

Witness Statement for COVID-19 Public Inquiry

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Equality Commission for NI**

Overview of the Equality Commission for NI

1. The Equality Commission for Northern Ireland is a non-departmental public body established by the Northern Ireland Act 1998, taking over responsibilities of a number of pre-existing equality bodies which had been established in 1976, the Fair Employment Commission and Equal Opportunities Commission for NI and in 1998 the Commission for Racial Equality NI, plus an advisory Disability Council. Our sponsor department is The Executive Office, which is responsible for equality legislation in Northern Ireland and for the resources which are allocated to the Commission.
2. I was appointed as Chief Commissioner by the Secretary of State for Northern Ireland and took up office on 1 March 2020. Neil Anderson is Deputy Chief Commissioner and presently there are 13 other Commissioners, all appointed by the Secretary of State. My role as Chief Commissioner is to provide strategic leadership on the effective delivery of our statutory remit, to represent the Commission at senior levels and publicly and to ensure high standards of corporate governance.

3. Until 31 January 2023, Dr Evelyn Collins CBE was Chief Executive. Amanda Logan, was appointed as Chief Executive from 1 August 2023. Keith Brown, Head of Corporate Services, acted as Interim Chief Executive from 1 February 2023 until 31 July 2023.

Role and remit of the Equality Commission for NI

4. As a Non-Departmental Public Body, the Commission is not directly involved in the decision making of government. The Commission operates as an independent public body and at arms' length from Government, it does not have a direct role in the political and administrative decision making of the Executive. As my witness statement sets out, we advised the Executive and Departments to assess and consider the equality impacts of proposed policies, in line with their responsibilities under the relevant provisions of the Northern Ireland Act 1998.
5. As an independent body, we do not represent any groups in any formal sense. That said, we engage extensively with a wide range of stakeholders in NI, across the public and private sector and civil society. We have a particular concern to promote awareness of the situation and experiences of groups who are covered by the anti-discrimination and equality law framework, calling for action to advance equality of opportunity and tackle discrimination.

6. In general terms, our statutory remit provides that we are to:
- promote equality of opportunity and affirmative action
 - work towards the elimination of unlawful discrimination and harassment
 - keep relevant legislation under review
 - promote good relations between persons of different racial groups and good disability practice
 - oversee the effectiveness of statutory equality duties on public authorities
 - monitor the UK Government's commitment to no diminution of rights as a result of withdrawal from the EU.
7. Our powers and duties derive from a number of statutes enacted over the last fifty years. These provide protection against discrimination in employment and in the provision of goods, facilities and services on grounds of disability, race, religion and political opinion, sex and sexual orientation. On the grounds of age, protection against discrimination is available only in respect of employment. Unlike in the rest of the United Kingdom, these have not been updated or harmonised within single framework legislation, such as the Equality Act 2010.
8. The Commissions powers derive from the following:
- Equal Pay Act (NI) 1970
 - Sex Discrimination (NI) Order 1976
 - Disability Discrimination Act 1995

- Race Relations (NI) Order 1997
- Fair Employment & Treatment (NI) Order 1998
- Special Educational Needs & Disability (NI) Order 2005
- Employment Equality (Sexual Orientation) Regulations (NI) 2003
- Equality Act (Sexual Orientation) Regulations (NI) 2006
- Employment Equality (Age) Regulations (NI) 2006

9. The key powers relate to the advice and assistance that can be provided in relation to complaints of discrimination. The Commission also has investigatory powers, which can be used to combat discrimination and promote equality of opportunity. These are limited in scope, depending upon the relevant legislation and unsuitable for addressing the issues outlined in the inquiries terms of reference. Under the above legislation the Commission is empowered to offer general advisory services, produce advisory guidance and undertake promotional and educational activities. It is these functions that drove the Commission's actions in relation to the Covid-19 response.

10. The Commission also has responsibilities, arising from the Northern Ireland Act 1998 and Disability Discrimination Act 1995, in respect of the statutory equality and good relations duties which apply to public authorities - the s75 duties and the disability duties. These responsibilities relate to approving and overseeing the arrangements for completing Equality Schemes and Disability Action Plans. The public sector duties under Section 75 cover persons of different religious belief, political opinion, racial group, age, marital status or sexual orientation; men and women;

persons with a disability and persons without; and persons with dependants and persons without. The Commission is empowered to investigate complaints and 'own name' investigations. However, the scope of such investigations is limited to whether a public authority adhered to its published Equality Scheme. Although the Commission has a role in dealing with complaints and providing advice, when requested, it has no role with regard to the actual policy formulation, option appraisal or policy implementation processes. The use of its role as an influencer or advice-giver provided a quicker means of responding to both the scale and evolving nature of the pandemic and Executive response, than the use of any more formal powers.

11. ECNI and NIHRC jointly form the Northern Ireland component of the UK's Independent Mechanism (IM). Under Article 32.2 of UNCRPD, each state is required to establish one or more Independent Mechanism to promote, protect and monitor implementation of the Convention. The Commission, jointly with the Northern Ireland Human Rights Commission, has been designated the independent mechanism for Northern Ireland (IMNI). Aligned to this role, the Commission has, with reference to the UNCRPD, published explanatory guides; commissioned research; organised training sessions for disabled people / disabled peoples organisations on various aspects of the Convention; and submitted evidence to a UNCRPD Examination and Inquiry. Work to monitor implementation of the CRPD is aligned with UN's CRPD Committee reporting cycles. The reporting cycles and our role in this area were of limited relevance to the Covid pandemic response. However, in the

correspondence and engagement described further below, where relevant, the Commission drew attention to CRPD obligations as relevant when issues relating to disability were being raised. An example of this was IMNI's submission to Women and Equalities Committee's Inquiry into the Unequal Impact of COVID-19: Disability and Access to Services, in July 2020 (**GMcG/1 – INQ000202004**).

12. The European Union (Withdrawal Agreement) Act 2020 gave new duties and powers to the Commission, and to the Northern Ireland Human Rights Commission (NIHRC), effective from 1 January 2021. These enable the Commission to monitor, advise and report on, and enforce the UK Government's adherence to its commitment set out in Article 2 (1) of the Ireland/Northern Ireland Protocol to the Withdrawal Agreement. This commitment is to ensure that no diminution of rights, safeguards or equality of opportunity, as set out in that part of the 1998 Agreement entitled Rights, Safeguards and Equality of Opportunity results from the UK's withdrawal from the Union, including in the area of protection against discrimination. No substantive issues arose, in relation to the impact on protected rights in relation to the Covid 19 response.
13. With the exception of its role under the Windsor Framework / NI Protocol and indirectly via its participation in the UNCRPD Independent Mechanism, the Commission's remit does not extend to representing the interests of those within the equality categories under the Northern Ireland Act 1998 in Northern Ireland to the UK Government, nor in respect of the UK Government's response to Covid-19.

Overview of response to COVID-19

- 13 This section provides a high-level summary overview of the Commission's approach. The specific actions delivered by the Commission are described in the sections which follow.
- 14 The COVID-19 pandemic, and the policy response to it, had a significant impact on all aspects of life in NI and, for the Commission.
- 15 At the outset, the Commission moved promptly to deliver our public services through remote working practices, in line with Government advice to work from home where possible and adapted our work priorities in response to COVID-19.
- 16 Specifically, in terms of our remit, we engaged in policy, advice and communications work to highlight the need to identify and consider equality issues in responses to the pandemic; areas of public policy or law reform with emerging or potential equality issues; and concerns about the impacts on various equality groups for attention by Government and others.
- 17 We were clear that, as the Equality Commission, we had both a support and a 'challenge' function in relation to Government/NI Executive action relating to COVID-19. We recognised the importance of keeping people and society safe and the necessity of extraordinary measures. We also recognised that, by their very nature, emergency measures and emergency planning may lead to

legislation and policies that compound existing inequalities and lead to the emergence of new inequalities. We were also clear, and stated publicly, that the statutory provisions on equality could not be set aside, even in extraordinary times,

- 18 We highlighted in correspondence to Ministers, Permanent Secretaries and other senior officials, as set out in more detail from para 25 onwards, that equality matters in such challenging times. Especially so, as the evidence indicated that certain equality groups were particularly vulnerable in relation to contracting the virus and being severely affected by it. We advised public authorities in Northern Ireland that they are under a duty (s75 of the NI Act 1998) to have due regard to the need to promote equality of opportunity across the nine equality grounds, that these are continuing duties and that assessments of equality impacts should be considered in planning and policy development. This was done in letters to key authorities, such as Government Departments and Health and Social Care Trusts and via blogs and ezines etc., more generally.
- 19 We advised, again mainly via correspondence, that equality characteristics (for example age, disability) should not be the sole criteria in decision making in respect of access to health care or other provisions, and due regard needed to be paid to equality of opportunity for equality groups and specific attention to the needs of specific groups.
- 20 We also advised that, in making difficult decisions, Ministers and officials would need to weigh carefully the potential impacts that such decisions have on those who are already disadvantaged,

ensuring that any inequalities are not exacerbated, and that individuals are not exposed unnecessarily to direct or indirect risks or further disadvantaged. We highlighted that Ministers would also need assurance that their proposals/decisions would not be unlawfully discriminatory(see para 27).

21 The Commission's experience was that the guidance was welcomed and accepted. The extent to which it was acted upon is less clear. Though there were examples e.g. impact of face coverings on disabled people, where the Department of Health did amend its approach and messaging (December 2021).

22 Meetings would be arranged following requests from the Commission and based on correspondence sent by the Commission. It was generally not the case that advice was proactively requested. Meetings would be based on the correspondence provided and oral presentation by the Commission representatives. As outlined above the Commission has no role in the actual policy formulation or option appraisal. Notes were taken independently by each side and not shared. No formal records of decisions or dissent were taken. The Commission would not be privy to the discussions between Ministers, civil servants, advisors or experts. These would have taken place following the meeting or at a later period. The Commission was not included in WhatsApp groups or other informal or private communications channels, if used by Departments or other public bodies.

23 Throughout the period under review by the Inquiry, we advised employers and businesses on various equality issues arising in the

context of COVID-19; we also advised individuals on potential complaints arising out of their treatment relating to COVID-19. I have not provided any detail on this work in my Witness Statement as we understand the focus of the Inquiry is on the decision making by Government in NI in relation to Non-Pharmaceutical Interventions (NPIs) during the pandemic between early January 2020 until COVID-19 restrictions were lifted here in March 2022. Much of this advice is summarised on the Commission's [dedicated Covid page](#) for employers and service providers.

- 24 We advised Ministers and senior officials of the need to use the existing equality law frameworks to help inform planning and policy development in the work of Government, the Executive and officials, as Government took steps to reconfigure legislation, public policy and the delivery of services, most notably in the early period of COVID-19 in health services and welfare support, and then in education.
- 25 We also advised them of the need for good evidence gathering also, advising Departments and Public Authorities that they should ensure they collected demographic and equality data across the full range of equality grounds so that the design, delivery and review of any changes to law, policy or service provision to address the pandemic could be improved by access to effective and comprehensive analysis.
- 26 Specific actions in support of this overarching summary are set out in the sections below.

Communications with the NI Executive

- 27 We engaged with key Executive Ministers and senior civil servants/public servants in writing to draw to their attention the importance of addressing equality issues in consideration of their responses to COVID-19.
- 28 This included correspondence with the Minister for Health, to set out key concerns and seek assurances in relation to health and social care provision (27 April 2020, **GMcG/2 – INQ000090779**). This referred to the need for equality-disaggregated data and the need to involve persons with disabilities in decision making relating to COVID-19, reinforcing the need to fulfil the Department's equality duties and obligations.
- 29 The Minister of Health, Robin Swann MLA, replied (22 May 2020, **GMcG/3 – INQ000090803**) pointing to his recent endorsement of a set of guiding principles concerning COVID-19 and the Rights of Disabled People which were developed by Disability Rights UK; the work of the COVID-19 HSC Ethics Forum; recently published guidance; and the Department's use of trend data to inform decision making, although it did not indicate any equality ground-specific aspect of this trend data.
- 30 I wrote to the First Minister and Deputy First Minister (29 April 2020, **GMcG/4 – INQ000090823**) to reiterate, in the context of COVID-19, the need for prompt action to ensure that the most vulnerable in society had adequate protection from discrimination and

harassment, and to express the Commission's ongoing concern about gaps in protection against discrimination for equality groups that remain unaddressed, including legislation to protect people from age discrimination in respect of goods, facilities and services (age GFS). We highlighted the particular need for this legislation in light of the particular impact that COVID-19 has had on older people. We noted that gaps in legislative protection continued despite consistent calls for reform by the Commission and others for more than a decade.

31 I wrote again to the First Minister and deputy First Minister on 25 August 2020 (**GMcG/5 – INQ000090837**), following a meeting with the representatives from a range of minority ethnic communities in Northern Ireland (further information in stakeholder engagement section further below), to highlight the concerns raised by them, about a lack of effective delivery and that the COVID-19 pandemic. I further highlighted that data, disaggregated by race to inform policy and service provision, is currently limited and there is a need for better data on race, collected and kept separately to allow action to identify and target so that Government can effectively identify and address inequalities in fields such as health and social care and also education, housing, employment and participation in public life. The letter included the need for effective implementation of the Racial Equality Strategy and the need for adequate race equality data to be collected across key areas of Government service delivery.

32 The First Minister and deputy First Minister replied to my letters on 17 September 2020 (**GMcG/6 – INQ000090845**). The letter acknowledged the differential impact that COVID-19 may have on

different groups across our society and Ministers' appreciation of the importance of continuing to comply with equality principles in all decision-making processes. It indicated a particular focus on older people at that stage and it referenced the need to ensure that their work continued to help everyone without discrimination. The reply also indicated that further work was required to finalise the policy content of the proposed legislation to outlaw age discrimination in the provision of goods, facilities and services and highlighted the commitment in the New Decade, New Approach¹ document to consider bringing forward an Age Goods Facilities and Services Bill as part of the next Programme for Government. This has not progressed in the absence of an Executive.

33 At the Commission's request, I met with the deputy First Minister O'Neill and Junior Minister Lyons (representing the First Minister) on 3 November 2020, together with the Chief Executive, to discuss a number of issues of mutual interest. This included our work in relation to COVID-19, the need for equality data, race equality matters and the need for law reform including protection against age discrimination in the provision of goods, facilities and services. No note of this meeting was on our file.

34 I also wrote to the Minister for Education, Peter Weir MLA (21 May 2020, (GMcG/7 – INQ000090846), noting a lack of data regarding any equality impacts in education in Northern Ireland during COVID-19 and raising potential areas for concerns.

¹ NDNA

- 35 The Minister for Education replied (8 June 2020, **GMcG/8 – INQ00090848**) pointing to a number of policies and procedures aimed at meeting the learning needs of pupils in Northern Ireland. This included reference to direct payments to families in lieu of Free School Meals and distribution of food boxes to those most vulnerable; the provision of digital devices for disadvantaged children; and considerations being given at that time to restarting the education system.
- 36 I met with the Minister for Justice, Naomi Long MLA, on 2 October 2020, in her capacity as leader of the Alliance Party, together with the Director of Communications, to discuss COVID-19 issues and the importance of introducing protection against discrimination on grounds of age in the provision of goods, facilities and services, and to the need for equality disaggregated data (**GMcG/9 – INQ000220394**).
- 37 The Commission recognises the extraordinary circumstances and pressures under which Government Departments and other major public authorities were working. There was also a recognition on Government's part of the potential for differential impacts, particularly in the context of the highlighting of differential impacts on older people, the care sector, some minority ethnic groups and people with disabilities and underlying long-term health conditions at an early stage, based on the evidence that was emanating from GB. Unlike the position in the rest of the UK, many of the protections, particularly for older people in the area of the provision of goods, facilities and services, were not in place when the pandemic hit and

this continues to be the case up to the present time.

- 38 Similarly, it is also the case that with the collection and ability to disaggregate data across the equality grounds, the problems faced by public bodies substantially pre-dated the pandemic and once it hit it was always going to be a case of too little too late. There was access to data and research from across the wider UK. The availability of data for Northern Ireland is improving. However, the Commission is still communicating with NISRA and other data holders about addressing gaps across the equality groups in Northern Ireland.

Evidence to Assembly Committees/contact with MLAs

- 39 I took the opportunity of a briefing to the Executive Office Assembly Committee on 13 May 2020 on the Commission's role and work generally to highlight the points made at paras 17 - 20 above, in respect of the need to use the existing equality law frameworks to help inform planning and policy development relating to COVID-19. I also specifically highlighted the significant impact the pandemic had on older people and took opportunity to raise the need for legislation to protect people from discrimination on grounds of age in respect of goods, facilities and services (**GMcG/10 – INQ000090849**). The Committee Chairperson welcomed and noted the timeliness of the briefing to hear about "the equality issues that underpin some of the difficulties with the coronavirus". The briefing and questions which followed provided an opportunity to raise the awareness of MLAs regarding key equality issues. Information provided at the meeting was subsequently referred to in Hansard.

- 40 I met with the Chair of the Education Assembly Committee, Chris Lyttle MLA, and briefed him them on our COVID-19 Education priorities and recommendations. I also met with the Education Committee, together with representatives of the Equality Coalition, for an informal briefing about our concerns on 13 October 2020 (**GMcG/11 – INQ0000780**).
- 41 Also, in a briefing we issued to all MLAs in advance of a debate on a Private Members' Motion in the NI Assembly on the Racial Equality Strategy (14 September 2020, **GMcG/12 – INQ0000781**), we highlighted the importance of introducing ethnic monitoring as a matter of urgency, referencing the particular context of COVID-19. The Assembly debate included reference to a number issues that had been highlighted by the Commission, and the Commission's views were directly referenced in the debate.
- 42 We issued (11 October 2021, **GMcG/13 – INQ0000782**) a briefing to all MLAs in advance of a debate on a Private Members' Motion 'Education Catch-up' in the NI Assembly. In doing so we noted that "we are all well aware of the role education plays in determining a person's life chances and of the damaging impact the COVID-19 pandemic has had on our children and young people's education. What we do next is key. Our steps forward must be the right ones". Highlighting the importance of the application of the Section 75 duties, we said that "children will now potentially have spent prolonged periods with less access to specialist supports and services and they may not have had access to materials and learning environments, to allow them to participate in remote

learning throughout the periods of school closures. This will have exacerbated existing inequalities” and that decisions must be informed by good quality equality data, gathered from a range of sources including evaluation...”. The Assembly debate (12 October 21), made reference to inequality and included points aligned to a number of those raised in the Commission’s briefing.

Advice to public authorities

- 43 Across the period, we continued to remind public authorities of the Section 75 duties and their responsibilities to pay due regard to equality of opportunity in relation to developing and implementing COVID-19 related policies. From April 2020 onwards, the Chief Executive wrote to the Permanent Secretary in the Department of Education, the Chief Executives of each of the Health Trusts, the Public Health Agency, the Health and Social Care Board and the Education Authority (**GMcG/14a-I – INQ000090783-788; INQ000090790-795**).
- 44 We also published (21 April 2020, **GMcG/15 – INQ000090796**) advice on our website on the Section 75 duties when developing COVID-19 related policies. While recognising that, in such unprecedented times, policymakers may need to make quick and often challenging policy decisions, we reiterated that the public authority duties set out in Section 75 of the Northern Ireland Act 1998 continued to apply, including when implementing COVID-19 related policies.

- 45 The Chief Executive and Manager, Public Sector Advice and Compliance, attended a meeting on 1 June 2020 (**GMcG/16 – INQ000090797**) with the Contact Tracing Steering Group, in the Public Health Agency, to provide input and advice on the application of the s75 duties to its contact tracing policy and programme.
- 46 In June 2020, we also responded to the Department of Health’s policy on ‘Rebuilding the HSC Services’, to highlight the importance of equality underpinning all aspects of the policy development and implementation. Further correspondence ensued in relation to the application of the equality duties following the publication of the Department’s plans for rebuilding elective care services (CE letter of 29 July 2020; Perm Secretary reply of 28 August 2020; CE further letter of 25 September 2020, (**GMcG/17a-c – INQ000090798-800**)). This was followed up by staff in the following months.
- 47 In November 2020 (**GMcG/18 – INQ000213350**), we responded to the Department of Health’s consultation on Cross-Departmental Actions for Vulnerable Children and Young People during the COVID-19 Pandemic Period, which included consideration of issues such as increased risk of harm in the home, increased pressure on families due to lockdown and social distancing restrictions and children facing educational disadvantage due to school closures. We highlighted that the Section 75 duties could be used to ensure the effectiveness of the interventions in the plan and outlined the nature of the duties. Our response highlighted areas of the plan which were unclear and highlighted the apparent low rate of return to school of children and young people from Traveller and Roma families, and the maintenance of SEN provision.

- 48 The Department responded in June 2021, highlighting that the planning process, informed by the Commission's input, has enabled departments to identify the challenges experienced by children and families during the pandemic, and to identify gaps in provision and to promote new responses. They noted that the consultation analysis report advised that learning from the consultation would be used to inform existing strategy development and service planning, including the Children and Young Peoples Strategy and the Anti-Poverty Strategy; and that existing strategy development and implementation now forms the basis of the ongoing response to the needs of children and young people, including those created or exacerbated by COVID-19 (GMcG/19 – INQ000090801).
- 49 On 25 February 2021, we responded to the Department of Health's budget for 2021/22 and screening (GMcG/20 – INQ000090802). We highlighted its Section 75 duties, and reiterated the concerns raised with the Health Minister in our letter of 27 April 2020, including the need for equality-disaggregated data and the need to involve persons with disabilities in decision making relating to COVID-19.
- 50 Staff were engaged in responding to a range of policies being developed by public authorities throughout the period. In addition to those mentioned above, this includes, for example, responses to the COVID-19 Surge Plan, Belfast HSCT; provision of services at Downe Hospital, Southern HSCT; Facemasks, Northern HSCT; advice on staff returning to workplace and response to COVID-19, Education Authority; and advice to the Department for Infrastructure, on Licensing and use of outdoor space.

Education

- 51 The Commission published a press statement Education inequalities could worsen in response to COVID-19 crisis which sought to highlight the potential differential impacts that decisions about schooling and examinations for example could have on different groups of children (21 May 2020, **GMcG/21 – INQ000090847**).
- 52 We published our COVID-19 and Education: Equality Considerations policy recommendations (June 2020, **GMcG/22 – INQ000090804**) to highlight the known and potential equality issues related to the COVID-19 pandemic and set out a range of recommendations. Dissemination included to the DE Minister and Permanent Secretary, the Education Authority Chair and Chief Executive, and the Northern Ireland Assembly Education Committee. We also used e-zines, social and wider media, including an extended interview on NVTV, to raise awareness of the potential for inequalities to worsen during the pandemic.
- 53 I wrote to the Education Minister (7 July 2020, **GMcG/23a, 23b – INQ000090805;INQ000090807**), and the Chief Executive wrote to the DE Permanent Secretary and Chief Executive of the Education Authority (**GMcG/23c,23d – INQ000090808;INQ000090910**), enclosing and highlighting our COVID-19 and Education: Equality Considerations policy recommendations (**GMcG/24 – INQ000090806**). The Deputy Secretary of the Department of Education confirmed that the recommendations have been incorporated into their Equality Toolkit (28 July 2020, **GMcG/25 – INQ000090811**). Officials on the DE Restart programme verbally

indicated their intention to track COVID-19 impacts by Section 75 equality ground in response work.

- 54 The Chief Executive corresponded with the DE Permanent Secretary around the application of the Section 75 duties and requesting Section 75 data in relation to the outcomes to the examination result processes and post primary transfer (21 August 2020, **GMcG/26 – INQ000090812**), specifically the equality screening of the former and the absence of screening regarding the latter. She sought assurances from the Department on these matters. The Permanent Secretary responded on 18 September 2020 (**GMcG/27 – INQ000090813**) setting out detailed responses to our concerns and providing contact details for relevant official in the Department. The Chief Executive wrote again on 6 October 2020 (to highlight the centrality of complying with the equality duties and offer that staff would meet to discuss and the Permanent Secretary replied on 13 October 2020 (**GMcG/28a,28b – INQ000090814;INQ000090815**).
- 55 Our recommendations around assessment were further highlighted in response to correspondence from Catherine Kelly MLA (25 August 2020, **GMcG/29a-b – INQ000225982;INQ000090817**), who subsequently quoted it in a press release re the transfer process. I also met with Daniel McCrossan MLA on 26 November 2020 on assessment and COVID-19 (**GMcG/30 – INQ000090818**).

- 56 In April 2021, the Commission published 'Learning from the pandemic' (**GMcG/31a-b – INQ000090919;INQ000090821**). Intended to inform education policymakers, decision makers and others committed to equality and education, it captured the views during the pandemic of 13 educationalists, charities and community and voluntary sector organisations on how initial learning from the pandemic could help to reduce educational inequalities. We disseminated the findings via electronic mailshot, e-zine, social media, and publication of articles in Northern Ireland newspapers.
- 57 On 17 August 2020, we responded to the Department of Education's Coronavirus Act 2020 Temporary Modification of Education Duties (No. 10) Notice (NI) 2020, relating to the Department's extension of its modification of its SEN duties (**GMcG/32 – INQ000090824**). We raised the Department's S75 duties, the UN Convention on the Rights of Persons with Disabilities (UNCRPD), and the need to maximise collaborative approaches to identify and respond to barriers to education.

Childcare and Early Years Provision

- 58 In June 2020, we issued a statement on Childcare and its role in the return to work after lockdown (**GMcG/33 – INQ000090825**). We highlighted the fundamental importance of childcare and that more than ever, families across Northern Ireland needed access to affordable, good quality, flexible childcare to enable those who can and wish to return to work. We noted disproportionate impacts on individuals with different equality characteristics groups and that "In the current circumstances, childcare provision needs to be more

flexible than ever before. It needs to take account not only of the working patterns of parents or carers, which may be more flexible, shift-based or part-time than previously, but also of the potential of a part-time school timetable where children may only be in school for part of each week or in alternate weeks.”

- 59 In August 2020 we published and disseminated (including to the Minister of Education) a policy briefing (GMcG/34 – INQ000090826) urging prompt action to extend appropriate, accessible and affordable early-years education and childcare provision. The briefing also noted the potential impacts of the loss of pre-school education on children’s development, including on children from minority ethnic communities and new residents, and children with disabilities. I wrote to the Minister for Education on 6 October 2020 on the importance of bringing forward a Childcare Strategy, including in the context of COVID-19 (GMcG/35 – INQ000090827).
- 60 The summary above and the correspondence from the Minister suggests that Commission representations were given consideration. However, whether they were given adequate weight is not something that the Commission is in a position to assess.

COVID-19 Recovery Plan

- 61 We called on the Executive and Departments to ensure that the COVID-19 Recovery plan and Programme for Government were built on an analysis of COVID-19 impacts across the full range of equality grounds and included a focus on addressing key

inequalities which included identifying and mitigating any negative equality impacts, arising from the COVID-19 pandemic.

- 62 The Commission highlighted that while data from other jurisdictions indicated COVID-19 equality impacts in those jurisdictions on the grounds of, for example, race and disability, NI Departments were advising that such data was not available in Northern Ireland to allow COVID-19 impacts to be considered across the full range of equality grounds.
- 63 We highlighted that the COVID-19 Recovery plan did not convey that it was built on any analysis of COVID-19 impacts across the range of equality grounds. While there is some mention of issues (for example age, gender or disability), the Plan generally did not convey a consideration of the impacts of COVID-19 on the protected statutory equality grounds or that it directly addressed specific inequalities across the protected statutory equality grounds which have emerged, or been exacerbated by, COVID-19. Indeed, data presented often spanned a time period well before the onset of the COVID-19 in March 2020.
- 64 In this context, we drew attention to our longstanding recommendation that comprehensive equality data should be collected to identify equality impacts and shape targeted actions to advance equality; and that to inform effective responses, tailored to the specific circumstances and needs in Northern Ireland, all relevant measures should also be tracked for the impact on individuals from across each of the Section 75 equality grounds. We set out that there was a need for the COVID-19 recovery to take

steps to identify those groups and issues on which actions should be focussed – both now and going forward.

- 65 In particular, we noted that the Commission was concerned that the Final Draft Recovery Plan did not include any indication that TEO or the other Departments had paid due regard to the need to promote equality of opportunity between persons across the range of protected statutory equality grounds, as required by the Section 75 duties set out in the Northern Ireland Act 1998. We noted that the Draft did not contain any equality assessment (screening/EQIA) and nor did it demonstrate how the duties impacted on the development of the Plan. Evidence of impacts and opportunities to promote equality are not presented across the Section 75 grounds, mitigation measures are not identified, nor alternate policies considered. We recommended that TEO followed the arrangements in its equality scheme and equality assess the Plan.
- 66 Officers engaged closely with TEO officials on the Draft Building Forward Consolidated Recovery Plan – July 2021, following concerns we had raised about the application of the Section 75 duties during the consultation on the draft Plan (letter 2 July 2021, **GMcG/36a-c – INQ000090828 - 830**). A general conclusion was that weaknesses in data gathering across groups protected by section 75 meant that it was difficult to assess what the most significant local equality impacts were on specific groups in Northern Ireland and policy analysis was reliant on inferring from and reacting to general UK wide data.

67 This included writing to the Director of COVID Recovery, on 20 August 2021 (**GMcG/37 – INQ000090831**), expressing concern that the published Plan did not include any information on TEO's application of the Section 75 duties and seeking information on this and its adherence to its equality scheme commitments when developing the Plan. This was followed by further correspondence, of 24 August 2021(**GMcG/38 – INQ000090832**) seeking a copy of the EQIA and/or screening of the Plan and seeking meeting to discuss. A meeting took place on 9 September 2021 which provided opportunity for officers to set out in detail our comments and provide advice (**GMcG/39 – INQ000090833**). The Commission is unaware of substantive changes made to the plan.

Vaccine Certification and Face Coverings

68 On the specific matter of COVID-19 Vaccine Certification, the Commission's Advice and Compliance team provided advice to the Department of Health which included the importance of ensuring information and processes are fully accessible to individuals from across the equality categories (e.g. to disabled and older people) and that awareness of the range of services and supports is promoted (e.g. telephone helplines) (**GMcG/40a-c – INQ000090834;INQ000090835;INQ000211690**).

69 We also highlighted the importance of those tasked with enforcing the policy being aware of their roles and responsibilities, particularly with regards to any reasonable adjustments that may be required for those with a relevant disability and of the importance of active engagement with service users from across a range of equality

categories. We reminded the Department of the requirement to monitor for any adverse impact of policies adopted across each of the Section 75 equality groups. The Department responded indicating that they had, and would continue to, take these points into account (**GMcG/41 – INQ000090836**).

70 We were very aware of the public debate, uncertainty, concern and distress following the amendments to face coverings regulations which came into effect on 27 December 2021². Following their announcement, we promptly wrote to the Department for Health on a number of points and subsequently welcomed the Department of Health's decision to extend the initial grace period for enforcement; and that the Executive's COVID Taskforce would undertake further meetings with stakeholders regarding the approach for obtaining proof of exemption, on medical grounds, from the requirement to wear a face covering³ (**GMcG/42 – INQ000090838**). The actions of the Department would suggest that consideration was given to the representations made by the Commission and that the Department was prepared to adjust its proposals.

71 Related to the amendments to face coverings regulations, we received and responded to in excess of 200 stakeholder emails and a further number of telephone enquires over the Christmas 2021 and New Year 2022 period. To inform our engagement on the matter, including with stakeholders and Executive Office officials we proactively engaged with Disability sector representatives so we

² Including: requirement on individuals to prove any exemption from wearing face coverings; requirement on service providers take reasonable steps to promote compliance with face coverings regulations; and on the removal of 'severe distress' as a reasonable excuse for not wearing a face covering

³ ECNI (4 Jan 2022) [Updated Statement on Face Covering Regulations](#)

could take account of their experiences, concerns and recommendations. We promptly convened, at short-notice, a meeting of available disability organisations on 10 January to discuss changes made to the COVID 19-related face covering legislation exemptions. The meeting, with representatives of Disability Action, the Inclusive Mobility and Transport Advisory Committee, the North West Forum of People with Disabilities and the OMNIBUS Partnership, identified that there should be an evidence-led and stakeholder informed approach focussing on encouraging and increasing compliance with face coverings regulations, so that those who can wear face coverings consistently do so. It also reinforced the importance of considering equality impacts, particularly for disabled people; of considering and implementing mitigating measures; and of ensuring ongoing monitoring and review. It also identified that there was a need at all times for the Executive and Departments to provide clarity with regards to exactly what regulations are in force, and the associated steps required of individuals, employers and service providers; and to have accessible processes in place to allow them to take those steps and ensure compliance.

Equality Data and Impacts

- 72 The Commission has long identified the need for robust equality data in Northern Ireland, both to enable good evidence-based policy making and to ensure effective compliance with the equality and good relations duties established by the Northern Ireland Act 1998.

- 73 The COVID-19 pandemic further highlighted the importance of readily available, up to date and detailed equality data in Northern Ireland, as a vital component in shaping public policy responses.
- 74 The Commission repeatedly (see examples from across this statement) conveyed our concerns that COVID-19 reporting / policy development / delivery did not appear to explicitly be based on any analysis of COVID-19 impacts across the full range of equality grounds. We drew attention to our longstanding recommendation that comprehensive equality data should be collected to identify equality impacts and shape targeted actions to advance equality. To inform effective responses, tailored to the specific circumstances and needs in Northern Ireland, all relevant measures should also be tracked for the impact on individuals from across each of the Section 75 equality grounds. There was and is a need for the COVID-19 response and recovery to take steps to identify those equality groups, and issues on which actions should be focussed – both now and going forward.
- 75 The Commission also continued to reinforce and communicate that public authorities have a statutory duty to consider the promotion of equality of opportunity and good relations, prior to decisions being made. We highlighted that in order to assess the equality impacts and monitor any adverse impacts of policies, public authorities need information to ensure that decisions and equality assessments are evidence based and appropriate.

- 76 In general the Commission does not collect primary data, but rather relies on primary data collected and published by government and/or its statistical bodies and partners. This was also true during the pandemic, where we did not undertake any primary research on the impact of the pandemic. Mindful of the speed that COVID-19 issues were evolving, and of the relative lack of NI specific equality data, we did however initiate action to gather links to published materials (news articles and reports) from across a range of jurisdictions on how the pandemic and any associated public policy responses might be affecting different equality groups. This was maintained throughout the first two years of the pandemic.
- 77 This statement points to a range of documents and articles produced and published by the Commission to draw attention to equality issues, and associated data needs, both generally and for specific groups and/or in specific areas (e.g. education) associated with the COVID-19 pandemic or the public policy response to it.
- 78 In addition to the outputs mentioned elsewhere in this statement, the Commission (working with NIHRC as IMNI) provided a written submission to Women and Equalities Committee 'Inquiry into the uneven impact of COVID-19: Disability and Access to Services' (pdf, July 2020). Across a range of recommendations we highlighted: law reform; the importance of s75 duties; the need for necessary, proportionate and time limited emergency powers; appropriate protections for people with disabilities; comprehensive disaggregated equality data on a comparable and standardised basis across the UK; full involvement in decision making, including via a disability forum at the UK and NI levels; consider and address

digital exclusion; prompt access to health information in appropriate formats; ensure access to financial support and food, aligned to need; health triage based on medical need; access to COVID-19 testing for care homes, to funding for the care sector, and to PPE for care workers; visiting options for health / care facilities kept under review; health services accessible online and in person; a need for comprehensive mental health strategies to be in place, with enhanced support as appropriate; moves out of lockdown for the general population should not exacerbate isolation for some; identify and address key factors which contributed to the high numbers of COVID-19 deaths within care homes; ensure appropriate support and education for children with Special Educational Needs; ensure appropriate support for domestic violence or abuse; ensure appropriate projects and funding to support people with disabilities to re-enter employment and training post-pandemic; ensure actions by government to restore the economy / raise revenue, do not unfairly impact on individuals in particular equality categories.

- 79 Further, as part of its preparation for the then anticipated 2022 UN CRPD Examination of the UK State Party, the Commission contracted Disability Action (a local NGO) and people with disabilities to produce an analysis "Research into Progress Towards the Implementation of the UNCRPD in Northern Ireland" (published February 2022), which included a number of references to stakeholder experiences and impacts of COVID-19. Although the Commission's linked work (due to the publication date of the report) will fall outside of the time-period of interest for this Inquiry, going forward the Commission is and will use the research to inform its actions locally, and with the UNCRPD Committee when they

proceed with their Examination of the UK State Party.

- 80 The Chief Executive wrote to the Chief Executive of NISRA on 11 June 2020 (**GMcG/43 – INQ000090839**) to highlight the importance of equality-disaggregated data in relation to tracking and analyses of COVID 19 impacts now and going forward and seeking information on its plans to ensure collection of such data. She pointed out that adequate equality data is critical in shaping public policy responses and highlighted the need for data on disability and race.
- 81 NISRA Chief Executive's reply of 25 June 2020 (**GMcG/44 – INQ000090840**) indicated that NISRA shared our view on the importance of equality-disaggregated data and acknowledged that there was more to do to ensure that data and analyses are readily available to demonstrate the impact of COVID-19 on different groups in society. It set out plans it had to address some of the gaps in data and that it will further engage with us on this. We organised a virtual event in Q3 2020/21 with NISRA on data development.
- 82 In November 2020, the Commission published a 'Briefing on the need for equality data' (**GMcG/45 – INQ000090841**). In it we highlighted that a number of equality-based analyses have emanated from data available in Britain and elsewhere, which showed different equality impacts of the virus, the wider pandemic and responses to it, on a range of grounds. We noted that the pandemic appeared to be reinforcing existing health and wider inequalities. We reiterated our specific concerns regarding the non-availability of certain data in Northern Ireland by equality ground which the COVID 19 pandemic has highlighted. For example, whilst

the Department of Health COVID-19 dashboard data included information on impacts by age and gender, it did not include data by race or disability. This contrasted with the position in Britain where data was collected and published on race for example. It appeared that the ready availability of such data has helped focus academics, policy makers and the UK Government's attention on the differential impact the virus would appear to be having on Black, Asian or Minority Ethnic people.

Investigation/ enforcement action

- 83 The Commission has specific powers to investigate complaints submitted to the Commission about alleged failures to comply with their Equality Scheme commitments by public authorities. These powers arise from paragraphs 10 and 11 of Schedule 9 of the Northern Ireland Act 1998, where there is a further power for the Commission to investigate on its own initiative, where it believes that a public authority may have failed to comply with its Equality Scheme. The statutory duties, which can be subject to complaints and investigations as described, are those that require a public authority to have due regard to the need to promote equality of opportunity, under Section 75 of the Northern Ireland Act. As outlined above; those duties could not be set aside during the pandemic. The decision to investigate any complaint submitted to the Commission, and which meets the statutory criteria in paragraph 10, is delegated to the Statutory Duty Investigations Committee, of which I am a member.

- 84 During the period under review, the Committee consider one Covid/pandemic related complaint, in September 2021, which was not investigated. The complaint alleged that the Department of Health failed to comply with its approved Equality Scheme in relation to 'The Health Protection (Coronavirus, Wearing of Face Coverings) Regulations (Northern Ireland) 2020'.
- 85 The Committee decided not to authorise an investigation of the complaint. The Department, in response to the complaint, had retrospectively screened the policy and applied the Commission's guidance, and the Committee considered the Department's action in relation to its Equality Scheme commitments to be relevant and proportionate in the context of the exceptional circumstances of the public health emergency arising from the Covid19 pandemic. The Committee also noted that the Department had both provided detailed explanations to the complainant of the considerations made on the matters alleged and that it had endeavoured to resolve the matters raised by the complainant.

Stakeholder engagement

- 86 Staff facilitated or participated in a range of stakeholder engagement events to gather information and highlight our views. We input to a seminar on Educational Underachievement (17 June 2020) organised by the Centre for Research in Educational Underachievement in Stranmillis University College, which allowed us to raise points about existing and exacerbated inequalities.

87 Aligned to our role as Independent Mechanism for Northern Ireland under the UNCRPD the Commission, along with NIHRC, convened two virtual roundtables (23 and 25 June 2020) with stakeholders to consider issues arising from the COVID-19 pandemic for disabled people. The purpose was to engage with the disability sector to explore concerns and issues arising from COVID-19 pandemic, with a view to identifying any potential common or collective messages for government. A wide range of issues were identified, including engagement and participation of disabled people, access to information, data collection, access to services, support for carers, education provision for children with SEN, employment concerns including return to the workplace and the inclusion of disabled people in the economic recovery.

88 An engagement session was also held with representatives from across groups representing minority ethnic communities, in partnership with Craic NI in July. The session included a discussion of the impact of the COVID-19 pandemic on people from Minority Ethnic communities in Northern Ireland. The discussion noted that the COVID-19 pandemic had further highlighted that data disaggregated by race, to inform policy development and service provision, is currently limited and there is a need for better data on race, collected and kept separately to allow action to identify and target so that Government can effectively identify and address inequalities in fields such as health and social care and also education, housing, employment and participation in public life. The meeting also noted the importance to see delivery be government and noted the lack of progress on the Racial Equality Strategy 2015-2025 against the background of the Black Lives Matter campaign.

As indicated at para. 29 above, I subsequently wrote to the First Minister and deputy First Minister on 25 August 2020 (**GMcG/5 – INQ000090837**).

UK equality and human rights bodies

- 89 Together with the Chief Executive, I participated in an online meeting with representatives of all the equality and human rights bodies in the UK in June 2020, to share what each organisation has been doing in respect of COVID 19 responses. Subsequent meetings in January 2021 and January 2022 also provided opportunity to share concerns and actions being taken. This included for example sharing concerns about COVID-19 vaccine roll out (January 2021) and compulsory vaccination in care homes (January 2022).
- 90 In respect of UK Government, as Chief Commissioner, together with the Chief Commissioners of the three other Commissions comprising the UK Independent Mechanism promoting and protecting the UN Convention of Rights of Persons with Disabilities, we wrote the Minister of State for Disabled People, Health and Work on 23 October 2020 (**GMcG/46 – INQ0000211691**). This set out, among other issues, concerns about the challenges for disabled people exacerbated by the pandemic, particularly in the context of independent living, employment opportunities, access to health and social care and access to food. It pointed out the rising infection rate and restrictions and asked how Government was going to ensure that the rights of disabled people were central to any new policies and announcements.

91 The Minister responded on 14 December 2020 (**GMcG/47 – INQ00090844**), advising of the UK Government’s commitment to the UNCRPD, and referencing the Equality Act 2010, and the Disability Discrimination Act 1995. He advised that ‘consideration of equality impacts must be integral in all key policy decisions, and that all equality and discrimination laws and obligations continue to apply during the COVID-19 pandemic’. He advised that the Government is engaging with disabled people’s organisations, and the Devolved Administrations.

92 I also discussed the impact of COVID-19 on grounds of age in meetings with the Older Person’s Commissioner and the Commissioner for Children and Young People in November 2020.

93 Although there was some communication between the Commissions, there was no overall, co-ordinated approach which involved ECNI.

Wider Publications

94 Beyond the articles, publications and meetings already mentioned in this document, the Commission published a number of wider articles to raise wider awareness of our key overarching views on the action needed by Government.

95 On 1 April 2020 the Commission published ‘Equality matters in extraordinary times’ (**CMcG/48 – INQ000220396**) where we set out that in making decisions “Ministers and officials will need to weigh

carefully the potential impacts of such decisions on the range of equality groups". We noted that *"Equality matters particularly at a time of crisis and even when policies need to be developed at pace"* and reinforced the importance of *"the existing framework of equality duties, with its requirements to pay due regard to the need to promote equality of opportunity and regard to the desirability of promoting good relations, should prove helpful in identifying and mitigating such impacts. They are important duties to observe."* We noted that Government will need to take difficult decisions, that "It needs to ensure that it understands the impact of these decisions and takes steps to mitigate these" and that *"Policy decisions taken now, in response to this crisis, have the potential to increase and reinforce existing inequalities; we must be very mindful of that in the days, weeks and months ahead. Equality matters for all of us."*

- 96 In April 2020 the Commission also published an online article 'People with disabilities must not be left behind by response to COVID-19' (CMcG/49 – INQ000220397) highlighting the pressing need to ensure that levels of support for people with disabilities are not adversely impacted by the current crisis; that transparent and accessible information is available; and that people with disabilities are fully involved in decision making at both a personal and public policy level. Working with representatives of Disabled People's Organisations, it also highlighted the fears of people with disabilities, and carers, at the current time and the need for attention to be paid international obligations on Government (including under the UNCRPD) and the recent Council of Europe advice to "take all necessary actions" to address such concerns.

- 97 In May 2020, the Commission published a press statement Education inequalities could worsen in response to COVID-19 crisis which sought to highlight the potential differential impacts that decisions about schooling and examinations for example could have on different groups of children (21 May 2020, **GMcG/21 – INQ000090847**).

Lessons learned/recommendations

- 98 The Commission recognises that Ministers and senior officials were dealing with rapidly evolving issues as the pandemic took hold and often had to develop responses at pace. The issues which required attention also evolved over time, with early attention necessary on access to life support / protective equipment; care in community / respite care; employment issues, including in relation to front line workers, as well as furlough support and employment protection / redundancy; education (access to tuition, equipment etc); childcare (children and workers); mental health; interaction of the above; and longer-term impacts of policy measures.
- 99 The Commission repeatedly set out our concern about the potential for new or exacerbated inequalities in the short, medium and longer terms as a result of the COVID-19 pandemic and/or the public policy responses to it. We noted, drawing on studies and reports from a range of jurisdictions outside of Northern Ireland, that the pandemic appeared to be reinforcing existing inequalities. Our concerns spanned the points raised in the paragraph above, as well as the need for equality to be considered at the earliest stage, and then on

a rolling basis, in policy development and delivery. Underpinning this, we repeated our longstanding calls on government and public authorities to ensure they better collected, analysed and used more comprehensive equality disaggregated data to target and track interventions across all key programmes and associated outcome areas.

- 100 Among the lessons to be learned from how Ministers and Departments responded, we would highlight the apparent lack of tracking of equality impacts across the full range of equality grounds, and as such the relative lack of targeting of key interventions to also avoid the emergence or exacerbation of inequalities. A key context was the absence of good, readily available data disaggregated across the full range of equality grounds, and a clear focus on equality impact assessments of policies.
- 101 The Commission repeatedly (see examples from across this statement) conveyed our concerns that COVID-19 reporting / policy development / delivery did not appear to explicitly be based on any analysis of COVID-19 impacts *across the full range of equality grounds*. For example, as noted further above, the Commission highlighted that while data from other jurisdictions indicated COVID-19 equality impacts in those jurisdictions on the grounds of, for example, race and disability, NI Departments were advising that such data was not available in Northern Ireland to allow COVID-19 impacts to be considered across the full range of equality grounds.

102 To inform effective responses, tailored to the specific circumstances and needs in Northern Ireland, all relevant measures should also be tracked for the impact on individuals from across each of the Section 75 equality grounds. There was and is a need for the COVID-19 response and recovery to take steps to identify those equality groups, and issues which on which actions should be focussed – both now and going forward.

103 It is vital that public authorities ensure that the data they collect to inform public policy and service provision also includes comprehensive equality data spanning the full range of equality ground, so that they can consider, target and track public policy and service provision to explicitly advance equality and to avoid exacerbating inequalities.

104 The Commission has a general concern that screening and Equality Impact assessments are given enough consideration and early enough consideration in the policy development process. As might be expected, in the circumstances of a national health emergency, this concern was exacerbated.

105 The Commission recommends the following needs are addressed:

- a) Improvement of the overall legal protections for groups likely to be vulnerable to pandemic -older people, young people and children, people with disabilities and longer-term underlying health conditions and people from different ethnic communities and those most at risk from poverty and deprivation. A major gap in legal protection in Northern Ireland is that for older people on the area of the provision of goods, facilities, and services.

- b) The need to use the existing equality law frameworks to help inform planning and policy development and improve decision making in the work of Government, the NI Executive and officials, in particular to ensure the public sector (Section 75) equality duties (to have due regard to the need to promote equality of opportunity across nine equality grounds) are used at the earliest possible stage in policy development, and across the lifecycle of policy development, delivery and review.

- c) The need for Government and Public Authorities to ensure the routine, robust and comprehensive collection and ready availability of data across the full range of equality grounds, to enable assessment by Public Authorities of equality impacts, and to better inform and target their decision making to ensure equality is advanced, and that the emergence or exacerbation of inequalities are avoided.

- d) Since the onset of the financial crisis in the late 2000's, the Commission has saw its staffing halved. It is inevitable that in the context of a significant emergency, such as a pandemic, resources are simply not available. Although the Commission did respond quickly to the demands of advice-giving in a new and difficult context, as the pandemic continued and the initial crisis was managed, it was not possible to do the follow up and evaluation that could be of benefit in the context of a similar national emergency.

Statement of Truth

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

Signed: Personal Data

Dated: 01. 08. 2023

