, UUP Leader
DR/57 - INQ000184784	August 2020	Advice to Sinn Féin on Grading Pupils During COVID-19: Human Rights Obligations
DR/58 - INQ000184785	24 August 2020	ENNHRI Blog – How We're Responding to COVID-19 in a Post-conflict Society
DR/59 - INQ000184786	24 August 2020	Response to Treasury Committee's Inquiry into Tax after Coronavirus



DR/60 - INQ000184787	24 August 2020	Minutes of the 226th Commission Meeting on 24 August 2020
DR/62- INQ000184789	24 August 2020	Paper for August Commission Meeting: HRC226.09 COVID-19: A Reflective Exercise
DR/63 - INQ000184790	25 August 2020	Notes from Meeting with PHA on reproductive healthcare
DR/64 - INQ000184791	28 August 2020	Notes from Meeting with Belfast HSCT on reproductive healthcare
DR/65 - INQ000184792	September 2020	Advice to Claire Sugden MLA on mandatory vaccinations
DR/64 - INQ000184793	29 September 2020	Notes from Meeting with Department of Health on reproductive healthcare
DR/67 - INQ000184794	27 October 2020	Letter from Department of Health to Committee for Health, Copied to NIHRC, on SL1 -The Children's Social Care (Coronavirus) (Temporary Modification of Children's Social Care) Regulations (Northern Ireland) 2020
DR/68 - INQ000184795	November 2020	Submission to the Expert Panel on Educational Underachievement
DR/69 - INQ000184796	6 November 2020	Letter from Committee for Health to NIHRC on the amendment to extend the Children's Social Care (Coronavirus) (Temporary Modification of Children's Social Care) Regulations (NI) 2020
DR/70 - INQ000184797	9 November 2020	Letter from NIHRC to Committee of Health on proposal to extend the operation of the Children's Social Care (Coronavirus) (Temporary Modification of Children's Social Care) Regulations (Northern Ireland) 2020
DR/71 - INQ000184798	10 November 2020	Press Release: Sport & Human Rights Forum hosts webinar on impact of Covid-19 on children's access to sport
DR/72 - INQ000184799	23 November 2020	Letter from Committee for Health to NIHRC on the Amendment to extend: The Children's Social Care (Coronavirus) (Temporary Modification of Children's Social Care) Regulations (NI) 2020
DR/73 - INQ000184800	23 November 2020	Letter from Police Service NI to NIHRC on use of spit and bite guards
DR/74 - INQ000184801	14 December 2020	Minutes for the 230 <sup>th</sup> Commission Meeting on 14 December 2020
DR/75 - INQ000184802	14 December 2020	Paper for December 2020 Commission Meeting: HRC230.07 Temporary closure of the Advice Clinic
DR/76 - INQ000184803	December 2020	Annual Statement 2020
DR/77 - INQ000184804	December 2020	Submission to the UN CRC 88 <sup>th</sup> Session on the Sixth Periodic Report of the UK of Great Britain and NI on Compliance with the UN CRC
DR/78 - INQ000184805	February 2021	Submission to the Department for Communities in Response to their Equality Impact Assessment of the Draft Budget 2021-2022

DR/79 - INQ000184806	22 February 2021	Minutes of the 232 <sup>nd</sup> Commission Meeting on 22 February 2021
DR/80 - INQ000184807	22 February 2021	Paper for February 2021 Commission Meeting: HRC232.06 Advice Clinic Options Paper
DR/81 - INQ00184808	March 2021	ENNHRI State of the Rule of Law Report 2020 – Northern Ireland
DR/83 - INQ00184809	18 March 2021	Staff notes from Meeting of DH Stakeholder Group
DR/84 - INQ00184810	30 March 2021	Letter from NIHRC to Minister for Economy on waiting times at the OIFET
DR/85 - INQ00184811	9 April 2021	Letter from Minister for Economy to NIHRC on waiting times at the OIFET
DR/86 - INQ00184812	22 April 2021	Letter from NIHRC to Department of Health on the consultation on proposals to extend the operation of the Children's Social Care (Coronavirus) (Temporary Modification of Children's Social Care) Regulations (Northern Ireland) 2020
DR/87 - INQ00184813	May 2021	Monitoring Report on Reproductive Healthcare Provision in NI
DR/88 - INQ00184814	May 2021	Submission to Police Service NI's consultation on its equality impact assessment on the use of spit and bite guards
DR/89 - INQ00184815	6 May 2021	Letter from Minister of Health to NIHRC on the Draft Human Rights Impact Assessment for the Health Protection (Coronavirus, International Travel) Regulations (Northern Ireland) 2021
DR/90- INQ00184816	6 May 2021	Annex A Human Rights Act Impact Assessment, The Health Protection (Coronavirus, International Travel) Regulations (Northern Ireland) 2021
DR/91 - INQ00184817	7 May 2021	Letter from NIHRC to Arlene Foster, DUP Leader
DR/92 - INQ00184818	7 May 2021	Letter from NIHRC to Michelle O'Neill, Sinn Féin Vice President
DR/93 - INQ00184819	7 May 2021	Letter from NIHRC to Colm Eastwood, SDLP Leader
DR/94 - INQ00184820	7 May 2021	Letter from NIHRC to Naomi Long, Alliance Leader
DR/95 - INQ00184821	7 May 2021	Letter from NIHRC to Steve Aiken, UUP Leader
DR/96 - INQ00184822	2 June 2021	Letter from NIHRC to Minister of Health on the Draft Human Rights Impact Assessment for the Health Protection (Coronavirus, International Travel) Regulations (Northern Ireland) 2021
DR/97 - INQ00184823	24 June 2021	Letter from TEO Director of COVID Recovery to NIHRC on the Draft Consolidated COVID Recovery Plan
DR/98 - INQ00184824	1 July 2021	Letter from NIHRC to TEO Director of COVID Recovery providing advice on the Draft Consolidated COVID Recovery Plan
DR/99 - INQ00184825	23 July 2021	Letter from NIHRC to Minister of Health on Arrangements for Visiting in Residential Care Homes
DR/100 - INQ00184706	30 July 2021	NIHRC commissioned report on awareness and priorities by Cognisense for Strategic Planning process 2021
DR/101 - INQ00184707	26 August 2021	Minutes of the 237 <sup>th</sup> Commission Meeting on 26 August 2021
DR/102 - INQ00184708	26 August 2021	Paper for August 2021 Commission meeting: HRC237.06 Advice Clinic Review

DR/103 - INQ00184709	6 September 2021	Letter from NIHRC to Naomi Long, Alliance Party Leader
DR/104 - INQ00184710	6 September 2021	Letter from NIHRC to Michelle O'Neill, Sinn Fein Vice President
DR/105 - INQ00184711	7 September 2021	Letter from NIHRC to Jeffery Donaldson, DUP Leader
DR/106 - INQ000184712	7 September 2021	Letter from NIHRC to Colm Eastwood, SDLP Leader
DR/107 - INQ000184713	7 September 2021	Letter from NIHRC to Doug Beattie, UUP Leader
DR/108 - INQ000184714	September 2021	The Impact of Public Spending Changes in NI
DR/109 - INQ000184715	25 October 2021	Staff notes of DH Stakeholder Group on Covid App
DR/110 - INQ000184717	26 November 2021	Letter from NIHRC to Minister of Health on COVID Status Certificate
DR/111 - INQ000184718	November 2021	The Impact of COVID-19 on Public Services in NI
DR/112 - INQ000184719	1 December 2021	Letter from Minister of Health to NIHRC on the Draft Human Rights Impact Assessment for the Health Protection (Coronavirus, Restrictions) Regulations (Northern Ireland) 2021 (Amendment No 19) Regulations (Northern Ireland) 2021
DR/113 - INQ000184720	December 2021	Annual Statement 2021
DR/114 - INQ000184721	15 December 2021	Letter from NIHRC to Minister of Health on the Draft Human Rights Impact Assessment for the Health Protection (Coronavirus, Restrictions) Regulations (Northern Ireland) 2021 (Amendment No 19) Regulations (Northern Ireland) 2021
DR/115 - INQ000184722	December 2021	Your Human Rights During the COVID-19 Pandemic
DR/116 - INQ000184723	9 January 2022	Letter from Department of Justice to Justice Committee, copied to NIHRC, on SL1 – The Coronavirus Act 2020 (Extension of Live Links in Courts, Tribunals and Inquests) Order (Northern Ireland) 2022
DR/117 - INQ000184724	9 January 2022	Annex: DOJ Report on the use of Live Links for Remote Hearings January 2022
DR/118 - INQ000184725	March 2022	ENNHRI State of the Rule of Law in Europe 2021 – Northern Ireland
DR/119 - INQ000184726	April 2022	NIHRC Strategic Plan 2022-25
DR/120 - INQ000184728	April 2022	NIHRC Business Plan 2022-23
DR/121 - INQ000184729	7 April 2022	Letter from NIHRC to UK Covid-19 Inquiry on the Terms of Reference
DR/122 - INQ000184730	30 May 2022	Letter from NIHRC to Chief Constable of Police Service NI on use of spit and bite guards
DR/123 - INQ000184731	June 2022	Response to the Department of Health Consultation on Reform of Adult Social Care
DR/124 - INQ000184732	17 November 2022	Letter from NIHRC to Permanent Secretary of the Department of Health on Access to Care Homes for Resident's relatives
DR/125 - INQ000184733	December 2022	Annual Statement 2022

DR/126 - INQ000184734	December 2022	Submission to the UN CRC Committee – Parallel Report to the Pre-session on the Combined Sixth and Seventh Reports of the UK of Great Britain and NI
DR/127 - INQ000184735	December 2022	Submission to the UN ICESCR Committee – Parallel Report for the List of Issues in Relation to the Seventh Periodic Report of the UK
DR/128 - INQ000184736	December 2022	Statement to the UN ICESCR Committee 72 <sup>nd</sup> Pre-Sessional Working Group on the Examination of the UK's Compliance with the UN ICESCR
DR/129 - INQ000184737	March 2023	ENNHRI State of the Rule of Law in Europe 2022 – Northern Ireland
DR/130 - INQ000184739	March 2023	GANHRI Report and Recommendations of the Session of the Sub-Committee on Accreditation
DR/131 - INQ000184740	Undated	NIHRC Data Retention and Disposal Schedule

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## NIHRC WITNESS STATEMENT: INDEX OF ANNEXES

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1. Annex 1: NIHRC Organisational Chart 2023
2. Annex 2: COVID-19 related reports, letters and evidence issued or received by NIHRC
3. Annex 3: List of meetings attended by Commissioners and/or senior staff with Ministers, elected representatives and civil servants in Northern Ireland