

## **Aims and Principles of the Scottish COVID-19 Inquiry**

The Human Rights Consortium Scotland is the Scottish civil society network to protect human rights. We have over 140 member organisations and many more individual supporters.

This joint submission is from:

- Dumfries & Galloway Advocacy Service
- Include Me
- West of Scotland Regional Equality Council
- The Equality Network
- Glasgow Council for Voluntary Sector
- Refugees for Justice
- Article 12 in Scotland
- Scottish Independent Advocacy Alliance
- Migrant Voice
- Inclusion Scotland
- Howard League Scotland
- Outside the Box
- Stonewall Scotland
- The Health and Social Care Alliance Scotland
- Forth Valley Migrant Support Network
- Close the Gap
- The Bridges Programme
- Women for Independence
- Welfare Scotland
- British Institute for Human Rights
- HIV Scotland
- Scottish Commission for People with Learning Disabilities
- Fife Migrants' Forum
- JustRight Scotland
- Forth Valley Advocacy
- Coalition of Racial Equality and Rights
- Making Rights Real
- Environmental Rights Centre for Scotland

**Human rights-based approach:** The Human Rights Consortium Scotland strongly welcomes the Scottish Government's announcement that the COVID-19 Public Inquiry will take a human rights-based approach. We highlight the key principles of a human rights-based approach set out in the Scottish

Human Rights Commission's P-A-N-E-L approach<sup>1</sup>. Expertise and understanding around what makes an inquiry human rights-based should not be assumed or taken lightly – we recommend that the Scottish Government should resource and engage particular human rights expertise to advise the Inquiry.

**Participation and empowerment:** This inquiry should aim for excellence in participation and empowerment of those most directly impacted by COVID-19 measures. Those whose rights were and are being impacted most should be at the very heart of the inquiry. The Terms of Reference should state, not that the inquiry will be *informed* by their experience or *evidenced* by their experience, but actually that it should be *driven* by people's lived experience of their rights during COVID-19. The starting point should be people's experience of their rights during COVID-19, and then to examine the decisions taken that led to those experiences.

**Seldom-heard groups:** It is important that the inquiry is set up in such a way as to, not only investigate and consider issues that concerned the majority or attracted media concern or wider public concern, but also to address the concerns of minorities. A human rights-based approach very much means not only listening to those with louder voices or who have similar interests to others. It means building in ways to listen to smaller or less visible groups. This should be clearly stated in the Terms of Reference so that this is obvious for all. This also means that the Inquiry should resource participation directly, particularly recognising that smaller community groups often operate on a shoestring and simply do not have the capacity to take part without some additional resourcing. People who live in poverty cannot afford to give their expertise and time for free.

**Human rights framework:** Human rights as set out in international human rights treaties provide a valuable framework for exploring experience during COVID-19 and then determining recommendations. For example, the right to life, the right to family life, the right to the highest attainable level of physical and mental health, the right to non-discrimination, the right to an adequate standard of living, the right to education, freedom from torture, inhumane or degrading treatment, and the right to a social security safety net – all of these rights have international definitions and detail that can ensure that the Inquiry's focus is on where those most fundamental rights were or are being breached, and investigate the reasons why and actions taken. A human rights-based approach also means being clear about who was responsible for each decision taken, with a focus on accountability and effective remedy.

**Participatory approach:** There should not be only one way to participate in or give evidence to the Inquiry. Being participative means providing multiple ways to contribute, with an emphasis on flexibility, accessibility and finding ways to make participation easy and positive. We emphasise that the Inquiry should not be formal and intimidating – it should feel informal and should go to where people are. We highlight too that communications about the Inquiry must be accessible and in plain English. Language support should be available for all who require this, for example to BSL users and others whose first language is not English. Others may need advocacy support to make their voice heard.

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<sup>1</sup> SHRC, available at: <https://www.scottishhumanrights.com/projects-and-programmes/human-rights-based-approach/>

We recommend that the Inquiry engages people with lived expertise specifically to advise on communications and around enabling participation – both of these are best designed not by civil servants but designed by ordinary people who have been impacted by COVID-19.

We note that where individuals and families participate in the Inquiry, very often they will have been through traumatic and difficult experiences during COVID-19 and being asked to speak about these may be very difficult. It is therefore important that the Inquiry from the outset establishes support for those who participate and takes evidence in ways that does not retraumatise participants.

**Transparency:** The Inquiry should be open and transparent at every step. They should regularly inform the public about who they are speaking with, what they are discussing and what stage they are at. The Inquiry should consistently err on the side of publishing and publicising. As well as specific invites to particular groups, they should be deliberately open to the public, with clarity at every point about the key questions they are addressing and what they will do with what they hear.

**Learning and recommendations:** The experience of our members is that many of the issues raised by COVID-19 measures are not new but are exacerbations of inequalities, gaps in services and data, and disadvantage that already existed. It is important then, that the Inquiry not only makes recommendations for any future pandemic or crisis, but also recommendations for COVID-related management and decisions now, and for more 'normal' times. The Inquiry should include looking at how government services changed their services, how they made those decisions and the extent to which this led to gaps in people's rights. For example, decision-making around social care. We also emphasise that the final recommendations must be specific so as to be able to evaluate if they were done or not; they should be assigned to a responsible person or body; and they should have a timetable with dates for completion.

## What do you think the inquiry should cover?

The inquiry should be framed by international human rights, and we highlight that the right to life is both fundamental but also most pressing because of the continuing risk from COVID-19 to people's lives. We have had a number of Consortium member's discussions and events around COVID-19 and human rights and highlight some of the issues these raised:

- **Right to life:** lack of PPE in care homes and for some workers, leading to a lack of protection for their right to life; people being forced into accepting DNARs or simply finding them on their files; disabled people being told that they will not be taken into hospital; people moved from hospital into care homes without COVID testing; disproportionate number of deaths in certain groups including people with learning disabilities and people who are Black or from ethnic minorities; women and children survivors of gender based violence / domestic violence and survivors of trafficking and labour exploitation accessing safety and support.
- **Right to family life:** infringement of this right for those living in care homes and supported accommodation, and for their family members; infringement of this right for those in hospitals, and for their family members; infringement of this right for those in prison and other institutional settings, and for their family members.

- **Freedom from torture, inhumane and degrading treatment:** those in prison subject to, in effect, solitary confinement for sustained periods
- **Right to health:** impact of services being reduced or changed, such as appointments being moved to phone-only or online, or certain services postponed such as alcohol treatment services or mental health-related services; impact on disabled people of care packages and other services withdrawn or reduced; support for unpaid carers; lack of access to medical treatment or primary care.
- **Right to liberty:** people who were held in hospital, mental health settings or elsewhere because of the lack of resource, attention or provision during COVID-19.
- **Right to adequate standard of living:** those left with not enough to live on, or without access to food or other basics, such as those on zero hour contracts or insecure employment, those with No Recourse to Public Funds; people who had to rely on charity due to the failure of government services to adapt; particular impact on people living in overcrowded households, overwhelmingly those from BAME groups.
- **Right to education:** children and young people who missed out on this right during COVID-19 particularly due to digital exclusion; impact of COVID-19 on students.
- **Right to non-discrimination:** services that ignore their failure to meet the needs of particular groups such as people who are LGBT+; experiences of racism and hate crime linked to COVID-19, both in the community and within the health and social care sector; COVID-19 measures that ignore particular cultural needs such as those of the Roma Community; discriminatory impact of extension of police powers and approach to policing, especially on BAME people and communities.
- **Right to participate:** We emphasise that the right to participation underpins and makes possible, many other human rights. The Coronavirus Act 2020 allowed for regulations that reduced local authority duties, including the duty to carry out an assessment of social care needs and to involve service users in decision making. It is significantly concerning that these crucial duties were so easily reduced, with the only condition being 'if it is not practical to do so'. People across Scotland experienced a drastic reduction in any agency over their lives and the services that they needed. The Inquiry should consider to what extent this was justified and make recommendations around people having a say.

**Digital communication and human rights:** Closely linked to the right to participate is the dependence during COVID-19 on digital instead of in-person communication. The impacts of digital by default on certain groups were significant, and by no means inevitable. Different government services took different decisions about operating in the COVID-19 environment. For example, whilst Children's Hearings quickly moved to using Zoom, Mental Health Tribunals used phone conferences which made it very difficult for individuals to know who was on the call and to take part in major decisions that affect their life. A human rights-based approach strongly asserts that a 'one size fits all' approach should not be assumed, but that what works for different individuals and groups should be explored with them and then government services designed accordingly. We also emphasise that this issue should not be reduced to solely being about access to digital devices – it is much more than that. The Inquiry should therefore take evidence around the different ways that the move to digital or phone communications affected people's human rights and make recommendations about digital government services and communications in the future.

**UK-wide inquiry:** We understand that this inquiry can only make recommendations in areas of devolved competence and welcome that 'consideration will be given to how duplication of investigations between the Scottish and UK wide inquiries can be avoided.' There must be this Scotland-focused inquiry given that there were many Scotland-only decisions, and accountability must sit at the same Human Rights Consortium Scotland, SCIO: SC050099; hrcscotland.org; @HRCScotland

level as those responsible for making the decisions. The Scottish Government should do all that it can to encourage the UK-wide inquiry to also take a human rights-based approach.

**Do not exclude New Scots:** People's experiences of course do not fall into devolved and reserved issues, and the Inquiry should not exclude people simply because their life is more directly impacted by reserved law or policy, such as New Scots. The Inquiry Terms of Reference should specifically state that evidence can and should be sought from refugees about their experience during COVID-19. This would be a human rights-based approach to the Inquiry – recognising that human rights necessarily belong to us all, and that the Inquiry should therefore not exclude any group from taking part.

In particular we highlight the campaign [Refugees for Justice](#) (R4J). Whilst there were government efforts to remove people from institutional settings or settings where they could come into contact with many people in order to keep them safe, the Home Office moved refugees from individual flats *into* an institutional-type hotel setting. This is a flagrant breach of their human rights, where rather than take steps to protect their right to life above all, they put it at greater risk. There must be accountability for the decision to move refugees into institutional accommodation and for this reason, evidence gathered during the Scottish Inquiry should also be sent to the UK-wide Inquiry.

In addition, these refugees experienced infringements of their right to family life, right to health, right to adequate housing, right to healthy food, amongst others. The Scottish Inquiry should hear their voices and experiences so that lessons can also be learned around government in Scotland's policy and practice. We also note that there will be learning that can inform implementation of the Ending Destitution Strategy and the New Scots: Refugee Integration Strategy. We highlight that R4J has a vast amount of collated evidence of lived experience which can be directly taken into account by the Inquiry.

### **Is there any type of evidence that you think is essential for the inquiry to obtain?**

We highlight that many of our civil society members have considerable evidence around people's experiences during COVID-19, and the measures that helped or hindered the realisation of rights. Civil society organisations and groups are key stakeholders in the Inquiry, often as collective expressions of lived experience. As one example, Fife Migrants' Forum usually help as many as 250 people into employment, and many to progress their careers all contributing to the public purse. Over the pandemic a lot of their efforts became focused on offering hardship vouchers and food parcels to many people experiencing migration, with young families, made unemployed and denied recourse to public funds to afford the basic necessities of life.

Many civil society organisations have produced evidence around the impacts of COVID-19 measures on those that they work with or for. This civil society evidence should be part of the Inquiry's evidence bank. For example,

- In May 2021, the Consortium published, together with Amnesty International in Scotland, a [survey of public authorities' consideration of human rights during COVID-19](#)<sup>2</sup>. This FOI-based survey was important evidence of the lack of attention given to human rights when public bodies made COVID-related changes to policy or services.

- Glasgow Disability Alliance published *Supercharged: A Human Catastrophe*, available at: <https://gda.scot/resources/supercharged-a-human-catastrophe/>
- [Further Out: The Scottish LGBT Rural Equality Report](#), including experience during COVID-19
- [Carers UK published Caring Behind Closed Doors: six months on](#)
- [TSI COVID-19 Learning Project](#)
- Close the Gap published a report on the disproportionate of Covid-19 on women's labour market equality and rights, available at [https://www.closesthegap.org.uk/content/covid-19/1617262883\\_Disproportionate-Disruption---The-impact-of-COVID-19-on-womens-labour-market-equality.pdf](https://www.closesthegap.org.uk/content/covid-19/1617262883_Disproportionate-Disruption---The-impact-of-COVID-19-on-womens-labour-market-equality.pdf); and an analysis of how Covid-19 is affecting women's labour market equality one year after the initial lockdown, available at: [https://www.closesthegap.org.uk/content/covid-19/1617267711\\_One-Year-On---How-COVID-19-is-impacting-womens-employment-in-Scotland.pdf](https://www.closesthegap.org.uk/content/covid-19/1617267711_One-Year-On---How-COVID-19-is-impacting-womens-employment-in-Scotland.pdf).
- [HIV Scotland have published a report](#) into access to HIV testing throughout the pandemic
- A [blog from the Coalition of Racial Equality and Rights \(CRER\)](#) discusses how a lack of high quality data on ethnicity and health in Scotland hampered understanding of Covid-19 and related outcomes for BME communities.
- Greenspace Scotland [published research](#) showing that COVID-19 amplified the importance of access to greenspaces for health and wellbeing.
- Scottish Learning Disabilities Observatory: [The impact of COVID -19 on people with learning/intellectual disabilities in Scotland](#)
- [Mortality rates for children with learning disabilities | Research projects | Scottish Learning Disabilities Observatory \(sldo.ac.uk\)](#)
- [Life expectancy and causes of death of people with Down Syndrome | Research projects | Scottish Learning Disabilities Observatory \(sldo.ac.uk\)](#)
- [SCLD, The Impact of Coronavirus on People with Learning Disabilities and their parents, supporters and carers](#)
- [Scottish Women's Rights Centre contributed to University of Glasgow research](#) around issues for survivors of domestic violence during lockdown
- Stonewall Scotland [evidence](#) to the Scottish Parliament Equalities and Human Rights Committee on LGBT people's experiences of the pandemic
- Scottish Partnership for Palliative Care has [collated evidence](#) relating to people's experiences of death, dying and bereavement and the provision of palliative care services during the pandemic

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