

## The Impact of the COVID-19 Pandemic on Equalities and Human Rights in Scotland

Written Evidence to the Equalities and Human Rights Committee  
Scottish Parliament, December 2020

### 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 work across a number of policy areas, including: women's legal justice, trafficking and labour exploitation, EU citizen rights, migration and citizenship, disability and trans legal justice. 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. We also run outreach legal surgeries and helplines, deliver rights information, training and legal education, and contribute to research, policy and influencing work.

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

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### The Impact of Covid-19

We have seen the impact of Covid-19 as having **increased existing inequalities**, primarily by making our most vulnerable and hard-to-reach clients, more vulnerable and isolated.

#### 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 (S0305962). 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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We have also seen key services – both statutory authorities and third sector organisations – **reduce or limit capacity to provide necessary support** to these vulnerable groups, whether because of challenges imposed by operating remote services, or because of the different staffing requirements necessary to safely operate in-person services. This includes **increasing gaps in access to justice, advice on rights, and legal representation** as legal and advice agencies also have reduced or limited capacity to assist.

We have seen clients struggling with the impact of **delays in judicial processes and administrative systems of adjudication**. In some cases, for example in asylum and immigration status determinations, a delay can prolong the period of time during which a person's immigration status is precarious or unlawful, thereby also prolonging the period of time during which they may remain destitute or at risk of homelessness. For survivors of violence and abuse, delays around criminal and civil processes can cause increased anxiety due to the uncertainty about achieving closure – and in some cases, safety – in relation a historic act of abuse or exploitation.

Finally, we note our concern about **an increased risk of harm or exploitation for some groups** – notably, for women facing gender-based violence and for people at risk of trafficking and labour exploitation. We note this increased risk as well for other clients who stand at risk of destitution and homelessness, due to economic losses including job losses, deteriorating physical or mental health, or precarity in their immigration status, and who therefore also experience increased vulnerability to abuse and exploitation.

In this briefing, we set out:

- our views on the legal framework and principles that should be engaged in evaluating the disproportionate impact of Covid-19 and our response on vulnerable groups in Scotland;
- our evidence of disproportionate impact on vulnerable and marginalised groups, drawn from the lived experience of our clients and our professional experience as frontline legal practitioners working through the pandemic in Scotland; and
- our calls for action to better identify the impact, and steps we believe Scottish Government can take to address and mitigate the inequalities arising to ensure a more equal and effective response over the coming year.

We also note that our JustCitizens migrant advisory panel has submitted a separate briefing to this inquiry on 22 December 2020, which sets out in greater detail the lived experience of migrants and asylum seekers during the Covid-19 pandemic in Scotland, and the reality of harm caused by current policies and systemic inequalities, as well as their specific calls for action.

## Legal Framework for Evaluating Disproportionate Impact of Covid-19

We are aware that the Covid-19 pandemic has been an exceptional event that has required the exercise of swift administrative decision-making and the use of emergency powers, as well as the allocation (or reallocation) of limited state resources.

However, we caution that such decision-making must be made within an existing legal framework which – among other things – requires statutory authorities to have regard to their Public Sector Equality Duty under the Equality Act 2010. Indeed, the Equality and Human Rights Committee has reiterated the importance – particularly in times of crisis and scarcity – of ensuring that public authorities adhere to the duty and ensure that equality remains at the core of our response to the pandemic.<sup>1</sup>

As human rights lawyers, we also view disproportionate impact on particular groups in terms of potential breaches of the Scottish Government's obligations (including the state's positive obligations to give effect to these rights) as set out in the European Convention on Human Rights, including the rights to life (Article 2), freedom from degrading treatment (Article 3), liberty and access to justice (Articles 5 and 6), and dignity and respect for private and family life (Article 8).

We maintain that these obligations apply regardless of whether specific emergency measures are used or ordinary ones retained during a crisis. We wish to underline that certain of these rights – for example, Articles 2 and 3 – are absolute rights which cannot be limited by state action. And further, that even where rights can be limited, and there is justification for their limitation, such limitations must be prescribed by law which meets the standards of legal certainty, and be proportionate to the needs of the situation and non-discriminatory.

Finally, we refer to the wider range of international human rights treaties setting out rights and responsibilities in the areas we work most closely, and recommend that they must also be taken into account in assessing our obligations, and our response.

They include the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), the Council of Europe Convention on Preventing and Combating Violence Against Women and Domestic Violence, the Convention on the Elimination of All Forms of Racial Discrimination (CERD), the Council of Europe Convention on Action against Trafficking in Human Beings, and the Convention on the Rights of Persons with Disability (CRPD).

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<sup>1</sup> See Equality and Human Rights Committee, *Public Sector Equality Duty in Scotland, Coronavirus: PSED reporting obligations*, <https://www.equalityhumanrights.com/en/public-sector-equality-duty-scotland>, accessed on 24 December 2020.

## International Human Rights Treaty Bodies: Key Principles for Guiding and Monitoring Our Response

We refer to guidance that has been set out by international human rights treaty monitoring bodies on the human rights implications of the Covid-19 pandemic<sup>2</sup> and in particular, the UN Committee on Economic, Social and Cultural Rights (UNCESCR): *Statement on the coronavirus disease (COVID19) pandemic and economic, social and cultural rights* (April 2020)<sup>3</sup>.

**We recommend the Scottish Government commit to these key principles as set out in the UNCESCR April 2020 guidance:**

### **Meet minimum core obligations**

In responding to the pandemic, **the inherent dignity of all people must be respected and protected, and the minimum core obligations imposed by the Covenant should be prioritized.**

### **Ensure access to justice and effective legal remedies**

In this difficult context, **access to justice and to effective legal remedies is not a luxury, but an essential element to protect economic, social and cultural rights**, especially those of the most vulnerable and marginalized groups. Thus, for example, it is essential that law enforcement officials respond to cases of domestic violence, that domestic violence hotlines are operational, and that effective access to justice and legal remedies is accessible to women and children who are subject to domestic violence.

### **Adopt special targeted measures for vulnerable groups**

All States parties should, as a matter of urgency, **adopt special, targeted measures**, including through international cooperation, **to protect and mitigate the impact of the pandemic on vulnerable groups such as older persons, persons with disabilities, refugees** and conflict-affected populations, as well as communities and **groups subject to structural discrimination and disadvantage.**

Such measures include, among others, providing water, soap and sanitizer to communities that lack them; **implementing targeted programmes to protect the jobs, wages and benefits of all workers, including undocumented migrant workers; imposing a moratorium on evictions** or mortgage bond foreclosures against people's homes during the pandemic; providing social relief and income-support programmes **to ensure food and**

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<sup>2</sup> See index of relevant guidance and recommendations: UN Human Rights Office of the High Commissioner, *Covid-19 and Human Rights Treaty Bodies*, <https://www.ohchr.org/EN/HRBodies/Pages/COVID-19-and-TreatyBodies.aspx>, accessed on 24 December 2020.

<sup>3</sup> UN Committee on Economic, Social and Cultural Rights: *Statement on the coronavirus disease (COVID19) pandemic and economic, social and cultural rights* (17 April 2020), <https://undocs.org/E/C.12/2020/1>, accessed on 24 December 2020.

**income security to all those in need**; taking specially tailored measures to protect the health and livelihoods of vulnerable minority groups, such as the Roma, as well as those of indigenous peoples; and **ensuring affordable and equitable access to Internet services by all** for educational purposes.

## Our Client Groups Disproportionately Impacted by Covid-19

As set out above, in this briefing we will describe disproportionate impact of Covid-19 and our response on four key client groups who we work with:

- Survivors of gender-based violence
- Survivors of trafficking and labour exploitation
- Migrants, including asylum seekers, refugees, EU citizens and people with NRPF
- Disabled people

### **Survivors of Gender Based Violence**

#### **Overview**

Our [Scottish Women's Rights Centre \(SWRC\)](#) is a unique collaborative project that provides free legal information, advice and representation to women affected by violence and abuse.<sup>4</sup> The SWRC exists because of abuses of power and because a gap persists between women's experience of violence and abuse and their access to justice. The SWRC strives to fill these gaps by working with specialist solicitors and experienced advocacy workers. Informed by our direct work with victims/survivors of violence and abuse, we seek to influence national policy, research and training to improve processes and systems, and ultimately to improve the outcomes for women who have experienced gender-based violence (GBV).

Through our outreach services we are afforded a unique insight into the legal landscape and the issues faced by victim/survivors of gender-based violence. We offer daily helplines and weekly legal surgeries where we provide free and confidential legal information and advice to women who have experienced gender-based violence. The SWRC was able to continue provision of its services throughout the Covid-19 pandemic and in fact increased service provision during this time to meet demand. It is through our direct contact with women across Scotland during this time that we have been afforded the opportunity to witness the impact of the pandemic on victim/survivors and services.

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<sup>4</sup> We recognise that people of any gender can be affected by abuse and violence (including sexual violence). However, statistics show that these crimes are more often committed by men against women. Also, as the SWRC specifically supports women aged 16 and over, when we talk about victims/survivors in this response we will generally refer to women. Despite this, we are aware – and do acknowledge – any person can be subjected to these crimes.

## Impact of Covid-19 on Child Contact

The impact of Covid-19 on child contact issues should not be underestimated. Guidance has not always been clear or consistent in terms of what would be seen as 'reasonable' measures in changing of contact arrangements. With many solicitors being furloughed or unavailable during the pandemic, victim/survivors have been left in the dark regarding their rights.

The guidance from the Lord President released during the pandemic was that contact arrangements could continue between separated families despite government guidance. It was stated that if one party unilaterally changed child contact arrangements due to Covid-19 concerns then the courts would expect, where possible, alternative arrangements to be made for contact to take place by video or telephone call<sup>5</sup>. This measure has caused issues for victim/survivors of domestic abuse as it left perpetrators of abuse free to continue the cycle of abuse via these means. We have heard through our outreach that abusers used this contact to monitor the ongoings of the other parent and to exert control and continue direct abuse towards the other parent. Many victim/survivors were unsure of their rights in these circumstances and had concerns that they would be deemed 'unreasonable' if they did not allow this contact despite the negative impact this was having upon their wellbeing and that of their children.

Furthermore, with abusers being aware that the courts were not open for non-urgent business, this meant that child contact could be manipulated and used to continue the cycle of abuse. It has been suggested that abusers can be seen "*to relish the ability to unilaterally alter arrangements in the knowledge that the courts were not open for business as usual and therefore their decisions would have no real consequences*".<sup>6</sup> We have heard of some instances through our outreach where the non-resident parent refused to return the child after an agreed period of contact or extended contact periods to their benefit, citing Covid-19 related issues. In these circumstances, during the initial lockdown, victim/survivors were unable to do anything about this issue due to courts being closed to non-urgent cases.

Article 8 of the ECHR encompasses the right to respect for private and family life, home and correspondence. The primary purpose of Article 8 is to protect against arbitrary interferences with private and family life, home, and correspondence by a public authority. In these circumstances, where an abuser can use child contact against the victim/survivor and the victim/survivor has no means of resolution, the lack of resolution provided by the State during this time could be considered in contravention of the victim/survivor's right to a family life.

**We would submit that guidance in this area requires to be clear and consistent.** Such guidance should be widely published to ensure that, even where legal representation is not available, victim/survivors are aware of their rights. Should there be any further requirement for the civil court system to reduce its capacity, as

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<sup>5</sup> Order of the Lord President of the Court of Session, *Coronavirus Crisis: Guidance on Compliance with Family Court Orders Relating to Parental Rights and Responsibilities*, (27 March 2020), <https://scotcourts.gov.uk/docs/default-source/default-document-library/guidance-on-compliance-with-family-court-orders.pdf?sfvrsn=0>

<sup>6</sup> Masson, A, *Reflections on Child Law in the Pandemic*, Fam. L.B. 2020, 166, 1-3.

above, there should be clear guidance that, where child contact is used to continue abuse, action can be taken by the victim/survivor to protect their wellbeing and, or to return the matter to court where required.<sup>7</sup>

## **Impact of Covid-19 on Legal Representation**

We are aware that there has been an ongoing issue in terms of accessibility of legal representation for women who qualify for legal aid, with many solicitors no longer providing legal representation under legal aid due to funding issues. However, this issue has come to the forefront during the Covid-19 pandemic. We hear through our outreach (legal helplines and surgeries) and from other violence against women organisations that sourcing legal representation on legal aid funding is still proving incredibly difficult at this time. We are aware that this is a particular issue for women living in the North of Scotland, where legal representation is generally limited. As a result, we have seen unprecedented increased demand for our legal surgeries, which are now regularly fully booked with most hosts having additional waiting lists.

Fewer solicitors are taking on cases on a legal aid basis due to flaws within the current legal aid payment structure; meaning solicitors are not able to be fully recompensed for their work. Many solicitors will be unable or unwilling to take on family actions and protective order cases under legal aid due to the current 'block fee' system. Nearly all cases of this type require a large volume of work to be undertaken at the start of the case. Specifically, for protective order cases, they do not normally require proceeding to a full evidential hearing. The block fee system does not recognise the front-loaded nature of this type of case and therefore does not adequately recompense the work required by solicitors in these cases. Not unsurprisingly, this has been exacerbated by Covid-19 and we are seeing increasing numbers of women contacting us who are eligible for legal aid but cannot find a solicitor to represent them. During the Covid-19 pandemic, the SWRC has prioritised representation in protective order cases as we consider this to be an area of strategic need for victim/survivors at this time. However, we cannot represent every case, and nor should we.

### **Case Study: Gaps in Access to Justice – Protective Orders Case**

*We met a client at one of our legal surgeries in the North of Scotland and quickly established that she required urgent legal representation due to the safety concerns for her and her child. She was eligible for legal aid but could not locate a solicitor to assist. We were aware of acute issues with seeking legal representation during the pandemic and specifically in the North of Scotland. Our client's Women's Aid support worker confirmed that it had been impossible to source legal representation. We agreed to act and were able to secure interim protective orders for our client and her child.*

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<sup>7</sup> We refer here in particular to our obligations under the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), ratified by the UK in 1986, and committing us to "eliminate discrimination against women in all aspects of life and to protect, promote and fulfil the human rights of women under all circumstances."

The Council of Europe Convention on Preventing and Combating Violence Against Women and Domestic Violence (the Istanbul Convention) was signed by the UK in June 2012, committing the UK and other signatories to “*create a Europe free from violence against women and domestic violence*”. Crucially Article 53 commits parties to the convention to take all measures to ensure that protective orders are available for victims of all forms of violence immediately and “*without undue financial... burdens placed on the victim.*”<sup>8</sup> **We would therefore submit that there should be greater access to legal representation in cases of gender-based violence.**

**We recommend that a review be undertaken of the legal aid fee structure of the Scottish Legal Aid Board for family law matters, to increase funding for solicitors in these cases.** Particularly, we are currently calling for a review of the funding for protective order cases as we are aware of issues with sourcing legal representation in these cases. We recommend that in the interests of justice, protective orders cases should be exempt from means-testing for civil legal aid and that no contribution should be required. People at risk should not therefore face any barriers in accessing this important protection through the civil court system. Yet, we are aware from our experience of women contacting our outreach services, that many women in desperate need of a protective order will be unable to raise a court action if they do not qualify for legal aid and additionally may choose not to pursue such an action if they require to pay a contribution. Requiring victim/survivors to make payment towards their legal fees adds to the stress and financial difficulties that they are already often experiencing. Victim/survivors facing upfront costs or prohibitive contribution levels will often feel they have no choice but to abandon the action.

### **Impact of Covid-19 on the Civil/Criminal Justice Systems**

We are aware through our own legal representation for clients and through our outreach that the civil justice system has experienced significant delays as a result of the ‘lockdown’. During the initial ‘lockdown’ phase of the pandemic all non-urgent civil cases were continued or sisted. As the civil courts began to move out of the ‘lockdown’ and into their phases, cases were resurrected, and hearing assigned. The civil courts have been working hard to progress cases where possible however despite this, significant delays have resulted<sup>9</sup>. The delays, and uncertainty that this causes, has placed significant stress and anxiety upon victim/survivors regarding how their cases will be progressed.

Similar delays have been seen through the criminal justice system with significant backlogs in cases being reported<sup>7</sup>. Victim Support Scotland warns of the significant

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<sup>8</sup> See further, The Council of Europe Convention on Preventing and Combating Violence Against Women and Domestic Violence, <https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=090000168046031c>

<sup>9</sup> The Law Society of Scotland reports a backlog of 1700 cases: [https://www.parliament.scot/S5\\_JusticeCommittee/Inquiries/20200526\\_LawSocietyScotlandResponsetoJusticeCommitteeRestarting\\_Jury\\_trials.pdf](https://www.parliament.scot/S5_JusticeCommittee/Inquiries/20200526_LawSocietyScotlandResponsetoJusticeCommitteeRestarting_Jury_trials.pdf)

harm caused to victim/survivors by lengthy delays in hearing cases<sup>10</sup>. Over the past months we have heard from women who are struggling to cope with the uncertainty and delays of this process.

We have heard through our outreach services that there is a lot of uncertainty around changes introduced by the courts due to Covid-19 measures and how they will be expected to give evidence as witnesses. Advocacy and victim support services are often the only source of information for victim/survivors in these situations. Some women have said to us that they want to withdraw from the process because they feel unable to cope with the uncertainty. We are very concerned that other survivors, particularly those who have no support in this process, will be faced with a similar decision, something that would be detrimental to the already disappointing justice outcomes for rape and sexual assault victims in Scotland.

**We urge the Scottish Courts and Tribunal System to deal swiftly with the backlog of rape and sexual assault cases in a way that is sensitive to the traumatic nature of these cases, so survivors can once again focus on recovering from their experience.**

Cases which are proceeding through the civil court system, where possible, are proceeding remotely by telephone conference hearing or video link. It is accepted that this is appropriate in the current circumstances and for the safety of legal professionals and clients. However, there is concern regarding the regular dispensing with the requirement for parties to attend remote hearings. We have seen that this has become a regular occurrence where parties are not required to provide evidence. We have concerns that if this becomes a continued occurrence it conflicts the right to a fair hearing for parties – in breach of Article 6 ECHR – and removes autonomy of victim/survivors through the process. We often hear from victim/survivors that being heard and having the opportunity to be involved in their own case, is an important element to accessing justice. Particularly, for victim/survivors of domestic abuse, where the perpetrator controlled their actions.

***Case Study: Gaps in Accessing Safety – Barriers in Reporting Violence to Police and in Enforcement of Bail Conditions***

*Victim/survivors have told us about barriers in reporting to the police regarding gender-based violence during the pandemic and gaps in enforcement leading to increased distress and risk of harm. Many have reported through our outreach services that despite serious criminal conduct, and breaches of bail conditions, their perpetrator has not been arrested or detained<sup>11</sup>. For the victim/survivors this has led*

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<sup>10</sup> Report by HM Inspectorate of Prosecution in Scotland, the backlog of High Court and sheriff and jury solemn cases was 750 and 1,800 respectively, and 26,000 for summary cases, August 2020, see Wallace, K, Crime in an Uncertain Time, Law Society of Scotland Journal, Oct 2020, <https://www.lawscot.org.uk/members/journal/issues/vol-65-issue-10/crime-at-an-uncertain-time/>.

<sup>11</sup> In Scotland recorded crime was 7% lower over April to September compared to last year however domestic abuse incidents were 8% higher in the same time period. In April to September 2020: 34,106 Domestic incidents recorded Up 8% since last year (31,689 incidents); see Justice Analytical Services Coronavirus (COVID-19) Data Report: September 2020 <https://www.gov.scot/publications/coronavirus-covid-19-justice-analytical-services-data-report-september-2020/>.

*to serious concerns for their safety and a distrust in the criminal justice system and its availability for protection from abuse.*

*Our of our clients experienced this issue at both the reporting and prosecution stage of the process. She reported a serious assault and domestic abuse to Police Scotland during the initial lockdown. The perpetrator was released on bail and following his release continually breached his conditions.*

*The client reported the continued breach of bail to Police Scotland and yet the perpetrator was not remanded and on each occasion was released, despite being charged with breach of bail. This caused significant stress and anxiety to the victim/survivor regarding her safety.*

### **Impact of Covid-19 on Mental Health of Victim/Survivors**

The real life and human impact of the Covid-19 pandemic has been devastating on society as a whole but the most vulnerable have been disproportionately hit. As a result, heightening mental health problems and exasperating psychological distress are reported amongst already vulnerable and traumatised survivors of domestic violence. With reduced support services buckling under the increased demand, Women's Aid describe "a perfect storm" for these vulnerable women.

In their August 2020 report, two-thirds of survivors, identifying as currently experiencing abuse, told Women's Aid that their abuser had started using lockdown restrictions or the Covid-19 virus and its consequences as part of the abuse, with over half of survivors identifying as currently experiencing abuse reporting deteriorating mental health which left them feeling less able to cope with abuse.<sup>12</sup>

Despite the restrictions, women faced in accessing support during the lockdown, most services have seen increased demand. Many have seen the impact of the pandemic on women's access to other support services such as homelessness or mental health.<sup>13</sup> Through our own outreach we have seen a decrease in mental health wellbeing of many victim/survivors and an increase in safeguarding concerns presenting through our service. The increase in safeguarding concerns has been so concerning for our service that we have introduced additional training and protocols for all staff in this area, for the benefit of the wellbeing of both clients and staff.

We have found that overall, during the pandemic there has been an increase in safeguarding issues being presented through our service, in addition with more complex legal queries presenting at later stages, which as succinctly put by Women's Aid, creates 'the perfect storm' in terms of victim/survivor's access to justice, through both legal and support services. This issue has been seen across jurisdictions, with Australia reporting an increase in domestic abuse during the

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<sup>12</sup> Women's Aid Report, *A Perfect Storm August 2020*, <https://www.womensaid.org.uk/wp-content/uploads/2020/08/A-Perfect-Storm-August-2020-1.pdf>

<sup>13</sup> Ibid.

pandemic and that the additional funding provided by their federal government is not being sufficient to meet the increased demand on support services.<sup>14</sup>

**We call on the Scottish Government to consider increased funding for violence against women organisations along with mental health support services.**

## **Survivors of Human Trafficking and Exploitation**

### **Overview**

Our [Scottish Anti-Trafficking & Exploitation Centre \(SATEC\)](#) provides information, outreach, policy, training, and research on human trafficking and exploitation. We also provide legal advice and representation to child and adult survivors of trafficking and exploitation throughout Scotland and work in partnership with the Trafficking and Awareness Raising Alliance (TARA), Migrant Help and the Scottish Guardianship Service in doing so.

Our SATEC lawyers have been working with victims of human trafficking for in both a support and legal capacity for a combined period of around 20 years, and are recognised as EU and international experts in the field, having made significant contributions to training, research and policy work in this area.

### **Impact of Covid-19 on Survivors of Human Trafficking and Exploitation in Scotland**

The European Commission, the United Nations and the Organization for Security and Co-operation in Europe (OSCE) report the intensification of human trafficking during the Covid-19 pandemic which has had, and will continue to have, a disproportionate impact on women and children<sup>15</sup>. The World Bank also predicts that the Covid-19 pandemic will push an additional 88 million into extreme poverty. This means that 150 million people will be living in extreme poverty in 2021 with eight out of 10 of this increase taking place in middle-income countries. Europol has thus issued a warning that human trafficking is likely to increase in the wake of the subsequent economic downturn and we are aware that traffickers have changed their operating methods to generate significant profits, increasingly advertising victims on the internet or exploiting them in private facilities<sup>16</sup>.

The OSCE Office for Democratic Institutions and Human Rights (ODIHR) and the United Nations Entity for Gender Equality and the Empowerment of Women (UN Women) have this year launched a joint report *Addressing Emerging Human*

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<sup>14</sup> 'The worst year': domestic violence soars in Australia during Covid-19, by Else Kennedy, The Guardian; see [https://www.theguardian.com/society/2020/dec/01/the-worst-year-domestic-violence-soars-in-australia-during-covid-19?CMP=Share\\_iOSApp\\_Other](https://www.theguardian.com/society/2020/dec/01/the-worst-year-domestic-violence-soars-in-australia-during-covid-19?CMP=Share_iOSApp_Other)

<sup>15</sup> Report from the European Commission to the European Parliament and the Council, "Third report on the progress made in the fight against trafficking in human beings (2020) as required under Article 20 of Directive 2011/36/EU on preventing and combating trafficking in human beings and protecting its victims" (20 October 2020), [https://ec.europa.eu/anti-trafficking/sites/antitrafficking/files/third\\_progress\\_report.pdf](https://ec.europa.eu/anti-trafficking/sites/antitrafficking/files/third_progress_report.pdf)

<sup>16</sup> Ibid.

*Trafficking Trends and Consequences of the COVID-19 Pandemic.*<sup>17</sup> It notes that the global health emergency has created new risks and challenges to victims and survivors of trafficking. The report notes that the pandemic has worsened and exposed the vulnerabilities of at-risk groups, especially women and children, to trafficking in human beings. According to the report, emerging trafficking dynamics are highly gendered and exacerbated by pre-existing gender inequality issues. For instance, there is an increased vulnerability of women and girls to recruitment by traffickers online. The findings demonstrate heightened vulnerability of women and girls to trafficking for the purposes of sexual exploitation.<sup>18</sup>

In the globalised world we live in, Scotland is not immune from these trends and we expect to see these reflected in Scotland in the coming years.

In our work at SATEC, during the period of March to September 2020, we noted a sharp decline in new referrals of victims of trafficking to our service, due to the pandemic. Since October 2020, we have been seeing an increase in new cases, however unlike other areas of social justice where the impact of Covid-19 has been reported contemporaneously **we predict that the true extent of the impact of Covid-19 on victims of trafficking will not be visible in frontline practice in Scotland until the coming year and beyond.**

In light of the above, we call on the **Scottish Government to continuously evaluate the policy and legislative responses taken to tackling trafficking and ensure there is support in place for this anticipated increased number of trafficked individuals we will become aware of in the near future.**

### **Migrants, including Asylum seekers, Refugees, EU Citizens and People with NRPF**

#### **Overview**

Our [Scottish Refugee and Migrant Centre \(SRMC\)](#) works with migrant communities across Scotland to tackle barriers to accessing justice when it comes to destitution and discrimination. Our lawyers provide direct legal advice to asylum seekers, refugees, EU citizens and people and families with the no recourse to public funds (NRPF) condition. We also run specialist services providing assistance with refugee family reunion applications, as well as pro bono and legal clinic collaborations that help EU citizens who are looked after children in care or who are street homeless to make applications under the EU Settlement Scheme to achieve lawful leave to remain post-Brexit.

We have consistently raised concerns about the impact of Covid-19 and our response on migrant communities in Scotland. We have done so in writing to the First Minister for Scotland and the Home Secretary for the United Kingdom in a letter

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<sup>17</sup> OSCE Office for Democratic Institutions and Human Rights (ODIHR) and the United Nations Entity for Gender Equality and the Empowerment of Women (UN Women), *Addressing Emerging Human Trafficking Trends and Consequences of the COVID-19 Pandemic (2020)*,

<https://www.unwomen.org/en/digital-library/publications/2020/07/guidance-addressing-emerging-human-trafficking-trends-and-consequences-of-the-covid-19-pandemic>

<sup>18</sup> Ibid.

dated 11 May 2020, as well as provided written evidence to the Local Government and Communities Committee of the Scottish Parliament on the Impact of Covid-19 for NRPF People on 9 October 2020.

We provide two case studies here, set out in those other response, to illustrate the types of issues we and our JustCitizens migrant advisory panel have typically seen in practice over the last nine months:

***Case Study: Gaps in Accessing Safety and Adequate Accommodation for Migrant Survivors of Violence***

*One of our clients, a 16-year-old girl with a migrant background, fleeing domestic abuse in the family, was not provided with 'looked after' care by her local authority for several weeks. The suggestion was that she could not be looked after and accommodated due to Covid-19 restrictions. She was instead placed in inappropriate homeless accommodation with no fixed financial support and forced to rely on food parcels from a local charity and ad hoc hand-outs from a social worker to top-up her phone. She was isolated and put in an unacceptably vulnerable position.*

***Case Study: Gaps in Accessing Financial Support for Asylum Seeking and NRPF Families***

*A member of our JustCitizens panel who works with asylum seeking and NRPF families in the community, gave these two examples:*

*"Yesterday we were speaking to a lady who has NRPF. Her kids were born in Scotland and she is an asylum seeker... With all the support [that local councils say are available for low income families], these kids are left out. The parents can't access that support. She said it is like they are "not recognised" - the kids are born here in Scotland, but they do not count."*

*"There is another lady, in a similar situation, with children. They contacted their MP to see if they can get extra support from the council. Because everyone is shouting about this extra support that is available [for families during Covid-19]. They contacted the social services, and they said unfortunately they cannot get support because they are NRPF, they do not have a category they fit into [for support]."*

Our SRMC has collaborated with our JustCitizens migrant advisory panel to submit a separate detailed briefing to this inquiry, which highlights 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 therefore only summarise and highlight here the key calls for action which are discussed in greater detail in the JustCitizens briefing:

## Mitigating the Impact of Hostile Environment / NRPF

- **We call on the Scottish Government to 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 (including in terms of safety and protection from abuse) of the worst of Home Office policies.**
- **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 the 1 December changes in the Immigration Rules which make the condition of being homeless a breach of immigration leave to remain is discriminatory and may put many migrants into more vulnerable situations. **We ask the Scottish Government call out this new hostile environment policy, 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.

## Gaps in Accessing Mental Health and Wellbeing Services

- Health and wellbeing are fully devolved to the Scottish Parliament, as such we call on the **Scottish Government to invest additional funding in specialist mental health support for migrants, 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.

## Need for Better Data

- **All data collected in our response, but in particular NHS data 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.

## Clear Guidance on Data Sharing with the Home Office

- 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 call on 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.**

### **Better Access to Information and Gaps in Digital Access**

- **Access to information in different languages and in simple terms is urgently needed and must be distributed equally across Scotland.**
- **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, Appropriate and Dignified Housing**

- 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.

### **Intersecting Inequalities**

- **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.

## Disabled People

### Overview

Our [Scottish Just Law Centre \(SJLC\)](#) aims to reduce discrimination and disadvantage in Scotland by helping people use equalities and human rights law as an effective tool for social change. We provide legal advice and representation in the areas of disability and trans legal justice, as well as support and advice to other third sector organisations across a range of human rights and equalities issues.

We work in partnership with [Inclusion Scotland](#), a Disabled People's Organisation (DPO), to develop and deliver our work focusing on disability justice.

### Impact of Covid-19 on Disabled People in Scotland

We refer to Inclusion Scotland's separate briefing submitted to this Committee, as well as their October 2020 *Rights At Risk Report* which analyses the results of a survey distributed in April 2020 to which over 800 disabled people submitted responses.<sup>19</sup>

The report draws on the lived experience of disabled people in Scotland as highlighted through the survey including:

- 30% of respondents said that the social care support that they receive was either stopped completely or reduced at the start of the pandemic.
- Parents of children with additional support needs (ASN) said they felt 'abandoned' and noted the lack of support for disabled children who were not attending school. This led in some cases to increased anxiety which sometimes resulted in violent behaviour or self-harm.
- Over half (53%) of respondents experienced difficulties accessing food for themselves or those that they care for.
- Over a quarter of respondents reported having difficulty in obtaining the medicines needed to maintain their health.
- 1 in 8 people at high risk from Covid-19 reported not being able to effectively shield or isolate themselves because they did not have other support to access food and or medication.

We support Inclusion Scotland's recommendations as set out in that report, including:

- **Making sure that emergency funding for social care support finds its way to those it is supposed to benefit – including disabled people who**

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<sup>19</sup> Inclusion Scotland, *Rights At Risk – Covid-19, disabled people and emergency planning in Scotland, a baseline report* (October 2020), <https://inclusionScotland.org/rights-at-risk-covid-19-disabled-people-and-emergency-planning-in-scotland-a-baseline-report-from-inclusion-scotland/>

**have now faced long-term gaps in accessing essential support, food and medical care.** Solutions could include: reopening the Independent Living Fund (ILF) to new applications and extending what funds can be used for.

- **Calling on local authorities to actively identify and provide additional support to children with “complex ASN” and ensure that schools ‘access proof’ alternative education models** including taking steps to ensure that online education is accessible and inclusive as well as providing alternatives for people with no access to the internet.
- **Providing effective and accessible employability support for disabled people.** Support employers to retain positive adjustments to ways of working, including remote working, that makes employment more accessible for disabled people.
- **Ensuring that crucial information is provided in ways that are accessible to disabled people**
- **Improving quality of data collection on the health outcomes of disabled people** to understand the long-term impacts of the pandemic, particularly on those who have been shielding and those whose social care support packages were cut. This data is necessary to inform decisions on future prevention and planning and to ensure the needs of disabled people are fully taken into account.
- **Supporting national and local disabled people’s organisations and ensuring that disabled people, as experts in their own lives, are involved in planning, implementation, monitoring Covid-19 policies, both now and in building the “new normal”.**

## Conclusion

We thank you for leading this inquiry and for the opportunity to share our evidence, drawn over the last 9 months from both the lived experience of our clients and the professional frontline experience of our lawyers who have delivered legal advice and representation to our vulnerable client groups throughout the Covid-19 pandemic.

It is clear that the pandemic and our response has exacerbated existing inequalities and that we can expect this to continue for some time.

For that reason, **we have asked for a human rights-focused response that sits within existing legal frameworks for ensuring accountability on our human rights and equalities obligations, and call with urgency for programmes of work across Scottish Government committing to:**

- **Ensuring adequate access to legal advice and representation, particularly in specialist areas**
- **Increasing funding for mental health and support services, including specialist services**

- **Ensuring safe, dignified and appropriate accommodation and taking measures to tackle food insecurity for all people in Scotland**
- **Ensuring key safety, health, legal and education information is communicated in an accessible and inclusive manner, and working harder to close the digital access gap for all people in Scotland**
- **Ensuring timely and accurate data – particularly NHS data on Covid-19 – is collected across equalities categories** including ethnicity, disability, migration status. Without doing so, we cannot fully evaluate the impact on disadvantaged and marginalised communities and apply a data driven response to tackle the disproportionate inequalities we know they have faced.
- **Taking a cross-government and intersectional approach to tackling the issues** in recognition of the cross-cutting nature of these issues and how multiple forms of disadvantage will compound disproportionate impact.
- **Working with people with lived experience of inequality in the Covid-19 pandemic as experts in their own lives**, to build solutions and ensure accountability, both now and in building the “new normal”.

JustRight Scotland  
24 December 2020