

SCOTTISH COVID-19 INQUIRY

OPENING STATEMENT ON BEHALF OF SCOTTISH CARE LIMITED

IMPACTS OF STRATEGIC DECISION-MAKING ON HEALTH AND SOCIAL CARE

Introduction

- 1 This Opening Statement is made on behalf of Scottish Care.
- 2 In accordance with the Direction issued by the Chair of the Inquiry on 29 September 2023 this Opening Statement describes Scottish Care's particular interest in that part of the Inquiry's work which focuses on the impacts of strategic decision making in relation to the themes of Health and Social Care in so far as those are matters related to the Inquiry's Terms of Reference. It does not address other issues that the Inquiry may consider at later stages of its work.
- 3 Nevertheless, this is also the first occasion on which Scottish Care has had the opportunity to make a statement in the context of a hearing of the Scottish Covid 19 Inquiry and it is grateful to the Chair for the opportunity to do so.
- 4 In the circumstances Scottish Care would wish to begin by acknowledging that the COVID-19 pandemic brought great trauma and pain to many people who received social care in care home settings, the challenges faced by frontline staff and the impact upon friends and family members who were in many cases bereaved as a result of the pandemic and who in other cases we unable to be with family members when they wanted to be.
- 5 While Scottish Care's participation in this part of the Inquiry's work is principally for the purpose of ensuring that the Inquiry understands the impacts of strategic decision-making on those who delivered social care, it does so with an acute awareness of the impacts experienced by those who received that care. It will listen carefully to the evidence given during these hearings by those who can speak to that impact and on behalf of those who cannot give evidence themselves.

Scottish Care

- 6 Scottish Care is a membership organisation representing the independent social care sector in Scotland. It works with its members and those who commission, regulate and use social care with the aim of creating conditions that support the provision of sustainable human-rights-based care and support.
- 7 It is a registered charity and its charitable purpose is "*the relief of those in need by reason of age, ill-health, disability, financial hardship or other disadvantage*". In pursuit of that purpose it has three key objectives. First, to promote, maintain, improve and advance, for the benefit of those referred to in its charitable purpose, organisations which offer care and support services in Scotland. Second, it aims to promote the common interests of organisations which offer such care and advance their position to the advantage of their members. Third, it seeks to assist the sector to develop services and standards.
- 8 Scottish Care has approximately 350 members. Those 350 members provide around 900 services with some members operating several care homes or organisations that provide care at home.
- 9 During the pandemic, and as is well known, Scottish Care's members were at the forefront of the frontline response to the pandemic, caring for older people and people with disabilities in residential settings and/or in those individuals' homes. Scottish Care was also directly and deeply involved in supporting its members in the delivery of those services and in communicating to Scottish Government and other decision-makers the experiences, concerns and fears of those delivering social care services. Scottish Care's involvement in supporting its members, and the response of the Scottish Government and others to Scottish Care and the social care sector during the pandemic, are matters that Scottish Care anticipates being examined by the Inquiry at a later stage.

Impacts

- 10 In relation to these hearings, Scottish Care considers that it can assist the Inquiry be providing evidence to the Inquiry about the impact of strategic decision-making on care providers and on individual social care workers. Those impacts are wide

ranging and continue to be felt. By way of a small number of examples they include the following:

- 10.1 **The impact on the health of care workers who contracted COVID-19 and whose risk of infection was contributed to by strategic decisions.** Those include the prioritisation of the NHS in relation to the procurement of PPE and the failure to mandate the use of PPE in March and April 2020 when PPE was only available after positive or suspected cases had been identified.
- 10.2 The failure to prioritise testing for social care staff resulted in staff having to take longer absences from work after coming into contact with a person who was COVID positive. In contrast, by mid-March 2020 NHS staff were receiving tests following such contact so that they could return to work after a 48-hour period. This resulted in the care sector having to operate with a reduced workforce despite the increased challenges it was facing. This led to staff shortages and also had negative financial impacts on social care staff who were, given their role, unable to work during such periods of self-isolation.
- 10.3 **The psychological and emotional impact on social care providers of strategic decisions that made it difficult for them to provide effective support for those in their care.** One example was the difficulty that care home operators experienced in obtaining health care support for residents. Care home providers and care workers reported to Scottish Care a sense of what might be called 'clinical abandonment' in the early part of the pandemic, with care homes struggling to access GP services or to have GPs come into care homes to see patients. Many factors contributed to this difficulty but Scottish Care considers that they include strategic decisions. So, for example, clinical guidance issued by Scottish Government in March 2020 "Nursing Home and Residential Care Residents and COVID-19" created a belief that care home residents who had contracted Covid-19 should not be transferred to hospital.
- 10.4 Although the guidance was later clarified, the practice of care home staff being strongly discouraged to transfer COVID positive residents to hospital remained. In many instances it was appropriate for the resident to remain in their care home but the presumption of a blanket ban in transferring residents was unhelpful and placed

enormous pressure upon care home staff as well as being hugely damaging to individuals with ongoing and developing clinical conditions.

- 10.5 **The impact on the morale of social care providers and individual social care workers of criticism which resulted from inconsistencies in national guidance.** A particular example was public criticism of social care providers in relation to the provision of PPE to their workers but without acknowledgement that national guidance prescribed different PPE requirements for staff working in social care compared with those working in healthcare settings. On occasions media shared photographs taken of social care workers while they were providing care together with criticism of the way in which PPE was being used.
- 10.6 **The impact on care providers of strategic decisions made about scrutiny and oversight.** One example was the announcement by Scottish Government in May 2020 of arrangements for "enhanced professional clinical and care oversight of care homes" which instructed Health Boards and Health and Social Care Partnerships to establish multidisciplinary teams to scrutinise and support care homes. The result of this decision was that in addition to inspections from the Care Inspectorate, care homes were inspected and visited by teams from Public Health Scotland, infection prevention and control specialists and appointees of the Health Board Nurse Director, among others.
- 10.7 This approach frequently resulted in contradictory advice and guidance being provided to staff and led to a clinical approach to care homes from practitioners who did not have any expertise in a social care context. In particular, infection prevention and control measures appropriate to an acute hospital setting were imposed on care homes by staff from an NHS background where, in the view of Scottish Care and its members, those measures were not appropriate. An example was the failure to recognise care homes as the homes of individuals with dementia. Personal items, which were often critical for residents' wellbeing, were assessed as infection risks and removed from residents' rooms often causing real upset to these residents.

- 10.8 Social care workers felt that in many cases that their experience and expertise was not respected by those who provided oversight and that their autonomy to make decisions in the best interests of their residents was reduced.
- 10.9 While improvements were made over time, Scottish Care undertook research in 2021 into the impact of this oversight and scrutiny model being imposed upon the sector. Findings included a significant reduction in staff morale during an already challenging time. The results of this research were published in Scottish Care's report "*The Ingredients for Growth: Care Providers Experience of Regulation and Oversight*" in November 2021.
- 10.10 **The financial impact on social care providers of funding decisions.** The immediate financial pressures faced by independent social care providers, including due to the increased costs of PPE and loss of staffing, meant there was an urgent need to establish financial support. This process took time to establish and for the relevant criteria to be developed.
- 10.11 Social care providers were not eligible to apply for business support funds that were available to other small businesses and a separate funding process was developed by the Health and Social Care Directorate within the Scottish Government specifically for social care providers.
- 10.12 Difficulties arose as a result of the approach to funding that was adopted. Those difficulties involved payments having to be applied for retroactively and multiple changes to the terms on which they were available.
- 10.13 The availability of funding was regularly extended on the week, if not the day, that the fund was due to end. This type of intervention did not allow for longer-term financial viability and business planning and affected the stability of care providers. Due to its lasting financial impact coupled with the rising cost of living the sector is currently experiencing the highest level of care home closures in Scottish Care's existence.

Scottish Care's role in giving evidence on impacts

- 11 Scottish Care is hopeful that the Inquiry will hear directly from individual care providers and social care workers about the impact on them of strategic decision-making.
- 12 There are, however, reasons to believe that many providers and workers will hesitate to come forward to give evidence to the Inquiry.
- 13 For many involved in the sector, the pandemic was an extremely traumatic period during which they were put under extreme pressure, were exposed to significant risks to their health and to their livelihood and witnessed the extreme suffering of those for whom they cared. Scottish Care understands that for many of those affected they do not wish to re-visit that trauma.
- 14 There is also hesitation on the part of some individuals as a result of the ongoing effect of Operation Koper, the name given to the investigation resulting from the Lord Advocate's announcement in May 2020 that the death of any care home resident due to COVID-19 or presumed COVID-19 was to be reported to the Procurator Fiscal.
- 15 This decision and the subsequent reporting and investigation of such deaths has caused trauma within the care home sector and Scottish Care knows that individual providers and care home workers remain anxious about the potential consequences for them of Operation Koper.
- 16 Scottish Care is able to assist the Inquiry in relation to these impacts because of its direct and immediate involvement in supporting the social care sector throughout the pandemic. It was in constant receipt of information, concerns and questions from its members about the impact of the pandemic on them, on the social care workforce and on those for whom they were providing care.
- 17 Its work during that period, in addition to extensive engagement with Scottish Government, local authorities and regulators, included substantial work to ensure that its members were aware of legislative changes and guidance issued by the

Scottish Government, Public Health Scotland, COSLA and the Care Inspectorate and the impact that such changes and guidance would have on their operations.

- 18 Amongst a wide range of activities, and in order to actively support its members, Scottish Care delivered webinars on COVID-19 twice a week from 17 March 2020. Those were then added to by the hosting of 'surgeries' to provide a forum in which members could ask Scottish Care questions and share information with each other.
- 19 These provided Scottish Care with feedback from members in relation to what was happening in the care sector in each part of the country and supplemented the daily intelligence it was receiving from its regional staff based throughout Scotland.
- 20 Scottish Care looks forward to working with the Inquiry to ensure that the impacts of strategic decision-making on its social care providers and social care workers are well understood.
- 21 It will assist the Inquiry in relation to this part of its work, and in later phases of the Inquiry's work, to greatest extent possible.

Personal Data

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