**UK Covid-19 Inquiry Before Baroness Heather Hallett**
**Module 6 Hearings: June and July 2025**

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**WRITTEN CLOSING STATEMENT**
**on behalf of**
**THE SCOTTISH GOVERNMENT**

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## Introduction

1. To begin where this Module began, and where it ended: with the Impact evidence. Both on film and in person, the poignant testimonies could not fail to move. This form of participation in the Inquiry process shows a *bravery* that an onlooker may not fully understand, and that perhaps we, who regularly appear in court rooms, come to take for granted. The Scottish Government pays tribute to those who participated in the film, and who gave evidence. It passes its sympathies and condolences to the bereaved across the UK. It acknowledges the herculean efforts of all those who looked after our most vulnerable, including the adult social care ('ASC') workforce and the **unpaid carers**. As Ms Freeman said, their response was *"absolutely exemplary"*[1].
2. In this Closing Statement, we examine some of the issues that arose in evidence, to which we offer context and clarity. We examine the following: understanding of and engagement with the ASC sector; unpaid carers; discharge from hospital; the Policy Alignment Check Process; staff movement and the testing of staff and residents; visiting; PPE; funding and sick pay; regulation; and use of Do Not Attempt Cardiopulmonary Resuscitation notices ('DNACPRs').

## Understanding of and engagement with the Adult Social Care Sector

3. In Scotland, ASC was prioritised alongside the NHS in the pandemic response. Further, the Scottish Government did have a good understanding of the sector. Within the Scottish Government, there existed a wealth and breadth of specialist knowledge, upon which Ministers could draw. Policy officials from dedicated social care divisions, professional advisers within the various directorates, advisory groups that assisted in development of policy, and a range of social care data and analysis all contributed in keeping Minsters fully informed. The Inquiry heard from Dr Jane Townson OBE that, in general, officials in the devolved administrations have all worked with each other across all aspects of health and social care for many years, so their level of knowledge is higher[2].

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[1] Evidence of Jeane Freeman, Transcript 14/40/22.
[2] Evidence of Dr Jane Townson OBE, Transcript 9/6/5-9.

4. Prior to the pandemic, there was extensive and meaningful engagement and consultation with the sector. During the pandemic, this engagement only intensified. The evidence would suggest that stakeholders accepted that this was so. Ms Lamb noted that a broad cross-section of stakeholder voices was listened to, albeit those voices were not always in agreement[3]. The Scottish Government's attitude to engagement reflects its views of the importance of an inclusive approach. In the case of Covid-19, the approach took the form of ensuring, from the outset, that all parties were involved in advising on support for the sector.
5. From early February 2020, meetings took place between the Scottish Government and the social care sector. They involved the Cabinet Secretary for Health and Sport and officials, the Convention of Scottish Local Authorities ('COSLA') and health and social care partnerships ('HSCPs'). Pre-pandemic, Scottish Government officials had attended the COSLA-convened National Contingency Planning Group ('NCPG'), a multi-stakeholder social care group, which has existed since 2011 to support contingency arrangements in social care. On 12 March 2020 the group was convened in relation to Covid-19, and until June 2020 held weekly meetings attended by the Scottish Government and a range of other stakeholders[4].
6. A wide range of groups was convened by the Scottish Government to bring stakeholders together, to discuss and prioritise actions, and to advise on the development of guidance. Requests (from stakeholders across the public, private and independent sectors) to participate in advisory groups were welcomed. Two main stakeholder groups were established by the Scottish Government: the Clinical and Professional Advisory Group for Adult Social Care ('CPAG'); and the Care Home Rapid Action Group ('CHRAG'). The latter was subsequently replaced by the Pandemic Response Adult Social Care Group ('PRASCG')[5]. We dealt in detail with their composition, remit, and the important work undertaken by these advisory groups, in our Written Opening Statement. Full details of the groups represented in the CPAG, the CHRAG and the PRASCG can be found in the witness statement for DG HSC[6]. The number and variety of groups represented evidences the Scottish Government's proactive and regular involvement with a *vast* range of stakeholders. In the CPAG alone, 60 groups and bodies were represented. A few groups from this very large pool are mentioned in the following paragraphs.
7. Scottish Care is a membership organisation and the representative body for independent social care services in Scotland. In evidence Ms Freeman observed that she and her officials had many meetings with them. She also noted that other organisations raised concerns, and with whom the Scottish Government had discussions[7]. One such organisation, also involved

[3] Evidence of Caroline Lamb, Transcript 14/128/5-8.
[4] INQ000614179_0049 – Witness Statement of DG HSC at §139.
[5] INQ000614179_0052 – Witness Statement of DG HSC at §149.
[6] INQ000614179_0052, 0061 and 0063 – Witness Statement of DG HSC at §150, 173 and 181.
[7] Evidence of Jeane Freeman, Transcript 14/43/1-8.

in the advisory groups, was the Coalition of Care and Support Providers in Scotland ('CCPS'), which represents not-for-profit social care providers[8]. The Scottish Government consulted with Care Home Relatives Scotland ('CHRS'), a group that brought together those with loved ones in nursing and residential homes during the pandemic. Following the introduction of visiting restrictions in care home settings, the group worked with the Scottish Government to make improvements to visiting guidance. The Scottish Government continues to work with CHRS in relation to the implementation of 'Anne's Law' (discussed further below)[9].

8. From May 2020, Scottish Government officials convened weekly meetings with the Society of Local Authority Chief Executives ('SoLACE'), the UK's leading membership network for public sector and local government professionals. SoLACE were members of the CHRAG and the Scottish Government ASC GOLD Group[10].
9. The Scottish Trades Union Congress ('STUC') met with Scottish Government Ministers and officials on a range of issues, including social care workforce matters, and participated in Scottish Government advisory groups. Scottish Government also met with individual trades unions, whose members included social care staff, including the GMB (General and Municipal Workers' Union), Unison and UNITE[11].

**Unpaid Carers**

10. In Scotland we use the term 'unpaid carers', rather than 'informal carers', to describe those who provide care to family, friends or relatives. Unpaid carers make a vital contribution to ensuring that people throughout Scotland get the care they need. An unpaid carer is anyone who looks after a friend, family member or neighbour due to either old age, physical or mental illness, disability or an addiction. This does not include paid care workers or those who are volunteering. 'Looking after' can mean helping with things like shopping, domestic tasks, emotional assistance and personal care[12].
11. In her Opening Statement, Counsel to the Inquiry set out some stark statistics on the numbers of people providing unpaid care in the UK. The 2021 censuses in England, Wales and Northern Ireland, and the 2022 census in Scotland, found that there were approximately 5.8 million people providing unpaid care. Among those unpaid carers, 59% are women, and about 1.7 million people provide 50 hours or more of unpaid care per week. Taken together, that is many millions of people either being *cared for*, or *providing care*[13].

[8] INQ000614179_0045 – Witness Statement of DG HSC at §127.
[9] INQ000614179_0046 – Witness Statement of DG HSC at §129.
[10] INQ000614179_0044 – Witness Statement of DG HSC at §123.
[11] INQ000614179_0045 – Witness Statement of DG HSC at §128.
[12] INQ000614179_0087 – Witness Statement of DG HSC at §251.
[13] Opening Statement, CTI, Transcript 1/9/7-16.

12. Figures indicate that, at the outset of the pandemic, there were around 696,000 unpaid carers living in Scotland, including 29,000 young carers[14]. The Scotland's Carers Update Release March 2024, published by the Scottish Government[15], states that the number of carers living in Scotland is presently estimated to be around 700,000 to 800,000. Figures from the Scottish Health Survey, 2018-2022 combined, also show that for people aged 16 and over, 17% of females and 12% of males are carers, and that people are more likely to be providing unpaid care in their later working years (especially females). Over a quarter (26%) of females aged 45-54, and females aged 55-64, provided unpaid care in 2018-2022 combined[16].
13. The Covid-19 pandemic created significant difficulties and hardships for unpaid carers. Many had to step into the gap to support vulnerable friends and family members as support services either closed or reduced their capacity during the initial 'lockdown'. This meant that the number of people providing care increased, and many existing carers took on more intensive caring roles, while also losing the opportunity to take breaks from caring[17]. Caroline Lamb was asked if she thought that unpaid carers and care at home staff had been overlooked during the pandemic. She explained "*I don't think that they were overlooked. I think that -- you're right that there was a focus on care homes, particularly in the early parts of the pandemic, but I do think that Scottish Government was also very aware of issues being raised by the care at home sector, and also by unpaid carers. So again, I think, as a result of the Carers Act 2016, we had well developed mechanisms for consulting with representatives of unpaid carers...*"[18]. It was clear that the voice of unpaid carers was heard by the Scottish Government. As Ms Lamb stated in evidence: "*I think that the ministers were always very keen to understand issues from the perspective of the people receiving services and their loved ones.*"[19]
14. In reality, and while not seeking to be complacent, there was extensive engagement by the Scottish Government with unpaid carers and representative groups. From the beginning of the pandemic, Scottish Government engaged remotely with carer representatives and with unpaid carers to listen to, and respond to, their concerns. Together, this dialogue enabled the Scottish Government to determine the level of support required[20] and the type of information that would be of greatest assistance. In particular, the Scottish Government hosted weekly catch-ups from the beginning of the pandemic with Scotland's National Carer Organisations (NCOs) to understand better the issues that carers and carer support organisations were facing, and to

[14] INQ000614179_0083 – Witness Statement of DG HSC at §237; INQ000509919 – Briefing from Scottish Government titled Scotland's Carers – Update Release dated 5 November 2019.
[15] INQ000509924 – Article from Scottish Government titled Scotland's Carers Update Release March 2024, dated 2 April 2024.
[16] INQ000614179_0087 – Witness Statement of DG HSC at §252.
[17] INQ000614179_0178 – Witness Statement of DG HSC at §537.
[18] Evidence of Caroline Lamb, Transcript 14/120/16-24.
[19] Evidence of Caroline Lamb, Transcript 14/127/12-14.
[20] INQ000614179_0178 – Witness Statement of DG HSC at §538.

keep them up to date with any changes to policy and guidance. The frequency changed from weekly to fortnightly later in the pandemic. The NCOs are the five main charities in Scotland who focus on addressing unpaid carer issues. They are Carers Scotland; Carers Trust Scotland; Minority Ethnic Carers of People Project (MECOPP); Coalition of Carers in Scotland (COCIS); Shared Care Scotland[21]. Family Fund, although not an official NCO, also attended these weekly catch-ups.

15. The Carer Leads Network was an informal network, which included representatives responsible for carer support from each local authority/Integration Authority in Scotland. The meetings of this network were facilitated by Scottish Government officials, but the decisions around content and focus were generally led by carer leads. The meetings shared good practice and discussed issues of common concern around carer support. Updates were provided by the Scottish Government at every meeting[22].
16. The Carers Act Implementation Steering Group was set up by the Scottish Government's Carers Policy Team in 2016 to oversee the implementation of the Carers (Scotland) Act 2016. It was renamed the Carers Rights and Support Steering Group in December 2021, and given a broader remit to focus on wider carers issues across social care and broader Scottish Government policy. It includes representatives from local authorities, territorial Health Boards, COSLA, third sector and carer representatives. This group has had responsibility for the implementation of the National Carers Strategy since it was published in December 2022. It is chaired by the Scottish Government[23]. Unpaid carers were also represented on the PRASCG, which provided a multi-stakeholder focal point for work being undertaken to support the effective delivery of ASC during the pandemic[24].
17. Access to information was a key issue for both unpaid carers and local carer support services. Carers needed advice on how to protect the person they were caring for, who were often people at higher risk of Covid-19 infection. They also felt an added responsibility to protect themselves from infection, both to reduce the risk of transmission to the cared-for person, and also so that they could continue providing the care[25]. In March 2020, the Scottish Government created carer-specific pages on its website to help people and carer organisations find the most up to date information relevant for them. It also helped to create content for similar pages for young carers on the 'Young Scot - Young Carers' platform. The content covered a range of practical issues, including infection control, when to use and how to access PPE, testing, vaccination, and how the distancing rules applied to carers. The Scottish Government adapted

[21] INQ000614179_0178 – Witness Statement of DG HSC at §539.
[22] INQ000614179_0179 – Witness Statement of DG HSC at §541.
[23] INQ000614179_0180 – Witness Statement of DG HSC at §544.
[24] INQ000614179_0184 – Witness Statement of DG HSC at §558.
[25] INQ000614179_0182 – Witness Statement of DG HSC at §547.

these pages throughout the pandemic in response to stakeholder feedback, and also as the advice and distancing rules changed[26].

18. In response to concerns raised by people who could not access the local PPE hubs, including the care at home workforce, an enhanced Hub model was set up in April 2020[27]. On 27 April 2020, the local PPE Hubs expanded their provision to support the whole social care sector with all of its PPE needs where normal supply routes had failed; and also extended PPE support to unpaid carers and social care Personal Assistants[28].
19. Recognising the pressures facing health and social care staff, the Scottish Government developed a range of national and local wellbeing programmes. On 11 May 2020, a new national digital wellbeing hub was launched to enable staff, carers, volunteers and their families to access relevant support when they needed it, and to provide a range of self-care and wellbeing resources[29]. The Wellbeing Hub included a specific section for unpaid carers[30]. The Scottish Government continued to recognise that individuals who work in health and social care experienced high levels of mental ill health, including depression, anxiety and PTSD[31].
20. A range of practical, wellbeing and financial measures were put in place from early in the pandemic by the Scottish Government. As part of the announcement of the Programme for Government 2020, the Scottish Government allocated £5 million in 2020/21 for a comprehensive package of national support to the workforce. This included the National Wellbeing Hub, digital therapies, Coaching for Wellbeing, the National Wellbeing Helpline, funding for psychological therapies and a new Workforce Specialist Service[32]. The publication of the Health and Social Care: Winter Overview 2021 to 2022[33], and the companion document, the ASC Winter Preparedness Plan 2021-22[34], saw an increased focus on supporting the needs and wellbeing of the social care workforce and unpaid carers[35].
21. In April 2020, a £500,000 fund was established to help local carer organisations transition to remote working, so that they could continue to support unpaid carers during lockdown[36]. In June 2020, over 84,000 eligible carers were given extra financial support through the Coronavirus Carer's Allowance Supplement ('CCAS') in recognition of the additional financial

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[26] INQ000614179_0182 – Witness Statement of DG HSC at §548.
[27] INQ000614179_0174 – Witness Statement of DG HSC at § 526.
[28] INQ000614179_0262 – Witness Statement of DG HSC at §805.
[29] INQ000606530_0059 – Witness Statement of Jeane Freeman at §224.
[30] INQ000614179_0182 – Witness Statement of DG HSC at §548.
[31] INQ000614179_0167 – Witness Statement of DG HSC at §496.
[32] INQ000614179_0167 – Witness Statement of DG HSC at §496.
[33] INQ000492663 – Report from Scottish Government titled Scottish Government Health and Social Care Winter Overview 2021-2022 dated October 2021.
[34] INQ000147362 – Report from Scottish Government titled ASC Winter Preparedness Plan 2020-21 dated 6 November 2020.
[35] INQ000614179_0167 – Witness Statement of DG HSC at §497.
[36] INQ000614179_0182 – Witness Statement of DG HSC at §549.

pressures carers were facing[37]. Further support was provided by the Scottish Government in July 2020, in the form of additional funding to expand the Family Fund short-break support, for families looking after disabled children. This was followed in August 2020 by the Scottish Social Services Council ('SSSC') and NHS Education for Scotland ('NES') publishing on-line wellbeing resources, specifically for carer support staff, to provide them with information and tools to support their own emotional wellbeing, and to encourage them to look after themselves while supporting others[38]. An extra £300,000 was allocated to expand support for young carers[39]. In January 2021, an additional £750,000 was allocated to local carer centres[40].There was also a £28.5m increase in local authority/HSCP funding for local carer support in 2021/22. In recognition of the additional financial pressures that carers were facing, a second additional payment of the Coronavirus Carer's Allowance Supplement of £231.40 was made to over 85,000 carers in December 2021[41]. As the evidence of Emily Holzhausen CBE of Carers UK said of the Scottish Government, "*they reacted very quickly, and that made carers in Scotland thousands of pounds better off*"[42].

22. In January 2022, £4m was allocated to help organisations working with unpaid carers, with a £500,000 fund being established in April 2022 to help local carer support organisations to invest in improving their capacity[43]. The annual Young Carer Festival in 2020 and 2021 was unable to be held in the traditional way due to Covid-19. The Scottish Government recognised that, more than ever, young carers needed an opportunity for a break and to be able to speak out about the most salient issues facing them. It therefore provided £100,000 in small grants for local young carer groups to run their own Covid-safe events. It also put in place an online festival featuring workshops; activities for young carers and their families to take part in; and panel discussion involving Scottish Ministers, answering young carers' questions[44].
23. The Feeley Review, published on 3 February 2021[45], recognised that carers need better, more consistent support to carry out their caring role well and to take a break from caring with regular access to quality respite provision[46]. A new provision has been included in the Care Reform (Scotland) Act 2025 (which will amend the Carers (Scotland) Act 2016), that requires a local authority to consider whether support should include breaks for unpaid carers[47].

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[37] INQ000614179_0182 – Witness Statement of DG HSC at §549.
[38] INQ000614179_0182 – Witness Statement of DG HSC at §550.
[39] INQ000614179_0182 – Witness Statement of DG HSC at §551.
[40] INQ000614179_0183 – Witness Statement of DG HSC at §554.
[41] INQ000614179_0183 – Witness Statement of DG HSC at §555.
[42] Evidence of Emily Holzhausen, Transcript 11/76/10-17.
[43] INQ000614179_0183 – Witness Statement of DG HSC at §555.
[44] INQ000614179_0183-0184 – Witness Statement of DG HSC at §556.
[45] INQ000280640 – Report from Scottish Government titled Independent Review of ASC in Scotland dated 1 February 2021.
[46] INQ000606530_0095 – Witness Statement of Jeane Freeman at §338.
[47] INQ000606530_0095 – Witness Statement of Jeane Freeman at §337.

**Discharge from hospital**

24. It would be wrong to imagine that the Scottish Government viewed discharge into care homes as the primary way to create capacity. *That* was to be achieved by measures such as the cancellation of elective and non-urgent healthcare; the pausing of cancer screening programmes; and the employment of retired health staff, final year medical students and nursing students. Rather, the decision to discharge reflected a considered approach to a long-standing issue. It had to be effectively tackled. It required to be taken amidst an urgent, rapidly developing situation.

*Hindsight judgement and asymptomatic transmission*

25. We have to be alert to the danger of hindsight judgement, specifically as it affects the concept of asymptomatic transmission. Neither Ms Freeman nor Ms Lamb were asked about asymptomatic transmission during the Module 6 hearings. However, some questions were asked of Ms Freeman during the Module 2A hearings. She referred to "*pretty categoric advice"* received on 24 January 2020 from policy officials to the effect that *"there was no asymptomatic transmission."* She also said, "*that began to change as various experts in the field understood the virus better"*[48]*.*

26. Also in the Module 2A hearings, the CMO for Scotland, Professor Sir Gregor Smith, stated that "*certainly by the stage that we were getting towards the end of January* [2020] *we recognised that it was possible that there was asymptomatic infection* (our emphasis). *What was very unclear at that stage was whether that asymptomatic infection could actually lead to asymptomatic transmission* (our emphasis)*. And even six months later, in July, we still had opinion from the WHO where they were still stating at that point that further research was needed to establish whether there was asymptomatic transmission or not"*[49]*.*

27. This development of knowledge is mirrored in the Module 6 statement of Ms Freeman[50], where she refers to a minute from a cabinet meeting of 24 March 2020, and a discussion led by the then CMO, Dr Calderwood, regarding the likelihood of people with asymptomatic *infection* in the community[51]. In her statement, Ms Freeman then goes on to say "*I am not able to pinpoint a precise moment at this time when it became clear that asymptomatic transmission of Covid-19 was a definite risk. My understanding of the virus and how it behaved was constantly developing from day to day… Throughout the course of March 2020, it became increasing clear to me that asymptomatic transmission could not be as easily ruled out as it had been at the end of January 2024* (sic)*. It was not until later on in April 2020 that clinical advice became*

[48] Evidence of Jeane Freeman, Module 2A, Transcript 9/159/6-15.
[49] Evidence of Professor Sir Gregor Smith, Module 2A, Transcript 5/109/16-25.
[50] INQ000606530_0031 - Witness statement of Jeane Freeman at §109.
[51] INQ000249330 - Minutes of the Scottish Cabinet titled SC(20)11th Conclusions, dated 24/3/20.

*more certain. The advice provided to me, approved by the CMO, prior to my announcement in the Scottish Parliament on 21 April 2020 said that 'some patients may have an essentially asymptomatic episode of Covid-19 infection, or be in the pre-symptomatic period at the time of admission'"*[52]*.* That same advice from the CMO, referred to by Ms Freeman in her statement, also stated that *"There is some debated evidence that people can be infectious prior to onset of symptoms"*[53]*.*

28. The evidence from Module 6 showed that the position was the same in other parts of the United Kingdom. Professor Susan Hopkins, of the UK Health Security Agency, when asked about alerting people (in February 2020 guidance) to the potential of asymptomatic transmission, said "*but at this point what we were doing was utilising the evidence in the past that said: if you have asymptomatic infection the likelihood of you transmitting the respiratory infection is very low, which we'd used for flu, which had worked as -- in good stead for many other respiratory viruses over many, many years. And trying to utilise that rather than change the basis of the science that we were utilising was what we did at the start"*[54]*.* She later said, when asked why, as at 13 March 2020, the protection against asymptomatic transmission was not written into guidance "*So again, I would say that at this point asymptomatic transmission was thought of as highly unlikely still, not impossible, but actually, the balance of evidence was that that was not what we were seeing in the main. The reports were talking about individuals were being detected with asymptomatic infection but that is not the same as who is most likely to transmit, and the consensus at that time remained that the people most likely to transmit were those with symptoms and not those without symptoms and who were fit and well"*[55].

29. We submit that it is crucial to give proper regard to these pieces of evidence. They portray the state of knowledge and approach as it existed *at the time*. They are unvarnished by hindsight judgements or, in other words, what governments across the United Kingdom *came to learn in due course* about asymptomatic transmission. It is on the basis of this evidence, and evidence like it, that judgements as to the reasonableness of the Scottish Government actions at this time should be made.

*Clinical decisions*

30. Patients were not discharged to care homes *en masse.* A decision to discharge any patient from hospital is taken on a case-by-case basis. A multi-disciplinary team is involved in that

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[52] INQ000606530_0032 – Witness statement of Jeane Freeman at §113-114. NB – the reference to "January 2024" is a typo that should read "January 2020".
[53] INQ000249330 - Submission to the First Minister and the Cabinet Secretary for Health and Sport titled Testing Policy and Application in a care home setting, dated 20/4/20.
[54] Evidence of Professor Susan Hopkins, Transcript 7/30/25 – 7/31/9.
[55] Evidence of Professor Susan Hopkins, Transcript 7/36/12 – 21.

decision. It is a clinical decision over which the Scottish Government has no control. That was so before, during and after the pandemic.

31. The clinical guidance of 13 March 2020 issued by the Scottish Government made this clear, in providing that *"steps should be taken to ensure that patients are screened clinically to ensure that people at risk are not transferred inappropriately"*[56].

32. The clinical guidance issued by the Scottish Government on 26 March 2020 made reference to the existing Health Protection Scotland ('HPS') guidance, to the effect that, if an individual is deemed clinically well and suitable for discharge from hospital, they can be admitted to the care home after the completion of an appropriate clinical plan. Annex 1 to the 26 March guidance attached a 'New Admission/transfer form', which posed clinical questions in respect of the patient in question[57].

*The decision to accept a patient lay with the care home*

33. While the Scottish Government has powers of *direction* in relation to the *NHS in Scotland*, it *cannot direct* providers of *social care*. It *cannot*, and did not, *compel* care providers to accept admissions from hospitals. Rather, the Scottish Government asked local authorities to put *additional effort* into reducing delays in discharging those assessed as clinically fit. In our Written Opening Statement, we explained the process by which reduction in the delayed discharge figure was achieved, through cooperation between the Scottish Government and COSLA, and by work carried out a local level by local authorities, NHS Boards and local health and social care services. As Ms Freeman put it, "*there was limited difficulty in securing agreement between myself and COSLA on the direction of travel and what needed to be done, both in the overall strategic approach and in some of the detail of delivery"*[58].

34. In evidence, Ms Freeman was of the view that care homes were fully aware of their right to refuse to accept a patient discharged from hospital, and in some cases exercised that right. She said, "*The key word in all of the paragraphs you've highlighted is 'clinical'. So an assessment as to whether or not someone is ready for discharge is a clinical assessment. It's not an assessment made by me or any of my officials, or even by a care home. But the care home has the right to see that clinical assessment and take a decision for itself as to whether or not it can appropriately manage the care of that individual in their setting. And they've always had that right and they had it throughout the pandemic"* (our emphasis)[59].

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[56] INQ000147441_0004 - Letter from Jeane Freeman (Cabinet Secretary for Health and Sport, Scottish Government) to IJB Chief Officers, Local Authority Chief Executives and various care sector recipients, regarding the Coronavirus (Covid-19) Social Care Response, dated 13/03/2020.
[57] INQ000147440_0004 and _0007 – Guidance from the Scottish Government titled Clinical Guidance for Nursing Home and Residential Care Residents and Covid-19 Version 1.2, dated 26/03/2020.
[58] Evidence of Jeane Freeman, Transcript 14/37/22-14/38/1.
[59] Evidence of Jeane Freeman, Transcript 14/68/7-19.

*Efforts to ensure safe discharge*

35. Great efforts were made to ensure that patients were safely discharged. Guidance issued between March and May 2020 by the Scottish Government and HPS, and addressed to the social care sector, contained provisions directed at the safe discharge of patients. In our Written Opening Statement, we covered these and other provisions in detail. Here we highlight the following points.

36. The clinical guidance of 13 March issued by the Scottish Government, in addition to the provisions re clinical screening described above, contained a ***recommendation*** that long term care facilities be subject to ***social distancing***, to reduce the risk of infection[60]. That recommendation applied to ***all*** residents, existing or newly admitted to the care home from hospital. The clinical guidance of 26 March issued by the Scottish Government, in addition to the clinical assessment provisions described above, imposed a ***requirement*** that patients who were known to have had contact with other Covid-19 cases, but who were not displaying symptoms, and all patients who had had no contact with Covid-19 cases and who were not displaying symptoms, should be ***isolated*** for periods of, respectively, 14 and seven days[61]. It was suggested to Ms Freeman that there was a delay in issuing the guidance of 26 March, following a meeting with Scottish Care on 18 March[62]. There was no such delay. The guidance did not deal exclusively with isolation. Rather it addressed a range of issues and was the subject of consultation, not just with Scottish Care but with a number of care sector representatives and clinical advisers. There was, in addition, a need to ensure consistency between that guidance, and the guidance issued by HPS on 26 March 2020.

37. Step-down facilities were considered, but as Ms Freeman said in evidence "*the availability of step-down facilities, and … the concern expressed, particularly by our geriatrician expert advice, about the impact, particularly on an elderly person, of being moved more than once* made such a measure impractical"[63].

38. As Ms Freeman acknowledged, while the protective measures in place at this time were perhaps *"not fully adequate, … they were the only measures available to us at that point, and the alternative was to leave someone ready for discharge in hospital, which was a high-risk environment"*[64]*.*

39. These measures were based on the principles of infection prevention and control ('IPC'). These have long been recognised in Scotland. Since 2012, Scotland has published a

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[60] INQ000147441_0002 – Letter from Jeane Freeman (Cabinet Secretary for Health and Sport, Scottish Government) to IJB Chief Officers, Local Authority Chief Executives and various care sector recipients, regarding the Coronavirus (Covid-19) Social Care Response, dated 13/03/2020.
[61] INQ000147440_0005 and _0007 - Guidance from the Scottish Government titled Clinical Guidance for Nursing Home and Residential Care Residents and Covid-19 Version 1.2, dated 26/03/2020.
[62] Evidence of Jeane Freeman, Transcript 14/70/1-5.
[63] Evidence of Jeane Freeman, Transcript 14/72/6-11.
[64] Evidence of Jeane Freeman, Transcript 14/107/14-21.

National Infection Prevention and Control Manual. It contains standard precautions. It was, and continues to be, applicable to all staff, in all care settings, at all times, in respect of all patients and service users, whether infection is known to be present or not. It ought to have been well known to the care sector, although as Ms Freeman recognised, training and delivery were not consistent[65].

40. However, care homes ***should*** have been able to follow basic principles of IPC. As Dr Rossi of Public Health Scotland (PHS) said, "*but if they were able to keep to the isolation principles, which they should have been able, and most of them did, in a care home where rooms, for the main, are single, then they would have been able to keep the individual isolated for the period of time accorded"*[66].

41. Later, on 21 April 2020, following a 'Deep Dive' on care homes, the Cabinet Secretary announced that Covid-19 patients discharged from hospital to care homes should provide two negative tests prior to discharge. Further, that other new admissions to care homes should also be tested. Both sets of patients should be isolated for 14 days. By 21 April 2020, testing capacity in Scotland was sufficient to allow the aforesaid new measures to be introduced. As a result, there now existed a presumption that everyone being admitted to a care home should provide a negative test before admission (unless a full risk assessment had been completed, and it was in the *clinical* interests of the individual to be moved).

*Changes to guidance were necessary*

42. In the early days of the pandemic, understanding of the virus and its effects developed rapidly. Guidance existed for the wellbeing and safety of individuals. Therefore, there was a clear need for updates as new data and evidence emerged. Whilst recognising that it was challenging for care homes to respond to changing guidance, it was essential that it be updated, and at speed.

*Not all patients were discharged into care homes*

43. Not all patients who left hospital were discharged into care homes. Between March and June 2020, around 63% of patients were discharged from hospital back to their own homes following a period of delay.

*Testing had limitations*

44. It is, of course, correct that tests were an important mitigation measure, as Ms Freeman recognised in evidence[67]. Indeed, as mentioned above, from 21 April 2020 all new admissions to care homes in Scotland were tested. Yet it would be wrong to regard them as a panacea, or 'silver bullet'.

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[65] Evidence of Jeane Freeman, Transcript 14/52/21-14/53/6.
[66] Evidence of Dr Maria Rossi, Transcript 17/87/2-6.
[67] Evidence of Jeane Freeman, Transcript 14/108/2.

45. Professor Dame Jenny Harries put it this way, when she said "*The focus on the test is really -- I class it as an adjunct to an intervention. It's quite good to know, it might change some people's behaviours in some ways. You know, if you know somebody is absolutely positive, then it might actually pay more attention to them, but that shouldn't be the thing. The really important thing is the isolation, not the test*"[68].
46. We pause here in order to repeat and to emphasise an earlier point: that from 13 March 2020, the Scottish Government advised that ***social distancing measures*** should be introduced for ***all*** care home residents, including admissions from a hospital; and from 26 March required that ***all*** new admissions undergo a period of ***isolation***.
47. In her evidence Ms Lamb said the following: "*I think if we were to think about what we would do differently, I think we need to maybe be even clearer than we were about the limitations of testing, the likelihood, the importance of maintaining a focus on infection prevention control and all the other mitigations you can put in place to try and ensure that people are kept safe in care settings"*[69].

*Hospital discharges were not the dominant route by which the virus entered care homes*

48. The Scottish Government does not argue that there were no instances in which infection was introduced to care homes through discharges from hospital. Yet, as we believe the Inquiry itself recognises, analysis has revealed ingress of infections to be primarily attributable to staff footfall, and directly related to care home size[70].
49. In our Written Opening Statement, we referred to the report by PHS titled 'Discharges from NHS Scotland Hospitals to Care Homes between 1 March and 31 May 2020'. It was commissioned by the Cabinet Secretary for Health and Sport on 18 August 2020, and was published on 28 October 2020. A revised version was published on 21 April 2021. The reports are detailed, and warrant examination. Yet the overarching conclusion arrived at in both reports was that no statistically significant association had been found between hospital discharge, and the occurrence of a care home outbreak (although a small effect could not be ruled out). The report noted that *care home size* was much more strongly associated with the risk of an outbreak than all other care home characteristics, including hospital discharge. In common with comparable analyses in England and Wales, the report found that ingress of infections to care homes was primarily attributable to staff footfall and, as noted, related directly to care home size.

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[68] Evidence of Professor Dame Jenny Harries, Transcript 7/162/21-7/163/2.
[69] Evidence of Caroline Lamb, Transcript 14/139/4-10.
[70] INQ000203933_0298 – Report from Chief Medical Officers and Deputy Chief Medical Officers titled Technical report on the COVID-19 pandemic in the UK: A technical report for future UK Chief Medical Officers, Government Chief Scientific Advisers, National Medical Directors and public health leaders in a pandemic, dated 01/12/2022 [Publicly Available].

50. As to whether the updated report (of April 2021) altered the original report of October 2020, by placing "*a different emphasis….on the understanding of a causal relationship between positivity and outbreak in care homes"*[71]*,* Dr Rossi of PHS said this: "*So what was being assessed was the discharge from hospital and some further information was done on whether a person was tested and tested negative, tested positive, or untested in further analysis, but that didn't change the conclusions, and did not increase the causality of the study, because the study was not of a -- using the method that could outline cause and effect, it could only give an observation as to what may be acting here in terms of risk factors, and the dominant risk factor was the size of the care home* (our emphasis)"[72]*.*
51. We conclude this section with the words of Professor Dame Jenny Harries, who said that, *"you have to build a picture, this is the issue with science, you're building a picture in a different direction all the time, so there's definitely-- I'm sure there were some cases from hospital admission in, that would depend on how good isolation control was, all sorts of things, but the dominant route from the evidence that we have is through staff"*[73]*.*

**The Policy Alignment Check ('PAC') Process**

52. The Policy Alignment Check ('PAC') process, as Dr Rossi succinctly put it, *"meant exactly that"*[74]. It was a process by which the Scottish Government could ensure that guidance being published by PHS was fully aligned with government policy. Although PHS has "*operational autonomy to advise and support government, local authorities and the NHS in an independent manner*"[75], it is ultimately an NHS board that is "*required to operate within the same governance and accountability frameworks set by the Scottish Government as other NHS boards*"[76]. It was for the Scottish Government to determine health policy within Scotland, with PHS' role being to "*operationalise health protection guidance aligned with Scottish Government policy*"[77]. Moreover, once the NHS had been placed on an "emergency footing" following the Cabinet Secretary for Health and Sport's announcement on 17 March 2020[78], the Scottish Government took responsibility for the sign-off of guidance[79].
53. Given the Scottish Government's lead role and PHS's ultimate accountability to the Scottish Government, as well as the possibility of guidance (drafted by different teams in a fast moving environment) that might not always line up, it was sensible to implement a formal method to

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[71] Evidence of Dr Maria Rossi, Transcript 17/111/18-20.
[72] Evidence of Dr Maria Rossi, Transcript 17/111/21-17/112/5.
[73] Evidence of Professor Dame Jenny Harries, Transcript 7/189/10-17.
[74] Evidence of Dr Maria Rossi, Transcript 17/99/16.
[75] INQ000587252_0010 – Witness statement of Public Health Scotland at §1.4.2.
[76] INQ000587252_0010 – Witness statement of Public Health Scotland at §1.4.2.
[77] INQ000587252_0115 – Witness statement of Public Health Scotland at §8.5.6.
[78] INQ000280668 – Statement from Scottish Government titled Coronavirus (COVID-19): Speech by Cabinet Secretary for Health and Sport, dated 17/03/2020 [Publicly Available].
[79] INQ000587252_0115 – Witness statement of Public Health Scotland at §8.5.4.

ensure consistency between messaging and operationalisation. This was particularly so at a time when the clear public and professional understanding of requirements was paramount. As Jeane Freeman noted, her view was that, "*I would be accountable for guidance that was issued in any respect by any of our health bodies, and therefore it was responsible of me to ensure that I was content with the guidance that was issued*"[80].

54. Initially, the process of sign-off for guidance was not formalised. Notwithstanding the high level of collaborative working between the Scottish Government and PHS, there was an instance on 14 May 2020 where PHS had (incorrectly) understood that Scottish Government approval had been obtained for the publication of interim PCR testing guidance for care homes[81]. The Cabinet Secretary for Health and Sport, however, confirmed the following day that she had not approved the guidance[82] and subsequently the CNO emailed some points to be clarified[83].
55. Ms Freeman confirmed there were no *"difficulties in the relationship between me and Public Health Scotland"*[84]. She, however, considered that a formalised process should be put in place. PHS gives a start date of 22 May 2020[85] for the process, although a written process description has been produced dated 4 June 2020[86].
56. The PAC process aimed to align draft guidance with evolving public-health advice at pace. It was not the case that every change to guidance was subject to the full PAC process, as minor changes could be confirmed as exempt[87]. Moreover, urgent safety changes proceeded without waiting for PAC completion. Over the course of the pandemic only 35 pieces of guidance were processed through the PAC, of which 13 related to care homes or domiciliary care[88]. The purpose was to check that, where guidance was being produced or adapted to reflect a new or updated policy position, PHS and the Scottish Government were speaking with one voice. The process was designed to provide internal clarity on procedure for those producing the guidance, and to ensure external clarity for those using the guidance.
57. Counsel to the Inquiry explored with Ms Freeman and Dr Rossi in oral evidence whether they considered that the implementation of the PAC process was necessary and/or led to delays.

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[80] Evidence of Jeane Freeman, Transcript 14/85/16-19.
[81] INQ000320628 – Paper from Health Protection Scotland titled Interim guidance on COVID-19 PCR testing in care homes and the management of COVID-19 PCR test positive residents and staff Version 2.4, dated 14/05/2020.
[82] INQ000320634 – Email chain between Angela Leitch (Chief Executive, Public Health Scotland) and Cabinet Secretary for Health and Sport and DG Health and Social Care, regarding Interim Guidance, between 15/05/2020 and 16/05/2020.
[83] INQ000320631 – Email from Fiona McQueen (Chief Nursing Officer, Scottish Government) to Mary Black (Director of Clinical and Protecting Health, Public Health Scotland), regarding Interim Guidance on testing in care homes, dated 16/05/2020.
[84] Evidence of Jeane Freeman, Transcript 14/85/14.
[85] INQ000587252_0115 – Witness statement of Public Health Scotland at §8.5.5.
[86] INQ000147529 – HPS Covid-19 guidance titled, Scottish Government proposed policy alignment process, dated 04/06/2020.
[87] INQ000614179_0105 – Witness statement of DG HSC at §312.
[88] INQ000485979_0041 – Witness statement of DG HSC for Module 3 at §157.

Ms Freeman did not believe that it led to unnecessary delays, although she accepted that there were *"a few delays"*[89]. As to necessity, Ms Freeman's view, as noted above, was that she thought it was responsible of her to have a formal process in place. Dr Rossi did not address the points directly in her oral evidence, although her view for the future was that she would like a situation where *"we didn't require a PAC process"*[90].

58. The Scottish Government accepts that any additional layer of approval/clearance will necessarily add some additional time before publication of guidance. Over the course of the pandemic, 11.4 working days on average were added to the timeline of guidance going through the PAC process[91]. Every effort was made to review and, if possible, approve guidance as quickly as possible. However, it would not be appropriate to characterise this additional time as unnecessary or superfluous bureaucracy. Having a formal system whereby the Scottish Government could ensure that policy was properly reflected in guidance was both reasonable and appropriate. Indeed, it might be considered that, where there were concerns being raised of guidance coming from too many sources and conflicting, it was important for the Scottish Government to institute a process to minimise conflict and confusion. As noted above, any urgent safety changes continued to progress at pace and were not delayed pending completion of formal procedures.
59. In an ideal world, the Scottish Government agrees with Dr Rossi that it would be preferable for guidance always to be perfectly aligned. However, given the realities of a pandemic and need to maintain PHS' position as a trusted and accurate source of guidance, the Scottish Government considers that instituting such a process in future is not something that ought to be ruled out.

**Staff movement and the testing of staff and residents**

*Staff Movement*

60. Professor Shallcross' evidence explained that data from the Vivaldi study, while it did not go as far as allowing the conclusion that staff movement was the main source of transmission, certainly highlighted the important role of staff in transmission of infection, and the risks associated with movement of staff[92].
61. However, even prior to the initial Vivaldi findings in June 2020, the Scottish Government had recognised that restricting staff movement within and between care settings would be critical to minimise the risk of infection. PHS guidance of 26 April 2020[93] recommended the

[89] Evidence of Jeane Freeman, Transcript 14/84/16.
[90] Evidence of Dr Maria Rossi, Transcript 17/100/20-21.
[91] INQ000485979_0041 – Witness statement of DG HSC for Module 3 at §157.
[92] Evidence of Professor Laura Shallcross, Transcript 2/181/3-24.
[93] Publicly available at https://publichealthscotland.scot/media/22842/covid-19-information-and-guidance-for-care-homes-v10.pdf at §2.16

minimisation of the use of bank or agency staff; where used they should only work for one facility where possible. Then, on 15 May 2020, the Scottish Government's clinical guidance was updated to direct that staff should not work in more than one facility and, *"movement between care homes e.g. through agency staff working across facilities must be restricted"*[94].

62. That said, the Scottish Government remained conscious of the challenges to adopting such measures to restrict staff movement between and within homes including agency staff in a sector where there were already staffing shortages. Ensuring sufficient workforce capacity to manage demand and provide continuity of safe care was paramount. Implementation required planning and co-ordination between partners at a local level.

63. The Scottish Government does not share Matt Hancock's optimism that it would be *"entirely feasible"* to ban staff movement or that providers could *"easily re-jig"* employment arrangements[95]. As Ms Freeman noted, given the current arrangements of how residential care is provided, she was not sure that mandatory restrictions on staff movement were feasible[96]. Similarly, Caroline Lamb considered that it would be *"incredibly complex"* and *"very difficult"* to legislate to stop staff movement[97]. What was important, as Ms Lamb pointed out[98], was funding and support for the workforce to enable safer workforce planning and the ability to self-isolate when required.

*Testing for Covid-19 amongst staff and residents*

64. Ms Lamb acknowledged that if there were something that she could go back and change, it would have been to have had "*more testing capacity earlier*"[99]. Testing capacity was a key early constraint. As Ms Freeman noted, "*testing capacity started out at 350 tests per day. And we scaled that up as rapidly as we could, both directly in terms of NHS Scotland, but also with our partners in the rest of the UK, through the Lighthouse initiative*"[100].

65. Notwithstanding this early lack of capacity, Ms Freeman's statement to Parliament of 17 March 2020[101] committed to testing key workers and scaling up of Covid-19 surveillance testing. This was supplemented by guidance of 24 March 2020 which made it clear that "*testing prioritisation should focus on supporting critical service delivery in health and social care*

[94] INQ000515948_0005 – Guidance from Scottish Government titled National Clinical and Practice Guidance for Adult Care Homes in Scotland during the COVID-19 Pandemic, dated 15/05/2020.
[95] Evidence of Matt Hancock, Transcript 3/111/10-12.
[96] Evidence of Jeane Freeman, Transcript 14/98/2-18.
[97] Evidence of Caroline Lamb, Transcript 14/150/9 and 14/151/14.
[98] Evidence of Caroline Lamb, Transcript 14/150/11 – 14/151/6.
[99] Evidence of Caroline Lamb, Transcript 14/156/1-2.
[100] Evidence of Jeane Freeman, Transcript 14/88/20-24.
[101] INQ000280668_0002 – Statement from Scottish Government titled Coronavirus (COVID-19): Speech by Cabinet Secretary for Health and Sport, dated 17/03/2020. [Publicly Available].

*services*", with NHS boards adopting a "*flexible and dynamic approach to identifying which health and social care services have the most serious staffing challenges*" [102].

66. On 15 April 2020, following the 'Deep Dive' on care homes of 14 April 2020[103], the First Minister announced a move toward testing all symptomatic patients in care homes[104]. Some may now, with the benefit of hindsight, argue this was an obvious step to take. It is notable, however, that Ms Freeman's statement explains that this announcement was made despite advice that such testing would have limited additional clinical benefit, and was not *"clinically required"*[105]. Instead, at the time, Ms Freeman took the decision on a precautionary basis and considered it necessary to provide assurance and for reasons of "*public confidence*"[106]. It is important to keep this in mind when considering the development of testing policy in this period.
67. The 15 April announcement was followed by PHS guidance of 17 April 2020, which set out arrangements for testing and self-isolation[107]. Ms Freeman's letter of 19 April 2020 confirmed that care home staff and residents were a *"priority for testing"* [108], and the next day the Chief Performance Officer of NHS Scotland wrote to, amongst others, Health Board chief executives, seeking assurances within four days of the provision of a *"robust pathway… to testing with a single point of access"*[109].
68. As testing capacity improved into the summer of 2020, so did the range of testing offered in the care sector. Leaving aside testing hospital discharges, on 1 May 2020 the First Minister announced that where there was a confirmed case in a care home, all residents and staff were to be offered testing, as well testing in any homes potentially linked to an outbreak through staff movement. Sample testing in care homes where there were no cases was also announced[110]. This reflected a growing recognition of the possibility of asymptomatic transmission. By 8 July 2020, routine weekly asymptomatic PRC testing was rolled out to health and social care staff[111], and a short-life working group was established in July 2020,

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[102] INQ000398888_0002 – Guidance document for NHS Boards titled Testing for COVID-19 Infection to Enable Key Workers to Return to Work, dated 24/03/2020. [Publicly Available].
[103] INQ000233414 - Action log regarding care home deep dive, dated 14/04/2020.
[104] INQ000147356_0005 – Statement from Nicola Sturgeon titled Coronavirus (Covid-19) Update: First Minister's Speech, dated 15/04/2020. [Publicly Available].
[105] INQ000606530_0028 – Witness statement of Jeane Freeman at §97-98.
[106] INQ000606530_0028 – Witness statement of Jeane Freeman at §98.
[107] INQ000189304_0013 – Guidance from HPS, titled 'COVID-19: Information and Guidance for Social or Community Care and Residential Settings Version 1.7, dated 17/04/2020.
[108] INQ000261560 – Draft letter from Jeane Freeman, Cabinet Secretary for Health and Sport, regarding Covid-19 testing in care homes, dated 19/04/2020.
[109] INQ000363375 – Letter from John Connaghan CBE, Chief Performance Officer to Health Board Chief Executives, regarding Care Homes Enhanced System of Assurance – Resident & Staff, dated 20/04/2020.
[110] INQ000509948_0005 – Article from the Scottish Government website titled Coronavirus (COVID-19) update: First Minister's speech, dated 01/05/2020. [Publicly Available].
[111] INQ000614179_0249 – Witness statement of DG HSC at §772.

meeting roughly fortnightly for around a year, to support efforts to roll out PCR testing to care home staff[112].

69. The availability of lateral flow devices ('LFDs'), along with continuing increased lab testing capacity, allowed for even greater expansion of testing by the end of 2020. Ms Freeman announced on 25 November 2020[113] that lateral flow testing for care home visitors would be rolled out in 12 early adopter care homes, in four local authority areas, from 7 December. This expanded to another seven local authority areas by 21 December, with a full roll out in January and February 2021.
70. Asymptomatic testing in the social care sector continued through to March 2022, when it was paused (with the exception of care homes), primarily due to the success of the vaccination programme in reducing severity of illness. Routine testing of health, social care and prison settings staff continued until 30 August 2023, and routine asymptomatic testing for admissions to care homes from hospitals remained until 3 June 2024[114].

**Visiting**

71. The Inquiry has heard powerful evidence of the effect that visiting restrictions had on care home residents and their families. That said, as Ms Freeman noted, decisions about visiting restrictions highlighted that the entire experience of the pandemic was about the balance of harms – there was no situation at any point where you could make a decision that carried no harm[115].
72. From the start of the pandemic, the Scottish Government's position was that 'essential' and 'end of life' visits should be supported, and that a flexible needs-based approach should be taken[116]. The Scottish Government guidance of 13 March 2020 stated that visits to care homes should be reduced to essential visits[117]. At that time, there were no effective treatments for Covid-19. Vaccines had not been developed. There was limited availability of testing.
73. As more became known about the virus, and protections were put in place to support care homes, there was general agreement on the need to facilitate the gradual opening of care homes to support wellbeing. This was reflected in discussions of CPAG and CHRAG[118]. On 25 June 2020, the first stand-alone Visiting Guidance for Adult Care Homes in Scotland was

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[112] INQ000614179_0145 – Witness statement of DG HSC at §430.
[113] INQ000240872_0004 – Statement to Parliament about testing expansion, undated [file name indicates date of 25/11/2020].
[114] INQ000614179_0254 – Witness statement of DG HSC at §785.
[115] Evidence of Jeane Freeman, Transcript 14/83/25 – 14/84/1-2.
[116] INQ000614179_0272 – Witness Statement of DG HSC at §833.
[117] INQ000280689 – Letter from Jeane Freeman (Cabinet Secretary for Health and Sport) to IJB Chief Officers, Local Authority Chief Executives, Scottish Care, Coalition of Care and Support Officers and Scottish Social Services Council, regarding Coronavirus (COVID - 19) social care response, dated 13/03/2020.
[118] INQ000614179_0267 – Witness Statement of DG HSC at §817.

published. The guidance comprised an overarching framework for the safe reintroduction of visiting, with stages moving from essential visits and outdoor (garden) visits only, to limited indoor visiting, culminating in routine visiting in the home[119]. This guidance provided a framework to support national and local decision making on the movement through four stages of visiting.

74. As Ms Lamb noted in her evidence, the Scottish Government was aware of accounts of care homes not opening their doors in accordance with the staged approach to indoor visits. Ms Lamb explained that the Scottish Government tried to address that through the 'Safety Huddle Tool'. Information gathered, about the extent to which individual care homes were or were not allowing visitors, could then be provided to HSCPs, to allow them to contact the care homes in question[120]. To support this, a subgroup of CPAG – the National Open with Care Oversight Group – was established in March 2021, to promote and monitor national 'Open with Care' visiting guidance, which recommended a full return to routine indoor visiting, and to ensure people's rights were being supported[121].
75. The Care Reform (Scotland) Bill, introduced to the Scottish Parliament by the Scottish Government, received Royal Assent on 22 July 2025. Amongst other provisions, the Act imposes a duty on Scottish Ministers to require providers of care home services for adults to facilitate certain visits. Those provisions are known as 'Anne's Law', in memory of Anne Duke, whose family was unable to see her for extended periods during the pandemic. It was Anne's daughter who lodged a petition on behalf of Care Home Relatives Scotland calling for legislation. The Act strengthens residents' rights, by enabling them to identify at least one Essential Care Supporter. That will help ensure that Supporters are able to carry on their role, even in infectious outbreak situations, when visiting is paused for others. That the Scottish Government introduced Anne's Law is recognition that families and friends play an essential part in the health and wellbeing of residents, and that the care home is their home.
76. The importance of visiting was not simply a post-pandemic realisation, however. The Scottish Government had already taken steps in April 2022 to ensure that people could remain connected to their loved ones even in outbreak situations. Utilising powers conferred by section 50 of the Public Services Reform (Scotland) Act 2010, the Scottish Government introduced two new statutory Health and Social Care Standards, which effectively provided for the substance of 'Anne's Law'. These standards, which are used as a basis for inspection by the Care Inspectorate, set out the expectation that people living in care homes should be able

[119] INQ000614179_0268 – Witness Statement of DG HSC at §821.
[120] Evidence of Caroline Lamb, Transcript 14/141/10-18.
[121] INQ000614179_0276 – Witness Statement of DG HSC at §850.

to see someone who is important to them, even during a Covid-19 outbreak, and be able to name a person or persons who can directly participate in meeting their care needs[122].

**PPE**

77. Concerns were raised in evidence as to the availability of PPE. However, it is important to remember the pre-pandemic arrangements for its supply, and the speed with which the Scottish Government and its partners responded to increased demand. These were issues explored in Module 5.
78. As is well known to the Inquiry, there was a global shortage of PPE as a result of the speed and coverage of the pandemic across the planet. It was inevitable that social care would be heavily reliant upon access to PPE, given the close contact between staff and residents as part of the nature of that work. In order to prevent transferring the virus between residents, staff, external healthcare providers and visitors, it was important that sufficient stocks were held. That was the context in which the Scottish Government worked hard to secure adequate stocks for the sector.
79. The adult care sector is largely made up of private operators who quite appropriately guard their independence. On that basis, PPE is, in ordinary times, generally bought by private social care providers directly from wholesalers. Typically, local authority-run care homes would be supported via Scotland Excel, which is the Centre of Procurement Expertise for local government. It was quickly recognised by the Scottish Government that this was not a sustainable position during the pandemic.
80. During the pandemic, social care providers received PPE support from the Scottish Government in two ways. The first was through recouping pandemic-related PPE costs from Local Authorities, via funding from the Scottish Government, initially under the COSLA Principles of Sustainability Funding published on 31 July 2020[123]. These payments applied retrospectively to the beginning of the pandemic.
81. The second way was by direct provision from the national stockpile, through the use of hubs. Local PPE hubs were established in every HSCP area. The agency tasked with the practical delivery of supplying the hubs was NHS National Services Scotland ('NSS'), which generally supplies the NHS. It was tasked with increasing the volume of supply to the adult care sector. Crucially, that did include care at home, and unpaid carers, as well as care homes.
82. There was also a National PPE support centre, which existed as a fall-back. Its stock could be accessed in emergency situations when neither normal supply chains nor the Local PPE hubs were able to meet a provider's or carer's needs.

[122] INQ000614179_0327 – Witness Statement of DG HSC at §1015.
[123] INQ000614179_0261 – Witness statement of DG HSC at §802.

83. From 16 March 2020, NSS was empowered by the Scottish Government to take on the distribution of PPE to the social care sector. There was also a dedicated helpline to assist providers who were experiencing difficulties in obtaining adequate supply.
84. Given the unique urgency of the situation, a one-off delivery of one week's worth of PPE stock was provided directly to around 1,100 Adult Care Homes between 18-23 April 2020. On 27 April 2020, the local PPE Hubs expanded their provision to support the whole social care sector with all of its PPE needs where normal supply routes had failed. The hubs at that point extended PPE support to unpaid carers and social care personal assistants.
85. Trades unions in Scotland raised a further concern with the Scottish Government: that people delivering care at home were, in some instances, without a sufficient supply of PPE to allow for a full change between visiting each client. The Scottish Government responded by ensuring that each worker would be issued with a number of full sets of PPE, equal to the number of clients that would be visited that day[124]. The question of the level of PPE that was appropriate when visiting each client was left to the professional judgment of the care staff.
86. The PPE hubs, and the memorandum underpinning them, were initially established for a period of six months. However, that period was frequently extended so that the PPE Hubs remained in operation throughout the pandemic. The final extension was agreed to September 2022.

**Funding and Sick pay**

87. Recruitment and retention of staff in the adult social care sector was, and remains, a major challenge for the workforce. That challenge was a contributing factor to the sector being stretched and under pressure prior to the pandemic. It made responding to the pandemic all the harder.
88. To help address ongoing pay issues, the Scottish Government has provided additional funding since 2016 to ensure that adult social care workers, delivering direct care in commissioned services, are paid at least the Real Living Wage ('RLW'). During the funding period 2018/19, this commitment was extended to include workers providing overnight adult social care support. Public sector pay is set by individual public sector bargaining units. Public sector pay policy sets a framework for these bargaining units. In contrast, providers delivering social care are made up of over one thousand employers who currently determine the terms and conditions for their workers. The Scottish Government's work on introducing sectoral bargaining for the commissioned adult social care sector is progressing. Once developed and introduced, sectoral bargaining will encourage improvements in pay, and terms and conditions,

[124] Evidence of Jeane Freeman, Transcript 14/45/2-14.

that are specific to the social care workforce and take into consideration the roles and responsibilities across the sector.

89. The Scottish Government recognised that the "stay at home" request was very difficult for many social care workers, because for many their terms and conditions did not provide contractual sick pay. They were left to rely upon Statutory Sick Pay ('SSP'). This issue was raised with the Cabinet Secretary for Health and Sport in a meeting with trades unions on 13 May 2020[125]. She was informed that some social care staff were reluctant to be tested for fear that, if found to be positive for Covid-19, they would have to self-isolate and would therefore have reduced incomes. They would be reliant on SSP at £95.85 per week.
90. With the inception of the Test and Protect policy, it was anticipated that social care workers would likely be among those identified as close contacts of someone who had tested positive for Covid-19, due to the nature of their work. Additional funding from the Scottish Government was designed to support social care workers who required to isolate.
91. The Scottish Government took the decision to use government funds to enhance sick pay. Scottish Ministers established the Social Care Staff Support Fund from 27 May 2020 to ensure that social care workers who were absent from work with illness due to coronavirus, or were self-isolating, received an amount similar to their usual salary and did not suffer undue financial hardship. This support was developed as it became clear that many social care workers may have been anxious about testing positive and the resultant reduction in pay.
92. This enhanced sick pay was not only fair to those care workers who were working throughout this period of particular worry and stress, but also helped to ensure that those persons, identified through the testing system, who should isolate were financially able to do so. Ms Freeman spoke in evidence about this scheme[126].
93. Further, in July 2020 the Scottish Government introduced a 'death in service' scheme. Under this scheme a one-off payment of £60,000 was available to a named survivor of any social care worker, who died without 'death in service' cover in their contracted pension arrangements. Both this and the enhanced sick pay measure had retrospective effect. The scheme aimed to provide a safety net for the families of social care staff who had no life assurance cover provided by their employer or through a pension scheme. For those who did have these things in place, it provided an extra level of financial protection in addition to death in service benefits bought through their pension scheme.

[125] INQ000107206_0004 &_0007 – Minutes from meeting between Scottish Trades Union Congress and Scottish Government, including Rozanne Foyer and Jeanne Freeman, dated 13/05/2020.
[126] Evidence of Jeane Freeman, Transcript 14/150/11-23.

**Regulation**

*The Scottish Government's role in regulating the ASC sector*

94. The Scottish Government is responsible for developing the legislation for the regulatory framework in Scotland. Within the ASC sector, there are a number of regulatory and assurance bodies with responsibility for regulation. A number of these bodies are sponsored by the Scottish Government and/or are accountable to Scottish Ministers[127]. The Public Services Reform (Scotland) Act 2010 (the '2010 Act') established Social Care and Social Work Improvement Scotland (known as the Care Inspectorate ('CI')) and Healthcare Improvement Scotland ('HIS'), a national healthcare improvement organisation[128]. The 2010 Act provides the statutory basis for both bodies along with associated powers and duties including those of the Scottish Ministers[129].

*The Care Inspectorate*

95. The CI is the national agency responsible for regulating care services in Scotland[130]. Under Chapter 2, Part 5 of the 2010 Act, the CI has the power to inspect any social service. This is defined in section 46(1) to mean both care services and social work services[131]. Their role includes registration, inspection, complaints, enforcement and improvement support[132]. The CI works with other scrutiny and improvement bodies, such as HIS, HM Inspectorate of Constabulary in Scotland ('HMICS'), HM Inspectorate of Prisons for Scotland ('HMIPS'), HM Inspectorate of Prosecution, Education Scotland, the Mental Welfare Commission and Audit Scotland to look at how social work and social care is provided[133].

96. Although sponsored by the Scottish Government, the CI operates independently from Scottish Ministers[134]. While independent, the CI would liaise with Scottish Government on an almost daily basis[135]. They met regularly, both formally and informally, throughout the pandemic. As Mr Mitchell of the CI made clear the CI, "*have always enjoyed a very positive and constructive relationship with our Scottish Government Sponsor team and with other officials who work closely with them, and we continue to do so"*[136]*.* The CI and the Cabinet Secretary met initially every two weeks from 28 May 2020 until May 2021 at which time the meetings were delegated to the Minister for Mental Wellbeing and Social Care, Kevin Stewart. The discussions usually

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[127] INQ000614179_0035 – Witness Statement of DG HSC at §100.
[128] INQ000614179_0018 – Witness Statement of DG HSC at §42.
[129] INQ000614179_0018 – Witness Statement of DG HSC at §43.
[130] INQ000614179_0036 – Witness Statement of DG HSC at §101.
[131] INQ000614179_0018 – Witness Statement of DG HSC at §43.
[132] INQ000614179_0018 – Witness Statement of DG HSC at §43.
[133] INQ000614179_0036 – Witness Statement of DG HSC at §101.
[134] INQ000614179_0036 – Witness Statement of DG HSC at §101; INQ000475130_0013 – Witness Statement of Kevin Mitchell at §44.
[135] INQ000475130_017 – Witness Statement of Kevin Mitchell at §60.
[136] INQ000475130_017 – Witness Statement of Kevin Mitchell at §60.

focussed on the latest Covid-19 data and trends, including deaths and outbreaks in individual services and geographic areas. They usually discussed the latest parliamentary report the CI had produced, and also provided an update on particular care homes and providers, that featured in the report, or in briefings the CI had submitted to their Scottish Government Sponsor Team and which had been passed to the Cabinet Secretary[137]. Mr Mitchell described the meetings with the Cabinet Secretary as *"very focussed and detailed and appropriately challenging but mutually respectful and in my opinion mutually beneficial"*[138].

*Changes to the Regulatory Inspection Regimes within the Care Sector*

97. The early stages of the pandemic saw a rapid transformation of the work of the CI, from a 'business as usual position' to an emergency response, with associated changes to its assurance and scrutiny activity[139]. The CI developed guidance on how it would carry out its registration and scrutiny role during the emergency period[140]. The Scottish Government was asked to approve the CI's revised Scrutiny and Assurance Directorate Coronavirus (Covid-19) Intermediate Response package, and did so on 13 March 2020[141]. That package included the suspension of non-essential visits. The rationale for scaling down inspections was clear and aimed at minimising the risk that CI staff would spread infection of Covid-19, while recognising that their inspectors might also be at risk of infection[142].

98. On 17 March 2020, the Chief Executive of the CI wrote to the care sector to provide an update on how the CI was responding through its contingency planning. This explained the decision to scale down the regulator's inspections and put in place arrangements which involved gathering information, assessing the level of risk in care services and establishing assurances about the quality-of-care people experienced[143].

99. The CI moved to use of remote monitoring and telephone contact with care home services[144]. As Mr Mitchell said in evidence, there was increased levels of contact by inspectors, "*contacting every home weekly... and sometimes daily*" between 1 April and 26 July 2020[145]. The CI introduced a new Red, Amber, Green ('RAG') assessment for notifications from care homes on staff levels on 3 April 2020 and this ran until 17 June 2020[146]. The RAG assessment enabled care services very simply to inform the CI of their assessment of their staffing levels, particularly when this was reaching crisis point. CI staff monitored and responded to these

[137] INQ000475130_0147 – Witness Statement of Kevin Mitchell at §553 & 554.
[138] INQ000475130_0019 – Witness Statement of Kevin Mitchell at §64.
[139] INQ000614179_0282 – Witness Statement of DG HSC at §876.
[140] INQ000614179_0283 – Witness Statement of DG HSC at §877.
[141] INQ000614179_0283 – Witness Statement of DG HSC at §877.
[142] INQ000614179_0283 – Witness Statement of DG HSC at §878.
[143] INQ000614179_0284 – Witness Statement of DG HSC at §883.
[144] INQ000614179_0284 – Witness Statement of DG HSC at §881.
[145] Evidence of Kevin Mitchell, Transcript 6/45/3-5.
[146] INQ000614179_0284 – Witness Statement of DG for HSC at §881.

daily, including over the weekends, to ensure that services received the support they needed from HSCPs, Public Health Teams or others, as appropriate. From 10 April 2020, CI agreed to share the information they received with the Scottish Government on a daily basis (seven days a week) and with the SSSC from 23 April 2020[147]. The RAG system was unique amongst the UK regulators. It meant the CI were immediately alerted to issues and could provide scrutiny, guidance, and support to services directly, as well as directing resources to services from other key agencies where needed[148].

100. The Scottish Government was, however, aware of concerns raised by members of the public regarding both the pausing and resumption of care home inspections. As mentioned above, on 14 April 2020 the First Minister led a Scottish Government Resilience Room ('SGoRR') 'Deep Dive' on care homes[149]. On 17 April 2020[150], the Scottish Government requested that Directors of Public Health ('DPHs') take immediate action to ensure an *enhanced* system of assurance was in place – working with local IPC teams, CI, primary care teams and others to oversee the provision of local support and assurance to care homes[151]. Following this, the Cabinet Secretary for Health and Sport wrote to the CI on 29 April 2020 requesting a timeframe for resumption of its inspection programme[152]. Despite some initial concerns, the CI resumed unannounced, on-site inspection visits to care homes from 4 May 2020 onwards.

101. As Ms Freeman made plain in evidence, the Scottish Government wished to see inspections resume, albeit conducted in a manner that balanced the potential risks. When inspections resumed, decisions as to whether to perform an in-person inspection were informed by *individual risk assessments* of each home, under the clinical direction of DPHs. This allowed considerations, such as the quality of care being provided in each home, to be taken into account. Scottish Ministers outlined new arrangements for enhanced professional and clinical care oversight of care homes in a letter[153] to key partners issued on 17 May 2020. Local oversight teams were required to ensure, amongst other duties, that joint inspection visits (of care homes) were undertaken as required by the CI and HIS[154].

102. The CI and HIS worked together under a statutory duty of co-operation. Joint inspections were undertaken on a targeted basis, with a focus on the physical and healthcare needs of residents, taking into account priorities and concerns identified by local oversight teams. HIS

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147 INQ000475130_0069 – Witness Statement of Kevin Mitchell at §248.
148 INQ000475130_0070 – Witness Statement of Kevin Mitchell at §250.
149 INQ000614179_0106 – Witness Statement of DG HSC at §318.
150 INQ000364126 – Letter from Malcolm Wright (Chief Executive of NHS Scotland and Director General of Health and Social Care) to Health Board Chief Executives, regarding a request for the implementation of Scottish Government support measures to care homes, dated 17/04/2020.
151 INQ000614179_0285 – Witness Statement of DG HSC at §884.
152 INQ000614179_0286 – Witness Statement of DG HSC at §889.
153 INQ000320169 – Paper from Scottish Government titled Coronavirus (COVID 19): enhanced professional clinical and care oversight of care homes, dated 17/05/2020.
154 INQ000614179_0286 – Witness Statement of DG HSC at §890.

assisted with clinical aspects of inspections of care homes (e.g., IPC). The presence of HIS inspectors, and the healthcare and IPC expertise that they provided, brought additional assurance to care home inspections. HIS contributed to over 200 inspections (including continuation, monitoring and follow-up visits), equating to approximately 30% of the total number of inspections carried out by the CI[155]. The CI had originally asked for support from HIS, and Mr Mitchell considered that HIS made *"a very valuable contribution to the general approach to inspection"*[156]*.* The involvement of HIS was "*very helpful because it allowed us to get around more services than we might otherwise have been able to"*[157]*.*

103. In 2019/2020 there were 1,129 inspections, which figure dropped to 603 between 2020 and 2021, but increased again to over 1000 in 2022/2023, a rise to almost pre-pandemic levels. That increase is in part explained by the decision, with the support of the Cabinet Secretary, to take an approach based on intelligence and risk, and to inspect some services more frequently where it had been identified that significant improvements were required in order to ensure sustained improvement[158].

*Emergency Covid-19 Legislation*

104. The Coronavirus (Scotland) (No. 2) Act 2020, which came into force on 26 May 2020, placed new duties on the CI in relation to reporting to the Scottish Parliament on its inspection activities, findings, and care home deaths. Mr Mitchell rejected the assertion, put to him in evidence, that the requirements to report meant that findings were reported to Parliament *before* the findings were reported to providers. Mr Mitchell was clear that the inspectors produced a summary of their findings within 24 hours of inspection and that summary was shared with the service immediately[159].

105. The Act also contained provisions around care homes. A package of measures was introduced to provide assurance to those involved in the care home sector, including staff and particularly those using these services and their families. In the event of a material risk to the health of persons in a care home, health boards had the power to intervene. In addition, Ministers could apply to a court for an Emergency Intervention Order (EIO). This allowed someone to act as a 'nominated officer', and to enter and occupy accommodation where there was serious risk to life, health or wellbeing.

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[155] INQ000614179_0287 – Witness Statement of DG HSC at §892.
[156] Evidence of Kevin Mitchell, Transcript 6/70/23-25.
[157] Evidence of Kevin Mitchell, Transcript 6/72/13-15.
[158] Evidence of Kevin Mitchell, Transcript 6/54/17-125/55/1-14.
[159] Evidence of Kevin Mitchell, Transcript 6/76/23-25/77/1-13.

*Scottish Social Services Council*

106. The Scottish Social Services Council ('SSSC') is a public body which regulates the social services workforce in Scotland[160]. During the pandemic the SSSC introduced changes to the regulatory practice of social care professionals to provide flexibility within the social care workforce and to address workforce capacity challenges[161]. There were no concerns raised with the Scottish Government by the sector in respect of changes made to qualifications or training of social care staff by the SSSC[162]. The fact that the SSSC held a register of those working in the care sector meant the SSSC were able to access people who had recently gone off the register to ascertain if they would be prepared to return to the sector[163]. The Scottish Government worked alongside the SSSC to set up a system to help social care services in Scotland recruit and deploy staff to increase the social care workforce capacity[164].

**Use of Do Not Attempt Cardiopulmonary Resuscitation Notices ('DNACPRs')**

107. As noted in the Scottish Government's Written Opening Statement to this module, guidance for health and social care professionals on Cardiopulmonary Resuscitation ('CPR') decisions had been updated in Scotland in 2016, and did not change substantively during the pandemic. The guidance emphasises the importance of ensuring that decisions relating to CPR are made on a case-by-case basis, with the individual and their loved ones where possible. The guidance makes clear the importance of health and social care staff having timely and sensitive conversations with individuals to plan for their care and support needs, should their health deteriorate.

108. Pre-pandemic, Anticipatory Care Plans ('ACPs') were widely promoted by the Scottish Government. During the pandemic it played a key role in supporting the communication of guidance around the importance of ACPs and good DNACPR practice. This included issuing letters of 10 April[165], 17 April[166] and 5 May 2020[167], and updating the Scottish Government ethical advice and support framework in July 2020, so as to make clear that health conditions or disabilities, that are unrelated to a person's chance of benefitting from treatment, must not

[160] INQ000614179_0013, Witness Statement of DG HSC at §23.
[161] INQ000614179_0292, Witness Statement of DG HSC at § 907.
[162] INQ000614179_0292, Witness Statement of DG HSC at §908.
[163] Evidence of Kevin Mitchell, Transcript 6/49/1-6.
[164] INQ000614179_0151 – Witness Statement of DG HSC at §440
[165] INQ000429276 – Letter from the Primary Medical Services team to GP Practices and Chief Executives NHS Boards, titled Anticipatory Care Plans for Vulnerable and High Risk Patients, dated 10/04/2020.
[166] INQ000364126 – Letter from Malcolm Wright (Chief Executive of NHS Scotland and Director General of Health and Social Care) to Health Board Chief Executives, regarding a request for the implementation of Scottish Government support measures to care homes, dated 17/04/2020.
[167] INQ000471396 – Letter from the Interim Principal Medical Officer to Chief Executives and Medical Directors of Health Boards for distribution to all clinical teams, regarding the use of the Clinical Frailty Scale and the use of the Do Not Attempt Cardiopulmonary Resuscitation, dated 05/05/2020.

form part of clinicians' decision-making regarding access to treatment[168]. The Scottish Government clinical guidance for adult care homes was also updated on 15 May 2020 in order to reinforce the existing guidance and best practice around DNACPR, to signpost the Healthcare Improvement Scotland ACP template, and to emphasise that a blanket approach should never be taken[169].

109. It is recognised that the concepts of ACP and DNACPR are sometimes conflated in public understanding. ACPs record a person's preferences in advance so that, in an emergency, care can be aligned with those wishes – including escalation to hospital or intensive care where that is the person's preference. DNACPR is not automatically part of an ACP, although it may arise as part of the discussion.

110. Professor Barclay's oral evidence highlighted the need to take a *"highly patient centred"*[170] approach to ACPs, emphasising the importance of involving family members or loved ones. This is in line with the messaging that the Scottish Government gave. His evidence also noted the availability of online tools and resources available to support staff in Scotland to have person-centred ACP conversations[171].

111. Ms Freeman was taken to the clinical guidance issued to the care sector by the CMO, via her letter of 13 March 2020[172]. She was asked to reflect on whether the wording, which suggested that ACPs should be in place for as many residents as possible, caused some people to think that DNACPRs should be issued on a more widespread basis. Ms Freeman accepted that, with hindsight, she could "*see how that may have been the interpretation by some*"[173]. Although she was quite clear that ACPs were *"not new to… anyone appropriately reading that"*[174], she accepted that the *"wording could have been different"*[175].

112. The Scottish Government recognises that in this module, and in previous ones, there has been evidence of concerns surrounding the inappropriate use of DNACPR notices (sometimes referred to as DNACPR *forms*). Professor Hatton's evidence (of people with learning disabilities having DNACPR in their notes, when this had not been agreed with them or their families, or solely on the basis that they had a learning disability) was particularly troubling[176] – and, if it occurred in Scotland, entirely contrary to the Scottish guidance.

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[168] INQ000614179_0297 – Witness statement of DG HSC at §926.
[169] INQ000515948_0010 - Guidance from Scottish Government titled National Clinical and Practice Guidance for Adult Care Homes in Scotland during the COVID-19 Pandemic, dated 15/05/2020.
[170] Evidence of Professor Stephen Barclay, Transcript 19/36/19.
[171] Evidence of Professor Stephen Barclay, Transcript 19/33/13-21.
[172] INQ000147441 - Letter from Jeane Freeman (Cabinet Secretary for Health and Sport, Scottish Government) to IJB Chief Officers, Local Authority Chief Executives and various care sector recipients, regarding the Coronavirus (Covid-19) Social Care Response, dated 13/03/2020.
[173] Evidence of Jeane Freeman, Transcript 14/94/22-24.
[174] Evidence of Jeane Freeman, Transcript 14/94/24 – 14/95/3.
[175] Evidence of Jeane Freeman, Transcript 14/95/6.
[176] Evidence of Professor Chris Hatton, Transcript 17/178/7 – 17/180/5.

113. Notwithstanding, Ms Freeman's understanding was that, in reality, the scale of the issue of inappropriate DNACPRs in Scotland was *"not widespread by any means"*[177]. Similarly, Kevin Mitchell noted that the CI had not received any complaints of blanket DNACPRs, and was *"never aware of any blanket policy"*[178] being implemented. As he noted, as well as some poorer examples, the CI *"saw good examples of individual care plans, including anticipatory care plans"*[179]. That said, although necessarily anecdotal, it was reassuring that in the evidence of Scottish Covid Bereaved's Rhona Arthur, the topic of DNACPR appears to have been handled appropriately with respect to her father[180]. The sensitive, individualised discussion she described is what the Scottish Government would have expected. The Scottish Government hopes that increased awareness of DNACPRs and ACPs will, as Professor Barclay put it, help to *"routine-ise"*[181] discussions of this nature, ensuring that decisions are made in a timely fashion with appropriate consultation and reflection.

**Conclusion**

114. The Scottish Government *once again* passes its sincere condolences and sympathies to those who have lost loved ones, and to those who continue to suffer. And it *once again* acknowledges the efforts and sacrifices of our workforce during the pandemic.

**5 September 2025**

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[177] Evidence of Jeane Freeman, Transcript 14/93/5-6.
[178] Evidence of Kevin Mitchell, Transcript 6/97/16.
[179] Evidence of Kevin Mitchell, Transcript 6/97/24-25.
[180] Evidence of Rhona Arthur, Transcript 19/134/3-18.
[181] Evidence of Professor Stephen Barclay, Transcript 19/37/16.