

## UK COVID-19 INQUIRY – MODULE 2A

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### CLOSING ORAL SUBMISSION ON BEHALF OF INCLUSION SCOTLAND AND DISABILITY RIGHTS UK

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#### INTRODUCTION

We act for Inclusion Scotland and Disability Rights UK. They are national organisations run by and for Disabled people.

1. My Lady. Where were the Disabled people of Scotland in the pandemic disaster management system? The answer is that whatever their recognition as citizens, their protection was not solid enough. The notion that no one should be left behind was effectively thwarted before the crisis started. That situation produced a chain reaction across all aspects of decision making and government services, because everything that followed was reactive government; not proactive, and despite intentions, not especially collaborative.
2. Three features of the overall system are worthy of note.
3. First. While health inequalities and their implications for Disabled people were recognised in Scotland through human rights policy and public health doctrine; as Caroline Lamb accepted in Module 1, and as this Module's evidence makes clear, core pandemic planning and emergency systems encompassing health inequalities did not yet exist in 2020.

4. Second. In this overall lower income and less clinically robust part of the UK, Scotland knew its health limitations and therefore Government put its fear of people dying from Covid above all other harms. Indeed Doctor Smith's position was that Scottish concern about Covid health risk was a matter of national cultural concern, as much as clinical concern. We do not criticise that. But in the midst of an emergency it was the concern that trumped all else. It meant that despite Disabled people already being in a dire state of crisis pre-pandemic, and Scottish government being aware of that, the impact of the NPIs on disabled people was not sufficiently mitigated.
  
5. Third. In Module 1 Nicola Sturgeon said that what she worried about "literally every day" during the pandemic was not so much that Government did not have a plan, but that Scotland did not have the underlying capabilities to discharge a plan. My Lady has now studied the scenarios for approaching lockdown differently, especially Professor Woolhouse's suggested approach of "cocooning" to protect the clinically vulnerable, rather than a universal lockdown. What these alternative scenarios do not always take into account is the lack of infrastructure and services in Scotland, and in the whole UK, that prevented the state from acting differently.
  
6. Taking Disabled people as the stress tester for the idea, how can you create cocooned super-shielding when you do not have the sufficient data, adequate engagement or proper support systems for those in care homes or those cared for at home, to deliver such a strategy. The proposed National Care Service would be the beginning of that capability; but in the summer of 2020, let alone the first six weeks of 2020, one size lock downs were as good as anywhere in the four nations of the UK could get.

## **Planning**

7. What happened once Scotland had to plan and respond to a pandemic from scratch?  
In that assessment, it finds an important critical friend in Professor Cairney. Of the 4 Harms Policy and the general requirement to promote human rights and equality in the National Performance Framework he asked rhetorically, “*who wouldn’t want a human rights approach*”? His criticism was that the detail of how government made choices about human rights – is to us his language laudable but what was “*far less visible*” is how decisions were being made.
8. For Disabled people the answer requires unpacking. Human Rights are part of the moral compass of the so-called Scottish model of government and style of politics. The situation is far more complicated in Westminster where government often expresses itself as ambivalent about human rights issues. The quality of the conversation on Disability rights was better in Scotland, as was the level of awareness of what needed to be done.
9. However, Scotland did not show itself to be particularly progressive in the actual delivery of human rights. The Covid response investigation by the Scottish Commission for Human Rights found that the Government could have been better in mainstreaming and cascading human rights compliance across different areas of decision making and delivery. The Scottish state is considerate in its value of rights, but not yet systematic or necessarily skilled in their implementation.
10. During the pandemic the Government had its 4 Harms framework that conceptualised trade-offs between harms, but it did not from the outset create a discrete Covid plan for Disabled people that anticipated and prevented hardship. There was no plan to cater for the foreseeable collapse in care or to deal with food and other resource

scarcity that befell those beyond and of the Highest Risk list. There was no plan to immediately obviate digital exclusion. To paraphrase Dr Jim Elder-Woodward, Government did not prevent excessive utilitarianism in health care and other social care provision. Nor did it enrol the DPO as emergency co-responders as part of the plan.

## **Machinery**

11. Since devolution Scotland has constructed a new machinery of government, how did those structures affect the ability of decision makers to deliver on their human rights aims?

12. First. The Scottish model of Government may be considerably more similar to Westminster than it wants to be, especially during crisis. Professor Cairney has broad observations to offer on this, but for the DPO there is much to be said that as a result of the lack of anticipatory and preventative planning, policy and infrastructure, Government veered into centralised and top down behaviour. This initially led to the relative disengagement from DPO compared to pre-pandemic collaboration. It also led to a number of witnesses being unsustainably positive about areas where Scottish government was objectively weak, and certainly not significantly better than the rest of the UK. On this we include data in relation to Disabled people and the overall quality of inclusive communications. Engagement with DPO for the purpose of co-production and co-design would never have led to such conclusions, or indeed such weaknesses.

13. Secondly. For Disabled people it remains unclear how the Scottish directorate system led to their needs being freed from the general governmental tendency to silo and afterthink on minority rights. Scotland, like the rest of UK, also churns through Ministers

and civil servants, jeopardising institutional knowledge and continuity. The statement that equality is the duty of everyone in Scottish Government is all well and good, but especially in an emergency how does co-ordinated action for marginalised groups get done without being the function of a particular Minister and lead group of civil servants? Christina McKelvie, as Minister for Older People and Equalities, could issue a memo to all government reminding it to comply with human rights and to leave no one behind in Covid decision making, but there was no machinery to drive through a formal Disability policy to ensure that Covid decision making was actually governed by Disability rights.

14. Thirdly. Whatever the qualities of the relationship between central and local government in Scotland it was not sufficiently developed to withstand a whole-system emergency. Certainly no better than England. Not surprisingly Nicola Dickie recognised on behalf of Scottish Local Authorities that partnership with the Third sector lacked consistent coverage and could be variable. What is surprising is the repeated reference in her statements, without any criticism, that most Local Authorities in self-assessments regarded themselves as ready to respond to the needs of vulnerable groups in an emergency, including Disabled people. In March 2020 the Cabinet was far too sanguine that this would happen. Local government responders cannot be left to self-assess their own readiness in that way; not least because their optimism bias and states of denial can then become the optimism bias and denial of central government.

### **Expertise**

15. Turning to expertise, the DPO do not take issue with the integrity of the advice or the degree to which pluralist views were shared about how best to suppress the virus. It was the lack of expert advice on mitigating NPIs that concerns them. The Chief Social

Policy Adviser Dr Carol Tannahill, whose role was to lead in Government on the consideration of social harm, has admitted her sense that the capacity of the expert meetings to fully consider and understand the impacts on different population sub-groups was less than ideal, and that more weight was placed on statistical modelling and biomedical science than on wider human experience and social science. Even when it came to creating sub-groups, they were made for race and ethnicity and children and young people in education, but not for Disabled people, which echoes some of the prioritisation seen at Westminster.

### **Recognition**

16.Disabled people of Scotland therefore endured a pandemic paradox in that their situation was simultaneously recognised and overlooked by government, and in that respect the weakness of the Scottish Model and style of politics is revealed. Government was good at speaking of “we” not “I”, at galvanising collective resilience, including civic connectedness. It empathised with Disabled people and articulated a social model that disability and vulnerability are both made and chosen. All of that is positive.

17.But there was a gulf between aspiration and deed, and it was all the more experienced by Disabled people because Government’s actual decision making was focused so highly on a medical orientated model of saving life. It was not particularly inventive or mitigating in its prevention of social harm.

### **Engagement**

18. Taking the quality of engagement with DPO as one indicator of this. There is a consensus in Scotland amongst politicians, civil servants and stakeholders that consultation is a good thing and that it is incumbent on government to build wide policy communities. Developed engagement with civil society is regarded as a Scottish political virtue not just to enhance the social contract, but to improve the quality of decision making.

19. The granting of access, of having a meeting and remaining in a conversation is valuable but that is not co-production and co-design. DPO are not equal partners in policy making. Whilst there are exceptions, DPO are not generally informed about the consequences of their interventions. There are no feedback loops, agreed methodology or external review. As DPO do not have secured funding to do this work they cannot sustain their seat at the table even when it is given. Engagement in Dr Elder-Woodward's terms is "started and ended by the authority" of the state. It is a gift without obligation or accountability as opposed to a human right and a means to make delivery of protection more real.

## **Data**

20. As in the rest of the UK, there were serious shortcomings of data collection and deployment on behalf of Disabled people in Scotland. The data infrastructure was minimal in 2020. PHS still call it "a work in progress". As a public health data specialist Professor Morris describes data collection as "still in the foothills" of where it needs to be and lacks the sufficient data infrastructure to create new insights. It is a defining feature of residential and domiciliary care of how little is known; how much people are not counted and consequently (whatever our aspirations) the uncounted count for less.

21. For Disabled people that exemplifies what was sorely missed out on by the absence of co-production structures. When ground level community networks, local authorities and central government combine in the collection of data, that not only binds and builds trust but promotes insight. Professor Freeguard has talked about this in the conclusion to his report to you. Almost every lesson learned document has said the same. Pandemics teach us that data is absolutely an issue of human rights and humanity. Finding trustworthy and collaborative ways to know it and use it should become one of the great priorities of our time.

### **Protection**

22. My Lady. In consequence of all these system weaknesses, levels of protection for Disabled people in Scotland were simply not what they could or should have been. You have the personal accounts from those on the impact video. Idrees told you in his words, his world was “turned upside down”. Dr Elder Woodward used the phrase “avalanche of issues” in the emails he wrote with increasing desperation. The survey of 800 Disabled people conducted by Inclusion Scotland across the month of April 2020 showed that 50.4% of respondents were no longer receiving health or care visits to the home and that 1 in 8 of them broke shielding rules, out of necessity, in order to acquire food or medicine.

### **Redistribution**

23. Dr Elder-Woodward’s final point in evidence was that human rights mean nothing without social and economic rights. Recognition of Disabled people as equal citizens will never be enough without redistribution. On this the Scottish Government points to an anomaly of devolution. In its current form Scottish Government is responsible for public health, but due to lack of UK Government funding was unable to fund large structural responses to Covid. Not just prolonged furlough, but paying the care sector



workforce a sufficient sum not to work; or substantially raising carer's allowance, including the capacity to pay for temporary carers to step in when the voluntary carers caught Covid. However, the Scottish Commission on Human Rights and the Feely Commission on Social Care have both made it clear that Scottish Government must be disciplined to find ways to secure social and economic rights to the extent that it has the power.

24. For instance, there is a human rights method to co-produce and co-design the way that budgets are made and spent. At the early stages of Covid, Scottish Government announced the £350 million would be made available to support depleted local services. Similarly £100 million was released to Councils to stop social care from being withdrawn or reduced. Obviously these are important sums. But the money was not accompanied by sufficiently detailed programs of how to channel it to the harder to reach, and how to transparently audit its effectiveness. It was not designed *with and for* DPO and Disabled people who would know how to do that. Its result was not as sufficiently redistributive or effective as it could have been.

### **CONCLUSION**

25. My Lady. Where does that then leave us mid-way in your journey across this country's four nations of Covid government response? In the Westminster module to this Inquiry the DPO challenged the extent to which the UK state ignored their rights. Now in this module they challenge the extent to which the devolved aspect of the state in Scotland has failed to deliver on their rights despite wanting to do so. Declaring that government cares about human rights, which is indeed the case in Scotland, is not enough.

26. These governors in Scotland must therefore, we say with respect, acquire the competence and the systems to deliver on their values. The DPO see full incorporation of the UNCRPD as a means to institutionalise their rights more formally, and for government to learn to better respect human rights. To return to Professor Cairney's critique, justiciable rights are one of the means that ensure that words become deeds.
27. But what of this suggestion that human rights—will never be enough without social and economic rights? That the woes of Covid governance essentially come down to economic determinism. That there has been a failure of the dominant free market philosophies in the wealthier western nations to protect the poorer parts of their populations?
28. My Lady, we are in the nation of Adam Smith and the city that many in this room would tell you is the birth place of the Enlightenment. Smith may be famous for extolling the virtues of "*the invisible hand*" of the free market in his "Wealth of Nations". But his earlier book on morals, the Theory of Moral Sentiments (published in 1759) has something to say about the ethics of care as the source of both a good life and good governance. He told his 18th century audience that the secret of happiness was "**to be loved and to be lovely**".
29. Broadly translated into modern language that accords with a submission we have already made to you. That the principal value of good government should be - **to care about caring and being cared for** .And that we should favour such politics, economics and systems that sustain that way of relating to one another.

30. The evidence in this Inquiry lays bare that the pandemic and its counter measures were wretchedly unjust. So as you continue your journey we ask you to keep thinking about how we all are vulnerable to some degree at some time. That the capacity to care is at least as fundamental to what it means to be human as the capacity to reason. And so **to do justice to** *the unequal harms of covid*, this Inquiry (along with the public it serves) must find ways to enable the ethics and practice of mutual care to become both *more possible* and *more sustainable*.

**Danny Friedman KC  
Anita Davies  
Matrix Chambers**

**Shamik Dutta  
Bhatt Murphy**

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