

Witness Name: John Kirkpatrick

Statement No. 3

Exhibits: 51

Dated: 11 April 2025

**UK COVID-19 INQUIRY**

---

**WITNESS STATEMENT OF JOHN KIRKPATRICK**

---

I, John Kirkpatrick of the Equality and Human Rights Commission, Arndale House, The Arndale Centre, Manchester, M4 3AQ, will say as follows: -

1. I make this statement in my capacity as Chief Executive ('CE') of the Equality and Human Rights Commission ('EHRC'; formally the Commission for Equality and Human Rights), in response to the request by the UK Covid-19 Inquiry ('the Inquiry') to Dr Lesley Sawyers OBE, Deputy Chair and Scotland Commissioner for the EHRC, for evidence relating to its Module 7, pursuant to Rule 9 of the Inquiry Rules 2006. References in this statement to "we" and "our" refer to the EHRC collectively.
2. I have worked at the EHRC, as Deputy CE since October 2023 and then as CE, from August 2024. I was therefore not in post for the period that the Inquiry is considering in Module 7 (1 January 2020 to 28 June 2022; 'the specified period'). I have overall responsibility for the operation of the EHRC, reporting directly to the Board of Commissioners. I sit on the Board as a Commissioner ex officio. In making this statement, I have drawn on knowledge and expertise from teams across the EHRC, in particular from the Scotland teams, and have relied on that knowledge and expertise.
3. The Inquiry has requested a statement from the Scotland Committee of the EHRC

in Module 7 to better understand the Scotland Committee's involvement in the government's response to the pandemic. Where I refer to 'government' in this statement, I refer to the Scottish Government, unless stated otherwise. We have treated the request as one for information about the activity of the EHRC in Scotland more generally, rather than work which was carried out by the Scotland Committee specifically. I have therefore responded to the request, as the most senior member of the Leadership Team, responsible for managing the operations of the EHRC. The EHRC has also provided witness evidence in relation to its work outside Scotland in relation to the issues raised in Module 7.

4. In this statement, I will focus on issues relevant to Module 7 in Scotland, namely policies, strategies and decision-making of the government, in relation to testing, tracing, and isolation. As such, this statement is not to be taken as a complete picture of all of the EHRC's work in Scotland in relation to the pandemic.

#### **The EHRC and EHRC Scotland**

5. The EHRC is Britain's national equality and human rights body. It is a statutory body established under the Equality Act 2006 ('EA 2006'). It operates independently of the UK, Scottish and Welsh Governments to encourage equality and diversity, eliminate unlawful discrimination, and protect and promote human rights. In Scotland we have a human rights mandate in relation to matters reserved to the UK Parliament only. It enforces the Equality Act 2010 ('EA 2010') and encourages compliance with the Human Rights Act 1998 ('the HRA'). It is accredited at UN level as an 'A status' National Human Rights Institution ('NHRI') in recognition of its independence, powers and performance.
6. The EHRC has unique duties and powers which are set out in Part 1 of the EA 2006. Pursuant to section 3 of the EA 2006, our general duty is to encourage and support the development of a society in which: (a) people's ability to achieve their potential is not limited by prejudice or discrimination; (b) there is respect for and protection of each individual's human rights; (c) there is respect for the dignity and worth of each individual; (d) each individual has an equal opportunity to participate in society; and (e) there is mutual respect between groups based on understanding and valuing of diversity and on shared respect for equality and human rights. There are also Scotland specific duties, including the Fairer Scotland duty (FSD), which apply to specified public bodies in Scotland.

7. As an independent and impartial body, the EHRC is not directly involved in any formal advisory groups and does not participate as of right in any government administrative processes, but does so on request. We will also offer advice to government and formal advisory groups (and others more generally) on our own initiative. Our role is to promote understanding and engagement with equality and human rights issues, to encourage compliance with the law, and to use our authority and influence to secure improvements in policy, practice and the law where necessary. This involves regulating employers and service providers across Britain, whether private, public or third sector. While we actively participate in debates across equality and human rights issues, and seek to foster good relations with and between stakeholders, it is not our role to be an advocacy or campaigning organisation. The EHRC's work generally has not, and does not, include epidemic or pandemic preparedness, as this issue is outside our explicit remit.
8. The EHRC regulates equality across the three nations of Great Britain. We are the NHRI for England and Wales and we have a human rights mandate in Scotland in relation to matters reserved to the UK Parliament. We take a three nations approach to our work, to ensure that our action to improve equality and human rights is relevant to the devolved contexts of Scotland and Wales, with assistance from our Scotland and Wales statutory Committees. In practice, this means regular discussion and information sharing between staff in our Great Britain, Scotland and Wales teams. In the specified period, this would have involved discussion and information sharing on the government's response to the pandemic as issues emerged. The Scottish Human Rights Commission has a mandate to promote and protect human rights in Scotland where they fall within the competence of the Scottish Parliament.
9. EHRC funding is provided by the Office for Equality and Opportunity (OEO), which is part of the Cabinet Office. During the specified period the OEO was known as the Government Equalities Office ('GEO'), We are accountable to Parliament through the Minister for Women and Equalities and the Women and Equalities Committee.
10. Responsibility for the strategic oversight of the EHRC lies with the Board of Commissioners. The Chair and Commissioners are public appointments made by the Minister for Women and Equalities.
11. There are also five committees which help guide our work: two statutory committees, the Scotland Committee and the Wales Committee; and three non- statutory

advisory committees, the Audit and Risk Assurance Committee, the People and Workspace Committee and the Public Reporting Committee. During the specified period, we also had a Disability Advisory Committee.

12. In Scotland, the statutory Scotland Committee advises the Commission about the exercise of its functions in relation to Scotland. The Scotland Commissioner sits on the Board. There is no formal or statutory requirement for EHRC to appear before the Scottish Parliament or before parliamentary committees.
13. The role of the Scotland Committee (“the Committee”) is to:
  - a. advise the EHRC on the exercise of its functions in so far as they affect Scotland.
  - b. exercise the EHRC’s general powers in respect of activities listed in section 13 of the Equality Act 2006, in so far as in the opinion of the EHRC they affect Scotland.
  - c. exercise the EHRC’s power in sections 11(2) (c) and 11 (2) (d) of the Equality Act 2006, in so far as that power, in the opinion of the Commission, affects only Scotland (the ‘section 11 advice’).
  - d. respond to consultations of the Committee by the EHRC. The EHRC is required, before exercising a function in a manner which in the opinion of the EHRC is likely to affect persons in Scotland, to consult the Committee.
14. The Committee provides its advice and responses through the Scotland Commissioner as Chair of the Committee. This can be either through oral or written report to the Board, the CE or other officers. Advice to the Board will be duly minuted.
15. The Board will consider all advice, oral and written, provided to it by the Committee through the Scotland Commissioner. Advice to the Board is not binding and it is for the Board to determine the extent to which the advice is reflected in the exercise of its own functions.
16. The Committee meets formally four times a year, with one informal development session. The Chair may convene additional meetings as necessary.
17. Full details of the role of the Scotland Committee, its statutory powers and how it discharges its functions are set out in the Scotland Committee Terms of Reference.

JK3/01 - INQ000596747.

18. The current members of the Scotland Committee are:
- a. Dr Lesley Sawyers OBE. Dr Sawyers is the Chair of the Scotland Committee. She is also the Scotland Commissioner. As Scotland Commissioner, she serves on the Equality and Human Rights Commission Board of Commissioners, of which she is also the Deputy Chair.
  - b. Mariam Ahmed
  - c. Professor Adam Tomkins
  - d. Mandy Rhodes
  - e. Arlene Stokes
  - f. Dr Lesley Thomson
  - g. David Stirling
19. Day-to-day operations are delegated to the CE and subdelegated to other officers as appropriate. The work of the EHRC in Scotland is carried out by various teams based in Scotland, which currently report to the directors listed below rather than to the Scotland Committee. Prior to 2022 the Scotland teams reported to a Scotland Director. The Scotland Committee is kept advised of the activities of the Scotland Teams by regular fortnightly updates and reports prepared for Scotland Committee meetings by the Heads of the Scotland functions.. The Scotland Committee provides advice and an input into the strategic direction of the work of those teams, but does not direct their work. . This statement therefore focuses on the work of the Scotland teams during the relevant period.
20. The EHRC's operations are overseen by a leadership team currently consisting of the following Directors:
- a. CE (myself, John Kirkpatrick );
  - b. Deputy CE (Penny Hobman)
  - c. Director of Policy, Human Rights Monitoring and Three Nations (Anna Boaden);
  - d. Interim Director of Finance and Corporate Resources (Arthur Babumba);
  - e. Director of Communications (Moya Alcock);
  - f. Director of Legal (Adam Sowerbutts);

- g. Interim Director of Regulation (Martin Crick)
  - h. Director of People and Infrastructure (Kerry Lucas).
21. The EHRC staff is made up of a number of teams reporting to the above listed directors. At the start of the Covid-19 pandemic the structure of the leadership team was different, with a chief executive officer, three executive directors, and more directors. At that time, we employed some 210 staff, and we now employ 200 staff, of which 15 are based in the Scotland Teams.

### **Coordination and co working**

22. Like other organisations, we began to consider the potential impacts of the pandemic in early 2020. The period up to September 2020 could be described as an emergency response period, with the EHRC engaging on new and complex issues as they arose.
23. In April 2020, we formed a steering group to lead our initial response to the pandemic. This was led by our then Director of Policy, Human Rights and Three Nations (Alasdair MacDonald) and overseen by Melanie Field in her capacity as Chief Strategy and Policy Officer. It was comprised of a number of key individuals including our then Director of Regulation, our then Director of Evidence and Strategy, our Head of Wales and our Head of Scotland (John Wilkes). The steering group was responsible for: assessing emerging impacts of the pandemic, and adjusting the strategic approach as required; ensuring that stakeholder views were properly considered and reflected in our work; and monitoring and refining the impact on our wider Business and Strategic Plans. We redirected internal resource, including by deprioritising one of our existing strategic areas (transport, around September 2020) to ensure that we had capacity to effectively advise governments and others on equality and human rights issues related to the pandemic.
24. On 9 April 2020, we published a statement from our then Chair of Commissioners, David Isaac, explaining how we would respond to the pandemic. We stated that we would: work closely with stakeholders and partners to monitor developments; provide expertise to governments across the three nations; and remind all carrying out public functions of their obligations under the Public Sector Equality Duty

(‘PSED’). We went on to make a number of public statements on pandemic-related issues arising throughout the specified period.

### **Engagement with government and non-government stakeholders**

25. Our remit requires us to engage regularly with Government at various levels. We have a key role in advising Government on equality and human rights issues. We regularly offer advice to Government, and during the specified period we did so in relation to its response to the pandemic, in the manner described below. When providing our advice to Government at various levels, we stressed the importance of compliance with the Public Sector Equality Duty (PSED), both the general duty found in the EA 2010 and the Scotland specific duties, which provide a clear legal framework to ensure that equality considerations are taken into account by public decision-makers at all times, including in crises. We made equivalent arguments in relation to human rights standards, where appropriate and within our remit.
26. In Scotland, our statutory Scotland Committee advises the EHRC about the exercise of its functions in relation to Scotland. The Scotland Commissioner sits on the EHRC Board. There is no formal or statutory requirement for EHRC to appear before the Scottish Parliament or before parliamentary committees. However, we meet with Ministers as appropriate and we are often invited to give evidence to parliamentary committees.
27. Our regular engagement with Government pre-dated the specified period. During the specified period, that engagement continued with a renewed focus on pandemic-related issues. Examples of our meetings with Government in the specified period are included in Areas of Focus below.
28. The EHRC also engaged extensively with parliamentary committees during the pandemic. These committees are important fora in which we share our expertise and advice and seek to have impact on decision-making. We also maintain relationships and share our expertise with other MSPs including Shadow Ministers. Our parliamentary briefings are published on our website and routinely shared with: relevant parliamentary Committees, relevant Government departments and individual parliamentarians.

29. In line with our remit, we had a particularly close relationship with the Equality and Human Rights Committee [EHRC] (now the Equalities, Human Rights and Civil Justice Committee).
30. Considerable correspondence was sent by the EHRC to Ministers and Government departments during the relevant period. Examples of this are given below where relevant.
31. We regularly engage with a very wide range of non-governmental stakeholders, to inform our work and amplify its impact. During the specified period, our relationships with such stakeholders would have enabled us to identify and monitor the impacts of the pandemic on protected characteristic groups and human rights. Evidence collated from a range of stakeholders informed our evidence and advice, such as that provided to parliamentary committees.
32. Our initial responsive work in relation to the pandemic between April and September 2020 included the following:
  - a. Producing detailed research and analysis through a cross-cutting report on the impact of the pandemic on different groups;
  - b. Submitting evidence to a wide range of Committees in the UK and Scottish Parliaments and in the Welsh Senedd on the impact of the pandemic. Some of our work with the Scottish Parliament is detailed below;
  - c. Influencing the British Medical Association ('BMA') and other bodies to ensure that an overly broad approach to the use of Do Not Attempt Cardiopulmonary Resuscitation ('DNACPR') orders was not adopted;
  - d. Contributing to Public Health England ('PHE') and other public bodies' work on the impact of the pandemic on different ethnic minority groups;
  - e. Raising concerns about the contract tracing app with NHSX;
  - f. Partnering with other regulators and stakeholders, such as the Care Quality Commission ('CQC'), on the serious impacts of COVID-19 on older people in social care settings;
  - g. Working with the Department for Environment, Food and Rural Affairs, Government, British Retail Consortium, major supermarkets and others to

ensure that disabled and older people were able to safely access food shopping;

- h. Engaging with exam bodies, including the Scottish Qualifications Authority (SQA) in Scotland, to try to ensure that particular groups were not disadvantaged by predicted grading;
- i. Working with the Government on its approach to return to the office policy and guidance;
- j. Advising public bodies on the importance of data collection in reducing inequality;
- k. Assisting various public bodies to carry out Equality Impact Assessments of the changes to their policies and processes brought about by the pandemic.

33. As we began to engage with the pandemic in early 2020 we redirected internal resource to this work. We offered our support to Government and offered our views on the Government response, including on the equality and human rights implications of the emergency legislation.

34. On 19 March 2020 our Scotland Commissioner, Dr Lesley Sawers, emailed the then First Minister, Nicola Sturgeon MSP sharing an open letter sent to the then Prime Minister by then EHRC Chair, David Isaac, and offering support

JK3/02 -  
INQ000596760.

35. Alastair Pringle, EHRC's then Executive Director of Scotland and Regulation wrote to the Cabinet Secretary for the Constitution, Europe and External Affairs, Mike Russell MSP, about upcoming COVID-19 emergency Scottish legislation on 25 March 2020: JK3/03 - INQ000596772. In the context of the anticipated emergency legislation, he emphasised the need to maintain equality and safeguard the wellbeing of our most vulnerable people while saving lives. He advised that actions to protect people that complement or enhance equality and human rights would maximise consent and compliance, and so ultimately best safeguard public health, He stated that the EHRC's view is that legislative changes of such magnitude should be proportionate and measured, rooted in science and the law, have clear review and end points, be flexible to specific needs, and remain open to challenge.

36. On 31 March 2020, a brief telephone meeting was held between Alistair Pringle, Executive Director at the EHRC, the Chair of the Scottish Human Rights

Commission (SHRC) and the Cabinet Secretary for Communities, Enterprise and External Affairs on the proposed emergency legislation. The EHRC was particularly interested in potential differential impacts on different communities and protected characteristics and how this would be monitored, as well as in clear review and end points for the legislation. The Cabinet Secretary advised that he would be issuing guidelines to Government colleagues for reporting around differential impact.

37. Also on 31 March 2020, we issued a Scottish parliamentary briefing in advance of the introduction of the Coronavirus (Scotland) Bill (now Act). JK3/04 - INQ000596784. Our briefing reiterated the need for emergency legislation to be proportionate and measured, rooted in science and the law, have clear review and end points, be flexible to specific needs, and remain open to challenge. We welcomed the reported automatic expiry of most provisions in the legislation after six months and urged the Scottish Parliament to consider what kind of measures were not subject to this expiration, and what the process would be for parliamentary renewal of powers. We advised that reporting should consider how powers are impacting differently on different people, and in particular on those sharing protected characteristics and that should inform future powers.
38. Based on the relevant UK legislation and consequent new Scottish public health regulations, and related activity in the Scottish Parliament, we highlighted the following issues in the briefing: relaxing safeguards on detention set out in the Mental Health (Care and Treatment) (Scotland) Act 2003; the impact of school closures on pupils with additional support needs (ASN); socioeconomic impacts and lack of economic support for “gig economy” workers and homeless people and rough sleepers; provision of essential services to older people in rural areas; the risks to disabled people and older people of UK legislation permitting Scottish local authorities “not to comply” with a number of duties under care legislation where not practical; the impact of requirements for workers to work from home on care, particularly for women; the impact of the need to stay home on domestic abuse; access to justice for people who could find it difficult to participate fully in proceedings remotely; impacts of challenges to accessing benefits; challenges for public authorities due to publish PSED information; public health communications.
39. The Coronavirus (Scotland) Act was passed by the Scottish Parliament on 1 April 2020. On 3 April 2020, we issued a statement welcoming the inclusion of a provision in the Coronavirus (Scotland) Act which largely replicated the Public Sector Equality Duty by reiterating that the Government must have regard to opportunities to

advance equality and non-discrimination when exercising powers in the Act. We also welcomed the Government's commitment to develop guidelines for reporting on the use of powers in the Act, which we argued should include evidence of their impact on people sharing different protected characteristics. JK3/05 - INQ000596796.

40. On 9 April 2020, Alastair Pringle, EHRC's then Executive Director of Scotland and Regulation, wrote to the Cabinet Secretary for the Constitution, Europe and External Affairs, Mike Russell MSP JK3/06 - INQ000596799 following up on our previous phone call regarding the emergency legislation and noting that we were pleased to see that the Act included Part 2, Section 9 on the advancement of equality and non-discrimination and asking that Government reporting includes information disaggregated by protected characteristics wherever possible to enable the Government to consider best use of powers with the Section 9 obligation to advance equality and non-discrimination in mind, and to best understand and act upon anything which impacted disproportionately on people with certain protected characteristics
41. On 16 April 2020, the Scottish Parliament EHRiC Convener Ruth Maguire MSP wrote to us seeking our views on the emergency legislation in the context of the equality issues we previously highlighted. JK3/07 - INQ000596800.
42. On 27 April 2020, our Scotland Commissioner, Dr Lesley Sawers, wrote to the then First Minister, Nicola Sturgeon MSP, to offer on behalf of the Equality and Human Rights Commission our services, resources, expertise and knowledge in the immediate response to COVID-19 and in considering the wider socio-economic recovery in Scotland and to update her on other work we had been doing. JK3/08 - INQ000596800.
43. As the pandemic progressed, we reviewed powers, raised concerns, made recommendations and provided responses to Scottish Parliamentary Committees.
44. We raised concerns about the risk of disproportionate impact of the emergency legislation on groups sharing protected characteristics on a number of subsequent occasions, including:
  - a. On 15 May 2020, we submitted an inquiry response to the Scottish Parliament Equality and Human Rights Committee on the equality and human rights impact of COVID-19 on groups and individuals. JK3/09 - INQ000596802. We made various recommendations including: expiring as

soon as possible any powers which could not be shown to be having a meaningful impact on the spread of COVID-19, or which had a disproportionate negative impact; filling data gaps; undertaking equality impact assessments; ensuring healthcare policies and practices did not discriminate; taking account of the experiences of unpaid carers and disabled people and making decisions in line with the PSED; highlighting to employers the need to adequately support pregnant women, and apply women’s experiences to shape policy; monitoring the use of video and phone hearings in courts and tribunals to ensure meaningful participation for all; regarding emergency provisions for detention under the Mental Health (Care and Treatment) Scotland Act; regarding mobility support in transport; regarding SQA assessing and monitoring the impact of their alternative certification model; for safeguards for children who are at risk or with ASN or eligibility for free school meals; and to take mitigating actions in relation to homelessness. On 19 May 2020 we issued a press release about our response. **JK3/10 - INQ000596802.** On 27 July 2020 we published an article about our response. **JK3/11 - INQ000596749.**

b. On 22 May 2020 we wrote to the Government reminding them of our earlier engagement in relation to various aspects of COVID-19 as detailed above, copying earlier correspondence, and asking for a meeting to get their thinking on the best way forward in this engagement between the EHRC and Government. **JK3/12 - INQ000596750.**

c. On 29 May 2020 we responded to a COVID-19 Committee call for evidence **JK3/13 - INQ000596753** referring to our (more lengthy) response of 15 May 2020 to the Scottish Parliament Equality and Human Rights Committee on the equality and human rights impact of COVID-19 on groups and individuals and reiterating many of the points we made in that. **JK3/14 -**

**- INQ000596754.** We supported the principles identified by the Government in its Framework for Decision-Making and urged the Government to ensure that it was used consistently to support and inform its future decision making and also that in the recovery stage rather than returning to “normal” advised that we must ensure that equality and rights considerations underpin decisions about what comes next, including how to address structural issues in our economy, how to reward key workers, how to learn from what worked during the pandemic, what an increasingly digital

economy would mean and how to harness goodwill and compassion. We shared this response with SHRC and the Scottish Government Equality Unit.

- d. We were asked by the Government to contribute to COVID-19 renew scenarios workshops, which we did on 2 July 2020.
- e. On 3 September 2020, we made a submission to the COVID-19 Committee in response to a call for views about the provisions the Government had chosen to include for expiry in the Coronavirus (Scotland) Acts (Early Expiry of Provisions) Regulations 2020, and provisions it had not chosen to include, but could have, or should include in future regulations. JK3/15  
- INQ000596755.
- f. In particular, we supported the expiry of a provision, which, if it had been commenced, would have removed important safeguards relating to detention under mental health law and had a significant and disproportionate negative effect on disabled and older people.
- g. We also raised concerns regarding children in secure accommodation and the operation of children's hearings and noted that consideration should be given to including provisions regarding vulnerable adults in subsequent early expiry regulations.
- h. We shared this response with staff in the Government Equality Unit, the Government COVID-19 legislation team and at Children and Young Persons Commissioner Scotland. We also met the COVID-19 legislation team to discuss the response.
- i. On 19 October 2020, we articulated concerns regarding devolved provisions in the UK Coronavirus Act 2020 which we believed should also be considered for repeal in our report, 'Coronavirus Acts: third report to the Scottish Parliament' JK3/16 - INQ000596755.
- j. We made a number of recommendations relating to: scrutiny of legislation; changes to local authorities' duties to assess care and support needs for various people; vulnerable adults; childrens' hearings and child protection; and mental health detention.

- k. We also shared this report with staff at the Government Equality Unit and at CYPES, and at some time later with Paul O'Kane MSP (following an introductory meeting where he expressed interest).
- l. On 9 June 2021 we met with the Government to discuss the Coronavirus (Extension and expiry) (Scotland) Bill. We asked about an Equality Impact Assessment of the Bill and what reporting obligations there would be, as well as raising the tests of necessity and proportionality with respect to provisions in the Bill and asking about review and end dates of powers.
45. On 15 February 2021 we asked the Government if they were recording the protected characteristics, of those who were vaccinated. This was prompted by anecdotal evidence of so-called 'vaccine hesitancy' among people from some ethnic minority backgrounds. On 1 March 2021, we received an email from the Government explaining their approach to gathering data. The data which was published on the COVID-19 dashboard was at that time broken down by sex, age and location and they intended to publish further breakdowns as the dashboard continues to be developed. They were exploring analysing other characteristics, such as ethnicity, from Public Health Scotland records **JK3/17 - INQ000596757**.
46. We engaged with the Government on vaccine status certification. This included the following work.
47. On 28 October 2021, we made a submission to the COVID-19 Recovery Committee regarding vaccine status certification **JK3/18 - INQ000596758**. We raised concerns about the risk of 'scope creep'; the use of facial recognition in the app; the lack of a test alternative; and the need for ongoing data collection to understand any disproportionate effects and noted that these issues all merited further scrutiny. We also shared this with various Government teams.
48. On 24 November 2021, we attended a round table meeting about domestic COVID-19 status certification, following which the Government had various action points, including to feedback to the relevant policy team the difficulties that some groups might face in accessing vaccines due to the closure of local vaccination sites and share details of data used in monitoring. After that meeting, the Government published and shared with us various impact assessments, including an Equality Impact Assessment. **JK3/19 - INQ000596759**.

49. Details of the work carried out by the EHRC and the Scotland teams in particular in relation to Test, Trace and Isolate measures are below at paragraph 79.

*Four nations*

50. The remit of the EHRC extends across Scotland, England and Wales. As a member of the EHRC internal Covid-19 steering group, described in paragraph 50, our Head of Scotland shared information and context with other members. This approach enabled relevant officers to include information and advice given in Scotland with other administrations. It is not within the remit of the Scotland Committee to give advice directly to other Devolved Administrations and our remit in the Scotland Teams was focused on work within Scotland rather than on the approach across the Devolved Administrations.

**Disproportionately impacted groups and inequalities**

51. By around September 2020, the EHRC – on the recommendation of the steering group – decided to focus the use of our powers on a smaller number of strategic COVID-19 related issues: health and social care, and the impact on ethnic minority groups. Both led to long-term programmes of work which became embedded in our Strategic and Business Plans, including an inquiry into decision-making in social care and a dedicated race legal support fund. In Scotland we also made recommendations in relation to the impact of the pandemic on victims of domestic abuse, which are detailed below.

*Health and Social care*

52. Throughout the specified period, we engaged extensively on health and social care issues with a wide range of NHS, governmental and non-governmental bodies.
53. On 17 April 2020, we submitted a briefing to the Government entitled ‘Scotland COVID-19 Guidance: Clinical Advice and Ethical Advice and Support Framework’ **JK3/20 - INQ000596762**, recommending that the Clinical Advice Guidance and the Ethical Advice and Support Framework must be revised to incorporate the principles of equality and non-discrimination from the outset. We argued that this would support frontline staff when making challenging healthcare decisions, while fulfilling

their legal duties. We also set out that public bodies must continue to have due regard to equality matters in the course of their work and that socio-economic inequality should also be at the forefront of decision-making, in line with the Fairer Scotland duty. We made recommendations, including that the guidance should explicitly state that blanket decision-making, which could have a negative impact on protected characteristic groups such as disabled people or older people, must not be permitted and highlighted concerns regarding the clinical frailty scale.

54. On 24 April 2020, our then Executive Director, Alastair Pringle, followed this up by writing to the interim Chief Medical Officer about adjustment of the clinical frailty scale and offering to work with him regarding Equality Impact Assessment. [JK/21 - INQ000596763.
55. Our written evidence to the Westminster Women and Equalities Committee's inquiry on 'Unequal impact: Coronavirus (COVID-19) and the impact on people with protected characteristics' on 1 May 2020 set out concerns and recommendations about a number of issues including: the application of DNACPR notices to older or disabled people in care or residential homes without proper consultation. We were credited, along with other stakeholders, by the Minister in Scotland for changing their views on DNACPR notices, which we had raised at a meeting with them, resulting in the CMO writing to GP practices, clarifying their use.
56. On 15 May 2020, we produced an emergency 40 page response to the EHRiC raising various issues, for example the need for health boards and integrated joint boards to be keeping data, access to treatment, feedback on Chief Medical Officer guidance. the use of the clinical frailty scheme and the impact on non-COVID-19 care. JK3/22 - INQ000596764. In this report we raised concerns about the impact of the COVID-19 pandemic on disabled people and people living with long-term conditions, who were affected particularly severely by reductions in care, or who were choosing not to accept, or giving up, care packages because of concerns of getting COVID-19.
57. On 27 May 2020, we wrote a joint letter with the Scottish Human Rights Commission (SHRC) and Children and Young Persons' Commissioner (CYPCS) to the Government Chief Medical Officer (CMO) regarding concerns we had about clinical guidance on using physical restraint on patients with confirmed or suspected COVID-19: in relation to lack of clarity about the situations the guidance applied to

and the legal frameworks and principles to be followed; and particularly whether it applied to children and young people **JK3/23 - INQ000146842.**

58. We carried out work on Scottish National Clinical Guidance for Care Homes and social care reform, which was informed by our work on the impact of the pandemic.
59. On 18 January 2021, we made a submission to the independent review of social care reform in Scotland **JK3/24 - INQ000596766** in which we made various recommendations regarding integrating equality into the review and ensuring equality is embedded into the structures, behaviours and culture of those involved in delivering reform. Those included that leadership should give clear and consistent messages about the PSED; gather and use equality evidence; assess equality impact; set equality outcomes and equality conditions and criteria in public procurement; and monitor progress.
60. On 22 March 2022 we responded to the Scottish Parliament Health, Social Care and Sport Committee's inquiry into health inequalities **JK3/25 - INQ000596767:** The response referenced the pandemic's disproportionate effect on different groups, including those sharing certain protected characteristics, exacerbating existing inequalities. It welcomed the Government's action to establish an Expert Reference Group on ethnicity and update the decision-making framework. It recommended focussing on data collection to help tackle health inequalities in the recovery phase.
61. The EHRC's 2020 briefing on equality in residential care in Scotland during COVID-19, published in December 2020, laid out our findings on the disproportionate impact of the pandemic on the lives, health and wellbeing of care home workers, who are overwhelmingly women. **JK3/26 - INQ000507856.**
62. The briefing summarised the key equality issues in care homes in Scotland that we identified during the pandemic, and explained the equality framework that care homes should apply to help tackle these problems and prevent them from happening again. In July and August 2020, we held roundtable meetings with organisations representing people with lived experience of living and working in care homes, care home providers and academics. They all raised concerns about the lack of access to healthcare services caused by the reprioritisation of healthcare resources during the first wave of the pandemic. The briefing also noted that there is evidence that public authorities do not always properly understand the needs of ethnic minority older people in care homes. Language barriers and cultural differences mean they do not always receive the same quality of care and support

as others. During our roundtable meetings, we heard evidence that suggests there has not been adequate engagement with people living and working in care homes, or with particular equality groups, in particular older and disabled people and people from some minority ethnic groups. This means their voices and experiences could not be heard, understood or reflected in decision-making.

63. In the briefing, we made a number of recommendations, including that care homes should ensure there is equality of choice, control and autonomy for each resident as far as possible during the pandemic, and that any restrictions on their living arrangements, care and support are non-discriminatory, proportionate, time-bound and only in place where strictly necessary. We also recommended that care homes ensure that staff understand and implement guidance from the Scottish Government about visiting, testing, PPE and wellbeing. We also provided advice on how care homes could meet their obligations under the Public Sector Equality Duty.
64. The EHRC has a power to conduct formal inquiries under section 16 of the EA 2006. In June 2020, we announced the start of an inquiry into the impact of COVID-19 on ethnic minorities across Scotland, England and Wales. The focus of the inquiry was developed at scoping stage and in October 2020, we formally launched an inquiry into racial inequality in health and social care workplaces. The inquiry's terms of reference, published on our website, included the following: "This inquiry will seek to understand how certain ethnic groups working in lower paid roles have been more impacted by COVID-19 and what work related factors contributed to this. We want to hear about a broad range of experiences, to identify specific issues for particular ethnic groups, and, where applicable, to understand the impact of immigration status." Our Scotland Commissioner, Dr Lesley Sawers updated Christine McKelvie MSP, Equalities Minister on the progress of the inquiry on 3 May 2022.
65. Our report was published on 9 June 2022. JK3/27 - INQ000136934. The report contains details of our methodology, which included extensive engagement with stakeholders including Government officials, race stakeholders, local authority organisations, health and social care organisations and trade unions. The purpose of this engagement was to inform our inquiry and did not involve us advising Government officials. We produced a Scotland briefing containing specific recommendations for the Government. JK3/28 - INQ000596770.
66. The Inquiry found a number of concerns about the experiences and the treatment of lower-paid ethnic minority workers in health and social care. In relation to

Scotland, the Inquiry noted that there was a lack of robust workforce data on lower-paid ethnic minority workers, particularly in adult social care, and recommended that the Scottish Government should work with key stakeholders to fulfil its PSED obligations by developing new structures for gathering more comprehensive health and social care workforce data on race and all other protected characteristics, and support organisations to gather and use this data to identify and address poor outcomes experienced by lower-paid ethnic minority workers. The Inquiry also made further recommendations to the Government and to health and social care regulators to address the racial inequalities identified by the Inquiry and the structural factors that cause them.

67. Since the publication of the report in 2022, we have engaged with Government departments to ensure that our recommendations are taken forward. This includes engagement with officials from the Government. An example of a letter sent was our letter of 9 June 2022 to Alison Carmichael, Head of Workforce Experience, Health Workforce Directorate, Government JK3/29 - INQ000596771.

*Domestic abuse*

68. In December 2020, we responded to a Scottish Parliament call for views on the Domestic Abuse (Scotland) Bill in which we supported the principle of the Bill in addressing some barriers in access to justice and the significant detrimental and disproportionate impact homelessness has on women and children [JK/30 INQ000596773. We called for the Bill to address other gaps in existing provision for legal protections for domestic abuse and barriers in access to justice and agreed with the Bill's approach to partners or ex-partners to ensure consistency with the Domestic Abuse (Scotland) Act 2018, enabling a more coherent understanding across the system.
69. We recommended that ways to prevent and protect victim-survivors from abuse within other relationships should be explored further by the Government, especially in light of reports during the COVID-19 pandemic of an escalation of abuse of some migrant women with 'no recourse to public funds' (NRPF) by both abusers and their abuser's family members and agreed with the age requirements in the Bill and that this legislation should offer protection to children.
70. In our inquiry response to the Scottish Parliament EHRiC on the equality and human rights impact of COVID-19 on groups and individuals of 15 May 2020 [JK/31

**INQ000596774.** (at pp 33 and 34)] we raised concerns about the increased risk of domestic abuse and violence against women and girls as a significant related impact of the COVID-19 pandemic. We welcomed the additional support provided to domestic abuse services by the Government and provision in the Health Protection Regulations that made clear it was not an offence to flee the risk of harm, and guidance to highlight this. We recommended that the Government and local authorities should continue to consider how they can support domestic abuse services and further promote the fact that it remained lawful to seek safety if there was a risk of abuse or violence at home through channels accessible to all communities. We recommended that local authorities should monitor the impact of school closures and restrictions to social work services and provide accessible support in line with demand. We raised concerns about issues relating to court ordered contact with children. We asked the Government to undertake a full Equality Impact Assessment of the options for progressing serious criminal trials and to ensure equality considerations were taken into account when making changes to hearings for criminal trials, child welfare hearings and interdicts relating to domestic abuse.

#### *Ethnic minorities*

71. In accordance with our remit, our advice, evidence and briefings throughout the specified period focussed on the impact of the pandemic on protected characteristic groups. In addition to the work referred to elsewhere in this statement, the following work had a specific focus on impacts on ethnic minorities.
72. We flagged existing data gaps and failure to collect data with the Government and National Records.
73. On 13 May 2020, we met with BEMIS Ethnic Minority Resilience Network. We attended further meetings as follows 9 December 2020, 2 February and 9 December 2021, and on 31 March and 27 October 2022. We obtained data and advisory and research support for our Inquiry into Racial Inequality in Health and Social Care Workplaces as a result.
74. We carried out this inquiry to assess the treatment and experiences of lower-paid ethnic minority workers in health and social care, particularly during the COVID-19 pandemic. **JK3/28 - INQ000596774.**

75. On 10 August 2022, our Scotland Commissioner, Dr Lesley Sawers met the Government Race Governance Group to discuss proposals to develop a new race governance structure, which was one of recommendations adopted by Government from the Expert Reference Group on COVID-19 and on our work which will focus on race and ethnicity. She met them again on 14 December 2022 and received an update on plans.

*Other substantial work*

76. In October 2020 we published “How coronavirus has affected equality and human rights”, part of our “Is Britain Fairer?” report series (our ‘October 2020 IBF report’). **JK3/31 - INQ000400715**. The report covered the areas of: work; poverty; education; social care; and justice and personal security. We made targeted recommendations for the UK, Scottish and Welsh Governments. We highlighted the report to a range of Governmental and non-Governmental stakeholders.
77. In September 2021 we provided a joint submission, with the Scottish Human Rights Commission, for a half-day UN panel discussion on deepening inequalities exacerbated by the COVID-19 pandemic and their implications for the realisation of human rights. **JK3/33 - INQ000185229**.
78. Throughout the specified period, we continued to engage on relevant policy issues as they emerged, on the legislative framework and on economic and social recovery. We carried out work in specific sectors, such as education and on specific issues such as advising the Government on postponement of PSED reporting by listed authorities and COVID-19 status certification.

**TTI policy and inequalities and Test & Protect Scotland**

79. On 12 May 2020, we produced an internal briefing paper regarding the NHS Contact Tracing App. **JK3/34 - INQ000596777**. In the paper, we summarised the Government’s Test, Trace, Isolate and Support” (TTIS) strategy published on 4 May 2020. We noted human rights and data protection concerns raised by other stakeholders. We also noted concerns that over-reliance on a tech solution may have an adverse impact on certain groups. Examples include those who are less likely to use smart phones or have internet at home, such as children, disabled and older people, and those who experience socio-economic disadvantage. We noted that concerns had also been voiced around data privacy and gender reassignment, and the implications for victims of domestic abuse.

80. We also highlighted further overarching concerns relating to: accessibility of the system(s); the need to reach certain groups whom health and social care services may find it difficult to engage; potential for disadvantages to arise through high rates of opt-out in certain groups; accessibility of communications in order to support people making an informed choice. We noted that the Government did not appear to have published an Equality Impact Assessment, either for the TTIS strategy, or for the use of the UK Government app in a Scotland-specific context, nor for the web based app the Government proposed to use. We noted that it was unclear whether the types of concerns outlined above were being appropriately considered and mitigated by the Government. We also noted that it was unclear how such a strategy would be applied in different settings in which there were significant equality considerations, for example such as in care homes and schools. We further noted that the TTIS strategy paper was very limited in terms of outlining what delivery would look like, or how the NHS and Government will maintain oversight at a national level. We additionally noted that the Government did not appear to have commented on the concerns raised around data privacy and security to the Joint Committee on Human Rights. We noted that if the Government planned to incorporate the UK Government app into its TTIS strategy, then it would have to consider and respond to these concerns. Finally, we recommended that further contact with the Government would be appropriate so that we could ensure the TTIS strategy balanced public safety with the needs of particularly impacted and already disadvantaged groups.

81. On 3 June 2020, we met with the Government Equality Unit JK3/35  
-INQ000596778. At the meeting the Test and Protect Strategy was discussed and the integration of Equality Impact Assessment tools was highlighted as well as the need to publish Equality Impact Assessments and how to improve practice in this area.

82. On 19 June 2020, we met with NHS National Services Scotland along with other external stakeholders to discuss the Test and Protect Strategy and recruitment to the National Contact Tracing Centre (NCTC) JK3/36 -  
INQ000596779. The meeting was an Equality Impact Assessment Focus Group meeting. Several recommendations were made, including:

- a. For future employment of staff to the NCTC, an additional sift is conducted to identify those who are disabled and are eligible for an interview in line with the Right to Interview scheme operated by NHS Scotland.

- b. Further planning going forward is required to ensure staff who use BSL have access to all of the necessary support to work in the NCTC.
  - c. To ensure the BYOD (“bring your own device”) requirement in previous applications is no longer a barrier to applying for a post in the NCTC.
  - d. Applications for posts within the NCTC are clear that reasonable adjustments will be made for staff who join the service.
  - e. Check how contact tracers are to approach asking contacts if they have a disability.
83. An internal email dated 1 July 2020 JK3/37 - INQ000596780. attaching the notes of the meeting also highlighted that at the meeting, we asked NHS National Services Scotland to clarify the recommendation in relation to tracing people who don't have phones, which can include groups of people with particular protected characteristics. The email notes that this is the end of our involvement with the Equality Impact Assessment of the Test and Protect Strategy in Scotland.
84. On 25 August 2020, we met with the team at NHS Scotland working on the development and launch of the Test and Protect Proximity App JK3/38 - INQ000596782. At the meeting it was noted that the Equality Impact Assessment of the App was ongoing and would be published when the app was launched. The team asked for our advice on which organisations to contact in order to gather specific equality evidence and we agreed to identify relevant organisations. We also suggested they use representative groups for those with protected characteristics to help promote the app and supporting guidance. We discussed how they could understand the impact on protected groups and the team agreed an action to find out what equality monitoring is being done by Contact Tracers and to consider the options available to them. We also discussed carrying out user surveys and working with groups with protected characteristics to obtain evidence of impact.
85. In relation to Test, Trace and Isolate measures across the UK, on 7 May 2020 Rebecca Hilsenrath, the then Chief Executive Officer of the EHRC sent a letter to Matthew Gould, the then Chief Executive Officer of NHSX (responsible for NHS technology, digital and data) regarding equality and human rights considerations in respect of a tracing app, which the UK Government was considering using. In particular we had concerns about accessibility and privacy JK3/39 - INQ000564707. We received a response on 24 May 2020, indicating that NHSX would welcome our

input on this issue. We went on to meet NHSX officials, discussing significant equality challenges in connection with the development of the app and the wider contact tracing programme. We also communicated our concerns to the UK Government's Centre for Data Ethics and Innovation. In June 2020 the plans to implement a centralised data model for the app were scrapped, following concerns raised by a range of interested parties, including the EHRC.

### **Public Communication/Reports and Publications**

86. I have provided details of our relevant work earlier in this statement including our published briefings, reports and inquiry findings. Our 2020-21 Impact Report summarises the impact of some of our work in this period throughout England, Scotland and Wales. JK3/40 - INQ000185245. We also published a Scotland 2020-21 annual report which specifically looked at the impact we had in Scotland and summarised our work in Scotland during this period. JK3/41 - INQ000596786. These reports do not specifically address Test, Trace and Isolate measures.

### *Lessons learned*

87. Throughout the specified period and since, we have monitored the impact of the pandemic on equality and human rights through our engagement with Governmental and non-Governmental stakeholders.
88. We use our published Measurement Framework (which is available on our website) to produce statutory reports under section 12 of the EA 2006. The Measurement Framework enables us to measure progress across six 'domains' (education, work, living standards, health, participation, and justice and personal security). It enabled us to produce an evidence synthesis for our October 2020 report, 'Is Britain Fairer?', highlighting emerging trends from the data and qualitative research into impacts for particular groups.
89. We do not produce our own data sets. We use existing Office for National Statistics ('ONS') and other data sets and undertake secondary analysis to look at trends for particular protected characteristic groups. During the specified period, we engaged with the ONS and other data stakeholders on a number of occasions, to share information on the impact of the pandemic on protected characteristic groups.
90. On 16 April 2020, we wrote jointly with the Scottish Human Rights Commission (SHRC) and Children and Young People's Commissioner Scotland (CYPCS) to Ruth Maguire, Convener of the SP EHRC, asking that the Committee undertake an

inquiry into the equality and human rights impacts of COVID-19 and mitigating actions: **JK3/42 - INQ000146827.**

91. On 16 April 2020, we received a letter from the Convener of EHRiC, stating that the Committee would be monitoring the impact of COVID-19 and emergency powers, and any implications for equalities and human rights and welcomes our input to the scrutiny of the legislation and its potential impacts.
92. On 26 April 2020, the EHRiC convener wrote to us and the SHRC and CYPCS, responding to our joint letter calling for an inquiry on COVID-19 and equality and human rights, noting that the Committee agreed on 8 April 2020 to undertake an inquiry into COVID-19 and the impact on equality and human rights. As a first step, the Committee had written to us and the Scottish Human Rights Commission on 16 April to seek our views. It had agreed a remit and hoped to formally launch the inquiry soon. We also shared with staff at the Government Equality Unit, and Scottish Parliament Information Centre [ SPiCe]: **JK3/43 - INQ000596788.**
93. On 27 April 2020 we issued a joint statement with SHRC and CYPCS welcoming EHRiC agreement to undertake an inquiry into Covid-19: **JK3/44 - INQ000596789.**
94. On 29 September 2021 we responded to a call for views on the draft aims of the proposed Scottish COVID-19 public inquiry, raising concerns that an explicit focus on only the four harms in the aims of the inquiry risked subordinating the importance of the inquiry exploring the impact of the pandemic and mitigating actions on equality and calling for equality to be included as a distinct element of the inquiry aims: **JK3/45 - INQ000596789.** We welcomed the subsequent amendment of the terms of reference.
95. As with any area of public policy and service delivery, equality and human rights should be at the heart of emergency responses. Emergency legislation, guidance and Government policy in response to a pandemic, as well as the effects of the pandemic itself, have the potential to exacerbate existing inequalities and particularly affect those with certain protected characteristics or who are in vulnerable situations. I have taken this request to provide information to the Inquiry as an opportunity to reflect on the EHRC's overall engagement with the Government during the period of the pandemic. The EHRC is one of a range of statutory and other actors seeking to influence complex policy considerations and the delivery of public services. Attributing impact to one organisation is not always possible. In the difficult and unusual circumstances caused by the pandemic, attribution is even more challenging. What I can confidently state is that much advice was given by the

EHRC on a range of topics relevant to the pandemic, and that some decisions made by the Government on those topics were subject to amendment following our engagement or advice.

96. It is my view that, for the most part, the EHRC worked well with the Government, providing advice and guidance through a number of routes. Our on-going relationships with particular teams within the Government were particularly useful for this, as were our engagements with parliamentary Committees. One lesson for the EHRC is that investing in building and maintaining relationships with Government, as well as maintaining our reputation for impartial expert advice, will maximise our impact in influencing public policy, which is particularly of value in creating the conditions for us to be impactful in an emergency situation.
97. This is because decisions during the pandemic were perforce made quickly. Where the EHRC did not already have relationships with relevant bodies, it was more difficult for our advice and guidance to be heard in a timely manner. For example, the BMA's need to amend its guidance on DNACPR notices may not have been necessary had we been able to advise on the guidance at an earlier stage. By contrast, in some of the examples above, our on-going relationship with the Government allowed us to influence policy and legislation from the outset.
98. One of the most significant lessons for all parties is that, at a time of fast-paced and critical decision-making, the particular needs of individuals and groups with protected characteristics, and those in vulnerable situations, may unfortunately be less likely to be at the forefront of decision makers' consideration processes. The same is true of human rights.
99. Decision makers must routinely consider the needs of, and impacts of decisions on, everyone who is likely to be affected by a public policy decision, no matter how time pressured. This is in fact a legal requirement on all public bodies under the PSED. If this consideration of the needs of people with different protected characteristics is built into all decision-making, it will be less likely that this vital step will be missed when decisions have to be made at pace, and less likely that important public policy decisions affecting people's lives and livelihoods will be ineffective, or less effective, or even actively disadvantageous for some groups, who may often be those already experiencing disadvantage.
100. There was a rapid movement of many services online during the pandemic, where this had previously not been offered. This increased accessibility for many and the

ability to provide services in this way, in response to a crisis, ought to provide learning for how service provision might be changed to improve equality in future.

101. The Government and other organisations should be careful to ensure that service improvements should not be lost when making decisions to return services to a more “normal” state.
102. However, the Government and other organisations should also be wary about making permanent those measures, which were initially intended to be temporary, particularly where the impact of doing so has not been fully assessed.
103. We also consider that, in time or resource-pressured situations where decision makers do not have time to undertake thorough consultations with representative groups, the EHRC could be used as a source of expertise and guidance on equality and human rights law which is available to decision makers. In circumstances where the Government is operating under pressure, it could avail itself of our expertise on matters relating to protected characteristic groups and relevant human rights issues to inform its decision-making.
104. In relation to whether groups sharing protected characteristics were adequately considered by decision makers, as stated above, in my view it was not the case that such groups were adequately considered as part of every decision that was taken. Where the EHRC identified this as an issue, we used our powers to seek to influence Government thinking and practice. As explained above, this should be the starting point for policy makers, and policy makers should ask for our expert assistance at an early stage when making decisions, to ensure the needs and impacts on such groups are routinely considered so that public policy works for everyone.
105. During the pandemic, we accepted the practical difficulties for the Government and others of reporting on their efforts to mainstream the PSED and publish information under the Equality Act 2010 (Specific Duties) (Scotland) Regulations 2012 (as amended) and that public authorities had been given the power to postpone reporting where it would impede effective action on coronavirus. We wrote to decision makers at public authorities on 8 April 2020 advising them to publish where they could, as they would already have done most of the work; otherwise to consider publishing in draft. On 15 April 2020 we wrote to listed bodies due to report on their equalities duties in April 2021, advising that we could not delay or suspend reporting obligations JK3/46 - INQ000596791. The PSED remained a duty which should have been complied with at all times by decision makers. The general duty is a “due

regard” duty, meaning that proper, reasonable consideration must be given to the need to achieve its aims. We wrote about this to listed public authorities, including Scottish Ministers, on 26 June 2020, enclosing guidance on COVID-19 and the equality duty **JK3/47 - INQ000596792.** On 18 September 2020 we responded to a call for views to EHRiC about the impact of COVID-19 on equality and human rights in pre-budget scrutiny **JK3/48 - INQ000596794.** We also shared this with the Government Equality Unit, Angela O’Hagan, then Chair of the Government’s Equality and Budgets Advisory Group (EBAG), and the Fraser of Allander Institute.

106. In October 2022, we responded to a consultation on the Government’s equality evidence strategy 2023-2025 **JK3/49 - INQ000596795.** We made various recommendations, including around the collection of equality data.

107. As well as the consideration of needs for groups sharing particular protected characteristics, another potential gap that we have identified is the need for routine consideration of policy decisions through a human rights lens. On 13 November 2020, we created an EHRC Briefing for the 2021 parliamentary election for all parties **JK3/50 - INQ000596797.** We called on all parties to adopt a human rights-based approach and to mainstream equality to inform our response to the pandemic. Looking to the future, this approach can help guide plans for economic recovery and social renewal. On 9 September 2022 we responded to a call for views from the Equalities, Human Rights and Civil Justice Committee on pre-budget scrutiny, which they called ‘the impact of human rights budgeting’ **JK3/51 - INQ000596798.** Our response was equality focused, given our remit in Scotland.

108. We therefore also consider that, in future situations where decisions must be made quickly on matters that may have human rights implications, policy makers should seek the advice of the relevant National Human Rights Institutions in the UK, including the EHRC which has responsibility for all human rights monitoring in England and Wales and for reserved matters in Scotland.

*The PSED*

109. In relation to the PSED, an important lesson for decision makers is that, when public policy decisions are being made, they must routinely think about the full range of people affected by those decisions, including people who share protected characteristics, as they are required to do in law. Doing this will avoid the risk of developing or implementing policies which have negative or unintended consequences for particular groups.

110. We consider that, in order to comply with the PSED, the Government should routinely seek views on the likely different impacts of proposals on different groups, and ensure that impacts are monitored and steps are taken to mitigate any adverse impacts on particular groups. The Government should also continue to scrutinise decision-making and policy impacts through the lens of the human rights framework. In doing so, it should work with, and seek advice and guidance from, other bodies such as the EHRC, on the impact of its decisions on particular groups or individuals.
111. A related issue that emerged during the pandemic was the routine failure of many parties to capture good equality data. This meant that, when decision makers needed to know specific information in a crisis situation, the data were not available, hampering the effectiveness of their response.
112. During the COVID-19 pandemic, it became apparent that in some cases the people who suffered the worst effects of the pandemic, and of decisions made by the Government in response to it, were those who in many cases already experienced disadvantage. Existing inequalities in society can create the conditions that lead to further disadvantage in times of crisis. An example is the disproportionate impact of the pandemic on people from particular ethnic minorities, the reasons for which are complex and multi-faceted, but in part resulted from the disproportionate presence of ethnic minorities in low-paid and front-line jobs and over-crowded housing, and low levels of trust in official advice and institutions. A more equal society will be a more resilient society in the face of a future emergency.
113. The pandemic also revealed some views within society which arguably betrayed underlying prejudice, and which could be addressed by placing greater value on equality and human rights for all residents of Britain. For example, the manner in which the needs and rights of older people, or disabled people, or those in care homes or in receipt of social care, were provided for in some cases suggested a lower value placed on their rights than those of others. A further example relates to the disproportionate and potentially long-lasting impact of pandemic measures on children and young people, including those from groups already subject to disadvantage, considered against their needs and rights.

**Statement of Truth**

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

**Personal Data**

**Signed:**

**Dated:** Thursday 26 June 2025