Witness Name: David Russell
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UK COVID-19 INQUIRY – MODULE 6

WITNESS STATEMENT OF DR DAVID RUSSELL

I, Dr David Russell, the Chief Executive (Grade 5, SCS) of the Northern Ireland Human Rights Commission (NIHRC) will say as follows:

1.0 Introduction

1.1 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.

1.2 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.

1.3 Our mission is to champion and guard the rights of all those who live in Northern Ireland. Our role is to ensure government and other public bodies protect the human rights of everyone in Northern Ireland. We also help people understand what their human rights are and what they can do if their rights are violated.

Statutory functions

1.4 Our primary role is to make sure government and public authorities protect, respect and fulfil the human rights of everyone in Northern Ireland. 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.

1.5 Each of our statutory functions has potential relevance for adult social care in Northern Ireland. Our statutory functions, in accordance with the Northern Ireland Act 1998, are:

- keeping under review the adequacy and effectiveness in Northern Ireland 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 Northern Ireland 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 Windsor Framework (formerly known as the Protocol on Ireland/Northern Ireland) of the UK-EU Withdrawal Agreement [sections 78A; 78C-78E].

1.6 We are mandated in accordance with Article 2(1) of the Windsor Framework (formerly known as the Protocol on Ireland/Northern Ireland) of the UK-EU Withdrawal Agreement to oversee the UK Government commitment 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. We are also mandated to oversee the UK Government commitment to ensure that Northern Ireland law keep pace with changes made by the EU to certain EU equality on or after 1 January 2021 to improve the protection of human rights. We exercise this mandate alongside the Equality Commission for Northern Ireland, and together we work with the Irish Human Rights and Equality Commission on the island of Ireland aspects of the commitment.

1.7 We are also designated, along with the Equality Commission for Northern Ireland 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 the United Kingdom, with our particular focus on Northern Ireland. As part of this role, we are joint Secretariats of the Northern Ireland-specific Independent Mechanism Disability Forum. Our work in these roles would include consideration of and advising on adult social care in Northern Ireland.

1.8 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. This has not occurred to date, but there is the possibility that any cross-border elements of adult social care could be discussed within this forum.

1.9 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. This would include adult social care, with the NIHRC's mandate focused on Northern Ireland.

1.10 We are a fee-paying member of the:

- European National Human Rights Institutions (ENNHRI); and
- Global Alliance of National Human Rights Institutions (GANHRI).

1.11 Relevant to adult social care, we are a member of a range of international working groups, such as the:

- Commonwealth National Human Rights Institutions Forum;
- ENNHRI ESCR Working Group;
- ENNHRI Older Persons Working Group; and
- ENNHRI UN CRPD Working Group.

1.12 Relevant to adult social care, we have observer status on a range of governmental groups such as:

- DfC Gender Equality Strategy Co-Design Group;
- DfC Disability Strategy Co-Design Group; and
- Health and Social Care Trusts, Joint Regional Equality, Human Rights and Good Relations Forum.

1.13 While the NIHRC can provide advice on human rights best practice or legally challenge the structure and size of the care sector in Northern Ireland in line with our statutory functions, we do not have responsibility for delivering, structuring, managing or regulating the care sector in Northern Ireland. We are therefore not best placed to provide an overview of the structure and size of the adult care sector in Northern Ireland.

2.0 NIHRC's Work

Engagement with stakeholders on COVID-19

2.1 The NIHRC did not directly advise, collaborate with or otherwise work with the Chief Medical Officer, Chief Nursing Officer, Chief Social Worker for Northern Ireland, or Health and Social Care Board on COVID-19 related matters. It is possible that the NIHRC's publicly available advice was utilised in the work and decisions of these public bodies, but that would be a matter to be determined with them directly.

2.2 The NIHRC did directly advise, collaborate with and otherwise work with the Department of Health, Public Health Agency, Health and Social Care Trusts, the Executive Office and the Commissioner for Older People of Northern Ireland on COVID-19 related matters, including issues regarding adult social care. In addition to the bodies listed, we also provided advice to the Northern Ireland Assembly Committee for Health on issues related to adult social care.

2.3 The NIHRC did not directly advise, collaborate with and otherwise work with the Regulation and Quality Improvement Agency or care providers on COVID-19 related matters, but the NIHRC did raise concerns with the Department of Health regarding the role and practice of these bodies regarding COVID-19, particularly adult social care. The NIHRC also collaborated with the Commissioner for Older Persons in raising these issues and providing human rights advice to the Department of Health and, through media reports, the public.

2.4 Between 1 March 2020 and 28 June 2022, the NIHRC initiated most of the correspondence with these public bodies on COVID-19 related matters. The full extent of this correspondence was provided in our evidence to the inquiry's Module 2C, at paragraphs 2.1 to 2.56 of INQ000220355. The following provides a summary of advice or significant concerns that we had in respect of key decisions or guidance made by relevant public authorities, including the devolved government in Northern Ireland, regarding COVID-19 and adult social care in Northern Ireland. A list of the correspondence referenced below is provided in Annex 1.

2.5 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 Northern Ireland (Exhibit DR2/03 [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. This included setting out the restrictions on movement and exceptions to these restrictions, which would have affected the provision and delivery of adult social care in Northern Ireland.

2.6 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 (Exhibit DR2/04 [INQ000184745]; Exhibit DR2/05 [INQ000184746]). This evidence provided advice on a broad range of issues. Relevant to adult social care, this advice included consideration of how restricting movement through COVID-19 measures affected access to paid and unpaid carers, impact on mental health and increased the risk of domestic and care home abuse. We indicated that we were available to provide oral evidence, but this was not requested by the Joint Committee.

2.7 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 (Exhibit DR2/08 [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. Relevant to adult social care, this included consideration of inadequate personal protective equipment affecting women, palliative care and do not resuscitate orders impacting older people, and the increased risks of abuse through restricting movement. 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.

2.8 On 11 May 2020, we wrote a joint letter with the Commissioner for Older People for Northern Ireland to the Department of Health regarding the role and practice of Regulation and Quality Improvement Agency in light of COVID-19 measures (Exhibit DR2/07 [INQ000184753]). While we understood that the decision was taken to reduce risk of infection, we were concerned that no alternative process was in place to ensure that care homes in Northern Ireland were effectively monitored. The NIHRC's investigation into care homes in Northern Ireland in 2012 found several concerns with how care homes were monitored (Exhibit DR2/37 [INQ000500067]).

Much work had been done with the Department of Health since this investigation to ensure the negative findings of our investigation were addressed (Exhibit DR2/39 [INQ000500069]). We were concerned that a lack of an alternative plan during the COVID-19 pandemic risked either a temporary or permanent roll-back on the advancements that had been made in improving regulation and monitoring of care homes in Northern Ireland. We were particularly concerned as we were aware that care home residents were at particular risk during this period in terms of both the infection and potential abuse. The Department of Health responded on 19 May 2020 providing information, but did not request further advice (Exhibit DR2/09 [INQ000184758]). This information clarified that a reduction in the Regulation and Quality Improvement Agency's inspections was seen as a necessity, but that inspections were taking place where possible and that enforcement action was being issued where risks were identified. It is for a court to determine whether a human rights violation occurred due to the Department of Health's approach. However, the NIHRC continued to be concerned of the broader ramifications of reduced monitoring of care homes due to COVID-19, particularly during a time of significant COVID-19 related care home deaths, and we continued to advise on this issue under the broader umbrella of monitoring and regulation. This included through our response to the Women and Equalities Inquiry into the UK Government's response to COVID-19 and engaging with the Department of Health through our Annual Statement. (Exhibit DR2/17 [INQ000184775]; Exhibit DR2/21 [INQ000184803]; Exhibit DR2/29 [INQ000184720]; Exhibit DR2/34 [INQ000184733]).

2.9 On 26 May 2020, the Northern Ireland Assembly Committee of Health wrote to us seeking advice on COVID-19 testing in care homes (Exhibit DR2/10 [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 (Exhibit DR2/13 [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. We were deeply critical of the slow introduction of testing within care homes, with the view that residents discharged from hospital to care homes should have been tested automatically from the outset of the pandemic, with priority testing within care homes from the beginning. It was NIHRC's view that lack of testing, late arrival of Personal Protective Equipment, the delay in including care home deaths in COVID-19 statistics to enable understanding of the issue, and the relative

underfunding and general neglect of the care home sector all contributed to the high numbers of care home deaths due to COVID-19 (Exhibit DR2/10 [INQ000184760]; Exhibit DR2/13 [INQ000184766]). With a particular concern for the rights of older persons and persons with disabilities, we recommended that care arrangements were subject to constant review and triage protocols are developed and implemented based on medical needs and the best scientific evidence available (Exhibit DR2/04 [INQ000184745]; Exhibit DR2/05 [INQ000184746]; Exhibit DR2/06 [INQ000184752]; Exhibit DR2/07 [INQ000184753]; Exhibit DR2/17 [INQ000184775]; Exhibit DR2/21 [INQ000184803]; Exhibit DR2/29 [INQ000184720]; Exhibit DR2/34 [INQ000184733]). We were also concerned that the blanket restrictions on visitors to care homes during the pandemic was a disproportionate response, and recommended that in exceptional circumstances that the provision for visitors to care homes was extended to relatives of patients receiving palliative care in all settings. (Exhibit DR2/04 [INQ000184745]; Exhibit DR2/05 [INQ000184746]; Exhibit DR2/06 [INQ000184752]; Exhibit DR2/07 [INQ000184753]; Exhibit DR2/17 [INQ000184775]; Exhibit DR2/21 [INQ000184803]; Exhibit DR2/29 [INQ000184720]; Exhibit DR2/34 [INQ000184733]). This work was both through our own initiative and through joint working with the Commissioner for Older People for Northern Ireland. We did not receive significant updates from the Department of Health regarding the concerns raised, instead relying on publicly available information to track developments.

2.10 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 (Exhibit DR2/11 [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 (Exhibit DR2/12 [INQ000184765]).

2.11 In July 2020, in response to a public call for evidence, we jointly with the Equality Commission for Northern Ireland (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 (Exhibit DR2/17 [INQ000184775]). In this we highlighted, among other issues, concerns around triage protocols, personal protective equipment, visiting relatives and care home deaths.

2.12 In February 2021, the NIHRC responded to the Department for Communities equality impact assessment of the Draft Budget 2021-2022 (Exhibit DR2/23 [INQ000184805]). Linked to COVID-19, this included advice for addressing rising unemployment and ensuring an effective social security system (including Carers Allowance). It also included advice on how to ensure the specific needs of people of different ages, women, persons with disabilities, minority ethnic communities and persons with dependants were considered.

2.13 On 24 June 2021, the TEO Director of COVID Recovery wrote to us seeking our views on the Draft Consolidated COVID Recovery Plan (Exhibit DR2/24 [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 respond 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.

2.14 On 23 July 2021, the former Chief Commissioner wrote to the Minister for Health in relation to the restrictions around visitation to care homes (Exhibit DR2/26 [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.

2.15 In July 2021, the NIHRC responded to a public consultation on the introduction of a duty of candour in Northern Ireland (Exhibit DR2/43 [INQ000500073]). This submission did not specifically address COVID-19. However, lack of information was a recurring issue during the pandemic, for example, not appropriately communicating or addressing issues to do with visitation of relatives, testing or triage decision making (Exhibit DR2/04 [INQ000184745]; Exhibit DR2/05 [INQ000184746]; Exhibit DR2/06 [INQ000184752]; Exhibit DR2/07 [INQ000184753]; Exhibit DR2/17 [INQ000184775]; Exhibit DR2/21 [INQ000184803]; Exhibit DR2/29 [INQ000184720]; Exhibit DR2/34 [INQ000184733]). Introducing a duty of candour would be an important step in addressing this.

2.16 In September 2021, we published a tendered cumulative impact assessment on the impact of public spending changes in Northern Ireland, which considered COVID-19 and the effect on specific groups (Exhibit DR2/27 [INQ000184714]). In November 2021, we published a tendered cumulative impact assessment on the impact of COVID-19 on public services in Northern Ireland, which considers the effect on specific groups (Exhibit DR2/28 [INQ000184718]). These two pieces of research, which included consideration of social care, 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.

2.17 In December 2021, we published across our online platforms a guide on your human rights during the COVID-19 pandemic (Exhibit DR2/30 [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. This guide would have been useful regarding staffing and recruitment to adult social care in Northern Ireland.

2.18 On 15 December 2021, the Chief Commissioner wrote to the Minister of Health on the draft Human Rights Impact Assessment for the amended Health Protection (Coronavirus Restrictions) Regulations (NI) 2021 (Exhibit DR2/44 [INQ000500075]). In this advice we re-emphasised the parameters that exist within which emergency powers may be used. We also advised that COVID status certification would have to consider proportionality, necessity and accessibility. This advice was relevant to adult social care in terms of access to and staffing of adult social care services in Northern Ireland.

2.19 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 Northern Ireland context, specific groups and the transition from emergency measures (Exhibit DR2/32 [INQ000184729]).

2.20 In June 2022, the NIHRC responded to the Department of Health's consultation on reform of adult social care in Northern Ireland (Exhibit DR2/45 [INQ000500076]). In

summary, this advised that a human rights based approach was required regarding adult social care, particularly concerning funding, resources (staffing and wages), data collection, management, support services and long-term planning.

2.21 We also tracked COVID-19 issues, as they remain relevant, on an annual basis through our Annual Statements (Exhibit DR2/22 [INQ000184804]; Exhibit DR2/29 [INQ000184720]; Exhibit DR2/33 [INQ000184732]). The content within our Annual Statements forms the basis of much of our engagement with public bodies. The Annual Statements 2020, 2021 and 2022 included consideration of the high level of deaths in care homes, regulation of care homes and visitation rights.

2.22 Between April 2020 and February 2022, we also received 1,009 complaints to our advice clinic. However, we are not able to further disaggregate which were specifically due to COVID-19 measures. We only retain details of our casework engagement for one year following closure of the case (Exhibit DR2/36 [INQ000184740]), and so most information relating to specific individual cases would no longer be retained. As a summary relevant to adult social care, we dealt with queries related to:

- visiting relatives in care homes and hospitals;
- certification requirements;
- requirements to wear face masks; and
- human rights compliance of government's powers to introduce COVID-19 related restrictions (Exhibit DR2/19 [INQ000184789]).

2.23 While offering human rights related advice and information where possible to the complainants, these complaints also helped us to better understand the issues in a holistic way, which enhanced our advice.

2.24 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 including matters related to adult social care. 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.

Adult social care in Northern Ireland

2.25 There have been ongoing issues with adult social care in Northern Ireland, even pre-pandemic.

2.26 In 2012, we undertook a statutory investigation into the human rights of older persons in care homes in Northern Ireland (Exhibit DR2/37 [INQ000500067]). This raised several structural concerns, particularly regarding staff training, staff resources and barriers to complaints mechanisms. There were also concerns regarding care provision, specifically concerning quality of life, personal care, medication, access to food and water, and use of restraint. However, following this investigation, in April 2015 the NIHRC welcomed publication of revised care standards for nursing homes in Northern Ireland (Exhibit DR2/39 [INQ000500069]).

2.27 In 2014, the NIHRC also researched and published advice on the human rights of carers in Northern Ireland (Exhibit DR2/38 [INQ000500068]). This report focused on the rights of unpaid carers, however several of the findings would be transferable across the care system and affect the effectiveness of the broader system. For example, the NIHRC found that there were high costs associated with obtaining care in Northern Ireland and that the system was difficult to access, with an increasing reliance on unpaid carers.

2.28 In 2017, we worked with the Northern Health and Social Care Trust and Newcastle University at an event in Irrelevant & Sensitive Health and Care Centre (Exhibit DR2/40 [INQ000500070]). The purpose of this event was to promote a more participative, human rights based approach to the development of future health and social care services. This was identified as a key component for improving Northern Ireland's health and social care system, which had been lacking.

2.29 In 2018 and 2019, the NIHRC provided advice regarding abuse in health and social care settings (Exhibit DR2/41 [INQ000500071]); Exhibit DR2/42 [INQ000500072]). This particularly focused on the Commissioner for Older People's findings regarding Irrelevant & Sensitive Care Home. The NIHRC advised that changes to the criminal law framework were required to ensure sufficient and robust protection of individuals reliant on others for their health and social care needs. The NIHRC advised that the Commissioner for Older People's recommendations concerning Irrelevant & Sensitive Care Home should be effectively implemented. The NIHRC also provided advice on

effective implementation of the Health and Social Care (Control of Data Processing) Act 2016 (Exhibit DR2/41 [INQ000500071]; Exhibit DR2/42 [INQ000500072]).

2.30 There have also been human rights concerns specific to the COVID-19 pandemic.

2.31 In March 2020, the NIHRC became aware that there were concerns with the UK Government and Northern Ireland Executive's COVID-19 related restrictions and provided advice to that effect. This advice was provided to the public (Exhibit DR2/02 [INQ000184702]; Exhibit DR2/03 [INQ000184703]; Exhibit DR2/06 [INQ000184752]; Exhibit DR2/21 [INQ000184803]; Exhibit DR2/29 [INQ000184720]; Exhibit DR2/31 [INQ000184726]; Exhibit DR2/34 [INQ000184733]), House of Commons and House of Lords Joint Committee on Human Rights (Exhibit DR2/04 [INQ000184745]; Exhibit DR2/05 [INQ000184746]), Northern Ireland Assembly Committee of Health (Exhibit DR2/10 [INQ000184760]; Exhibit DR2/13 [INQ000184766]), House of Commons Women and Equalities Committee (Exhibit DR2/17 [INQ000184775]), UN Committee on Social, Economic and Cultural Rights (Exhibit DR2/35 [INQ000184735]), Minister of Health (Exhibit DR2/07 [INQ000184753]; Exhibit DR2/26 [INQ000184825]) and broader Northern Ireland Executive (Exhibit DR2/21 [INQ000184803]; Exhibit DR2/29 [INQ000184720]; Exhibit DR2/31 [INQ000184726]; Exhibit DR2/34 [INQ000184733]). These concerns persisted for the periods that these restrictions were in place. From a human rights standpoint, the NIHRC's advice was that it is permissible to restrict movement in extreme situations, such as a pandemic. However, there is a requirement on government to ensure that the restrictions in place are proportionate, are in pursuit of a legitimate aim and are only utilised when necessary and for as long as is necessary. We were very aware that it was vital that these tests were appropriately applied regarding the restrictions on movement and when exceptions were or were not applied (Exhibit DR2/01 [INQ000184697]; Exhibit DR2/30 [INQ000184722]). We were aware that restricting movement through COVID-19 measures had a significant effect on access to carers (including unpaid carers) and mental health (Exhibit DR2/17 [INQ000184775]). We were also acutely aware that restricting movement can increase the risk of domestic and care home abuse (Exhibit DR2/04 [INQ000184745]; Exhibit DR2/05 [INQ000184746]; Exhibit DR2/08 [INQ000184756]; Exhibit DR2/21 [INQ000184803]; Exhibit DR2/29 [INQ000184720]; Exhibit DR2/31 [INQ000184726]; Exhibit DR2/34 [INQ000184733]; Exhibit DR2/35 [INQ000184735]). Furthermore, there were legitimate concerns that the restrictions on visitation rights for residents and their families increased the risk of unchecked abuse, inappropriate use of restraint and declining health (Exhibit DR2/04

[INQ000184745]; Exhibit DR2/05 [INQ000184746]; Exhibit DR2/06 [INQ000184752]; Exhibit DR2/07 [INQ000184753]; Exhibit DR2/10 [INQ000184760]; Exhibit DR2/13 [INQ000184766]; Exhibit DR2/17 [INQ000184775]; Exhibit DR2/21 [INQ000184803]; Exhibit DR2/26 [INQ000184825]; Exhibit DR2/29 [INQ000184720]; Exhibit DR2/31 [INQ000184726]; Exhibit DR2/34 [INQ000184733]; Exhibit DR2/35 [INQ000184735]). The NIHRC encourages the inquiry to consider whether the extent and nature of restrictions on care homes satisfied the human rights based tests, particularly in the latter stages of the pandemic.

2.32 Since March 2020, the NIHRC has been aware that COVID-19 had a particular impact on the most at risk groups in society, exacerbating existing inequalities (Exhibit DR2/08 [INQ000184756]). However, we were concerned that the effects or specific needs of specific groups were not sufficiently considered in decision-making. The NIHRC raised this formally and informally with public bodies at every available opportunity. Relevant to adult social care, of particular concern was inaccessible and inadequate personal protective equipment (particularly for women), constraints around palliative care, the increased risks of abuse through restricting movement and the increased use of do not resuscitate orders particularly regarding older people (Exhibit DR2/08 [INQ000184756]). Furthermore, regarding the Care Partner concept, we advised that unpaid carers in health and social care settings, including adult social care, that were at risk of exposure to COVID-19 in the course of their work should have been immediately provided with Personal Protective Equipment that adequately fitted to ensure satisfactory protection (Exhibit DR2/08 [INQ000184756]).

2.33 Since March 2020, the NIHRC was concerned that there was not effective, regular monitoring of the use and effect of COVID-19 restrictions, particularly regarding individuals most at risk. We were also concerned that there was not effective monitoring of the spread of COVID-19 or use of available measures to prevent the spread of COVID-19, particularly in the earlier stages of the pandemic. Our understanding of the specific ways in which particular individuals or groups were affected evolved over time. This was a particular concern in the context of COVID-19 testing, personal protective equipment and use of triage decision-making. Consequently, we had concerns regarding protecting life, the use of invasive procedures and high levels of deaths in care homes in Northern Ireland (Exhibit DR2/13 [INQ000184766]). The COVID-19 pandemic also exposed the weaknesses in regulating adult social care in Northern Ireland, particularly in the context of care homes (Exhibit DR2/07 [INQ000184753]).

2.34 Since March 2020, the NIHRC was further concerned that cumulative impact assessments of any changes were not being undertaken and individuals and groups affected by any changes were not being effectively engaged with or able to effectively participate in decision-making (Exhibit DR2/18 [INQ000184786]; Exhibit DR2/25 [INQ000184824]). This also linked to concern for whether data was being appropriately handled and stored in line with data protection laws (Exhibit DR2/15 [INQ000184772]; Exhibit DR2/16 [INQ000184773]). In 2021, with it clear that the UK Government or Northern Ireland Executive were not planning and had no plans to undertake a cumulative impact assessment of the effects of COVID-19, we published research showing that a cumulative impact assessment could be conducted (Exhibit DR2/27 [INQ000184714]; Exhibit DR2/28 [INQ000184718]).

2.35 From at least July 2021, the NIHRC was actively advising that lessons needed to be learned from the COVID-19 pandemic (Exhibit DR2/25 [INQ000184824]; Exhibit DR2/29 [INQ000184720]; Exhibit DR2/32 [INQ000184729]; Exhibit DR2/34 [INQ000184733]). The challenges faced during COVID-19 raised the importance of introducing a duty of candour to health and social care in Northern Ireland (Exhibit DR2/43 [INQ000500073]). It also raised the need for an inquiry to establish what happened and learn lessons from the COVID-19 pandemic (Exhibit DR2/25 [INQ000184824]; Exhibit DR2/29 [INQ000184720]; Exhibit DR2/32 [INQ000184729]; Exhibit DR2/34 [INQ000184733]). Such inquiry should look at the United Kingdom in detail, including Northern Ireland. We, therefore, welcome this inquiry's work.

2.36 While mandatory vaccination was not introduced, it was being seriously considered. In September 2020, the NIHRC developed advice on this issue (Exhibit DR2/20 [INQ000184792]). Under such an approach is permissible, as long as it is in line with Article 8 of the European Convention on Human Rights. The emerging hesitancy towards introducing such a regime was understandable and we were concerned that human rights were not being given due consideration in the decision-making process.

2.37 Ultimately, the COVID-19 pandemic emphasised and exacerbated the general issues with the health and social care system in Northern Ireland. In the context of adult social care, it has emphasised the need for significant reform, including that a human rights based approach is required regarding adult social care, particularly concerning funding, resources (staffing and wages), data collection, management, support services and long-term planning. It further highlighted the need for an effective social

security system, with particular consideration for people of different ages, women, persons with disabilities, minority ethnic communities and persons with dependants (including paid and unpaid carers). These are issues that the NIHRC has been actively raising before, during and after the COVID-19 pandemic.

Reflections

2.38 A summary of the NIHRC's advice is provided in paragraph 2.1 to paragraph 2.24 of this statement. However, to draw on some specifics we are concerned that there was not sufficient consideration given to preventing spread of COVID-19 among and protecting the lives of groups with specific needs, including residents of care homes. In the latter stages of the pandemic this extends to not providing sufficient support and protection to high-risk individuals to return to some form of normality. This starts with preventing COVID-19 from rapidly spreading through care homes, through to enabling re-engagement with independent living and communities as the pandemic subsided. It is beyond our area of expertise, but consideration is required regarding what can be done better to ensure infection prevention and control measures are effective in Northern Ireland. It also requires consideration of how to achieve a better balance during a pandemic between restricting access by or to healthcare professionals, while also ensuring individuals are receiving an adequate standard of healthcare, including access to and provision of adult social care.

2.39 While appreciating the broader situation of a fast-moving infection that the world had never seen before, the NIHRC was concerned at the lack of timely consultation and lack of communication regarding decisions that impacted on the adult care sector. It was typical for the NIHRC to initiate dialogue with public bodies on a particular issue. On occasion this dialogue continued and it was felt that the NIHRC's advice was being meaningfully considered. For example, in our engagement with the Northern Ireland Assembly Committee of Health on COVID-19 testing in care homes (Exhibit DR2/13 [INQ000184766]) or engaging with the Department of Health on the contract tracing app (Exhibit DR2/14 [INQ000184768]). However, the initiation of this dialogue was often last minute. For example, with contact tracing we were contacted one working day before the app was due to go live (Exhibit DR2/15 [INQ000184772]; Exhibit DR2/16 [INQ000184773]) or on the COVID recovery plan we were given eight days to provide a written response (Exhibit DR2/25 [INQ000184824]). On other occasions, the dialogue did not progress and there were concerns that a human rights based approach was not at the forefront of the decision-maker's

considerations. For example, on undertaking cumulative impact assessments of COVID-19 related changes (Exhibit DR2/27 [INQ000184714]; Exhibit DR2/28 [INQ000184718]), informing considerations of alternative plans for regulating and monitoring care homes in Northern Ireland (Exhibit DR2/07 [INQ000184753]) or engagement around visitations to care homes (Exhibit DR2/26 [INQ000184825]).

2.40 More broadly, there were significant concerns that the care sector and individuals affected by decisions related to COVID-19, particularly individuals or groups with specific needs, were not being effectively engaged with and did not have effective opportunities to participate in decision-making. The NIHRC raised this on several occasions (Exhibit DR2/18 [INQ000184786]; Exhibit DR2/25 [INQ000184824]).

2.41 In general, there was a lack of guidance relevant to adult social care. When guidance did exist, it was slow to react to the evolving situation or to include sufficient guidance for the range of different scenarios that could arise in the evolving situation. For example, clear guidance on access to care homes was initially lacking. This guidance, once available, then failed to be updated in a timely manner or to take into account a tailored approach in reasonable circumstances (Exhibit DR2/26 [INQ000184825]).

2.42 Overall, the NIHRC recommends that a human rights based approach to adult social care is adopted in Northern Ireland. Such an approach should also include clear plans and means to develop guidance that can evolve at a timely pace, should an extreme situation or further pandemic arise.

2.43 In practice this means that decisions are in line with the human rights framework. This includes that any limitation on rights is permissible in law, proportionate, in pursuit of a limited aim, necessary and only in place for as long as is necessary. Any decisions or actions should be appropriately regulated and regularly and effectively monitored, with lessons learned applied in a timely manner. Decisions and actions should be developed, implemented and monitored through effective participation, particularly with affected individuals or groups and their representative organisations. Guidance should be timely, clear and fully accessible, with particular consideration of specific needs. This includes that it evolves as required and when required. There should also be an effective complaints and remedy process. Where appropriate, disaggregated data should be gathered, evaluated and published for the purposes of improving services in a timely manner.

3.0 Statement of truth

3.1 I believe that the facts stated in this witness statement are true. I understand that proceedings may be brought against anyone who makes, our 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:

20.09.2024