

Establishment of the Scottish COVID-19 Public Inquiry

Equality Impact Assessment Summary

March 2022

Scottish Covid-19 Inquiry Equality Impact Assessment Summary

1.1 This summary records the outcomes of an Equality Impact Assessment (EQIA) concerning a Ministerial decision to exercise powers under the Inquiries Act 2005 to establish a Scottish public inquiry into the coronavirus (COVID-19) pandemic.

1.2 In undertaking this impact assessment of Ministers' decisions, Ministers are mindful that the public inquiry is independent of Ministers and Government in its operation.

1.3 The Inquiries Act 2005 vests powers in the Chair of the Inquiry to determine its operation.

1.4 However, separate to the impact of COVID-19 on the people and organisations in Scotland, when taking the step of setting up a public inquiry Ministers are seized of the need to assess the impact of their decisions. Indeed, this impact assessment gives an opportunity to reflect on the establishment of the inquiry.

Background

2.1 On 24 August 2021 the First Minister announced that a public inquiry into the handling of the coronavirus pandemic would be established by the end of that year.

2.2 The public inquiry will operate independently and will scrutinise the decisions taken during the course of the pandemic and also identify lessons for the future. The independence of the inquiry was made clear by Ministers in a draft set of Aims and Principles¹.

2.3 Public inquiries do not make findings of criminal guilt or apportion civil blame. They must report to Ministers setting out facts and, particularly where tasked to by the terms of reference, make recommendations.

2.4 The Inquiries Act 2005 gives a framework within which public inquiries operate, setting out their powers and duties, and the powers

¹ Scottish Government (2021). COVID-19 Inquiry Aims and Principles. [online] www.gov.scot. Available at: <https://www.gov.scot/publications/covid-19-inquiry/> [Accessed 11 Nov. 2021].

and duties of Ministers setting them up. Ministers make a number of decisions at the time a public inquiry is established.

2.5 Ministers appoint the chair and any other members to sit on the panel with the chair and must ensure that they are suitable for their roles and can be impartial.

2.6 Ministers fix the setting up date for an inquiry and no evidence can be considered before that date.

2.7 Terms of reference² for the public inquiry are fixed by Ministers and set out the matters to which the inquiry relates and which it must consider and report on. The Scottish Parliament must be informed of the terms of reference.

The Scope of the EQIA

3.1 The Inquiry is intended to have positive impacts once established, for example advancing strengths and tackling vulnerabilities exposed by the pandemic, and learning how to respond to future pandemics. Delivery of this intention is ultimately dependent on the independent functioning of the inquiry itself once established, and the response to any recommendations. Both these aspects fall outwith the scope of this assessment, which covers only the establishment of the inquiry.

3.2 From an early stage it was recognised that decisions about the contents of terms of reference could have impacts given the effects of the pandemic upon people with one or more of the protected characteristics listed in the Equality Act 2010.

3.3 In developing this EQIA the Scottish Government is mindful of the three requirements of the Public Sector Equality Duty (PSED)³:

- to eliminate unlawful discrimination, harassment and victimisation;
- to advance equality of opportunity between people who share a protected characteristic and those who do not;
- to foster good relations between people who share a protected characteristic and those who do not.

² <https://www.gov.scot/publications/covid-19-inquiry/pages/terms-of-reference/>

³ <https://www.gov.scot/publications/scottish-governments-equality-duties/>

3.4 The Scottish Government is also mindful that the equality duty is not just about negating or mitigating negative impacts, there is also a positive duty to promote equality.

3.5 The Scottish Government's terms of reference for the COVID-19 Inquiry were developed after a programme of engagement, during which the Scottish Government sought the views of organisations and individuals on the establishment of the inquiry. This engagement was captured in a paper, "The COVID-19 Public Enquiry Engagement Report⁴", which was published in December 2021 and which summarised what the Scottish Government learned from its engagement with citizens and organisations from all over the country. Evidence from this engagement has informed this EQIA, as discussed below.

3.6 As shown below, there was evidence from the call for views that the unequal impacts of the pandemic had been, and would continue to be, experienced disproportionately by different groups, including women, those from minority ethnic communities, older people and disabled people. Therefore, the operation of the inquiry and its outcomes might have particular impacts on people with one or more of the protected characteristics. There was recognition that the specific decisions required by Ministers to establish the Scottish inquiry under the Inquiries Act 2005 Act, were limited in nature. That said, establishment of a public inquiry could be a positive step.

Key Findings from engagement and wider sources of evidence

Protected Characteristics

Age

4.1 Children and young people have experienced particular impacts from the COVID-19 pandemic and this has been evident across many different areas of their lives. Young people have experienced significant educational, social and wider impacts.

4.2 Children and young people have been hit hard by the pandemic. They have struggled with school work, which was made worse during

⁴ <https://www.gov.scot/publications/scottish-covid-19-inquiry-analysis-public-stakeholders-views-approach-establishing-public-inquiry/>

the initial lockdown by a lack of access to technology. Children with additional support needs particularly struggled.⁵

4.3 Higher levels of anxiety and loneliness are reported by people aged 18-24. Young carers in particular have reported lower levels of physical and mental health during the pandemic.⁶

4.4 Evidence suggests that there are unequal impacts within the labour market due to COVID, with effects being felt disproportionately and on an intersectional basis for people, including women, disabled people, young people & older adults.⁷

4.5 Direct health impacts of the pandemic have also disproportionately affected older people. Of those who died from COVID, most (72%) were aged 75 or over⁸. Long COVID has also been found to become increasingly likely with age⁹.

4.6 Stakeholders raised key issues relating to care homes for older people that should be a focus for the Inquiry, in particular the decisions that led to older hospital patients being discharged into care homes, decisions around visiting restrictions and the decisions around infection prevention and control.

4.7 Older people were more likely than younger people to be asked to shield. Stakeholders suggested the Inquiry examine the process around the Scottish Government's shielding policy and the advice given to those identified as Clinically Extremely Vulnerable.

⁵ <https://www.gov.scot/binaries/content/documents/govscot/publications/research-and-analysis/2021/07/experiences-vulnerable-children-young-people-parents-during-covid-19-pandemic/documents/experiences-vulnerable-children-young-people-parents-during-covid-19>

⁶ See e.g. <https://www.gov.scot/publications/impact-covid-19-wellbeing-scotland-wave-3-survey-summary/pages/1/>

⁷ See e.g. <https://includem.org/wp-content/uploads/2021/01/Poverty-and-the-Impact-of-Coronavirus-on-Young-People-and-Families.pdf> and <https://nationalperformance.gov.scot/scotlands-wellbeing-impact-covid-19-chapter-4-communities-poverty-human-rights>

⁸ <https://statistics.gov.scot/resource?uri=http%3A%2F%2Fstatistics.gov.scot%2Fdata%2Fdeaths-involving-coronavirus-covid-19>

⁹ <https://www.medrxiv.org/content/10.1101/2021.06.24.21259277v2>

Disability

5.1 Across the UK, disabled people were more likely than non-disabled people to be asked to shield. They were also more likely to report that their access to healthcare was affected.

5.2 Of those who died from COVID-19, 93% had an underlying health condition¹⁰; disabled people were more likely to die than those who are not disabled. Research also indicates that Long COVID is more likely in those with poor pre-pandemic mental health, and those with poor general health.

5.3 Levels of psychological distress and depression have been higher amongst those with an existing physical or mental health diagnosis. Higher levels of anxiety and loneliness are reported by disabled people than others.

5.4 Although Scotland's disability employment gap (the difference between employment rates of disabled and non-disabled people based on the Annual Population Survey) fell each year between 2015 and 2019, it widened again in 2020¹¹. Disabled people were also more likely to report they had zero earnings by mid-year.

5.5 Stakeholders, when raising these issues, suggested the Inquiry examine the process around the Scottish Government's shielding policy, including the decisions to end shielding and the advice given to those identified as Clinically Extremely Vulnerable.

5.6 Respondents wanted the scope of the Inquiry to include the use of inappropriate and/or blanket Do Not Attempt Cardiopulmonary Resuscitation (DNACPR) decisions, the use of DNACPRs without informed consent and family pressures to sign DNACPRs.

5.7 Suggestions relating to the Scottish Government's pandemic communications highlighted the need for specific communications strategies for people with specific communication needs. For example, people whose first language is not English (this includes, but is not limited to minority ethnic people), autistic people and people with sensory issues such as deafblind people. Examples include easy-read provision, British Sign Language.

¹⁰ <https://www.nrscotland.gov.uk/files/statistics/covid19/covid-deaths-21-report-week-11.pdf>

¹¹ <https://www.gov.scot/publications/labour-market-monthly-briefing-august-2021/>

5.8 Stakeholders highlighted the need for the Inquiry to pro-actively search out and include the ‘seldom heard’, such as disabled people.

Sex

6.1 Age-standardised rates of death from COVID-19 for men were significantly higher than for women¹². Research has found that Long COVID is more common amongst women than amongst men¹³.

6.2 Levels of psychological distress and depression have been higher amongst women than amongst men¹⁴ and higher levels of anxiety and loneliness are reported by women than by men.¹⁵

6.3 The number of domestic abuse incidents recorded in Scotland in June 2021 (5,331) was lower than the level seen in June 2020, but higher than June 2019¹⁶.

6.4 Stakeholders, including third sector representatives, raised concern about rollback of women’s rights and equality in terms of health, care, financial security, employment, violence against women and housing. Within this, it was raised that particular issues have manifested in the cases of young women, disabled women, unpaid carers and mothers.

Pregnancy and Maternity

7.1 Pregnant women, particularly those over 28 weeks pregnant, are deemed to be of higher risk of severe illness and were asked to strictly follow physical distancing guidance. For some women this may have led to increased anxiety and loneliness at a crucial life-stage. It was also noted that there is growing evidence that pregnant women may be at increased risk of severe illness from COVID-19 compared with non-pregnant women, particularly in the third trimester.

7.2 Maternity services have continued throughout the pandemic, although the way that some of those services are delivered has changed.

¹² <https://www.nrscotland.gov.uk/files/statistics/covid19/covid-deaths-21-report-week-32.pdf>

¹³ <https://www.medrxiv.org/content/10.1101/2021.06.24.21259277v2>

¹⁴ <https://www.covidsocialstudy.org/results>

¹⁵ <https://nationalperformance.gov.scot/scotlands-wellbeing-impact-covid-19>

¹⁶ <https://www.gov.scot/publications/coronavirus-covid-19-justice-analytical-services-data-report-june-2021/pages/3/>

7.3 New mothers and single parents, in particular, are most likely to have been affected by the isolation and reduced social contact driven by the pandemic. Loneliness is also a risk factor for poorer mental health and wellbeing, which might be particularly relevant for single parents.

7.4 Issues that were highlighted regarding pregnancy and maternity healthcare during the pandemic have included access to perinatal care, maternity care and screening programmes. A lack of appropriately sized and fitted PPE, and inconsistent advice and support for pregnant women were also highlighted.

Gender Reassignment

8.1 Health service backlogs may have limited or deferred access to gender-affirming health care, which could have led to negative mental health outcomes for those intending to use it. Limited availability of hormone prescriptions, some of which require administration by a practice nurse, has been raised as another example of an issue.

8.3 Stakeholders suggested the Inquiry examine the impacts of decisions on health service delivery and the effects these had on the LGBTI community. In particular, the effects on mental health provision, access to trans healthcare, reproductive health and fertility services, and services for older LGBTI people.¹⁷

8.4 It was suggested the Inquiry examine the impacts of social restrictions on LGBTI people. In particular, the impact of lockdown on LGBTI young people and how they coped with home-schooling and self-isolation, domestic abuse rates among LGBTI people and how COVID-19 and its associated restrictions impacted LGBTI asylum seekers and refugees.

Sexual Orientation

9.1 Available evidence¹⁸ shows that due to the collapse of employment opportunities and closure of colleges and universities, some LGBTI people were forced to return home to self-isolate with family opposed to their sexuality, which can in turn lead to a particular risk of homelessness, often due to parental rejection, familial physical, sexual and emotional abuse, and familial aggression and violence.

¹⁷ <https://www.gov.scot/publications/covid-19-health-and-social-impact-assessment/>

¹⁸ <https://www.gov.scot/publications/covid-19-health-and-social-impact-assessment/>

9.2 Available evidence also suggested, for example, that many young LGBT+ people may be less able to draw on the support of family in cases of loss of income or being unable to meet housing costs in the wake of the pandemic.

9.3 Stakeholders including third sector organisations, in responding to the call for views, suggested the Inquiry examine the effects on mental health provision, access to reproductive health and fertility services, and services for older LGBT+ people.

Race

10.1 There is evidence that the health of minority ethnic (ME) groups has been disproportionately directly affected by COVID-19 because of differential exposure to COVID-19 itself, existing health vulnerabilities, and access to treatment and other forms of support¹⁹.

10.2 Some minority ethnic people are over-represented in UK COVID-19 severe illness and deaths. For example; data focusing on deaths occurring in Scotland on or after 12th March 2020 and registered by 14th June 2020 indicates deaths amongst people in the South Asian ethnic group were almost twice as likely to involve COVID-19 as deaths in the White ethnic group, after accounting for age, sex, area-level deprivation and urban rural classification.²⁰

10.3 Levels of psychological distress and depression have also been found to be higher during the pandemic amongst people from minority ethnic communities than amongst other groups.

10.4 ME women were more likely to lose working hours over the course of the crisis, with 39% of ME women reporting losing working hours compared to 14% of white women²¹.

10.5 Stakeholder engagement indicated the Inquiry should investigate the causes for disparities in COVID-19 infections and deaths, in addition to examination of hate crime and potential indirect discrimination.

¹⁹ <https://www.gov.scot/publications/expert-reference-group-on-covid-19-and-ethnicity-recommendations-to-scottish-government/>

²⁰ Source: National Records of Scotland

²¹ <https://www.engender.org.uk/content/publications/Close-the-Gap-and-Engender-Joint-Briefing-on-the-impact-of-COVID-19-on-women-with-childcare-responsibilities-in-Scotland.pdf>

10.6 Decision making during the pandemic that led to removing refugees and asylum seekers from safe residential accommodation into hotel/institutional accommodation was also highlighted as potentially leading to reduced financial support, reduced access to support services, healthcare, housing, access to nutritious food, and breaches of human rights.

10.7 Stakeholders sought a review of the reserved Asylum Accommodation and Support Contract (AASC) and its compliance with public health guidelines, Scottish public service provision standards, relevant legislation and with AASC contractual obligations, as well as an investigation of the human rights breaches that resulted from these processes.

10.8 The Scottish Government's pandemic communications and policymaking were highlighted and in particular the need for specific communications strategies for different, often more marginalised, groups, such as minority ethnic people. The absence of targeted communications may have caused added stress to them.

10.9 Stakeholders, when raising these issues, highlighted the need for the Inquiry to pro-actively search out and include the 'seldom heard', and that there should be help and support for those participating in the Inquiry, including financial, legal and emotional support, as well as time to participate. This would ensure that no-one would be 'worse off' financially, personally or professionally for participating in the Inquiry.

Religion or Belief

11.1 Worship services of various faiths were cancelled and, for example, Sunday Schools closed for a period of time during the COVID-19 pandemic.

11.2 Religious groups were forced to sacrifice major festivals that punctuate their practice over the year: Christians were unable to attend Holy Week services, Muslims experienced Ramadan without communal Iftar meals each day, the Jewish community experienced Passover without extended Seders, and Sikhs were unable to mark the festival of Vaisakhi.

11.3 Stakeholders were keen to note spiritual harm, especially given the Four Harms framework identified by Scottish Ministers. They noted that

religious rights were not upheld by restrictions, and were keen to have these studied by the Inquiry.

11.4 Other examples given were that during hospital visits – people were deprived of their family, religious support and comfort at the end of their lives. Upon death, funeral attendance and burial traditions were restricted.

11.5 Stakeholders were keen to include within the Inquiry's terms of reference the impact of the pandemic on places of worship and faith communities, with particular reference to how and why operational decisions affecting places of worship were made.

Recommendations and Conclusions

12.1 As discussed below, the decision to have a public inquiry presents an opportunity to have a positive impact in terms of the three needs of the Public Sector Equality Duty. The powers of the inquiry and its terms of reference enable the inquiry to understand relevant topics, and make recommendations that could have the effect of:

- Eliminating unlawful discrimination, harassment and victimisation
- Advancing equality of opportunity
- Promoting good relations

12.2 It is again recognised in what follows, that delivery of the public inquiry is ultimately dependent on the independent functioning of the inquiry itself once it is established.

(1) Age

12.3 Examples of impacts which could arise from the inquiry in relation to this protected characteristic, recognising that the actual topics and recommendations in its reports will be for the inquiry to decide:

- help eliminate discrimination by examining the perceived issues with DNACPR.
- help advance equality of opportunity by examining clinical treatment for COVID-19 in Scotland and educational system functioning during the pandemic.

- help foster good relations by examining care home visiting arrangements.

(2) Disability

12.4 Examples of impacts which could arise from the inquiry in relation to this protected characteristic, recognising that the actual topics and recommendations in its reports will be for the inquiry to decide:

- help eliminate discrimination by examining inclusive communication of public health measures.
- help advance equality of opportunity by examining the differential approaches towards educational system functioning during the pandemic.
- help foster good relations by examining disability hate crime implications of public health measures imposed by government.

(3) Sex

12.5 Examples of impacts which could arise from the inquiry in relation to this protected characteristic, recognising that the actual topics and recommendations in its reports will be for the inquiry to decide:

- help eliminate discrimination by examining the provision of appropriate welfare assistance for men and women during public health interventions.
- help advance equality of opportunity by examining differential economic impacts on women.
- help foster good relations by examining the impact of lockdown and other public health restrictions on violence against women and the response to this.

(4) Pregnancy and Maternity

12.7 Examples of impacts which could arise from the inquiry in relation to this protected characteristic, recognising that the actual topics and recommendations in its reports will be for the inquiry to decide:

- help eliminate discrimination by examining the differential clinical issues associated with treatment of COVID-19 in pregnant women.
- help advance equality of opportunity by examining the functioning of welfare programmes for pregnant women.
- help foster good relations by examining effectiveness of workplace risk assessments, with consequential impacts on the integration of pregnant women in the workplace.

(5) Gender Reassignment

12.8 Examples of impacts which could arise from the inquiry in relation to this protected characteristic, recognising that the actual topics and recommendations in its reports will be for the inquiry to decide:

- help eliminate discrimination by examining the perceived issues with access to gender healthcare services.
- help advance equality of opportunity by examining the provision of mental healthcare services during the pandemic.
- help foster good relations by examining the extent to which welfare assistance was appropriate, especially for people in lockdown at home.

(6) Sexual Orientation

12.9 Examples of impacts which could arise from the inquiry in relation to this protected characteristic, recognising that the actual topics and recommendations in its reports will be for the inquiry to decide:

- help eliminate discrimination by examining the implications of lockdown on LGBTI communities and how these were mitigated.
- help advance equality of opportunity by examining the provision of mental healthcare services during the pandemic.
- help foster good relations by examining the provision of assistance for lockdown for young LGBTI people returning to a family environment.

(7) Race

12.10 Examples of impacts which could arise from the inquiry in relation to this protected characteristic, recognising that the actual topics and recommendations in its reports will be for the inquiry to decide:

- help eliminate discrimination by examining the provision of healthcare that was properly reflective of latest evidence concerning disparities in outcomes for COVID-19.
- help advance equality of opportunity by examining the provision of appropriate welfare assistance programmes that were open to minority ethnic communities.
- help foster good relations by examining the extent to which public health decisions and measures were inclusively communicated to all.

(8) Religion or Belief

12.11 Examples of impacts which could arise from the inquiry in relation to this protected characteristic, recognising that the actual topics and recommendations in its reports will be for the inquiry to decide:

- help advance equality of opportunity by examining the extent to which this was considered in public health decision making.
- help foster good relations by examining the extent to which healthcare provision was appropriate and recognised the importance of faith.

(9) Marriage/Civil Partnership

12.12 Not Applicable. It is not likely that the inquiry establishment will have any negative impact on any of the above characteristics as it is designed to learn lessons from the handling of the pandemic.

Conclusion

13.1 Following the impact analysis, no unlawful discrimination, either direct or indirect, has been identified in relation to the establishment of the public inquiry. Indeed, as discussed above the establishment of a public inquiry by use of Scottish Ministers' powers under the Inquiries Act 2005 gives the opportunity to realise positive impacts on outcomes for people with one or more of the protected characteristics listed in the Equality Act 2010.

13.2 Terms of reference have been developed that are wide enough to allow for scrutiny of relevant issues including equality, based on stakeholder engagement and the analysis of the evidence.

13.3 The terms of reference specifically require the inquiry to consider where it is appropriate and necessary to investigate the impact of decision-making on the exercise of Convention rights, including in relation to discrimination. That is to say, the terms of reference charge the inquiry with considering the impacts of the elements it is investigating, on the exercise of Convention rights (as defined in Section 1 of the Human Rights Act 1998). This approach ensures that the impact of decisions are taken into account, without making any judgement on what those impacts might have been, or which groups were most affected, in advance of the inquiry beginning its work.

13.4 It should be noted that the legislation underpinning public inquiries allows for amendment to the terms of reference after they have been announced initially, and this allows the Inquiry to decide for itself which legal bases are appropriate for its consideration of the strategic decision on particular topics. These bases can include equality and fairness.

Covid Inquiry Establishment
Scottish Government



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