

SCOTTISH COVID-19 INQUIRY

OPENING STATEMENT of REFUGEES FOR JUSTICE (a core participant) for HEALTH AND SOCIAL CARE IMPACTS HEARINGS

1. Introduction

- 1.1 This statement is made on behalf of Refugees for Justice (“R4J”) in response to Lord Brailsford’s direction of 29 September 2023, inviting submission of opening statements in respect of:

The impacts of the strategic decision making in relation to the themes of Health and Social Care insofar as are matters related to the Inquiry’s Terms of Reference

- 1.2 R4J seeks leave to make an oral submission in support of this opening statement.
- 1.3 R4J represents the interests both of those who had, by the material time, already been recognised as refugees, and of those who had, by then, not yet been thus recognised, so were considered asylum seekers. For brevity, henceforth the term ‘refugees’ may be used for both.
- 1.4 The material time was from 1 January 2020 until 31 December 2022, as made out in paragraph 7(a) of the Inquiry’s Terms of Reference.
- 1.5 R4J acknowledges that, at the material time, asylum was a reserved matter in terms of section B6 of schedule 5 to the Scotland Act 1998. In practice the asylum system was administered by the UK Government’s Home Office. However, the Scottish Government was responsible for the overall strategic response to the COVID-19 pandemic in Scotland, including in respect of issues likely to affect the experience of refugees and asylum seekers, for better or for worse. In that context, it is important to consider Home Office policy because it is that policy that contributed to the particular needs and vulnerabilities of

refugees located in Scotland. In essence the Scottish Government were or should have been aware of the impact of Home Office policy. That should have been taken into account during policy making.

2. R4J's Sources of Evidence

2.1 R4J is a Glasgow-based refugee-led campaign group, which originally formed in response to the Park Inn Hotel incident of 26 June 2020. It has also come to represent the broader interests of refugees and asylum seekers in Scotland. It has strong connections with that community at large, and with other organisations which exist to support it and its members, such as the Scottish Refugee Council ('SRC') and Refuweegee.

2.2 The R4J coordinators who have produced witness statements for this Inquiry are active, well-known and trusted participants in that community, in whom many of its members have confided in respect of their experiences of the Scottish Government's strategic response to COVID-19. For example, over the course of 2020 some 42 refugees and asylum seekers gave statements (through a variety of organisations), which elucidate the relevant issues. Accordingly, these coordinators are well-placed to speak to those individuals' overall experience.

2.3 SRC was established in 1985, and is Scotland's foremost charity for refugees and asylum seekers. Its Policy Manager, Graham O'Neill, has also produced a witness statement. Given SRC's broad sphere of activities with refugees and asylum seekers, and his role in the organisation, he too is well-placed to speak to the same overall experience.

2.4 Refuweegee was established in 2015, and is a Glasgow-based charity for refugees and asylum seekers. They provide welcome packages of essentials and emergency support packages to people in Glasgow and across Scotland. They intend to provide a statement.

2.5 The Independent Commission of Inquiry into Asylum Provision in Scotland ('the Commission') required it to consider:
in its title the specification:

... failings in the provision of care to New Scots during the Covid pandemic

It was commissioned by R4J to inquire into the situation at large in Glasgow during lockdown, including but not limited to said Park Inn Hotel incident, in order:

... to make sense of the decisions that led up to these events, and to provide recommendations to improve provision of asylum accommodation and support and to stop future tragedies occurring’.^[1]

It produced its report in 2 parts, where the first summarises relevant evidence, and the second discusses that evidence, formulates conclusions on that basis, and makes recommendations thereupon.

- 2.6 The Commission was chaired by Baroness Helena Kennedy KC, a Glasgow-born, English and Wales qualified barrister, and a well-known advocate for human rights and social justice at large. She holds, and has held, numerous senior appointments to organisations active to those and related ends.

3. R4J’s Principal Propositions

- 3.1 Paragraph 1 of the Inquiry’s Terms of Reference require it ‘*to establish the facts of, and learn lessons from, the strategic response to the COVID-19 pandemic in Scotland*’. On the material available to it, R4J submits that the following findings and recommendations should be made.

Factual findings

- 3.2 The evidence filled on behalf of R4J demonstrates the particular vulnerability of refugees. For example, part 2 of the Commission Report states that refugees:

... are also vulnerable. And I believe it is the current systems of asylum determination and support that makes them so. At a multitude of levels, and in many different ways, it places people into marginalised social and economic situations, without adequate support, and leaves them there with ever-diminishing hope for the future. For those who have experienced trauma, this same system can compound the problem. We have heard almost countless stories of re-traumatisation and further trauma as a result of treatment in the UK. It is very clear to me that trauma-informed approaches should be the norm in how we treat asylum seekers.

That vulnerability may well not be controversial but needs to be recorded as it provides the context in which public authorities are required to act. For example:

- a. Public authorities are bound to have regard to proper factors, and not to have regard to any other improper factors (*R (Alconbury Developments Ltd) v Secretary of State for the Environment Transport and the Regions* [2003] 2 AC 295 at [50]). Vulnerability will often be a legally relevant to public law decision making. For example, where a decision maker seems to assess the impact of a policy, it is plainly important to consider impact on the vulnerable.
- b. Further, discrimination can require account to be taken of vulnerability. As the European Court of Human Rights held in *Thlimmenos v Greece* app 34369/97:

The right not to be discriminated against in the enjoyment of the rights guaranteed under the Convention is also violated when States without an objective and reasonable justification fail to treat differently persons whose situations are significantly different. [44]

That implies that it may be discriminatory to fail to assess vulnerability.

3.3 On the limited material available, it appears that at the material time the Scottish Government failed to have specific regard to refugees and asylum seekers as a group of persons who needed special consideration in its overall strategic response to COVID-19. That means that no account was taken of their vulnerability. This is despite the relevance of their particular vulnerabilities. For example:

- a. The evidence suggests that refugees suffered isolation because of Lockdown. That is potentially particularly troubling for a group that has experienced trauma and may, in any event, require support. It appears that no consideration was given to the particular need for refugees to socialise when decisions of general application such as the decision to Lockdown were taken.
- b. Issues appear to have arisen with refugees accessing medical treatment. No particular arrangements were made for refugees to access medical treatment. That is despite their potential medical needs as victims of

trauma. The Park Hotel incident may be an indication of the consequences of a failure to provide adequate mental health care.

- c. A particular issue appears to have arisen with access to the GPs. It appears that there was a disconnect between addresses and documentation provided by the Home Office (a UK responsibility) and those required by GPs (a Scottish responsibility). While the Scottish Government had no control over what was provided by the Home Office, it was in a position to make sure that the documentation provided was accepted.
- d. There was no education regarding the self-testing system. Self-testing was a matter that the Scottish Government was responsible for. Similar issues arose in relation to vaccination.

3.4 It is accepted that some complaints raised in the evidence of R4J relate to matters that were not direct responsibility of Scottish authorities. That does not mean that those matters are irrelevant. The Scottish authorities were subject to a duty of sufficient inquiry (*Secretary of State for Education v Tameside MBC* [1997] AC 1014 at 1065B). That means that they should have been aware of the treatment of refugees by United Kingdom authorities. Had they been aware of that treatment, they should have taken account of their vulnerability and/or the need to mitigate the harm to refugees caused by the combination of UK and Scottish policies.

Lesson / Recommendation

3.5 The primary recommendation sought is that Scottish public authorities should take particular account of the vulnerability of refugees when implementing decisions of general application (such as Lockdown) at least where those decisions may impact on that vulnerability. The failings in the past suggest that duty should be incorporated in legislation so that it is not overlooked during periods of emergency.

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1. Para.1c of Report One

2. Holders of Asylum Accommodation and Support Services Contracts, e.g. in this case Mears Group plc, who are contracted by the Home Office