

## The impact of the COVID-19 pandemic on equalities and human rights

### JustCitizens Project

[The JustCitizens Project](#) is hosted by JustRight Scotland and funded by the Paul Hamlyn Foundation. Its purpose is to support the development of a fairer Scotland for migrants, through participatory methods, co-production and the design of a “social citizenship” model for Scotland.

Input to this consultation response was provided through our Migrant Advisory Group which co-produced our JustCitizens project. This group includes 14 migrants from diverse backgrounds including with experience of the UK asylum system.

### About JustRight Scotland

JustRight Scotland is a registered charity established by an experienced group of human rights lawyers. We use the law to defend and extend people’s rights, working collaboratively with non-lawyers across Scotland towards the shared aims of increasing access to justice and reducing inequality. We do this by providing direct legal advice to individuals and organisations, running outreach legal surgeries and helplines, delivering rights information, training and legal education, and contributing to research, policy and influencing work.

We work across a number of policy areas including women’s legal justice, trafficking and migration and citizenship. Whilst our work is specific to Scotland, we appreciate that our areas of focus cover both devolved and reserved legislation and as such we endeavour to work across both the Scottish and UK Parliament where appropriate.

We work with clients directly providing legal advice and representation. In this briefing we highlight specific cases to demonstrate clearly the lived experience of migrants and asylum seekers, and the reality of harm caused by current policies and systemic inequalities.

We give consent for this response to be published along with other consultation responses.

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### Scotland’s Legal Centre for Justice and Human Rights

JustRight Scotland is a Scottish Charitable Incorporated Organisation (SC047818) which provides legal services through its limited liability partnership, JustRight Scotland LLP which trades as JustRight Scotland (SO305962). This firm has been authorised to act as solicitors by the Law Society of Scotland (Registered No 53703). Our Registered Office is: Suite 3.1, 3<sup>rd</sup> Floor, Forsyth House, 111 Union Street, Glasgow, G1 3TA

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## Our Response

[Studies across a number of OECD](#) countries found that the risk of Covid-19 has been twice as high for migrants as for “native born” individuals. Migrants are more likely to be living in poverty, living in overcrowded and less safe housing, and employed on precarious and zero- hour contracts, making them more at risk of Covid-19 and destitution. These experiences of deep-rooted inequalities are not new, but have been exacerbated by Covid-19 and the continued use of hostile environment policies by the UK Government.

JustRight Scotland has been consistently vocal about the human rights violations and consequences of the Home Office hostile environment policies. Our position has been further validated by recent legal rulings including in *(W, a child) v Secretary of State for the Home Department, Project 17 intervening* [2020] EWHC 1299, in which the High Court found that the Home Office was in breach of Article 3 of the European Convention on Human Rights in its implementation of No Recourse to Public Funds for immigrants on a ten-year route to settlement. More recently, this week in *R (IJ (Kosovo)) v Secretary of State for the Home Department* [2020] EWHC 3487 (Admin) the High Court has also issued a landmark ruling in favour of a woman who had been trafficked to the UK who was denied the right to work as a cleaner and earn income whilst waiting on the Home Office to make a decision regarding her migration status. The High Court held that the Home Office policy prohibiting asylum seekers the right to work was unlawful because it does not direct caseworkers to exercise discretion in considering requests for the right to work under the policy. The Equality and Human Rights Commission conducted a review in November 2020 of hostile environment policies and found that the Home Office had failed to comply with equalities law and that the devastating consequences of immigration policies were “repeatedly ignored” by the UK Government.

To take a genuine equalities and human rights focused approach to Covid-19 response and recovery, migrants (regardless of their status) must be included with the same access to support and services as any other individual in Scotland. As it currently stands, the migrant community is facing some of the worst outcomes from this pandemic from loss of income to loss of homes to loss of life. To do this well, Scotland must identify more innovative and courageous ways to mitigate and reject Home Office policies.

### **The Impact of No Recourse to Public Funds**

Throughout the pandemic multiple organisations, particularly those working with the most vulnerable migrants, have highlighted the disproportionate impact of Covid-19 for migrants with No Recourse to Public Funds (NRPF). All benefits related to employment impacts of Covid-19 such as statutory sick pay, the furlough scheme and the Self-Employed Income Support Scheme have not been accessible to all migrants with NRPF conditions (unless they have a work visa). Given the impact of Covid-19 on the labour market and the significant increase in the number who have

lost (or have a reduced) income, without access to the welfare system, NRPF migrants are even more likely to experience destitution. In particular, there is a clear public health rationale during a pandemic to ensure that those who may need to self-isolate, as they may experience symptoms or have come in contact with someone with symptoms, should be able to do so without fear of destitution. With no access to support, we are effectively forcing migrants to risk their own health and the health of others by continuing to work and maintain an income.

For this reason, JustRight Scotland [co-signed a recent letter](#) to the Cabinet Secretary for Social Security and Older People led by BEMIS to encourage the Scottish Government to open access to the Self-Isolation Fund to those under NRPF conditions, and we have since welcomed the joint decision by COSLA and the Scottish Government to open the self-isolation fund to those under NRPF through the use of devolved Public Health regulations.

**However, The Scottish Government must make use of more innovative methods through devolved areas such as public health, justice (including domestic abuse legislation), local government and third sector funding to prevent destitution and mitigate the impact of the worst of Home Office policies.**

Covid-19 has further highlighted the dangers of the continuation of hostile environment policies by the Home Office beyond NRPF; data sharing, limited access to support, convoluted and complex migration processes and threats of deportation are all examples of hostility towards the migrant community conducted through policy delivery and systems. Despite the overwhelming evidence of inequality and potential risk to life caused by these policies during a global pandemic, there has been little to no change in position from the Home Office.

**Whilst we, at JustRight Scotland, appreciate that this matter is fully reserved, we would ask that the Scottish Government continue to call out the harm of the Home Office on the realisation of equality for migrants and specifically address the ways in which it prevents the full delivery of the New Scots Integration Strategy. We would encourage the pursuit of further action, wherever possible within the devolved settlement, to counter the impact of UK Government immigration policies and refuse cooperation with the Home Office where there is no legal justified rationale and when doing so may protect the lives of migrants.**

The impact of NRPF restrictions have continued to be felt disproportionately by women and disabled migrants who experience intersecting inequalities and as a consequence are more likely to be in need of access to publicly funded support services. In particular, migrant women experiencing domestic violence are potentially being forced to remain with the perpetrator as they do not necessarily have access to publicly funded services and refuges. Currently, women's organisations are working tirelessly to raise donations to support NRPF migrant women where

possible, and are largely at the mercy of local authority decision making as to whether women have access to shelter (which varies greatly between local authorities).

**If the Scottish Government is serious about taking a human rights-based approach across policy areas, then the impact on migrant women experiencing domestic violence who are under NRPF restrictions must be reviewed, particularly under the current pandemic, but also beyond. There must be consistency across local authorities on service access and provision, which requires funding and support from the Scottish Government.**

### **The Impact of an Unequal Labour Workforce**

The unequal distribution of the migrant workforce and their concentration in roles which are under-valued, under-paid, with less favourable conditions (such as access to sick pay) and in some cases employment which is open to abuse, has pre-existed the pandemic but has been exacerbated by it. Migrants are more likely to be working in agriculture, health and social care (majority non-EEA migrants), hospitality, retail and food-processing (majority EEA migrants).

These sectors, particularly health and social care, are frontline workers protecting the nation, and as a consequence, migrants are putting themselves at greater risk to protect Scotland. It is crucial that this is acknowledged in how the health and social care sector is supported through the pandemic and the pay, security and conditions for migrant workers.

The retail and hospitality industries have been some of the hardest hit during the pandemic, within hospitality it is estimated that 1 in 5 jobs have been lost. With the disproportionate number of migrants working in these sectors, there is likely to be a higher number of job losses across the migrant community, and a significant number of them unable to access financial support during the crisis.

Finally, the concentration of migrants in one sector or company (caused by inequality in access to jobs), further increases the risk during Covid-19. The recent closure of the Perth and Kinross based food-processing factory after a Covid-19 outbreak is estimated to employ approximately 75% of its workforce from local migrant communities (PKAVS).

**Jenni Keenan (PKAVS) provided further information on the 2 Sisters Factory and the impact of Covid-19 and Eastern European migrants:** *“The factory employs approximately 1,200 people, of whom we believe upwards of 900 are migrant workers. The majority of those workers are Eastern European, though not exclusively; 17 languages are thought to be spoken in the factory in total, in addition to English. Whilst factory employees did receive pay for the closure period, the approximately 300 staff on the agency’s books did not. This agency specialises in providing Eastern European workers. They were therefore the most severely impacted financially. This was compounded by the fact that these individuals are the*

*newest arrivals, many of whom have been unable to get a national insurance numbers, as EEA nationals have been unable to do this since March due to Covid rules prohibiting face to face interviews, which only those here through freedom of movement need to go through. This means they are NRPF by default and unable to access some of the financial and other support available to others at the factory, and were therefore more inclined to breach self-isolation guidance to, for example, continue to attend a second job. In our experience, this demographic also experiences lower levels of system consciousness, meaning that they are less likely to know where to go for support, and less likely to, for example, be watching the local news and be exposed to the full scale of the situation.”*

### **Financial Support, Advice and Wellbeing**

Asylum support for asylum seekers before this pandemic has been woeful with only £37.50 per week per person in a household. During the Covid-19 crisis, whilst there has been an increase to just £39.63, this low level of financial support has become even more problematic as individuals may need to pay for additional wellbeing related products to adhere to public health guidelines such as disposable gloves, facemasks and hand sanitiser. For asylum seekers accommodated with full board in hotels, this financial support is restricted to only £8 per week for transport, toiletries and non-prescription medication. Whilst there were some measures put in place, such as cessation of evictions and support for those who have been refused asylum in March/April by the Home Office, and again as the tier lockdown system was introduced in early November, clarity and access to information has been a continuing problem throughout the pandemic.

Regardless of the pandemic, the mental health of refugees and asylum seekers has been an ongoing concern, according to the Mental Health Foundation in 2016 “The increased vulnerability to mental health problems that refugees and asylum seekers face is linked to pre-migration experiences (such as war trauma) and post-migration conditions (such as separation from family, difficulties with asylum procedures and poor housing)”

Limited access to culturally well-informed mental health support, lack of investment in this area and a lack of information about it, all contribute to the emotional difficulties experienced by refugees and asylum seekers. This has been exacerbated by Covid-19, as the community connections relied upon by asylum seekers and migrants more widely, become more restricted due to Covid-19 public health measures, increasingly the likelihood of loneliness and isolation.

### **Michael, a member of the Just Citizens Advisory Panel stated:**

*“Pre-Covid 19 many of those in the asylum system lived in fear and isolation but could move around and integrate in the community. With Covid-19 many are 100 times worse off because they are restricted from movements and the integration in the communities is less. I recently met a couple who have been in the asylum system for 12 years and because of Covid-19 they said they were depressed. This is*

*creating a lot of mental health problems and the worst part of it is that there is no relevant mental health support for these communities.”*

**Mira, member of the Just Citizens Advisory Panel stated:**

*“Mental health support is important - interpreting over the phone is quite difficult and can be frustrating, because you don’t know when someone has finished like you would if they were in front of you, so helpline mental health support is not adequate for those who do not speak English, many councils do not have enough interpreters anyway, or do not have the resources to pay them, so this has always been a problem and now even more so.”*

*“From the people I work with and help, the biggest thing is difficulty in accessing support and help. Before Covid-19 there was already issues for example working without a contract and employee rights, or being housed by someone who is not a landlord but not knowing this and don’t know their rights. Usually people would call on each other, through word of mouth and get support to know what to do, but the communities are not meeting, so the information is not being shared as well.”*

*“Advice and support services are over-subscribed and cannot help more people, they are working so hard and are stretched, but lots of people are not getting what they need, they are turned away. There is not enough provision here.”*

*“The 50-60+ age group would get face to face support and see the advice as a social thing, if they didn’t come to me, they wouldn’t get out anyway, but obviously with Covid-19 they’ve stopped coming forward for support – so I worry that they are even more isolated and suffering more”*

**Health and wellbeing are fully devolved to the Scottish Parliament, as such we would encourage the Scottish Government to consider ways in which further funding can be invested in specialist mental health support for migrants, and specific support for asylum seekers and refugees, and improve access to information about mental health support. “Resilience” has become more frequently used when discussing recovery from Covid-19, however resilience of any kind is entirely dependent on individual and community level access to necessary support.**

### **The Need for Better Data**

As has been repeatedly highlighted by race equality organisations such as CRER and BEMIS, the lack of information on ethnicity and the impact of Covid-19 in Scotland has been hugely problematic in enabling an adequate response. Currently, data collection on ethnicity is completed by registrars on a voluntary basis, as a consequence data remains incomplete. According to the National Records of Scotland July 2020 report, “Due to the low number of completed records for deaths involving COVID-19 in other minority ethnic groups, it was not possible to carry out valid analysis of the relative likelihood that deaths involved COVID-19.”

UK wide analysis has revealed that BAME communities are more likely to contract, be hospitalised and die from Covid-19. Due to multiple factors including a higher representation of BAME people who live in poverty, the higher proportion of BAME individuals working in frontline services, living in inter-generational households and are more likely to be living in overcrowded conditions.

Data across the NHS, but in particular on Covid-19, must be accurate, must be able to be disaggregated by ethnicity categories and consistently completed to allow a competent policy response. Without doing so, we cannot fully evaluate the impact on migrant communities and apply a data driven response to tackle the disproportionate inequalities we know they have faced.

### **Protection from Data Sharing**

The Scottish Government's long-term decision to refuse to participate in data sharing between the NHS and the Home Office is hugely welcome and has/will have proven to be a life-saving policy intervention for many migrants; according to recent research into NHS England, a lack of trust regarding data sharing negatively influencing migrants' health seeking behaviours and safety.

However, there remains a lack of trust in authorities due to the nature of Home Office behaviour, and as such, it is likely that despite this positive decision by the Scottish Government regarding the NHS, there may be migrants (particularly those who are undocumented or awaiting asylum decisions) who feel unable to seek medical help, or help from other public bodies which have not taken the same non-compliance for example local authorities or Police Scotland. We already know that exemptions to data sharing are being backed by others in England, including HM Inspectorate of Constabulary and Fire and Rescue Services, the College of Policing and the Independent Office for Police Conduct (IOPC), after a ground-breaking investigation, successfully advocated for by Liberty and Southall Black Sisters, found that domestic abuse victims do not report crimes or come forward for support as a consequence of data sharing between police and the Home Office, which was causing "significant harm".

During a public health pandemic, this must be overcome through increased community focused information.

**As the Scottish Government has taken the decision to not cooperate with data sharing through the NHS, the disproportionate impact of Covid-19 should act as a reminder of the need to create a safe and secure environment for all migrants to seek support whether it is through the NHS, the justice system, the education system or other public sector agencies. We would encourage the Scottish Government to review where data sharing with the Home Office is still taking place and whether, on devolved matters, a principle of "refusal to cooperate" where it is not in the interest of the migrant's safety or public safety, should be upheld across all policy areas.**

## **Information and Accessibility**

During Covid-19, public messaging and information sharing has been critical. Understanding changes to restrictions, lockdowns, travel arrangements and public health guidance (such as FACTS) is of utmost importance to lower transmission and death rates. However, from our conversations with our migrant advisory group (JustCitizens), we have been repeatedly told, that access to information in different languages and in simple terms is needed and must be distributed equally across Scotland. Currently, many third sector and community-based organisations are having to translate and deliver Scotland specific information to migrant communities, on already tight budgets.

## **Digital Access, Education and Inequality**

Digital exclusion has come into focus during the pandemic, impacting particularly low-income families, rural communities and the elderly. However, migrants (including those on low or no income, those in rural communities and older migrants), have specific difficulties with digital inclusion that must be resolved to overcome the deep-rooted inequalities they face. During Covid-19 we have relied on access to internet and technology to stay connected, to have access to support, to work from home and for some, to make an income. However, given the very low level of financial support for asylum seekers and the higher level of poverty among migrants, access to data/internet has not always been possible, meaning that some migrants have been further isolated. With public buildings such as libraries being closed, free access to technology and the internet has also created additional barriers. During the period of lockdown and home schooling this was particularly difficult for migrant children and families who may not have had access to online classes and support, causing distress to children and the possibility of them falling behind their peers in attainment.

### **Michael from our Just Citizens Advisory Panel stated:**

*“This has been a big challenge for many especially if they don't speak English as their first language, are not allowed to work and have No Recourse to Public Funds. We (local group) managed to loan some of our laptops to our participants because they could not afford to buy a laptop at the time when Covid hit. Besides having a laptop you have to either have data to keep in touch or have access to the internet. Considering the fact that most public places have been in lock down many are struggling to keep in touch. So we have whatsapp groups where we keep in touch with them.”*

JustRight Scotland joins Community Infosource in calling on the Home Office to provide Wi-Fi in asylum seeker homes, as this is something that is vital for them to be able to operate in society. The Home Office has admitted it does not include costs for internet access, phones or phone running costs in the daily allowance they provide asylum seekers. Asylum seekers face additional challenges to securing Wi-Fi access at an affordable price. For example, hostile environment measures

prohibit asylum seekers from opening a bank current account, which is a precondition for most affordable home Wi-Fi contracts. Community Infosource has outlined the impact of accessibility data/internet for asylum seekers:

Asylum seekers have found it harder than others to deal with lockdowns due to Covid-19 as:

- They do not have easy access to Wi-Fi and/or data. being unable to pay to use inexpensive methods of keeping touch with their family and friends, both locally and abroad. During a time of worldwide pandemic, this causes even more stress than for people with easy communication access, leading to serious mental health issues.
- It makes it harder to understand what the new Covid-19 rules are as most information is provided in English initially and many are still learning this language, plus no way of keeping in touch with friends and family for updates
- As the Home Office does not pay for TV licenses, most asylum seekers do not have TV's. During lockdown, children can only have access to entertainment or educational programmes through the internet, which is expensive (if the parent even has a smart phone)
- Children are struggling to keep up with their school work as they either have no or limited internet access
- It is hard for asylum seekers to access support services and networks, which are often identified or accessed remotely, through the internet, especially if they are new to Glasgow

#### **Community Infosource also told us:**

*“Community InfoSource has tried to help during the last 9 months by accessing smart phones to give asylum seekers who either have no phones or only have “small” phones (non-digital) or broken ones which cannot access the internet – a necessity in this modern world. We have provided some data on all of the phones and some of the phones have pre-loaded static information about Glasgow on them. In addition, we have had to provide monthly data top ups for our volunteers who are a vital part of our team, and tried to direct other asylum seekers to organisations who were able to provide data for a while. Currently we are developing an Information App for asylum seekers which can be access from a smart phone and the information downloaded onto it (so Wi-Fi is not needed to view the information, and which can be updated when next in Wi-Fi range). We are aware that lack of access to digital equipment such as tablets, laptops and computers is also significantly affecting asylum seekers who want to take part in educational activities or who want to support organisations.”*

**Pathways to create equal access to broadband/internet data and digital technology must be pursued by the Scottish Government going forward to prevent further deepening the inequality faced by some of the most vulnerable in the migrant community.**

## **Safe and Appropriate Housing**

The pandemic has illustrated what can be achieved if there is political will. Many of those who are homeless were rehomed as a matter of urgency and public health, however homelessness is a matter of urgency and public health regardless of the current pandemic. Access to safe, affordable and warm homes for all must be a priority in Scotland.

Asylum seekers have been at the receiving end of dangerous and poorly thought-through housing decisions, largely at the hands of the Home Office. This has been particularly apparent in the Mears Group handling of asylum support accommodation in Glasgow where approximately 400 asylum seekers have been moved from safer, separate housing into hotels where there is communal dining and corridors. Asylum seekers currently housed in hotels have repeatedly complained about the standard of food, care and access to information. They have also been denied additional financial support as the hotel is (according to the Home Office) providing all shelter and sustenance required. However, this does not include specific needs they may have in relation to diet or health, and it does not include additional access to data allowing them to maintain connection with their communities here and abroad. Causing further isolation and impacting wellbeing.

In July 2020, the Home Affairs Committee report specifically raised concerns over the use of hotel accommodation during the pandemic and highlighted the complaints related to the Mears Group<sup>vi</sup>. The report specifically stated “asylum seekers should not have been moved to new accommodation during the pandemic without justified and urgent reasons for doing so or without a vulnerability assessment demonstrating that the move could be made safely’. We do not recognise any justified or urgent reason for such a high number of asylum seekers to have been moved to hotel accommodation. Moreover, our work with asylum seekers illustrates that this decision was detrimental to their health and wellbeing.

**Whilst the decision regarding housing contracts to suppliers and re-homing of asylum seekers is reserved to the Home Office, we believe there is further action that can be taken by the Scottish Government and we urge the Government to exhaust any and all legal avenues to improve the current dangerous housing situation for asylum seekers. Furthermore, we urge the Scottish Government to encourage consistency across local authorities in their response to housing migrants, particularly vulnerable migrants under NRPF restrictions, and finally to invest further funding in shelters and community-based charities which are seeing increasingly high demand for the migrant community.**

## **Homelessness and Changes to Immigration Law**

As of 1st December 2020, new immigration rules have come into force which make it a breach of condition of leave to remain to be rough sleeping – effectively making destitution illegal for those on student, work or visitor visas, victims of human

trafficking and modern slavery, EU migrants who do not apply for the EU settlement scheme before June 30th 2021 and EU migrants who arrive after 31st December 2020. Rather than providing support to those who are experiencing destitution and may be at their most vulnerable, the Home Office has made this vulnerability grounds for detention and potentially deportation. JustRight Scotland and partners are deeply concerned that the implementation of this law will see increases in detention and will prevent many migrants from coming forward for support as they will not have trust in authorities (and potentially third sector organisation) to re-home them without their homelessness being reported to the Home Office.

With Covid-19, and the impact of job losses on the migrant community, there are likely to be a disproportionate number of migrants who have lost (or have a decreased) income and are at risk of destitution and homelessness. Whilst this is caused by a health and economic crisis and migrants are at no fault, the consequences are being felt by the migrant community with the introduction of this law.

**This change in law is discriminatory and may put many migrants into more vulnerable situations. We would like to see the Scottish Government call out this addition to hostile environment policies by the Home Office, and create an environment where local authorities feel supported if they refuse to comply. The Greater London Authority have already declared that they will not cooperate with this measure, along with Islington and Haringey Councils. We would welcome such statements of intent from local authorities in Scotland.**

### **Intersecting inequalities**

Migrants do not exist as a single characteristic or siloed community, they are also communities more likely to be living in poverty, they are likely to experience racism, migrant women experience disproportionate inequality as do disabled migrants, all of these overlapping experiences create disproportionate negative impacts for the migrant communities during a crisis like Covid-19.

**As such, we strongly urge the Scottish Government to take an intersectional approach to recovery and response to the pandemic, ensuring that those who experience multiple and compounding discriminations are thought about first in order for policies and systems to be fit for purpose for those who need them the most. This also applies to competent data collection which can be disaggregated to tell us the full story of migrants' lives and the inequalities they face.**