



The Scottish Parliament
Pàrlamaid na h-Alba

Equalities and Human Rights Committee

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Dear Minister,

COVID-19 (IMPACT ON EQUALITIES AND HUMAN RIGHTS)

Following the Committee's evidence session on 28 May, when the Committee heard from witnesses on a wide range of equalities and human rights issues, it agreed to write to the Scottish Government highlighting those matters relevant to lockdown measures that need to be addressed urgently and of course, if further periods of restriction of liberty become necessary in the future. In addition, the Committee felt it important to set out other matters that should be addressed by the Scottish Government in considering its approach to relaxing lockdown measures and any recovery planning being undertaken. Unavoidably, some of these topics overlap.

Inclusive communication

During this crisis one of the key issues raised with the Committee was the importance of inclusive communication. Specifically, the types of messaging and the means of communication used by the Scottish Government, local authorities and the medical profession.

In relation to older people, and their care and support, Adam Stachura, Age Scotland advised of an upsurge of helpline enquires from older people trying to work out what the 'top-line' messaging meant for them and their circumstances. Calls to the helpline peaked at 840 calls per day and has settled at around 70 calls. He provided an example of the types of questions being asked, "Can I go to visit my husband's grave?" and said that whilst the daily briefings were good they often directed people

to the internet. Adam Stachura however advised that “there are half a million over-60s in Scotland who do not use the internet”.¹

Written submissions, such as from deafScotland, raised similar concerns. deafScotland commented helplines are inaccessible for people with hearing loss and a lot of deaf people are older and so they access computers through local library services which are currently closed.

Whilst the Committee recognises these issues might not have been intentional and some issues might not have been foreseen, it highlights the necessity for inclusive communication to become the norm across public bodies. Many groups of people are suffering from increased anxiety and fear because they can’t access the information they need.

According to the Scottish Government, it is estimated that over a million people in Scotland have some form of communication support need.² The Committee asks the Scottish Government what action it has taken to ensure that life-saving messages and key policy documents around Covid-19 and the support available have been provided in accessible formats to those who need them, and available at the same time as plain text versions are released, and in ways that recognise barriers of digital exclusion and means of effective communication to all groups.

In addition, the Committee asks the Scottish Government what consideration it has given to working towards a national commitment to inclusive communication while the country is recovering from the pandemic to ensure a reduction in social isolation for many people in Scotland, including those with hearing loss, older people, those with long-term health conditions or disabilities and people who are living in poverty.

Do Not Attempt Resuscitation

Also, of grave concern to the Committee is the ongoing issue around Do Not Attempt Resuscitation (DNAR) forms and related communications. Age Scotland was still receiving anecdotal evidence, of “family members are leaving hospital with a DNAR form slipped into their discharge notes. Those people who leave hospital do not have their own capacity—they might have dementia—and their power of attorney is not consulted”.³ Adam Stachura went on to explain that people “thought that it meant that they would not be given medical treatment and that they would be left to die if they got the virus” and that “Administrative staff have been calling older people with dementia, who have agreed to something on the phone”.⁴

These actions, the Committee considers, are a breach of people’s human rights at a time when they should be being upheld. Communication between the clinician and

¹ The Equalities and Human Rights Committee, [28 May 2020](#), Official Report Col 11

² <https://www.gov.scot/publications/principles-inclusive-communication-information-self-assessment-tool-public-authorities/pages/1/>

³ The Equalities and Human Rights Committee, 28 May 2020, Official Report Col 12

⁴ The Equalities and Human Rights Committee, 28 May 2020, Official Report Col 13

the vulnerable person is vital. Conversations should be handled in a sensitive way to avoid further worry and upset.

The Committee asks what guidance the Scottish Government will provide to ensure that patients released from hospitals, as well as advance care planning by GPs and social care support workers respect human rights and do not have a disproportionate impact on any groups, including those that have protected characteristics under the Equality Act 2010.

The Coronavirus Act 2020 and mental health legislation in Scotland

A further priority for the Committee is the impact of Schedule 9 of the Coronavirus Act 2020 on mental health in Scotland. These mental health measures provide for longer periods of emergency detention, and make it simpler for securing short-term detention certificates and compulsory treatment orders.

The Committee notes these powers have not been brought into force and that the Scottish Government has issued a [note to clarify how the UK Act will impact on mental health legislation in Scotland \(30 March 2020\)](#), confirming there have been no changes to the provisions of the Mental Health (Care and Treatment) (Scotland) Act 2003.

In evidence, Judith Robertson, the Chair of the Scottish Human Rights Commission emphasised to the Committee—

“Like all aspects of legislation that is put in place, those measures require ongoing review. There is a process for that within the legislative process. We recommend that any measures that are no longer deemed relevant be stood down. The principles of taking action from a human rights perspective are that measures should be proportionate, time limited, have a legislative basis and be for as short a time as possible. From that perspective, we would recommend that the measures should be withdrawn, particularly given the experience of the first phase of the pandemic”

As a matter of urgency, the Committee recommends the Scottish Government works with the UK Government to repeal Schedule 9. These powers have not been used, even at the peak of the outbreak, and therefore can no longer be deemed as proportionate. The Committee is concerned that the longer these powers remain in law the harder it will be to reverse the position.

A further area of concern raised with the Committee was emergency powers relating to the Social Work (Scotland) Act 1968. Judith Robertson, SHRC, advised the emergency powers have not yet been brought into force, as it is considered they will not be used. She further explained she would be concerned if they were used because they would allow local authorities to disapply key principles of the Adults with Incapacity (Scotland) Act 2000. This would include the requirement to take into account the views and wishes of the person and their relative, carer or guardian in connection with the provision of community care support, including moving home, which engages the right to liberty.

The Committee shares these concerns and asks the Scottish Government for its detailed views on its intention regarding these powers.

Domestic violence against women and girls

Due to lockdown and social distancing women are at increased risk of domestic abuse and violence. Girijamba Polubothu of Shakti Women's Aid told us BME women are “living with multiple perpetrators, behind closed doors. If they are living in a joint family, their mother-in-law, sister-in-law or brother-in-law may be a perpetrator, as well as their husband”.⁵ BME women also faced technology and language barriers; “most women would get help from children, or from a friend, to text the caseworker to make an appointment or to speak with her”. This support is curtailed under lockdown measures.⁶ There had been increased referrals from agencies, but a lack of outreach services available in Glasgow and especially Aberdeen was making it difficult to deal with demand.

On the availability of refuge accommodation, Girijamba Polubothu said—

“For example, in 2019-20, we had 10 women in our refuge. One of the reasons for such low numbers is the unavailability of permanent accommodation in Edinburgh. It takes between 18 months and two years for a woman to move into permanent accommodation. We supported 125 women in City of Edinburgh Council temporary accommodation.”⁷

At the same time Dr Marsha Scott from Scottish Women's Aid explained the capacity of their refuge accommodations had shrunk as “communal shared space have been moved from multiple family to single family accommodation”, reducing the number of families that can be rehoused.⁸ Compounding the situation Dr Scott said “almost all our local authorities have, in essence, frozen allocations processes” and advised that all their services were now full, and as lockdown eases, a surge in demand is expected. She commented “The system has created more harm than it has removed”.⁹

Regarding other forms of domestic violence, Girijamba Polubothu advised several forced marriage cases had been referred to them in the early period of lockdown by social work and other agencies. All the survivors were young school-age girls. In addition, she said Shakti Edinburgh had had two potential female genital mutilation (FGM) case referrals involving people with no recourse to public funds.

Given the evidence set out above, the Committee asks the Scottish Government what actions it is taking to fulfil women's right to protection during the coronavirus including monitoring and responding to the need for extra support, refuge places and housing, and clear communications further promoting the support available and women being lawfully allowed to leave home to escape violence.

⁵ The Equalities and Human Rights Committee, 28 May 2020, Official Report Col 27

⁶ The Equalities and Human Rights Committee, 28 May 2020, Official Report Col 27

⁷ The Equalities and Human Rights Committee, 28 May 2020, Official Report Col 22

⁸ The Equalities and Human Rights Committee, 28 May 2020, Official Report Col 22-23

⁹ The Equalities and Human Rights Committee, 28 May 2020, Official Report Col 23

Furthermore, the Committee would like to know what the Scottish Government is doing specifically to help more vulnerable women who experience different and complex barriers, including, for example, where English is not their first language and who therefore cannot access helplines or access the internet to get the support they need.

The Committee recognises children as well as women can be affected by domestic violence, as such what is the Scottish Government doing to ensure children’s safety due to school closures and in particular, to prevent forced marriages and female genital mutilation.

In relation to the need for cumulative impact to be assessed, Dr Marsha Scott, Scottish Women’s Aid, said “When I look across justice, education, children and families and housing and homelessness, I am really concerned about the cumulative impact of the increased risk of harm to women and children. It is just so striking”. She called on “more rigorous commitment to carry out impact assessments and to engage with those of us who see the whole picture”.¹⁰ She gave an example of a woman who had to be moved as an emergency, because the perpetrator who had been lifted on a Friday night and ordinarily would have been held in custody over the weekend, was released because of infection control. As the perpetrator’s name was on the tenancy agreement he returned home.¹¹

Dr Marsha Scott went on to say “stop putting sticking plasters on domestic abuse, whether we are in a pandemic or not. Domestic abuse is, itself, a pandemic”. To end domestic abuse refuges and services were needed, but Dr Marsha Scott explained “we also really need to choke what I call the feeder system for domestic abuse—women’s poverty, and the failure to have them at the table when decisions are made about the economy and issues such as local housing policy”.¹²

Emma Ritch, Engender, also considered not enough attention was being paid to the cumulative impact of action to mitigate the impact of Covid-19 on women. Although she welcomed the leadership by the Cabinet Secretary for Social Security and Older People and the permanent secretary for Scottish Government officials to consider equality and human rights issues, she said—

“We do not think that the equality impact assessments are being done properly or that adequate data is being appropriately used and analysed. However, because the publications are so scanty, it is not straightforward to see what is happening. Where Government is succeeding, it is because of specific advocacy, which is delivered by organisations that are outside Government.”¹³

The Committee notes the correspondence received from the Cabinet Secretary for Social Security and Older People ([15 April 2020](#)) and the Minister for Older People and Equalities, ([12 May 2020](#)), which respectively assured the Committee that the

¹⁰ The Equalities and Human Rights Committee, 28 May 2020, Official Report Col 26

¹¹ The Equalities and Human Rights Committee, 28 May 2020, Official Report Col 32

¹² The Equalities and Human Rights Committee, 28 May 2020, Official Report Col 31-32

¹³ The Equalities and Human Rights Committee, 28 May 2020, Official Report Col 21

Scottish Government is continuing to undertake Equality Impact Assessments and other impact assessments (including Children's Rights and Wellbeing Impact Assessments) during the current emergency, and that learning would inform the review of the Scottish Specific Duties under the Public Sector Equality Duty which Ministers have committed to undertake.

Equality Impact Assessment (and human rights assessments) should be undertaken at the earliest stage of policy development and influence the options considered and the design of the intervention to ensure equality and human rights are mainstreamed comprehensively. The Committee is concerned that these Assessments are not flagging the sorts of issues arising in evidence, for instance as described in the example of where a domestic abuse perpetrator is released early from police custody.

Those providing evidence to the Committee urged the Scottish Government to engage with them. The Committee asks the Scottish Government to commit to carrying out Impact Assessments at the earliest stage of development, to publish these online and draw on evidence from those with lived expertise for all coronavirus-related law, policy and resource decisions.

Additionally, the Committee asks the Scottish Government what steps it's taking to work with other public bodies to ensure that they carry out Impact Assessments for all coronavirus-related policy and practice change.

In relation to cumulative impact and intersectionality, the Committee would like to know what steps the Scottish Government will take to ensure that coronavirus-related policies and practice changes don't adversely affect particular groups, such as women and can identify accurately any intersectional impact, for example in relation to BME women or older people with disabilities.

Finally, the Committee would find it helpful if you could frame your answers in relation to the [Framework for Decision-Making](#), which recognises that:

- Harms caused by Coronavirus do not impact everyone equally
- The response to the pandemic must recognise these unequal impacts
- The Scottish Government must seek to advance equality and protect human rights in everything [it does]
- Options for action must be assessed to see whether they promote equality
- In re-building Scotland's economy, we must seek to overcome inequality and advance human wellbeing.

If you have any questions, please contact the Clerks to the Committee on 0131 348 6040, or by email at equalities.humanrights@parliament.scot.

Yours sincerely,

Ruth Maguire

Ruth Maguire MSP

Convener

Equalities and Human Rights Committee