

# **Scottish COVID-19 Inquiry Research**

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**Update of Health and Social Care research covering the period February 2022 to 31 December 2022**

Professor Colin McKay, Professor Jill Stavert,  
Professor Elizabeth McKay, Maria King, Amy Zarins

Centre for Mental Health Practice, Policy and Law Research  
Edinburgh Napier University  
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# Background to this report

This report was commissioned by the Scottish COVID-19 Inquiry as academic research. The commission was to update research covering the period February 2022 to 31 December 2022, building upon previous reports produced by (a) Professor Anne-Maree Farrell and Rhiannon Frowde and (b) Dr Jenni Burton. The earlier reports are available at Portfolio Three at the following link: <https://www.covid19inquiry.scot/introductory-academic-research>.

The focus is on items 2(g) – (i) of the Inquiry’s Terms of Reference, namely:

To investigate the strategic elements of the handling of the pandemic relating to:

(g) in care and nursing homes: the transfer of residents to or from homes, treatment and care of residents, restrictions on visiting, infection prevention and control, and inspections;

(h) the provision of healthcare services and social care support, including the management and support of staff and the recognition, involvement and support of unpaid carers;

(i) the delivery of end-of-life care and the use of DNACPR (do not attempt cardiopulmonary resuscitation decisions).

# 1 Executive Summary

The period from February to December 2022 was largely characterised by a shift from the emergency response to the pandemic to a 'new normal', reflecting the success of the vaccination programme and emerging therapies in reducing the impact of COVID-19.

This included:

- The removal of emergency legislation and the restrictions imposed on the public
- The introduction of amendments to primary legislation to address future emergencies
- The continuing opening up of care homes alongside the wider removal of restrictions
- The strategic focus of health and social care services shifting to one of recovery from the impact of the pandemic.

Much of the emergency legislation in the health and social care sector was never used.

Apart from delaying the removal of restrictions by a short period, the response of the Scottish Government and the UK Government were broadly in step. Care home restrictions were lifted over time, although there was ongoing controversy over whether this was done quickly enough. There were also concerns about whether people at high risk were being abandoned by the removal of safety measures.

The use of DNACPR notices was an area of huge controversy at an earlier stage of the pandemic. During this period, the issue received less attention. There does not appear to have been any significant attempt to rethink or improve processes of anticipatory care planning.

The investigation by the Crown of deaths in care homes continued to be a source of concern in the care sector, and was scaled back in December 2022. It has yet to lead to substantive outcomes.

As we emerged from COVID-19, the Scottish Government continued with its reform agenda in health and social care, particularly the introduction of a National Care Service – albeit the legislation to introduce this has been delayed.

It became evident that ‘recovery’ involved much more than returning to pre-pandemic arrangements. The pandemic has left deep scars. There are huge backlogs of unmet need and resources are hugely overstretched. Some services will never return to what they were before. The emergence of Long COVID has exacerbated demand and affected capacity. Many staff have ongoing health issues, including dealing with trauma.

Some trends towards different modes of delivery of care have been accelerated. The increased involvement of the NHS in the oversight of care homes has been retained, albeit in a modified form.

The main questions which arose concerning the strategic response of the Scottish Government during the period can be summarised as:

- (1) Was the introduction of ongoing legislation to address issues which had been covered by emergency legislation justified, proportionate and timely?



- (2) Did the Government respond quickly enough to remove restrictions on the lives of care home residents and their families, and to ensure that the care sector did so across the board?
- (3) Was enough done to safeguard and respect the human rights of those who remained at high risk from COVID-19?
- (4) Were 'lessons learned' in a systematic, open and accountable way, and (a) did that lead to appropriate action; and (b) will it lead to appropriate action going forward?
- (5) Has the Government's recovery agenda been strategic, measurable and effective, and will be it sustainable?
- (6) Have health and social care staff been properly supported and their needs recognised?
- (7) How far have human rights and equalities informed, and will they inform, the Government's approach to recovery?

## 2 The organisation of health and social care services in Scotland

### Update of Farrell and Frowde Parts II and III

The description of the provision of health and social care in Scotland in Parts II and III of Farrell and Frowde is still essentially up to date. This chapter provides updates, where available, to some of the figures quoted in those chapters, and on the reform of social care (F&F pages 35-36).

### 2.1 Funding of the NHS

The Health and Social Care portfolio of the Scottish Government was awarded £18bn in the 2022-23 budget, an increase from the £16bn for 2021-22 reported in F&F (page 18), which was subsequently revised to £17bn ([note 1](#)). At the time of publication in December 2021, no figure for additional COVID expenditure was shown in the Level 3 budget, to compare with the £960m allocated for 2021-22.

The Government said:

“The public health measures required to respond to the threat and uncertainty of COVID-19 remain a key consideration in our planning, and we await the outcome of further detail that was promised in the UK Spending Review to support our plans.”

A large part of the increase in expenditure in 2022-23 was allocated to ‘Social Care Investment’ which increased from £395.4m in 2021-22 to £1,137m.

The 2023-24 budget, published in December 2022, increased the total allocated to Health and Social Care to £19bn ([note 2](#)). The level 3 budget for ‘COVID-19 Funding and other services’ was set at £252m, against £9.5m in 2022-23 and a revised figure of £925m in 2021-22. The three-year allocation for territorial Health Boards was now set as follows:

2021-22: £10,894m 2022-23: £11,508m 2023-24: £12,132m

A high-level costs summary for the NHS in Scotland covering 2021-22 was published by Public Health Scotland in February 2023 (this replaces the link at footnote 17 of F&F) ([note 3](#)).

## 2.2 Overview of health care workforce

Updated workforce data has been published by NES, most recently on 7 March 2023 covering the quarter to 31 December 2022 ([note 4](#)). This recorded the number of staff employed by NHS Scotland as 155,927. This included 5909 consultants (WTE) with 413 vacancies, 64,724 nurses and midwives with 5780 vacancies, and 13,261 allied health professionals with 1269 vacancies.

## 2.3 Public Health Scotland

PHS expenditure increased substantially from the budgeted figure of £61m cited at page 22 of F&F. Its annual accounts for 2021-22 ([note 5](#)) record gross expenditure of £95.94m for that year, and £80.574m for 2020/21. The accounts do not disclose how much of this was additional expenditure to respond to COVID-19.

## 2.4 Funding of social care services

In April 2023, the Accounts Commission published a financial analysis of Integration Joint Boards ([note 6](#)). This reported significant surpluses in 2021-22, largely due to additional funding received late in the year. However, it reported a difficult outlook, with a projected funding gap for 2022-23 of £124m. Key messages included increased demand, the workforce being under extreme pressure, the ongoing impact of COVID-19 on services, and considerable uncertainty about future planning. In 2021, care services reporting staff vacancies increased by 11% to 47%.

The report stressed that the sector cannot wait for the National Care Service to deal with these challenges. It also pointed out that:

‘The pandemic continued to impact on the delivery of IJB savings plans, with the Scottish Government providing specific financial support in 2021/22 to support unachieved savings on a non-recurring basis. This typically means that these savings have to be achieved in future years. It is essential that comprehensive plans are in place, demonstrating how IJBs will achieve recurring savings and support required service transformation.’

These concerns were despite a reported increase of overall funding in 2021-22 of 7% (£704m) to a total of £11.3bn.

The report also highlighted that the Scottish Government planned to recover £321m (64%) of COVID-19 related reserves held by IJBs at the end of 2021-22. This reflected the changes to public health policy during the year which had reduced the amount of COVID related expenditure.

The Care Home Census reported at F&F page 26/footnote 32 has been updated to 2022 ([note 7](#)). The estimated percentage of self-funded residents (34%) was unchanged. The report also noted:

- An increase between 2012 and 2022 of the gap between the charges levied on self-funding and publicly funded residents. At 31 March 2022 the average weekly cost for a publicly funded resident was £792 without nursing care and £856 with nursing care. The average weekly cost for a self-funded resident was £1,077 without nursing care and £1,200 with nursing care.
- A drop of 9% (3090) between 2012 and 2022 in the overall number of long stay residents, to a total of 29,465.
- A significant reduction in the number of admissions for respite, particularly during the COVID period, with a 70% reduction from 2018-19 to 2021-22.

## 2.5 Provision of social care services

F&F page 27 quotes £28,500 as the cut-off point beyond which public funds will not contribute to the cost of residential care (beyond the allowance for free personal/nursing care). This has been updated to £29,750 (for 2022-23) and then £32,750 (from 10 April 2023) ([note 8](#)).

The replacement of Attendance Allowance for people of pensionable age by disability assistance for older people, and of Carers' Allowance by Carers' Assistance has not yet happened. The Government has announced an intention to introduce Carer Support Payment with a pilot at the end of 2023 followed by a national launch in spring 2024, and Pension Age Disability Payment with a pilot in autumn 2024 and a national launch in early 2025 ([note 9](#)).

## 2.6 Overview of social care workforce

The SSSC infographic shown at F&F page 32 has been updated ([note 10](#)). Notable changes include a fall between 2020 and 2021 of 0.6% of workers in the sector (to 208,360) and a substantial increase in the number of services reported as having vacancies (from 36% to 47%).

F&F pages 33-34 includes extracts from the SSSC's Report on 2020 Workforce Data. The 2021 Report was published in August 2022 ([note 11](#)).

## 2.7 Reform of social care

In February 2022, the Scottish Government published an analysis of the responses to its consultation on the creation of a National Care Service ([note 12](#)). This included significant criticisms of the consultation itself, including 'the length of the consultation questionnaire, the relatively short space of time in which they could prepare a response; the lack of detail around the proposals; and the nature of some of the questions which were thought to lead the respondent to a particular answer.'

The analysis noted that the Scottish Government viewed the establishment of a National Care Service as 'a key opportunity to address the challenges across social care highlighted before and during the Covid-19 pandemic.' (Introduction, p.13). However, COSLA took a different view of the implications of COVID, saying that it recognised that social care needs to be addressed but, in the current circumstances of the COVID-19 pandemic:

‘There is no clear reason why improvement cannot be progressed in the short term through collaborative engagement between the organisations who are currently involved in this space, without embarking on a period of structural reorganisation.’

The National Care Service (Scotland) Bill was introduced in June 2022 ([note 13](#)). Audit Scotland, in its response to the Bill, noted that the Financial Memorandum sets out that total estimated cost ranges of the Bill will be £24–36 million in 2022/23, increasing to £241–527 million by 2026/27. Audit Scotland’s view was that this was likely to significantly understate the margin of uncertainty and range of potential costs of establishing the NCS ([note 14](#)).

The Health and Sport Committee of the Scottish Parliament issued a call for views on 8 July 2022 which closed on 2 September 2022 ([note 15](#)).

The summary of responses highlighted other concerns by respondents, including scepticism that the Bill would provide the basis to bring about the necessary improvements to social care, and a fear that given the fragile nature of social care, exacerbated by the pandemic, the Bill could lead to unintended consequences and delays in addressing urgent problems ([note 16](#)).

On 1 December 2022 the Finance and Public Administration Committee published its report on the Financial Memorandum for the Bill ([note 17](#)). It stated:

‘142. The Committee has significant concerns in relation to the costings within this Financial Memorandum, which it considers does not provide best estimates of the costs the Bill gives rise to.’

It requested that the Scottish Government provide a revised Financial Memorandum.

The Delegated Powers and Law Reform Committee said in its report in February 2023 that it did not believe the Bill should progress in its current form ([note 18](#)). It was concerned that there was insufficient detail on the face of the Bill and within the Bill documents to allow for meaningful parliamentary scrutiny.

The Stage 1 debate was originally scheduled for March 2023. This was postponed to 30 June and, following the change of First Minister, has been further postponed ([note 19](#)).

## 2.8 Conclusion

This update may be read alongside Chapter 8 on the recovery from and aftermath of COVID. Issues for further investigation may include:

- The decisions on expenditure on COVID and the subsequent decisions to reduce and claw back some of this expenditure
- The impact of the National Care Service Bill on the policy space available to address the COVID recovery agenda.



# 3 The COVID-19 pandemic in Scotland: Overview

## Update of Farrell and Frowde Parts IVA-IVD and IVF

### 3.1 Progress of emergency legislation

The period from February to December 2022 saw a slow progress to a 'post-COVID' world. Although COVID was still prevalent in the community and in care settings, the success of the vaccination programme meant that deaths fell markedly. For example, 1 in 25 people had been infected with COVID-19 in early February 2022 ([note 20](#)) and this rose to 1 in 12 people as at the week ended 26 March 2022 ([note 21](#)), but by the week ending 5 December 2022 the estimated number of people testing positive for COVID-19 in Scotland had fallen to approximately 1 in 50 people ([note 22](#)). This did rise to some extent over Christmas 2022 and early 2023, but it was at 1 in 40 people by the end of March 2023 ([note 23](#)). This led to the loosening or ending of many of the restrictions which had been in place, and a shift in strategic focus from management of the pandemic to recovery.

Amendments relating to emergency measures made by the Coronavirus Act 2020 to the Mental Health (Care and Treatment) (Scotland) Act 2003 never came into force. The modifications expired on 25 March 2022 in accordance with section 89 of the sunset provision in the Coronavirus Act 2020.

Other emergency provisions had already been ended before the period under review. Amendments made by the Coronavirus (Scotland) Act 2020 to the Adults with Incapacity (Scotland) Act 2000 and to the Social Work (Scotland) Act 1968

expired on 30 September 2021 (section 2(3) Coronavirus (Extension and Expiry) (Scotland) Act 2021).

The Coronavirus (Scotland) (No 2) Act 2020 (Sch 1, Part 6, para. 15) introduced a further emergency measure relating to the Mental Health (Care and Treatment) (Scotland) Act 2003, removing the need for a prescribed person to witness the signature of a nominated person agreeing to become a named person. This did come into force and has now been made permanent by the Coronavirus (Recovery and Reform) (Scotland) Act 2022 ([note 24](#)).

The Coronavirus (Scotland) (No.2) Act 2020 Schedule 1 para. 7 gave powers to Health Boards to issue emergency directions to care homes and for Scottish Ministers to apply to court for emergency intervention orders to enter care homes and direct and control their occupation. These powers continued not to be used and the measures expired on 1 October 2022 ([note 25](#)).

Until 30 September 2022 the Scottish Government continued to report to the Scottish Parliament on the status and operation of the emergency legislation. Although these reports noted fluctuating levels of COVID-19 infection within care homes, the last, and final report, published in October 2022 stated it was decreasing (as at 6 September 2022). That being said, all the reports during 2022 noted that there was some evidence that infection within care homes was more extensive. They commented that the higher susceptibility to COVID-19 was not only because of the nature of the resident population but also because they were in close proximity with shared staff and regular visitors, which increased the potential for infection ([note 26](#)).

The Coronavirus (Recovery and Reform) (Scotland) Act 2022 was enacted on 10 August 2022. Its policy objective was to incorporate reforms in Scotland's public services and justice system which were required by the pandemic but are perceived as providing improvements for service users or efficiencies, and to build resilience against future public health threats. The Act also made some of the temporary pandemic measures permanent. The Act therefore includes, amongst other things:

- a) Amendments to the Public Health Etc. (Scotland) Act 2008 (Part 1, Chapter 1) allowing Scottish Ministers to make regulations quickly in the event of any future infectious disease or biological or chemical contamination with tailored and proportionate measures. These must be kept under regular review.
- b) Giving permanent effect to the National Health Service (Scotland) Act 1978 as modified by section 36 of the Coronavirus Act 2020, allowing health boards to design vaccination programmes to be delivered by a wide range of staff, including experienced vaccinators who are not medical practitioners.
- c) Various amendments relating to public services reform including named persons provision in mental health legislation.

The Coronavirus (Recovery and Reform) (Scotland) Act 2022 is now fully in force with various provisions coming into force between 10th August 2022 and 25th January 2023 ([note 27](#)).

## 3.2 Commentary on use of emergency legislation

The Mental Welfare Commission for Scotland's annual monitoring reports 2021/22 for both the Mental Health (Care and Treatment) (Scotland) Act 2003 and Adults with Incapacity (Scotland) Act 2000 for 2021/2022 indicate that COVID-19 had distorted the numbers of interventions under these Acts (with decreases in Mental Health Act detentions and Adults with Incapacity Act guardianship orders) ([note 28](#)).

The Adults with Incapacity Act report also noted (p.12) that “The Covid-19 pandemic, associated emergency legislation and any number of additional factors may account for delays [in processing applications for guardianship] and it is therefore hard to draw any firm conclusions from this data. Delays can, in some instances however, stop an individual from moving from hospital to a care home and may affect the choice of care home as well, when initial choices are no longer available after delays.”

Questions have arisen over the necessity for specific emergency legal measures during the pandemic as, arguably, existing legislative measures with greater human rights safeguards could have been used to the same effect. In academic literature, Blick, Mossavian and Walker have, in relation to UK Parliament legislation, criticised the use of the Coronavirus Act 2020 and statutory instruments under the Public Health (Control of Disease) Act 1984 as the legal response to the pandemic emergency. They argue that use of the Civil Contingencies Act 2004 would have been more appropriate with better and more effective levels of oversight and accountability, effectiveness and protection of individual rights. They also draw parallels with Scotland's use of emergency legislation ([note 29](#)).

Concerns over the use of secondary legislation by the Scottish Government during the pandemic, with less parliamentary scrutiny and therefore assurance of rights compliance are also noted. de Londras, Grez Hidalgo and Lock write that whereas well-embedded Scottish Parliament processes and an apparent Scottish Government receptivity towards rights resulted in high levels of rights-based scrutiny ([note 30](#)) of COVID-19 related primary legislation, this was undermined by extensive recourse to delegated legislation and the Scottish Parliament's failure to subject this to meaningful scrutiny. Not only does this call into question the use, content and impact of secondary legislation under COVID-19 related legislation but also under the more permanent measures created under the Coronavirus (Recovery and Reform) (Scotland) Act 2022.

Some concerns were voiced during the passage of the Coronavirus (Recovery and Reform) (Scotland) Bill about Scottish Ministers effectively having 'Henry VIII' powers to make regulations without or with insufficient parliamentary scrutiny ([note 31](#)). The COVID-19 Recovery Committee of the Scottish Parliament was split in its Stage 1 report on the Bill, stating (para 150):

'This Bill also provides Scottish Ministers with powers to make regulations for the purpose of public health protection. The Committee notes that these provisions (Chapter 1, Part 1) will bring Scotland into line with comparative public health legislation in England and Wales and the International Health Regulations 2005. Some members of the Committee agree with the general purpose of these provisions to enable Scottish Ministers to coordinate a national response to future public health threats. Other members of the Committee consider that the Scottish Government has not made a sufficient case for why the powers should be made permanent and instead consider

that these powers could be brought forward quickly under primary legislation if required in future.’

The Government agreed to amend the Bill to ensure greater parliamentary scrutiny of secondary legislation ([note 32](#)). However, where parliamentary oversight is low it is important to keep executive powers to make secondary legislation under review.

### 3.3 Guidance from UK Government and advice from professional bodies

The guidance mentioned in Part IVB of the Farrell and Frowde report appears to remain the same, with the following exceptions:

- The NICE ‘COVID-19 Rapid Guideline’ was updated several times, most recently on 29 March 2023 ([note 33](#)).
- BMA COVID-19: Lessons Learned Inquiry
  - There have been a number of 2022 publications relating to the impact of the pandemic on the medical professionals, the delivery of health services, the effectiveness of the measures on public health and inequalities ([note 34](#)).
- General Medical Council
  - ‘Treatment and care towards the end of life: good practice in decision making’ updated 15 March 2022
- The following guidance appears no longer to be available:
  - ‘Coronavirus: Your Frequently Asked Questions’ (2022)
- Royal College of Nursing (RCN)
  - Added a further position statement on vaccination (22 September 2022) ([note 35](#))
- UK Government
  - ‘COVID-19 Guidance for First Responders’ (21 December 2021) was withdrawn 1 April 2022.

- ‘UK Infection Prevention and Control for Seasonal Respiratory Infections in Health and Care Settings Including SARS-CoV-2 for Autumn/Winter 2021/22’ was withdrawn on 27 May 2022.

## **3.4 Health and Social Care Guidance from Scottish Government**

The Scottish Government issued updated guidance on/for:

- Self-isolation for residents in adult care homes (precautionary self-isolation and cases/ contacts) and indoor visiting (letter 19 January 2022)
  - Changes to COVID-19 Guidance for Adult and Older People Care Homes (letter 24 March 2022) (See Chapter 4 for more detail)
- Childcare settings regarding COVID-19 (letter 17 March 2022),
- Childcare Sector Omicron Impacts Fund (letter 10 February 2022)
- Childcare providers (letter 2 February 2022).
- Self-Isolation for Health and Social Care Staff (letters 6 January 2022 and 17 January 2022).
- Coronavirus (COVID-19): vaccination (updated 7 February 2022).
- Coronavirus (COVID-19): use of face coverings in social care settings including adult care homes (last updated 12 October 2022)
- Information and guidance for social, community, and residential care settings (last updated 6 March 2023) (see Chapter 4 for more detail).



The Scottish Government also updated its guidance ‘Coronavirus (COVID-19): minimising the risk over winter and updated protective measures for Omicron variant’ on 27 January 2022.

## 3.5 Vaccination

Care home residents continued to be prioritised in vaccine booster programmes which took place during the period. The spring/summer booster programme began on 7 March 2022 with residents of care homes ([note 36](#)).

Based on advice from the Joint Committee on Vaccination and Immunisation, the winter 2022/23 vaccination programme began on 22 September 2022, with a more limited eligibility for vaccines among the general population. Residents and staff of care homes remained a priority and were among the first cohort to receive further vaccinations, alongside flu vaccinations ([note 37](#)).

On 11 April 2022, the Scottish Government ceased publishing data relating to vaccine uptake ([note 38](#)). Data including vaccine uptake in care homes is still available in a raw form on the Public Health Scotland website ([note 39](#)).

Public Health Scotland statistics in October 2022 indicated low vaccine uptake amongst NHS and social care staff (39% of healthcare staff and 20% of social care staff workers were reported to have had their winter 2022 COVID-19 booster) ([note 40](#)) Some media reports have highlighted vaccine hesitancy among care home staff ([note 41](#)).



England introduced compulsory requirements for health and social care workers to be vaccinated ([note 42](#)). There were several challenges to this but the January 2022 ruling in *Arlette v Scarsdale Grand Nursing Home Ltd* ([note 43](#)) determined that it was a necessary and proportionate measure and did not violate individual workers' Article 8 ECHR rights.

There were no similar compulsory requirements in Scotland and there are no published rulings in the Scottish courts on this. However, this is not to say that there are no pending, unreported, challenges. In our view it is likely that the "*Arlette v Scarsdale*" ruling would also apply had care homes in Scotland adopted a 'no jab, no job' policy and dismissed or refused to engage staff on this basis.

The Scottish Government Director of Vaccine Policy outlined plans for a national vaccination and inoculation service in June 2022 ([note 44](#)).

## 3.6 High Risk Groups

There were concerns that the removal of restrictions and the provisions regarding testing would adversely affect vulnerable and high risk groups.

The Herald reported in March 2022 that the removal of free lateral flow tests would mean that some clinically vulnerable patients and unpaid carers would have to return to shielding ([note 45](#)).

The impact of the vaccination programme was shown by the fact that the Scottish Government ended the separate status for people judged to be at particularly high risk at the end of May 2022 ([note 46](#)). On 25 April, the Chief Medical Officer set out

the Government's reasons in a letter, which said that the Highest Risk List was no longer being used to prioritise for vaccination or new treatments, and that 'many of the groups and individuals originally considered to be at higher risk do not need to be considered as such any longer' ([note 47](#)). Highest risk individuals had been advised to follow the same advice as the general population since August 2021.

A review of the evidence underpinning these changes was published on 27 April 2022 ([note 48](#)).

This move was not welcomed by all. Dr Sally Witcher argued that there was insufficient long-term evidence to reassure people that the risk of infection for high risk groups was in fact minimal ([note 49](#)). She subsequently resigned as Chair of the Scottish Commission on Social Security, citing in part her unhappiness with the Government's approach to COVID, particularly for people at high risk.

In written evidence to the Scottish Parliament's COVID recovery committee in June 2022, Dr Witcher said that clinically vulnerable people have been made to feel like "encumbrances on other people's rights and freedom" and "modern day lepers" since COVID restrictions ended ([note 50](#)).

Giving oral evidence to the Committee, Dr Witcher argued that there were many things that should be done to build a safe and inclusive 'new normal'. These included a clean air strategy, more work on water and sterilisation, addressing the fact that some vulnerable people were not eligible for vaccination or antiviral treatments, better and enforceable signage, building regulations, and recognition that the right to reasonable adjustments for disabled people should include safeguards for people at risk ([note 51](#)).

In its report, the Committee recommended that ‘the Scottish Government works with representative groups to review the needs and concerns of people on the highest risk list to consider how these can be addressed in public health messaging going forward.’

The Government’s response to this recommendation said that ‘We recognise, though, that people who have been considered at highest risk may find it more difficult to adjust to living with COVID-19, and that is why we continue to fund, promote and pilot a number of initiatives designed to provide reassurance, and to protect people who need more protection from viruses, including COVID-19. These include the Distance Aware scheme, the British Red Cross’s Connecting with You service, and the Covid Sense Signage pilot.’ ([Note 52](#))

It could be argued that the Government’s approach reflected an emphasis on reassurance and a voluntary approach, rather than a systematic attempt to address the concerns of people at higher risk and their rights to inclusion in Society. The Distance Aware scheme, for example, involved inviting people who ‘might be worried about mixing with others’ to wear badges or lanyards, and encouraging shops and businesses to adopt the scheme ([note 53](#)).

## **3.7 Capacity to consent to the COVID-19 vaccination**

During the pandemic the issue of consent to the COVID-19 vaccination has arisen in relation to people with decision-making and capacity challenges. In 2022 a certain amount of guidance and information became available on this issue.

## Guidance and Information

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On 14 February 2022 the Mental Welfare Commission for Scotland published a position statement "Vaccination for people with mental illness, learning disabilities, dementia and associated conditions" ([note 54](#)). The Commission was concerned that research indicated that people with mental health difficulties that might result in reduced capacity were at greater risk of COVID-19 infection, and might therefore be disadvantaged. It therefore issued guidance on how to proceed in situations where a person is unable to consent to the vaccine and is resisting. The Commission wished to ensure that people who lack capacity and who are resisting vaccine were treated with dignity and in accordance with Adults with Incapacity (Scotland) Act 2000 principles.

Ross et al. provide similar guidance and discussion in "COVID-19 Vaccination in those with mental health difficulties: A guide to assist decision-making in England, Scotland, and Wales" ([note 55](#)) but the article is targeted towards medical practitioners and psychiatric inpatients.

The Commission's 2021/22 Monitoring Report on the use of AWI legislation noted an increase (to 6) requests for an independent second opinion doctor visit under section 50 of the Act, and stated that this increase was in part, due to consent issues relating to COVID-19 vaccinations ([note 56](#)).

## Case law

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There do not appear to be any reported cases from the Scottish courts relating to COVID-19 vaccinations and persons who lack capacity to consent to, or refuse, vaccination. However, several 2022 rulings of the Court of Protection for England and Wales, following on from earlier 2021 rulings, are informative and, in

the absence of specific rulings of the Scottish courts, such rulings are persuasive ([note 57](#)).

These cases involved adults who lacked capacity and where family members opposed the vaccination. The overall approach of the Court of Protection has been that it will follow public health guidelines and order the COVID-19 vaccination only departing from this in exceptional circumstances.

In one of the cases ([note 58](#)), the situation had changed between the original ruling (for the vaccination to take place) and its appeal with the adult having contracted COVID-19 and though he had recovered had been quite ill. Given this development, although the original decision was regarded as 'unimpeachable' it was decided that the adult's subsequent infection now required a different approach. His parents' very evident concern now about the impact of the vaccination was regarded as a more important factor when assessing what was in the adult's best interests. Further evidence was therefore ordered about the nature of the vaccinations required and the effect of post-viral natural protection before reaching a final conclusion.

A further ruling ([note 59](#)) involved a person aged 22 years old and the issue of whether Article 8 ECHR (respect for private and family life) is engaged if the decision to administer the vaccination is taken away from parents. The parents argued that such a decision violated the person's Article 8 right. However, the court held that parents do not continue to have parental rights for an adult child who lacks capacity and therefore, by extension, the parents' and child's Article 8 rights do not merge.

## 3.8 Update on COVID-19 and care homes in England

The guidance mentioned in Part IVF of the Farrell and Frowde report appears to remain the same with the following exceptions:

- UK Department of Health and Social Care guidance 'Coronavirus (COVID-19): admission and care of people in care homes' (2 April 2020) was updated on 22 March 2022 but its 'Guidance on care home visiting' was withdrawn 1 April 2022.
- Public Health England, 'Coronavirus (COVID-19): care home support package' (01 April 2021) was withdrawn 6 April 2022.

## 4 Care Homes and their Residents

Update of Farrell and Frowde Part IVE pages 55-59 and Burton on Transfer of Residents (pages 10-16) and Care of Residents and Restrictions on Visiting (pages 25-36)

### 4.1 Changes to Government guidance on care homes between February and December 2022

Issues around testing became less salient as the success of vaccines and improved therapeutics meant COVID could be more safely managed in care home settings, although requirements to test on admission to care homes were largely retained. The Government also introduced further relaxations to the rules regarding visiting and isolation.

#### **Strategic Framework**

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In February 2022, the Scottish Government published an update of their Strategic Framework ([note 60](#)) which included a section on care homes (pages 53-55). This stated that:

‘People living in care homes, which are essentially their homes, should be supported to enjoy fulfilled, meaningful lives free from restrictions as far as possible. Even during outbreaks, unless there are exceptional circumstances, the care home should support residents seeing friends and family and participating in activities in and away from the home. Where protection measures do need to be in place these should be proportionate and only be in place for the shortest possible period ...

The Framework highlighted the following actions:

- The recent decision to remove precautionary self-isolation for care home residents on admission to care homes who have not had COVID-19 or not been a contact, and to reduce isolation periods for residents who are COVID-positive or have been a contact from 14 to 10 days.
- The development of a new healthcare framework led by the Clinical and Professional Advisory Group (CPAG) for adult social care
- A new subgroup of CPAG focused on learning disability which would explore how to support care homes and other settings to improve outcomes and reduce ongoing risk from COVID-19 and associated harm
- A follow-up exercise to the Root Cause Analysis report published in November 2020
- A data and reporting strategy to be published in spring 2022.
- The commitment to deliver Anne's Law through non-legislative and legislative measures, including:
  - working with the Care Inspectorate to update and strengthen the Health and Social Care Standards
  - continuing to work with stakeholders on the Open with Care visiting guidance to emphasise that visiting should be as normal as possible.
- Continuing to promote and monitor vaccination, including boosters, for residents and staff. Social care staff should also receive a vaccination for flu on an annual basis.



- Reviewing testing arrangements for staff in care homes and isolation periods for care home residents who have COVID-19.

We have not yet been able to trace the new healthcare framework, outputs from the new group on learning disability, the follow-up to the Root Cause Analysis report and the data and reporting strategy. We have written to the Scottish Government seeking clarification.

The First Minister's statement to the Scottish Parliament on 15 March 2022 confirmed the removal from 18 April of the requirement to test regularly for most situations, but confirmed Government advice to continue to have a lateral flow test when visiting a care home until the end of April ([note 61](#)).

## **Changes to clinical/care home guidance**

A letter was issued to Care Homes on 24 March 2022 summarising new guidance to take effect from 31st March ([note 62](#)). The changes included:

- A separation of PHS advice for care homes for adults from that for care homes for older people. This was intended to provide 'flexibility to meet the needs of younger adults, who in most cases will have a lower risk of hospitalisation from COVID-19, than older adults living in care homes' ([note 63](#)). This separation was reversed in a subsequent update of the guidance (Version 2.2, published 06 July 2022), which reverted to a single set of guidance for all care homes, alongside other social care settings.
- Reduced restrictions on isolation for COVID recovered patients, to be more similar to the provisions for the general population.

- Residents in all care homes to be able to identify up to three named visitors during an outbreak.
- Residents who are not cases or contacts to be able to meet in communal areas during an outbreak.
- Asymptomatic testing of residents and staff to continue, but routine LFD testing of residents after outings was no longer recommended, and staff testing reduced from 'working day' testing to twice weekly LFD and weekly PCR tests.

The PHS guidance for care home settings for older adults was issued on 04 April 2022 (version 2.8) and updated on 03 May 2022 (version 2.9) before being superseded by the merged guidance on 06 July. The 03 May update included a reduction of the minimum self-isolation period from ten to five days.

The PHS information and guidance for social, community and residential care (excluding care homes for older people, but now including care homes for other adults) was issued on 31st March 2022 (Version 2.0) and was further updated on 16 May 2022. The merged guidance was issued on 6 July 2022 ([note 64](#)), and updated on 15 September 2022, 29 September 2022, and 30 January 2023 ([note 65](#)). Significant changes included:

- 16 May – changes to reflect removal of asymptomatic testing for the general population.
- 06 July – health protection principles to support the reintroduction of community groups into residential settings.
- 15 September – amendments to reflect the pause in asymptomatic testing in health and social care settings ([note 66](#)).

- 30 January – removal of the ‘testing table’ for visitors, as testing no longer advised, and addition of a ‘staying connected’ section during outbreaks.

On 16th January 2023, the Chief Nursing Officer issued a summary of extant guidance on infection prevention, face masks and testing ([note 67](#)). This confirmed that

- Following a review on October 2022, face coverings were still strongly recommended in healthcare settings
- Guidance was different for social care settings, where residents, staff and visitors did not routinely require to wear a face mask
- The pause in most asymptomatic testing in health and social care settings remained in place
- Most people being admitted as residents to a care home still required to be tested. Exceptions included COVID-19 recovered individuals that have completed their 10-day self-isolation period in hospital prior to discharge, or individuals who had an overnight stay in hospital.

## **Open with Care**

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On 1st June 2022, the Government published ‘Open with Care: supporting meaningful contact in adult care homes: principles’. This was an update of the original Open with Care guidance published in February 2021. It was itself updated on 8th July 2022 and 28th September 2022 ([note 68](#)).

Alongside the principles, the Government issued on 1st June 2022 a leaflet for family and friends of people living in care homes, setting out the expectations regarding care home visits, based on the Open with Care and NHS Inform Guidance ([note 69](#)), and an Easy Read version of the guidance ([note 70](#)).

On the same date, the Government ceased publishing weekly data on the visiting status of care homes ([note 71](#)).

## **Other guidance and information**

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On 7th September 2022 the guidance on face coverings in social care settings, including care homes, was amended to state that ‘Due to a number of factors including high vaccinations rates and other mitigations against COVID-19 in the social care sector, the recommendation that face masks are worn at all times is being removed.’ ([Note 72](#))

The NHS Inform web pages contain advice to carers and relatives which summarises the guidance to homes ([note 73](#)). The Scottish Government web pages include a page with links to all the relevant guidance for care homes ([note 74](#)).

Guidance on supporting people with dementia in care homes was published on 22 July 2021 and updated four times in the period from March to December 2022. So far as we can ascertain, the amendments were minor ([note 75](#)).

The National Infection Prevention and Control Manual has appendices on COVID-19. A new Appendix 21 replacing old Appendices 21 and 22 was developed in December 2022 but not published until March 2023 ([note 76](#)).

## 4.2 Anne's Law

On 2nd March 2022, the Scottish Government published its analysis of the consultation responses regarding the proposed introduction of 'Anne's law'. This is a proposed law intended to ensure that people who live in adult care homes have the legal right to see and spend time with the people who are important to them ([note 77](#)). It emerged following a campaign by relatives groups, notably Care Home Relatives Scotland.

Nearly all respondents to the consultation agreed with the overall aim that people living in adult care homes should have the right to see those important to them to support their health and wellbeing. Many of the responses gave graphic accounts of the distress and harm caused by restrictions on visiting by relatives and loved ones during the pandemic.

On 9th March 2022 there was a debate in the Scottish Parliament motion S6M-03492, in the name of Jackie Baillie, on Anne's law—protecting the right of care home visiting ([note 78](#)). Ms Baillie criticised the fact that 'Almost one year on from the Scottish Parliament elections, when the Scottish National Party vowed to deliver Anne's law for care home residents, the position is largely unchanged'.

The Minister for Health and Social Care, Kevin Stewart, argued that named visitor guidance 'emphasises that care homes should always support visiting, even in an outbreak, unless there are truly exceptional circumstances.' He stated that there was 'regular indoor visiting in more than 90 per cent of care homes.' The Government had acted by making changes to the Health and Social Care Standards [see 5.2 below]. The Government amendment to the motion said that 'these will be further underpinned by Anne's Law being part of the foundations of the new National Care Service, and that the legislation to deliver this is being introduced in the coming months.' ([Note 79](#))

The National Care Service (Scotland) Bill was introduced on 20 June 2022 ([note 80](#)). Section 40 seeks to enshrine ‘Anne’s Law’ by obliging Ministers to issue ‘visiting directions’ which care home providers would be required to follow in respect of visits to or by care home residents.

Paragraphs 211-225 of the accompanying Policy Memorandum set out the Government’s rationale for this approach ([note 81](#)). This included that current guidance ‘is not enforceable however, and there is widespread support for providing clarity through legislation to promote a consistent approach to supporting and enforcing requirements to enable people to remain connected with those important to them even in outbreak situations’ (para 217). It was accepted that the changes to Health and Social Care Standards [see 5.2 below] were not felt by stakeholders to be sufficient in themselves, and ‘it was felt that people may have had rights restricted in a way which does not appear to comply with ECHR, and that people in residential care are not well placed to challenge breaches of ECHR rights’ (para 221).

The Health and Social Care Committee issued a call for views on the Bill on 8 July 2022. Published responses can be seen on the Scottish Parliament website ([note 82](#)). The Summary of Responses published by the Scottish Parliament Information Service (SPICe) highlighted criticisms of the claim that the Bill embodied a human rights approach ‘because of the absence of duties and means of redress associated with mention of rights, particularly where the Bill discusses particular rights: the National Care Service charter, a right to breaks for carers and ‘Anne’s Law’ for example’ ([note 83](#)).

The Bill remains at Stage 1, and the new Minister for Health, Social Care and Sport has advised the Health, Social Care and Sport Committee on 17th April 2023 that there would be a further delay in progressing it through Parliament beyond the summer recess ([note 84](#)).

## 4.3 Isolation in care homes

Although restrictions on visiting were relaxed with the Open with Care guidance, it was still the case that visiting might be restricted or suspended during an outbreak in a care home. Concerns were expressed by care homes, relatives and politicians that, with the level of infections still high, this could result in more or less continuous ‘rolling lockdowns’.

The Daily Record reported on 13 February 2022 ([note 85](#)) that:

‘thousands of families continue to endure heartbreaking lockdowns as the second anniversary of the pandemic approaches.

While official guidance now encourages visitor contact, homes can still shut their doors to most visitors in the event of even a single positive COVID-19 case being discovered.

And shocking government records showed last week that it left 21 percent of homes likely to be operating under severe restrictions.’

In the report, Cathie Russell of Care Home Relatives Scotland said:

‘They say a lockdown for an outbreak is 14 days but we have members whose loved ones have been locked up for more than 50 days because there is always someone in a home that employs hundreds of staff who will test positive in any one week, whether relatives are banned or not.’

During the debate in the Scottish Parliament on 9 March 2022 ([note 86](#)), Jackie Baillie MSP said:



‘Lockdown appears to be a distant memory, yet care home residents continue to face some of the severest restrictions....

Let us look at the contrast. If any of us tested positive, we would be told to isolate for seven days. In care homes, it is 10 days. If someone is a close contact and triple vaccinated, they do not need to isolate but, in a care home, close contacts have to isolate for 10 days. For someone in a household with COVID, there are no restrictions, but a care home closes for 14 days. The reality is that that means rolling lockdowns and restricted visiting. Donald Macaskill of Scottish Care has said:

“such extended periods of isolation ... are unacceptable, disproportionate, unnecessary, and hugely damaging.”

On 5 April 2022, the Herald reported concerns by Care Home Relatives Scotland that residents in Scotland were still being locked in their rooms when England, unlike Scotland, had scrapped the ‘close contact’ rule, ending the requirement to isolate for 10 days or undertake additional testing if residents do not have symptoms ([note 87](#)). This ten day period was subsequently reduced in Scotland to five days on 3 May 2022 ([note 88](#)).

## **4.4 Discharge to care homes – lawful authority**

In May 2022, the Mental Welfare Commission published a ‘closure report’ on its project to review whether discharges to care homes during the pandemic were carried out lawfully ([note 89](#)).

The original report ([note 90](#)), published in May 2021, highlighted concerns that some people who could not consent to a move had been moved without proper legal authority, and



that this was both unlawful in terms of Scots law and a possible breach of Article 5 of ECHR. More broadly, the Commission also found confusion and poor understanding in some areas of people's legal rights and the requirements of the Adults with Incapacity (Scotland) Act 2000.

The 2021 report recommended 11 areas for improvement – 8 for Health and Social Care Partnerships, two for the Care Inspectorate, and one for Scottish Government: that it 'should monitor the delivery of the above recommendations and work with Health and Social Care Partnerships (HSCPs) and the Care Inspectorate to support consistency and address any barriers to delivery over the next two years.'

The closure report said that the initial responses to the recommendations by HSCPs were variable in quality but that, after follow up by the Commission, all action plans 'now evidence clear objectives in relation to recommendations and timescale to delivery.' The Care Inspectorate had commissioned extra resource to address recommendations made to it, and the Scottish Government had issued a joint position statement with the Commission ([note 91](#)) and approved a joint Commission/NES national training programme on Adults with Incapacity. This programme was funded by the Scottish Government for 14 months over 2022/23.

On 2 December 2022, the Scotsman reported on a review by Edinburgh City Council of discharges by patients lacking legal capacity during the first six months of the pandemic. The report claimed that the review had found that 31% had been discharged unlawfully – that 'Out of 268 cases examined by Edinburgh City Council, 83 were found to fall outwith the Adults with Incapacity (Scotland) Act 2000, other legislation, European Court of Human Rights legislation, or the UN Convention on the Rights of Persons with Disabilities' ([note 92](#)).

## 4.5 Discharge to care homes without testing

There have been no rulings by the Scottish courts on the issue of COVID-19 testing and discharge of patients from hospital to care homes, but there is some English authority. In one case, the daughters of two men who died in the first wave of the pandemic brought a judicial review against the Secretary of State for Health and Social Care and others. On 27 April 2022, the High Court ruled that UK Government policy, made in March and April 2020, to discharge patients from hospital into care homes without testing them for COVID-19 was unlawful as this failed to take into account the risk to elderly and vulnerable residents from non-symptomatic transmission ([note 93](#)). An academic analysis of the judgment by Victoria Moore and Luke Graham has been published in the *Medical Law Review* ([note 94](#)).

As stated in at section 3.5, in the absence of a relevant ruling by the Scottish courts on a particular issue, rulings of the English courts are persuasive.

A clinical study using genome sequencing was undertaken into patients discharged from hospital to care homes in Lothian from 1st March 2020 to 31st May 2021 ([note 95](#)). Of 787 patients, 776 were ruled out for subsequent introduction of COVID into care homes. Results were inconclusive in 10 cases, and in one there was a genomic, time and location link to positive cases during hospital admission, leading to 10 positive cases in their care home.

## 5 Care homes inspection and oversight

Update of Farrell and Frowde IVE pages 59-65 and Burton on Inspections, oversight and investigation pages 42-45

### 5.1 – NHS involvement in inspections and oversight of care homes

On 14 December 2022, the Government issued a letter notifying the care home sector of new arrangements for enhanced clinical care and support, building on the multi-disciplinary care and professional oversight teams introduced in 2020 ([note 96](#)). The teams were renamed Collaborative Care Home Support Teams, removing the emphasis on ‘oversight’ and seeking to avoid confusion with the statutory duties of the Care Inspectorate.

The guidance stressed that ‘There should be a move away from an inspection model of assurance which has caused confusion in the sector’. At the same time, ‘Collaborative Care Home Support Teams will have an ongoing duty to respond to serious concerns by taking immediate steps to mitigate risks and reporting concerns to the regulator.’

In general, the intention appears to be for the teams to take a strategic overview of the sector and how able it was to meet the needs of the area. The recommended work of these teams included:

- Monitoring the viability of care homes
- A pathway for escalating/reporting serious concerns about quality and safety in care homes to the Care Inspectorate
- Ongoing review of local care home bed availability

- Monitoring opportunities for people living in care homes to connect with their loved ones in the context of the ongoing delivery of Anne’s Law.

Although the sector welcomed the focus on collaboration, concerns remained about the burden of additional oversight. Scottish Care expressed concern that additional resources were still being focused on the NHS and Scottish Government, not the sector ([note 97](#)). In November 2022, their CEO Donald Macaskill stated that over regulation had “neutered out life” within care homes ([note 98](#)).

In October 2022, an Independent Review of Inspection, Scrutiny and Regulation in Social Care was established by Scottish Government, chaired by Dame Sue Bruce. It launched a call for evidence on 24 October 2022, which closed on 13 January 2023 ([note 99](#)).

## 5.2 Health and Social Care Standards

The Government has issued Health and Social Care Standards in exercise of their powers under section 50 of the Public Services Reform (Scotland) Act 2010 and section 10H of the National Health Service (Scotland) Act 1978. They are taken into account by the Care Inspectorate in regulating care services.

As part of its consultation on ‘Anne’s Law’ (see 4.2 above), the Scottish Government also consulted on changes to the Health and Social Care Standards to support the right of care home residents to remain in contact with relatives. Analysis of the responses was published on 2nd March 2022 ([note 100](#)). There was strong support for either a new standard or improvements to existing standards.

On 31st March 2022, the Government announced two new Health and Social Care Standards were to be added, that adults living in care homes could:

- Nominate relatives/friends who would be supported to be directly involved in providing their care and support, and
- Nominate relatives/friends to visit them, if there are restrictions to prevent infection ([note 101](#)).

The Care Inspectorate has issued guidance on the standards ([note 102](#)).

### 5.3 Quality assurance during COVID

The Scottish Government asked Iriss to review how social care improvement is best supported during periods of acute crisis such as the pandemic. In September 2022, Iriss published a report, 'Care Home Quality Assurance in COVID-19', based on a review of 17 local authority areas ([note 103](#)). Findings were mixed, and indicative rather than conclusive, but highlighted the challenges presented when assurance was framed as 'inspection' or 'oversight' rather than support, or when staff and leaders were overwhelmed or experiencing distress. Co-production and partnership was felt to be more helpful, and sometimes in evidence.

Material submitted noted the substantial pressure on care home support staff and leadership, expressing concerns about exhaustion, stress, and burnout.

Several reports noted pressure and distress for staff required to give more end-of-life support than usual and in particular handling family and friends' distress at not being physically present at end-of-life.

A number of areas noted changing messaging and lack of clarity relating to the national and local guidance on COVID-19 as significant barriers to practice during lockdown. Some areas saw different areas of guidance as periodically conflicting and noted the very short time window for implementing guidance following issue.

## 5.4 Care homes and COVID-19 deaths

The daily data on deaths, including care home deaths, cited by Farrell and Frowde (page 62, footnote 148) would no longer appear to be published. Similarly, the National Records of Scotland web page on deaths involving coronavirus in Scotland is no longer updated ([note 104](#)). A new page has been set up, 'Deaths registered weekly in Scotland', which includes data on deaths involving coronavirus ([note 105](#)).

This links to a spreadsheet which includes deaths involving coronavirus in care homes each week ([note 106](#)). There were 48 in the week beginning 31 January 22. The weekly death rate drops significantly around April 2022 and is below single figures for the period beginning on 15 August 2022 to 12 December 2022, although there is a rise from mid-December to January 2023.

The Scottish Government website contains links ([note 107](#)) to data published by the Care Inspectorate ([note 108](#)) on deaths in care homes notified to them, and by Public Health Scotland on confirmed cases of COVID-19 amongst care home residents and care home staff. The Crown Office and Procurator Fiscal Service continues to publish on its website data on deaths linked to COVID-19 in individual care homes, which are referred to their COVID Deaths Investigation Team ([note 109](#)).

## 5.5 COPFS investigation of deaths (Operation Koper)

The investigation by the Crown Office of care home deaths remained controversial. The perceived burden on care homes was felt by many in the sector to be disproportionate, particularly compared with the investigation of deaths in other settings.

On 6 February 2022, the Daily Record criticised the fact that none of the 4888 cases being investigated by the Crown Office had reached a conclusion ([note 110](#)).

In March 2022, the CEO of Scottish Care wrote to the Lord Advocate calling for a halt to the investigations and arguing that, because of the changed nature of the pandemic, there was no longer a justification for the investigation of every COVID related care home death ([note 111](#)).

On 23 October 2022, the Scotsman reported continuing concerns by the care sector that the investigations were causing a 'real emotional and psychological burden' and that, to date, there had not been a single prosecution or fatal accident inquiry ([note 112](#)).

In December 2022, it was reported that more than 95% of the nearly 5,000 COVID-19 deaths in Scottish care homes under investigation by the COPFS remained unresolved ([note 113](#)).

On 22 December 2022, the Lord Advocate announced updated guidance on the reporting of COVID related deaths to the Crown Office ([note 114](#)). The updated guidance was issued on 21st December by the Chief Medical Officer to medical practitioners ([note 115](#)). With immediate effect, certifying doctors were no longer required to report deaths associated



with COVID-19 where the only reason for reporting the death was that the virus was contracted whilst the deceased was resident in a care home, or where it may have been contracted whilst the deceased was in the course of their employment or occupation.

## 5.6 Care Home Data Review

The Office for Statistical Regulation's 2020 report on Adult Social Care Statistics ([note 116](#)) highlighted a number of issues with the current care home evidence base. It noted that the data landscape can be confusing and does not currently provide the insight it could to meet the needs of stakeholders. In addition, current data collections place a significant burden on care home data providers but do not necessarily collect information that benefits them.

In response, Scottish Government, Public Health Scotland and the Care Inspectorate began in late 2022 a review of the care home data landscape ([note 117](#)).

Although not directly linked to COVID, the review may be relevant to some of the concerns expressed regarding the burden of data collection during the pandemic and gaps in Government understanding about the needs of the sector.



## 6 COVID-19 and the Health and Social Care workforce

Update of Farrell and Frowde Part IVG and Burton on Infection Protection and Control pages 17-24

### 6.1 Managing workforce risks

The summary of relevant guidance on the NHS Scotland Staff Governance online hub ([note 118](#)) was updated on 28th September 2022 ([note 119](#)). Notable new guidance included:

- on 31 March 2022, a letter confirming a de-escalation of infection protection and control measures in Health and Social Care settings including withdrawal of physical distancing guidance: but stating that care homes were exempt from these recommendations, pending consideration through appropriate governance channels ([note 120](#))
- in April 2022, revised guidance on symptomatic testing of staff ([note 121](#))
- from September 2022, guidance indicating a pause in asymptomatic testing of staff ([note 122](#)).

### 6.2 Rates of COVID-19 infection among staff

The Care Inspectorate publishes rates of staff absence in care homes related to COVID ([note 123](#)). 1245 absences were reported for the week of 1 March 2022 (3.3%). From April, the numbers fell, with 283 reported for the week of 20 December 2022 (0.9%).

The rates of infection among healthcare workers also declined, from the 15 February 2022 figure of 3,482 cited by Farrell and Frowde (p79) to 1,148 as at 20 December 2022 ([note 124](#)).

## 6.3 Healthcare workers

On 19 May 2022 the BMA published its "Covid Review 2: the Impact of the pandemic on the medical profession" ([note 125](#)) reporting on a UK-wide survey it had conducted. It noted that the pandemic had significantly impacted on everyone, but that medical professionals had particularly borne the brunt of it. In late 2021 it found that the pandemic had seriously affected the health and wellbeing, and financial and career prospects of medical professionals in the following ways:

- Healthcare workers were among those with higher infection rates relative to the general population.
- Ethnic minority doctors and disabled doctors were among those whose physical health was particularly negatively impacted.
- Medical professionals' mental health and emotional wellbeing suffered considerably.
- Burnout, overwork, distress, trauma, and isolation were all serious issues. Calls to the BMA's counselling service increasing by over a third in the first year of the pandemic, and several respondents to the BMA survey indicated they had left or would be leaving the medical profession.
- Exhaustion was found to be more prevalent among female respondents to the BMA survey (62%, compared to 53% for male respondents) and amongst respondents with a disability or LTC (62% versus 57% of those without).

The BMA report also highlighted that the medical profession rarely received the support they needed, and employers had missed opportunities to mitigate the negative impact of COVID-19 on medical professionals. However, the pandemic had also resulted in some practical positive changes in the UK's health services. The report noted that remote working and hybrid working was better facilitated, morale improved (particularly at the start of the pandemic), and a better streamlined appraisal system had emerged.

Information on the impact of COVID-19 on social care workers and further evidence of this on healthcare workers, together with lessons learned and the impact of Long COVID, can be found in Chapter 8 of this report.

Couper et al reported on a study conducted between April and August 2020 on the psychological impact of COVID-19 on the UK nursing and midwifery workforce. This identified post-traumatic stress disorder in this workforce and potential factors associated with signs of the disorder and has implications for planning for future pandemics ([note 126](#)).

## **7 DNACPR, end of life care and anticipatory care planning**

### **Update on Farrell and Frowde Part IVF and Burton on end of life care and DNACPR pages 37-41**

We identified few new developments in relation to the pandemic and DNACPR and related issues during the period February to December 2022, although some of the guidance documentation which was discussed in the earlier research appears no longer to be extant.

We found little evidence of how far practice during the pandemic followed or was influenced by this guidance, or how it comported more generally with legal requirements and ethical principles. There are ongoing concerns about the way in which DNACPR notices are understood and used by health professionals.

### **7.1 Clinical and ethical guidance**

At the beginning of the pandemic, there was considerable concern that parts of the NHS might be overwhelmed, raising issues about rationing of care. Concerns were also expressed about whether care teams were being encouraged to place DNACPR notices on people, sometimes on a block basis or without full discussion and consent. A number of guidance documents were subject to critical scrutiny, and some were amended to better reflect human rights and equalities concerns.

It appears that much of the guidance has been withdrawn. We have not been able to establish when this was done, but the following guidance is no longer listed on the Government website:

- Coronavirus (COVID-19): clinical guidance for managing patients (contains chapter on Anticipatory Care Planning and ACP Template) ([note 127](#))
- Coronavirus (COVID-19): ethical advice and support framework (guidance on ethics, human rights and equality issues) ([note 128](#))
- Coronavirus (COVID-19): guidance on critical care management of adult patients ([note 129](#)).

The ethical advice and support framework referred (pages 12-14) to a national ethical advice and support group, which would meet on a regular basis and report to the Chief Medical Officer, alongside local support groups at Health Board level. As far as we can establish from contact with the Mental Welfare Commission, some local groups were established, but it appears the national group was never set up. Some, if not all, of the local groups have been wound up.

Early guidance to care homes specifically mentioned the importance of Anticipatory Care Plans ([note 130](#)). The topic does not appear in more recent guidance.

## 7.2 Impact of pandemic on end-of-life and critical care

One small study looked at ‘moral distress’ among palliative care doctors working during the pandemic ([note 131](#)). ‘Moral distress’ refers to the experience of being unable to take the action that one believes to be morally right due to institutional

constraints. During the pandemic, restrictions imposed by national government and local management forced doctors to act against their instincts: to reduce communicative touch, limit visiting and spend less time with patients. The authors wrote:

‘This study found that the limited visitation policy, PPE and physical distancing restrictions had a large impact on staff. Facial recognition and lip-reading are important for interpersonal reassurance in distressed patients and the presence of family and friends is well-known to benefit patients with delirium and dementia. Restrictions therefore increased patient distress, which in turn led to moral distress in palliative care doctors as they felt they were not always doing the right thing.’

It recommended that ‘Measures to mitigate moral distress should be implemented at a personal and institutional level.’

Another Scottish study looked at how doctors in critical care units gathered information to guide their practice during the early stages of the pandemic, when there was little knowledge of how to treat it ([note 132](#)). The study largely focused on research and information on how to treat COVID, rather than ethical and legal guidance. Since the usual routes such as peer-reviewed journal articles were too slow, new sources of information were found, including social media platforms and instant messaging apps – with information of variable quality and accuracy.

Although the ethical and legal issues were not to the fore in this research, the researchers reported:

‘As the first wave progressed, the increasing burden of COVID-19 on critical care capacity led clinicians to question how ICU service provision should be organised and attempt to predict who would benefit from different types of treatment.’

One interviewee commented ‘We were worried about the ICU being fully overwhelmed so there were a lot of discussions about who we would admit to our ICU, and there were a lot of discussions around about that.’

The research did not disclose whether or how Government guidance influenced these discussions.

Another area of concern highlighted was a lack of alignment in some areas between advice from Scottish and UK Government and clinical bodies, such as PPE Guidance from NHS England versus that from Health Protection Scotland and the Intensive Care Society.

## 7.3 Use of DNACPR during pandemic

Research by Michalowski and Martin into the forms used for DNACPR notices in England found that there was continued uncertainty around fundamental key concepts, including the notion of ‘futility’, the legal status of DNACPR notices, and the nature of the required consultation ([note 133](#)).

It argued that DNACPR forms used in the NHS in England, and the broader ReSPECT form, had shortcomings in reflecting the legal requirements. The use of the terms ‘order’ or ‘instructions’ was misleading as, unlike advance decisions to refuse treatment under the Mental Capacity Act 2005, the notices are not binding legal documents. The decision of the clinician who signs the form may influence the decision of a later health professional but does not exempt them from making their own clinical judgement on how to proceed. This highlighted the need for improvements in the forms used and a better understanding of the legal framework underpinning the process.



A study by Bows and Herring examined the use of DNACPRs during the pandemic across 23 Trusts in England ([note 134](#)). It found overall increases in the number of patients with a DNACPR decision during the two main COVID ‘waves’ (23 March 2020–31 January 2021) compared with the previous year: an increase of 30% for the first wave compared with the same period in 2019, and an 11% increase for the second wave compared with the same period in 2019–2020.

Overall, approximately one in five patients was not consulted about the DNACPR decision, but during the first COVID wave more patients were consulted than pre-COVID: 16% of patients not consulted compared with 18% of patients during the earlier period.

A disproportionate number of Black Caribbean patients had a DNACPR decision. There was no change in the proportion of patients with a DNACPR who had a learning disability during the two pandemic waves (Periods 3 and 4) compared with the pre-COVID data periods.

Only 8% of NHS Trusts provided information in response to a Freedom of Information request, highlighting the lack of centrally collected data on the use of DNACPR forms.

Another English study by Fitton et al involved a survey and focus group of professionals discussing their experiences of the use of DNACPR notices in care homes during the pandemic ([note 135](#)). Fifty-five per cent of survey respondents reported that, during the pandemic, they had witnessed DNACPR forms being added without consultation with the resident or a relative. Seventeen per cent of survey respondents reported that, at some point since the beginning of the pandemic, they had witnessed DNACPR recommendations influence medical decisions beyond CPR. Twenty-two respondents reported that a decision had been made not to transfer any residents with a



DNACPR recommendation to hospital. Four respondents reported that they had witnessed the denial or withdrawal of medication on the basis that a resident had a DNACPR recommendation in place.

We have not found similar research in Scotland, but media reports suggest continuing concern across the UK about the making and operation of DNACPR notices ([note 136](#)).

## 7.4 Parliamentary consideration of DNACPR notices

On 13 April 2022, Monica Lennon MSP asked a Parliamentary Question about what information the Scottish Government holds on how many do-not-resuscitate orders have been signed during the COVID-19 pandemic, and how this compares with each calendar year from 2010 onwards. In line with previous responses, the Health Secretary answered on 10 May 2022 that:

‘This recording is done in hard copy on a DNACPR form, the existence of which is then recorded on an individual’s Key Information Summary. Such information is only shared for the purposes of direct care and is therefore not centrally collected.’ ([Note 137](#))

This suggests that the data issues found by Bows and Herring would be likely to be replicated in Scotland.

# 8 COVID Recovery and Aftermath

## 8.1 NHS and social care recovery plans

In October 2021, the Scottish Government published its COVID Recovery Strategy ([note 138](#)). It sets out the Scottish Government's "vision for recovery and the actions we will take to address systemic inequalities made worse by Covid, make progress towards a wellbeing economy, and accelerate inclusive person-centred public services."

The strategy makes very few references, or specific commitments, in relation to social care. However, it does contain the following commitments:

- An "ambition" that, from 2030, at least 5% of all community-based health and social care spend will be invested in preventative whole family support measures that will enable more children to only know care, compassion and love rather than a 'care system'.
- To work with local government to deliver the key foundation pillars set out in the Independent Review of Adult Social Care in Scotland together with a commitment to ensuring that staff delivering direct adult social care are paid at least the real Living Wage including an additional funding of £64.5 million in 2021.
- To deliver a framework that supports and enables the delivery of approaches to tackling health inequalities within communities, including developing more effective ways to support community-led third sector programmes that can help to improve the health of and support those most in need and supporting health and social care providers to be anchor institutions in reducing socioeconomic inequalities.
- Renew and refocus efforts to build equity into our health and social care services for minority ethnic groups.

There is evidence, however, that although life was returning to normal there were concerns that council-run social care services remained closed after being suspended at the beginning of the pandemic. This led the Scottish Government to request an audit of adult day and respite services across all Scotland's local authorities in May 2022 ([note 139](#)).

"Coronavirus (COVID-19): adult social care building-based day services – guidance" was updated on 26 May 2022 and then 28 September 2022 ([note 140](#)) and on 19 October 2022 the Cabinet Secretary for Health and Social Care wrote to local authorities and health and social care partnerships setting out the findings of the day services and respite services audit and next steps in supporting the reopening of services ([note 141](#)). The letter also stated that the survey would be repeated in November 2022 to establish progress since the publication of updated guidance.

It appears that providers of adult social care in Scotland were told in June 2022 that 'essential' funding for COVID-19 costs would be pulled at the end of the month. This gave them only a fortnight to prepare, with the risk that some would be pushed out of business ([note 142](#)). NHS funds were being squeezed as well ([note 143](#)). Indeed, there were concerns that the NHS recovery plan was scrambled together much too quickly by the Scottish Government ([note 144](#)).

In February 2023, Audit Scotland published its report "NHS in Scotland 2022" ([note 145](#)) in which it calls for the Scottish Government to be more transparent about how long NHS recovery from COVID-19 and to reform services will take.

In terms of social care, Audit Scotland's "Social Care Briefing of January 2022" stated:

‘The pandemic has exacerbated the long-standing challenges facing the social care sector, highlighting the precarious situation of many vulnerable people who rely on social care or support. The Scottish Human Rights Commission (SHRC) reported on the negative impact Covid-19 had on people requiring support and their rights. The SHRC expressed deep concern about future levels of social care support likely to be available to people whose packages were reduced or withdrawn during the pandemic. It highlighted the need to invest in a social care system, based on human rights, that meets people’s needs and improves outcomes’ ([note 146](#))

Audit Scotland published its "Local Government in Scotland Overview" in May 2022 ([note 147](#)) which maps progress towards recovery and looks at the impact of COVID-19 on services and equality. In June 2022, it published "Scotland's financial response to Covid-19" ([note 148](#)) which it updated on 29 March 2023 ([note 149](#)).

## 8.2 Future pandemic planning and learning from COVID-19

In August 2020, ARC Scotland published its report "“We’re all in this together”: the impact of Covid-19 on the future of social care in Scotland: a view from the workforce" ([note 150](#)) reporting the findings of an online survey resulting in 623 responses from social care frontline staff and managers from across 23 Scottish local authority areas. The survey’s purpose was to capture and record the learning and experiences of those involved in the planning and delivery of social care services during 2020, particularly in relation to people with learning disabilities, autism and physical disabilities, in order to inform and shape longer term changes to social care in Scotland. It included the provision of care at home, housing

support, residential, day and respite services and community-based support. The report states that it contains important information for:

- Frontline social care practitioners and service managers
- Local authority planners and commissioners
- Leaders in the third and independent sectors
- National bodies
- Scottish Government

and delivered four key messages arrived at from the perceptions of social care staff:

1. Supported people are better able to cope and more resilient than many would have thought.
2. Supported people prefer support that is constructed around their needs and preferences, and provided in a relaxed, non-pressurised way.
3. Whilst feeling motivated, resilient, adaptable and proud of how their work changes people's lives, social care staff also feel undervalued professionally. The longstanding resentment within substantial parts of the third sector that it is seen as the 'poor cousin' to the public sector needs to be addressed.
4. An opportunity now exists to use learning from the 'lockdown experience' to re-appraise the way the social care workforce functions, especially in terms of how to make use of more flexible, autonomous, and creative working practices.

A lack of guidance was particularly mentioned, e.g. how Scotland's social care sector could cope with a flu pandemic (despite this being identified as a priority).

In April 2022, concerns were expressed over whether social care will be included in future Scottish Government pandemic planning ([note 151](#)).

In August 2022 the Scottish Government Standing Committee on Pandemic Preparedness called for a dedicated Centre of Pandemic Preparedness for future pandemics which can pull together all relevant cross-sector and discipline data in a unified way to ensure better preparedness and actions ([note 152](#)).

On 29 March 2023, Audit Scotland published a blog by Sheila Gunn of the Accounts Commission entitled "Learning the lessons of Covid-19" has never been more important ([note 153](#)). In terms of social care and lessons learned, issues relating to provision in rural and island communities during the pandemic were highlighted to the Inquiry in March 2022 by Broadfoot et al ([note 154](#)).

Moreover, several pieces of literature remind us of the adverse and unequal impact of the COVID-19 restrictions both during and coming out of the pandemic. Woolhouse discusses whether lockdown was an effective public health measure ([note 155](#)) and Yang et al. write about the disparity in policies during the first and second pandemic waves across the UK ([note 156](#)). In October 2022, Witcher called for urgent and meaningful dialogue with government to make sense of the 'incomprehensible mismatch' between lived experience of harms caused by the restrictions and coming out of them and government abandonment of ways to prevent them ([note 157](#)). The Scottish Health Survey 2021, published in November 2022, highlights that Scots' mental wellbeing declined since the pandemic ([note 158](#)). Again, the Health and Social Care Alliance Scotland in its letter of 5 January 2022 to the COVID-19 Recovery Committee Inquiry ([note 159](#)) highlighted that COVID-19 exacerbated pre-existing inequalities and that health inequalities contributed to higher COVID-19 (and other)

deaths amongst certain groups, e.g. disabled people, people with long term conditions, older people, Black and minority ethnic people, and socio-economically disadvantaged people. To deal with the indirect impact of COVID-19 during winter 2021/22 the Alliance recommended an equality and human rights and AAAQ (accessible, available, appropriate and high-quality) (note 160) based focus, better support for third sector support and a holistic care and support planning approach in primary care.

### 8.3 Long COVID – emerging evidence

The Health and Social Care Alliance Scotland in its January 2022 communication to the COVID-19 Recovery Committee Inquiry (note 161) also emphasised the ongoing and indirect impact of COVID-19 on people's health and that there was insufficient strategic focus on this. The BBC, citing ONS statistics, also reported in November 2022 that whilst Long COVID has contributed to people being out of work owing to long term illness this is not a new phenomenon (note 162).

The Alliance also highlighted the need to support persons with Long COVID in its email of 13 January to the Scottish COVID-19 Public Inquiry (note 163). In this email it once more highlights the:

'profound and disproportionate impact on certain population groups, including disabled people, people living with long term conditions and unpaid carers. A range of issues within the Scottish Government, local and Integration Authorities, and the third and independent sectors, have been highlighted and exacerbated.'



It asked, amongst other things, what steps have been taken to support people living with Long COVID, including access to care and support, and research.

On 19 May 2022, the Royal College of Nursing Scotland (RCN Scotland) issued a parliamentary briefing "Scottish Government debate on Long Covid" ([note 164](#)). It pointed out that;

“ONS data shows that people working in health and social care are significantly more likely to report having long term sickness as a result of Covid than the wider population. Support for these staff needs to continue and the impact of Long Covid in terms of increased long term absence needs to be factored in to workforce planning.”

It noted that ONS across-UK statistics estimated that 3.2% of health care staff and 3.5% of social care staff working report having symptoms of COVID more than 12 weeks after contracting it (in comparison to 2% in the wider population).

It expressed concern that:

- Insufficient consideration had been given to the workforce requirements of treating Long COVID, particularly on already overstretched community services.
- The real risk that, in addition to other pressures on services, Long Covid will disrupt efforts to remobilise health and social care.

The RCN Scotland has also developed Long COVID guidance ([note 165](#)), primarily targeted at RCN members with Long COVID and who are looking to return to work or are experiencing difficulties with their employers. The guidance webpage was last updated on 27 April 2023. The RCN Scotland briefing noted that NHS staff absent from work with COVID were receiving full pay and allowances and stated that these



arrangements should remain in place for as long as possible, and that ongoing support for staff with Long COVID must include enhanced Occupational health provision going forward.

In the Health and Social Care Alliance's 30 June 2022 response to the Scottish Parliament consultation on 'Road to recovery: impact of the pandemic on the Scottish labour market' it stated that there were two key factors contributing to labour market inactivity in Scotland following the COVID-19 pandemic, which were:

- The impact of Long COVID on people's ability to work; and
- Burnout amongst health and social care workers. It noted that this has been a recurring theme since the start of (even before) the pandemic. They were also experiencing recruitment and retention issues again starting prior to the pandemic resulting from factors such as Brexit, increasing workloads, and the persistent undervaluing of the social care sector which was compounded by the pandemic, the subsequent recession, and the current cost of living crisis.

A Robert Gordon University study "Lived experience of long term Covid-19 on workers in NHS health care settings in Scotland: a longitudinal mixed methods study" ([note 166](#)) commenced on 1 June 2021 and concluded 30 April 2023. It explored the impact of the longer-term effects of Long COVID-19 on NHS workers with a view to informing workforce planning needs. Its first survey results revealed that 92% of participants ([note 167](#)) reported limitations in their daily activities due to Long COVID, with the most reported symptoms being fatigue (88%), brain fog (80%), and breathlessness (69%).

# Annexes

## Annex A: Bibliography

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### Chronology of key events – February to December 2022

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- **Date:** 10 February  
**Events:** Publication of responses to National Care Service consultation  
**Chapter:** 2.7
- **Date:** 22 February  
**Events:** Publication of COVID-19 Strategic Framework update  
**Chapter:** 4.1
- **Date:** 7 March  
**Events:** Spring/summer vaccination booster programme begins  
**Chapter:** 3.5
- **Date:** 9 March  
**Events:** Parliamentary debate on ‘Anne’s Law’  
**Chapter:** 4.2
- **Date:** 25 March  
**Events:** Expiry of Mental Health Act emergency measures  
**Chapter:** 3.1
- **Date:** 31 March  
**Events:** New guidance to care homes – more visitors, reduced isolation, greater mixing in communal areas  
**Chapter:** 4.1

- **Date:** 31 March  
**Events:** New Health and Care Standards to support visiting in care homes  
**Chapter:** 5.2
- **Date:** 11 April  
**Events:** Govt ceases publication of vaccine update data  
**Chapter:** 3.5
- **Date:** 18 April  
**Events:** Ending of advice on regular testing except for care homes  
**Chapter:** 4.1
- **Date:** 4 May  
**Events:** Govt announces audit of adult social care day services  
**Chapter:** 8.1
- **Date:** 27 April  
**Events:** High Court ruling in Gardner and Harris on legality of discharge from hospital to care homes  
**Chapter:** 4.5
- **Date:** 30 April  
**Events:** Ending of routine testing of care home visitors  
**Chapter:** 4.1
- **Date:** 3 May  
**Events:** Isolation period in care homes reduced from 10-5 days  
**Chapter:** 4.1



- **Date:** 31 May  
**Events:** Ending of Highest Risk List  
**Chapter:** 3.6
- **Date:** 1 June  
**Events:** Updated 'Open with Care' guidance  
**Chapter:** 4.1
- **Date:** 1 June  
**Events:** Publication of weekly data on visiting in care homes ends  
**Chapter:** 4.1
- **Date:** 20 June  
**Events:** Introduction of National Care Service Bill 2.7,  
**Chapter:** 4.2
- **Date:** 10 August  
**Events:** Coronavirus (Recovery and Reform) (Scotland) Bill enacted  
**Chapter:** 3.1
- **Date:** 7 September  
**Events:** Recommendations re face masks in social care sector ended  
**Chapter:** 4.1
- **Date:** 22 September  
**Events:** Winter vaccination booster programme began  
**Chapter:** 3.5
- **Date:** 23 September  
**Events:** Announcement of Independent Review of Inspection, Scrutiny and Regulation in Scotland  
**Chapter:** 5.1

- **Date:** 28 September  
**Events:** Pause in asymptomatic testing in care homes (except on admission)  
**Chapter:** 6.1
- **Date:** 1 October  
**Events:** Expiry of emergency powers to direct care homes  
**Chapter:** 3.1
- **Date:** 15 October  
**Events:** 15th and final report to Parliament on Coronavirus Acts  
**Chapter:** 3.1
- **Date:** 14 December  
**Events:** Scottish Government announce new arrangements for clinical care and support of care homes  
**Chapter:** 5.1
- **Date:** 15 December  
**Events:** Publication of Scottish Budget 2023/24  
**Chapter:** 2.1
- **Date:** 22 December  
**Events:** Lord Advocate updates guidance on reporting of COVID deaths to Crown Office  
**Chapter:** 5.5

### List of abbreviations

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- ACP: Anticipatory Care Plan
- BMA: British Medical Association
- CPR: Cardio-pulmonary resuscitation
- DNACPR: Do not attempt cardio-pulmonary resuscitation
- CEO: Chief Executive Officer
- COPFS: Crown Office and Procurator Fiscal Service
- COSLA: Convention of Scottish Local Authorities
- CPAG: Clinical Professional and Advisory Group
- ECHR: European Convention on Human Rights
- F&F: Farrell and Frowde
- HSCP: Health and Social Care Partnership
- ICU: Intensive Care Unit
- IJB: Integrated Joint Board
- Iriss: The Institute for Research and Innovation in Social Services
- LTC: Long term condition
- NCS: National Care Service
- NES: NHS Education for Scotland
- NICE: National Institute for Health and Care Excellence
- ONS: Office for National Statistics
- PHS: Public Health Scotland
- PPE: Personal Protective Equipment
- RCN: Royal College of Nursing
- SSSC: Scottish Social Services Council
- SPICe: Scottish Parliament Information Service
- SHRC: Scottish Human Rights Commission
- WTE: Whole time equivalent

## Search Strategy

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The following databases and platforms were searched on the 12th April 2023: CINAHL with Full text (EBSCO), Medline (EBSCO), PubMed Central, Web of Science Core Collection, Ovid Nursing and Proquest Social Science Premium Collection. Nexis Uni was searched on 17th April 2023 and Westlaw UK and Lexis+ were both searched (using the search terms set out below for cases and journal articles and for relevant legislation) on 21st April 2023.

Handsearching was undertaken online in the Edinburgh Napier University Library catalogue, LibrarySearch [https://napier.primo.exlibrisgroup.com/discovery/search?vid=44NAP\\_INST:44NAP\\_ALMA\\_VU1](https://napier.primo.exlibrisgroup.com/discovery/search?vid=44NAP_INST:44NAP_ALMA_VU1), and GoogleScholar <https://scholar.google.com/>,

Hand searches were also carried out in the following websites:

- Audit Scotland:  
<https://www.audit-scotland.gov.uk/>
- Age Scotland:  
<https://www.ageuk.org.uk/scotland/>
- BBC News: Scotland:  
<https://www.bbc.co.uk/news>
- Care Inspectorate:  
<https://www.careinspectorate.com/>
- Court of Protection Hub:  
<https://www.courtofprotectionhub.uk/>

- Health and Social Care Alliance Scotland:  
<https://www.alliance-scotland.org.uk>
- HealthandCare.Scot:  
<https://healthandcare.scot/>
- Healthcare Improvement Scotland COVID pages:  
[https://www.healthcareimprovementscotland.org/our\\_work/coronavirus\\_covid-19.aspx](https://www.healthcareimprovementscotland.org/our_work/coronavirus_covid-19.aspx)
- Inclusion Scotland:  
<https://inclusionscotland.org/>
- Mental Welfare Commission for Scotland:  
<https://www.mwcscot.org.uk/>
- NHS Management Letters:  
<https://www.sehd.scot.nhs.uk/index.asp?name=&org=%25&keyword=&category=6&number=50&sort=tDate&order=DESC&Submit=Go&offset=0>
- NHS CMO letters:  
<https://www.sehd.scot.nhs.uk/index.asp?name=&org=%25&keyword=&category=9&number=10&sort=tDate&order=DESC&Submit=Go>
- Office for National Statistics:  
<https://www.ons.gov.uk/>
- Public Health Scotland Archive:  
<https://www.hps.scot.nhs.uk/covid-19-guidance-archive/home/>
- Royal College of Nursing Scotland:  
<https://www.rcn.org.uk/scotland>

- Royal College of Occupational Therapists:  
<https://www.rcot.co.uk/>
- Scottish Care:  
<https://scottishcare.org/>
- Scottish Commission for People with Learning Disabilities:  
<https://www.scld.org.uk/>,
- Scottish Government:  
<https://www.gov.scot/>,
- Scottish Human Rights Commission:  
<https://www.scottishhumanrights.com/>,
- Scottish Parliament:  
<https://www.parliament.scot/>
- Social Care Online:  
<https://www.scie-socialcareonline.org.uk/>.,
- Unison:  
<https://www.unison.org.uk/>

The search strategy was developed in CINAHL by the Subject Librarian, Maria King, then sent to the rest of the review team for peer-review before the full searches were carried out across all the databases.

Table 1 below demonstrates the free-text keyword terms used in the database searches. Search results were limited to a date range of 1st January 2022 to 1st April 2023 .

## Table 1

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### Overview of Search Terms

#### Main Concept: Free Text Search Terms

- **Covid:**
  - covid-19
  - coronavirus
  - 2019-ncov
  - sars-cov-2
  - cov-19
- **Scotland:**
  - Scotland
  - Scottish
- **Health and social care:**
  - health resources
  - health facilities
  - health care services
  - healthcare services
  - health services
  - health provision
  - patient care
  - nursing care
  - hospitals
  - inpatients
  - acute care
  - critical care
  - emergency care
  - social care
  - social services
  - social work
  - care home\*
  - residential care
  - nursing home\*
  - residential home\*

long term care  
residential facilities  
DNACPR  
Cardiovascular  
Cardiac  
life support  
ventilat\*  
palliative care  
critically ill  
emergency patients  
resuscitat\*

Handsearching was undertaken using adapted free-text search terms to account for the difference in allowed characters and search terms in these platforms. A simpler search of (covid **or** coronavirus) **and** (Scotland **or** Scottish) was therefore used for LibrarySearch, Google Scholar and Social care Online and (covid **or** coronavirus) for the remainder of the sites, with search results screened for relevance to health and social care and the eligibility criteria.

## **Inclusion and exclusion of literature**

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The following shows all the searches and results for the different databases searched. Literature and sources identified by these, and from the hand searches, were then screened by the research team for specific relevance to the Farrell and Frowde and Burton report updates and other requests made by the Inquiry Team. Literature and sources which fell outside such relevance were excluded.



## Database Searches

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**CINAHL 12th April 2023**

- **Main Concept: Covid**

**Search No.: 1**

**Search Line:** TI ( covid-19 or coronavirus or 2019-ncov or sars-cov-2 or cov-19 ) **or** AB ( covid-19 or coronavirus or 2019-ncov or sars-cov-2 or cov-19 )

**No. of Results:** 119,869

**Search No.: 2**

**Search Line:** (MH "COVID-19") **or** (MH "COVID-19 Pandemic") **or** (MH "SARS-CoV-2") **or** (MH "Coronavirus") **or** (MH "Coronavirus Infections")

**No. of Results:** 76,794

**Search No.: 3**

**Search Line:** S1 **or** S2

**No. of Results:** 134,990

- **Main Concept: Scotland**

**Search No.: 4**

**Search Line:** TI ( scotland or scottish ) **or** AB ( scotland or scottish )

**No. of Results:** 14,275

**Search No.: 5**

**Search Line:** (MH "Scotland")

**No. of Results:** 17,781

**Search No.: 6**

**Search Line:** S4 **or** S5

**No. of Results:** 22,988

- **Main Concept:** Health services

**Search No.:** 7

**Search Line:** TI (health resources or health facilities or health care services or healthcare services or health services or health provision or patient care or nursing care or hospitals or inpatients or acute care or critical care or emergency care or social care or social services or social work or care home\* or residential care or nursing home\* or residential home\* or long term care or residential facilities or DNACPR or cardiovascular or cardiac or life support or ventilat\* or palliative care or critically ill or emergency patients or resuscitat\*) **or** AB (health resources or health facilities or health care services or healthcare services or health services or health provision or patient care or nursing care or hospitals or inpatients or acute care or critical care or emergency care or social care or social services or social work or care home\* or residential care or nursing home\* or residential home\* or long term care or residential facilities or DNACPR or cardiovascular or cardiac or life support or ventilat\* or palliative care or critically ill or emergency patients or resuscitat\*)

**No. of Results:** 1,290,987

**Search No.:** 8

**Search Line:** (MH "Health Care Delivery") **or** (MH "Health Services Administration") **or** (MH "Health Resource Allocation") **or** (MH "Health Resource Utilization") **or** (MH "Primary Health Care") **or** (MH "Secondary Health Care") **or** (MH "Patient Care") **or** (MH "Life Support Care") **or** (MH "Nursing Care") **or** (MH "Quality of Health Care") **or** (MH "Health Care Delivery, Integrated") **or** (MH "Health Services Needs and Demand") **or** (MH "Health Services for Older Persons") **or** (MH "Health Services for Persons with Disabilities") **or** (MH "Health Services") **or** (MH "Social Work") **or** (MH "Health Facilities") **or** (MH "Hospitals") **or** (MH "Nursing Homes") **or** (MH "Residential Care") **or** (MH "Acute

Care") **or** (MH "Cardiovascular Care") **or** (MH "Critical Care") **or** (MH "Emergency Care") **or** (MH "Gerontologic Care") **or** (MH "Palliative Care") **or** (MH "Residential Facilities") **or** (MH "Long Term Care") **or** (MH "Hospitalization of Older Persons") **or** (MH "Cardiac Patients") **or** (MH "Critically Ill Patients") **or** (MH "Emergency Patients") **or** (MH "Nursing Home Patients") **or** (MH "Ventilator Patients") **or** (MH "Terminally Ill Patients") **or** (MH "Resuscitation, Cardiopulmonary") **or** (MH "Resuscitation") **or** (MH "Resuscitation Orders") **or** (MH "Ventilation, Manual")  
**No. of Results:** 649,032

**Search No.:** 9

**Search Line:** S7 **or** S8

**No. of Results:** 1,630,293

- **Main Concept:** Combined

**Search No.:** 10

**Search Line:** S3 **and** S6 **and** S9

**No. of Results:** 150

- **Main Concept:** Final

**Search No.:** 11

**Search Line:** Date limiter from 2022

**No. of Results:**72

## **Medline 12th April 2023**

- **Main Concept:** Covid

**Search No.:** 1

**Search Line:** TI ( covid-19 or coronavirus or 2019-ncov or sars-cov-2 or cov-19 ) **or** AB ( covid-19 or coronavirus or 2019-ncov or sars-cov-2 or cov-19 )

**No. of Results:** 346,957

**Search No.:** 2

**Search Line:** (MH "COVID-19") or (MH "Coronavirus Infections") or (MH "SARS-CoV-2") or (MH "Coronavirus")

**No. of Results:** 229,523

**Search No.:** 3

**Search Line:** S1 or S2

**No. of Results:** 358,895

- **Main Concept:** Scotland

**Search No.:** 4

**Search Line:** TI ( scotland or scottish ) or AB ( scotland or scottish )

**No. of Results:** 25,422

**Search No.:** 5

**Search Line:** (MH "Scotland")

**No. of Results:** 25,998

**Search No.:** 6

**Search Line:** S4 or S5

**No. of Results:** 38,156

- **Main Concept:** Health services

**Search No.:** 7

**Search Line:** TI (health resources or health facilities or health care services or healthcare services or health services or health provision or patient care or nursing care or hospitals or inpatients or acute care or critical care or emergency care or social care or social services or social work or care home\* or residential care or nursing home\* or residential home\* or long term care or residential facilities or DNACPR or cardiovascular or cardiac or life support or ventilat\* or palliative care or critically ill or emergency patients or resuscitat\*) or AB (health resources or health facilities or health care services or healthcare services or

health services or health provision or patient care or nursing care or hospitals or inpatients or acute care or critical care or emergency care or social care or social services or social work or care home\* or residential care or nursing home\* or residential home\* or long term care or residential facilities or DNACPR or cardiovascular or cardiac or life support or ventilat\* or palliative care or critically ill or emergency patients or resuscitat\*)

**No. of Results:** 73,354,492

**Search No.:** 8

**Search Line:** (MH "Patient Care Management") or (MH "Delivery of Health Care") or (MH "Delivery of Health Care, Integrated") or (MH "Health Services Administration") or (MH "Social Work") or (MH "Patient Care") or (MH "Terminal Care") or (MH "Resuscitation Orders") or (MH "Palliative Care") or (MH "Long-Term Care") or (MH "Life Support Care") or (MH "Hospitalization") or (MH "Critical Care") or (MH "Nursing Care") or (MH "Health Services for the Aged") or (MH "Health Services for Persons with Disabilities") or (MH "Health Services") or (MH "Health Care Facilities, Manpower, and Services") or (MH "Hospitals") or (MH "Health Facilities") or (MH "Health Resources") or (MH "Primary Health Care") or (MH "Secondary Care") or (MH "Quality of Health Care") or (MH "Health Services Needs and Demand") or (MH "Nursing Homes") or (MH "Residential Facilities") or (MH "Homes for the Aged") or (MH "Cardiovascular Nursing") or (MH "Critical Illness") or (MH "Resuscitation") or (MH "Cardiopulmonary Resuscitation")

**No. of Results:** 918,915

**Search No.:** 9

**Search Line:** S7 or S8

**No. of Results:** 3,784,609

- **Main Concept:** Combined

**Search No.:** 10

**Search Line:** S3 and S6 and S9

**No. of Results:** 310

- **Main Concept:** Final

**Search No.:** 11

**Search Line:** Date limiter from 2022

**No. of Results:** 148

## **PubMed 12th April 2023**

- **Main Concept:** Covid

**Search No.:** 1

**Search Line:** covid-19[Title/Abstract] or coronavirus[Title/Abstract] or 2019-ncov[Title/Abstract] or sars-cov-2[Title/Abstract] or cov-19[Title/Abstract]

**No. of Results:** 350,143

**Search No.:** 2

**Search Line:** (((COVID-19[MeSH Terms]) or (Coronavirus Infections[MeSH Terms]))) or (SARS-CoV-2[MeSH Terms]) or (Coronavirus[MeSH Terms])

**No. of Results:** 239,982

**Search No.:** 3

**Search Line:** S1 or S2

**No. of Results:** 367,384

- **Main Concept:** Scotland

**Search No.:** 4

**Search Line:** scotland[Title/Abstract] or scottish[Title/Abstract]

**No. of Results:** 25,783

**Search No.:** 5

**Search Line:** scotland[MeSH Terms]

**No. of Results:** 26,079

**Search No.:** 6

**Search Line:** S4 or S5

**No. of Results:** 38,280

- **Main Concept:** Health services

**Search No.:** 7

**Search Line:** health resources[Title/Abstract] or health facilities[Title/Abstract] or health care services[Title/Abstract] or healthcare services[Title/Abstract] or health services[Title/Abstract] or health provision[Title/Abstract] or patient care[Title/Abstract] or nursing care[Title/Abstract] or hospitals[Title/Abstract] or inpatients[Title/Abstract] or acute care[Title/Abstract] or critical care[Title/Abstract] or emergency care[Title/Abstract] or social care[Title/Abstract] or social services[Title/Abstract] or social work[Title/Abstract] or care home\*[Title/Abstract] or residential care[Title/Abstract] or nursing home\*[Title/Abstract] or residential home\*[Title/Abstract] or long term care[Title/Abstract] or residential facilities[Title/Abstract] or DNACPR[Title/Abstract] or cardiovascular[Title/Abstract] or cardiac[Title/Abstract] or life support[Title/Abstract] or ventilat\*[Title/Abstract] or palliative care[Title/Abstract] or critically ill[Title/Abstract] or emergency patients[Title/Abstract] or resuscitat\*[Title/Abstract]

**No. of Results:** 2,120,905

**Search No.:** 8

**Search Line:** (((((((((((((((((((((((((((((((((((Patient Care Management[MeSH Terms]) or (Delivery of Health Care[MeSH Terms])) or (Delivery of Health Care, Integrated[MeSH Terms])) or (Social Work[MeSH Terms])) or (Patient Care[MeSH Terms])) or (Terminal Care[MeSH

Terms])) or (Resuscitation Orders[MeSH Terms])) or (Palliative Care[MeSH Terms])) or (Long-Term Care[MeSH Terms])) or (Life Support Care[MeSH Terms])) or (Hospitalization[MeSH Terms])) or (Critical Care[MeSH Terms])) or (Nursing Care[MeSH Terms])) or (Health Services for the Aged[MeSH Terms])) or (Health Services for Persons with Disabilities[MeSH Terms])) or (Health Services[MeSH Terms])) or (Health Care Facilities, Manpower, and Services[MeSH Terms])) or (Hospitals[MeSH Terms])) or (Health Facilities[MeSH Terms])) or (Health Resources[MeSH Terms])) or (Primary Health Care[MeSH Terms])) or (Secondary Care[MeSH Terms])) or (Quality of Health Care[MeSH Terms])) or (Health Services Needs and Demand[MeSH Terms])) or (Nursing Homes[MeSH Terms])) or (Residential Facilities[MeSH Terms])) or (Homes for the Aged[MeSH Terms])) or (Cardiovascular Nursing[MeSH Terms])) or (Critical Illness[MeSH Terms])) or (Resuscitation[MeSH Terms])) or (Cardiopulmonary Resuscitation[MeSH Terms])

**No. of Results:** 10,170,043

**Search No.:** 9

**Search Line:** S7 or S8

**No. of Results:** 11,068,565

- **Main Concept:** Combined

**Search No.:** 10

**Search Line:** S3 and S6 and S9

**No. of Results:** 345

- **Main Concept:** Final

**Search No.:** 11

**Search Line:** Date limiter from 2022

**No. of Results:** 153



## Ovid Nursing 12th April 2023

- **Main Concept:** Covid

**Search No.:** 1

**Search Line:** coronavirus/ or sars virus/ or coronavirus infections/

**No. of Results:** 4,514

**Search No.:** 2

**Search Line:** (covid-19 or coronavirus or 2019-ncov or sars-cov-2 or cov-19).ab,ti.

**No. of Results:** 13,761

**Search No.:** 3

**Search Line:** S1 or S2

**No. of Results:** 13,887

- **Main Concept:** Scotland

**Search No.:** 4

**Search Line:** Scotland/

**No. of Results:** 3,773

**Search No.:** 5

**Search Line:** (scotland or scottish).ab,ti.

**No. of Results:** 2,383

**Search No.:** 6

**Search Line:** S4 or S5

**No. of Results:** 4,146

- **Main Concept:** Health services

**Search No.:** 7

**Search Line:** (health resources or health facilities or health care services or healthcare services or health services or health provision or patient care or nursing care or hospitals or inpatients or acute care or critical care or emergency care or social care or social services or social work or care home\* or

residential care or nursing home\* or residential home\* or long term care or residential facilities or DNACPR or cardiovascular or cardiac or life support or ventilat\* or palliative care or critically ill or emergency patients or resuscitat\*).ab,ti.

**No. of Results:** 187,896

**Search No.:** 8

**Search Line:** health services/ or health services administration/

**No. of Results:** 14,002

**Search No.:** 9

**Search Line:** health services for the aged/ or gerontologic care/

**No. of Results:** 6,778

**Search No.:** 10

**Search Line:** nursing care/ or social work/ or health care delivery/ or "health services needs and demand"/

**No. of Results:** 74,873

**Search No.:** 11

**Search Line:** health care/

**No. of Results:** 32,846

**Search No.:** 12

**Search Line:** health resource utilization/

**No. of Results:** 144

**Search No.:** 13

**Search Line:** patient care/ or cardiovascular care/ or critical care/ or emergency care/ or life support care/ or long-term care/ or nursing care/ or palliative care/ or primary health care/ or residential care/ or terminal care/

**No. of Results:** 122,611

**Search No.:** 14

**Search Line:** health care delivery/ or integrated health care delivery/

**No. of Results:** 18,428

**Search No.:** 15

**Search Line:** resuscitation/ or cardiopulmonary resuscitation/ or resuscitation orders/

**No. of Results:** 8,777

**Search No.:** 16

**Search Line:** health facilities/ or "health care facilities, manpower, and services"/ or hospitals/ or housing for the elderly/ or residential facilities/ or health facility administration/

**No. of Results:** 13,842

**Search No.:** 17

**Search Line:** "quality of health care"/ or "quality of nursing care"/

**No. of Results:** 23,173

**Search No.:** 18

**Search Line:** nursing home patients/ or nursing homes/

**No. of Results:** 15,448

**Search No.:** 19

**Search Line:** critical illness/

**No. of Results:** 4,797

**Search No.:** 20

**Search Line:** S7 or S8 or S9 or S10 or S11 or S12 or S13 or S14 or S15 or S16 or S17 or S18 or S19

**No. of Results:** 326,595

- **Main Concept:** Combined

**Search No.:** 21

**Search Line:** S3 and S6 and S20

**No. of Results:** 13

- **Main Concept:** Final

**Search No.:** 22

**Search Line:** Date limiter from 2022

**No. of Results:** 8

## **Web of Science 12th April 2023**

- **Main Concept:** Covid

**Search No.:** 1

**Search Line:** covid-19 or coronavirus or 2019-ncov or sars-cov-2 or cov-19 (Title) or covid-19 or coronavirus or 2019-ncov or sars-cov-2 or cov-19 (Abstract)

**No. of Results:** 425,662

- **Main Concept:** Scotland

**Search No.:** 4

**Search Line:** scotland or scottish (Title) or scotland or scottish (Abstract)

**No. of Results:** 66,109

- **Main Concept:** Health services

**Search No.:** 7

**Search Line:** health resources or health facilities or health care services or healthcare services or health services or health provision or patient care or nursing care or hospitals or inpatients or acute care or critical care or emergency care or social care or social services or social work or care home\* or residential care or nursing home\* or residential home\* or long

term care or residential facilities or DNACPR or cardiovascular or cardiac or life support or ventilat\* or palliative care or critically ill or emergency patients or resuscitat\* (Title) or health resources or health facilities or health care services or healthcare services or health services or health provision or patient care or nursing care or hospitals or inpatients or acute care or critical care or emergency care or social care or social services or social work or care home\* or residential care or nursing home\* or residential home\* or long term care or residential facilities or DNACPR or cardiovascular or cardiac or life support or ventilat\* or palliative care or critically ill or emergency patients or resuscitat\* (Abstract)

**No. of Results:** 4,215,860

- **Main Concept:** Combined

**Search No.:** 10

**Search Line:** #3 and #2 and #1

**No. of Results:** 341

- **Main Concept:** Final

**Search No.:** 11

**Search Line:** Date limiter from 2022

**No. of Results:** 147

**Proquest Social Scien Arial ces Premium Collection 12th April 2023**

(title(covid-19 or coronavirus or 2019-ncov or sars-cov-2 or cov-19) or abstract(covid-19 or coronavirus or 2019-ncov or sars-cov-2 or cov-19)) and (title(scotland or scottish) or abstract(scotland or scottish)) and (title(health resources or health facilities or health care services or healthcare services or health services or health provision or patient care or nursing care or hospitals or inpatients or acute care or critical care or

emergency care or social care or social services or social work or care home\* or residential care or nursing home\* or residential home\* or long term care or residential facilities or DNACPR or cardiovascular or cardiac or life support or ventilat\* or palliative care or critically ill or emergency patients or resuscitat\*) or abstract(health resources or health facilities or health care services or healthcare services or health services or health provision or patient care or nursing care or hospitals or inpatients or acute care or critical care or emergency care or social care or social services or social work or care home\* or residential care or nursing home\* or residential home\* or long term care or residential facilities or DNACPR or cardiovascular or cardiac or life support or ventilat\* or palliative care or critically ill or emergency patients or resuscitat\*)) = 67

Final results with date limiter from 2022 = 28

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167. 471 participants completed the survey of which 48% were nurses, 22% were administrative and other professionals, 11% were Allied Health Professionals, 11% were ancillary staff and 8% were doctors.

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Unit 4 Montpelier Central, Station Road, Bristol BS6 5EE  
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