

**The Scottish Covid-19 Inquiry Before Lord Brailsford**  
**Hearings on the Impacts of Health and Social Care: October to December 2023**

---

**DRAFT/**  
**OPENING STATEMENT**  
**on behalf of**  
**THE SCOTTISH GOVERNMENT**

---

**Introduction**

1. My name is Geoffrey Mitchell, KC and I appear at this hearing on behalf of the Scottish Government. I appear today along with my junior, Kenneth McGuire, Advocate. We are instructed by Caroline Beattie, of the Scottish Government Legal Directorate.
2. I would like to thank the Inquiry for granting the Scottish Government leave to appear at these Hearings, and for the opportunity to make these opening remarks. As the body that was responsible for steering a path for Scotland through the pandemic, the Scottish Government is of course well placed to explain the strategic decisions made during that time. Those decisions are not, however, the immediate focus of the Inquiry. The focus of the current hearings is *the impact* of the pandemic on, and experienced by those within, the Scottish health and social care sector. The Scottish Government is too well aware of the loss and suffering experienced in that sector, and in Scotland as a whole.
3. Today, on behalf of the Scottish Government, I would like to recognise that loss. All of Scotland suffered. Yet, undeniably, some suffered far more than others. Thousands lost their lives, and their families and friends continue to grieve. The health of many individuals has been affected in innumerable ways. Many people lost their jobs, while living circumstances of others were affected in countless different ways. Children and young people, often thought to be less susceptible to the virus than adults, nevertheless suffered greatly, also. Further, many people continued to work through the pandemic in extremely challenging circumstances. This pain, suffering, sacrifice and endurance is recognised, understood and acknowledged by the Scottish Government.
4. Yet, 'recognition', 'understanding' and 'acknowledgement' are plainly not sufficient. The Scottish Government understands that legitimate questions arise as to whether the suffering needed to have been so great. This was one of the reasons that the Scottish

Government established this 'judge led' statutory inquiry into the handling of the pandemic in Scotland. It was also one of the reasons why, when the Inquiry was established by the former First Minister (Nicola Sturgeon), she emphasised that it would take a person centred, human rights approach. Indeed one of the Inquiry's Terms of Reference is, "*To demonstrate how a human rights based approach by the inquiry has contributed to the inquiry's findings in fact and recommendations*".

5. The Scottish Government understands that the most meaningful and genuine way to recognise the loss suffered is to listen to the evidence, and to learn lessons from it. To that end, it is important that I stress that the Scottish Government is fully committed to the Inquiry process, to the Chair and to the people of Scotland. That commitment is to assist, to cooperate fully and openly, to listen and to learn. I recognise that, for some people, the giving of evidence at these public hearings will be a difficult experience. I can reassure any such person that their evidence will be listened to by the Scottish Government with great respect and consideration.
  
6. I should firstly make clear one important point. That is the distinction between, on the one hand, decisions made on health and social care during the pandemic by the *UK Government*, and on the other those made on behalf of *the Scottish Government*. This is relevant, since Module 2 of the UK Covid 19 Inquiry is currently hearing evidence that relates to the UK's core political and administrative decision-making in relation to the pandemic between early January 2020 until February 2022. This will doubtless include evidence on decisions taken by the UK Government in relation to health and social care in England. The important point is this: public health, the NHS, social care and social services are generally devolved matters in Scotland. That is, in Scotland, the Scottish Government has primary responsibility for, and the powers necessary to make decisions in these areas. Given the widely varying geographical and epidemiological circumstances across Scotland, and conscious of the need to balance the impact on social and economic activity of measures necessary to suppress virus transmission, the Scottish Government took the approach of tailoring restrictions to local circumstances. The Scottish Government, where possible, worked in 'partnership' with a number of bodies including, for example, NHS Boards, the Centre of Sustainable Delivery, and Public Health Scotland. The decisions that it took in these areas were always taken in the interests of people in Scotland.

## **Impact on Health and Social Care**

7. I turn now to the issue of impact in the area of health and social care, and begin by setting out in a little more detail the ways in which the impact was felt.
8. The entire health and social care system was affected in multiple and varied ways. Structures, services, processes and organisations were all impacted. Most importantly, however, the impact was felt by individuals, also in multiple and varied ways. Factors such as COVID-19 infection control requirements; the redeployment of staff; the ability of hospitals to provide the capacity to treat COVID-19 patients; delayed discharges; and COVID-19 related staff absences all had a detrimental effect on the system, and consequently on individuals. Some people were reluctant to seek medical help, for fear of contracting the virus. Some adult screening programmes (e.g., for the detection of cancer) were paused during the pandemic (albeit everyone was offered the opportunity to attend screening once they restarted). Some of the impacts continue to be felt. For example, there has been an increase in waiting times for certain medical treatment.
9. The impact on the social care sector was severe. Deaths that occurred in care homes and that were attributable to COVID-19 accounted for a significant percentage of all COVID-19 deaths in Scotland. The suffering of residents and the continuing pain of their relatives is palpable. Evidence on this issue will surely, and understandably, figure prominently in these hearings.
10. The pandemic affected the health and social care workforce. In jobs that were already demanding and that carried high levels of responsibility, the pandemic presented further challenges of stress and fatigue for hospital and social care staff. Their roles were further complicated by the shortage at times of personal protective equipment, or PPE. Although Scotland did not run out of PPE, unprecedented demand placed strain on the distribution mechanisms.
11. There has also been an impact on the health of the Scottish people, in a variety of ways. For example, in addition to illness and death caused directly by the virus, the mental health of the population suffered. The impact of Long-Covid has yet to be fully understood. And pre-existing health inequalities were exacerbated. The full effects of COVID-19 have yet to become clear.

12. The Scottish Government is fully committed to the recovery of the NHS and the social care system to its pre-pandemic level, and beyond. The detail for recovery of the NHS and the social care system will no doubt be dealt with in future hearings, but I shall briefly mention three aspects. First, the *'NHS Recovery Plan 2021–2026'* sets out how the Scottish Government will address the backlog in care, meet the ongoing health needs of the population, enhance primary and community care, and enhance wellbeing support. Second, an early example of recovery planning was the Scottish Government's *'Mental Health Transition & Recovery Plan'*. Published in October 2020 and backed by £120m investment, in recognition of the negative impact of the pandemic and associated restrictions on people's mental health, coupled with the limitations it placed on clinical services, the Scottish Government expanded the range of support available, from public messaging to new digital services. Third, a further, early example of recovery planning was the report *'Coronavirus (COVID-19) initial health and social care response: lessons identified'*. Focusing on the period March to September 2020, the report examined what worked well, and what improvements could be made, so that Scotland was better equipped for on-going recovery and remobilisation plans.

### **The 'Four Harms' Approach**

13. Standing the focus of the current hearings, it is not appropriate to explore strategic decision making. However, the Scottish Government does consider that, if the Inquiry is to hear evidence about impact, it should have an understanding of the principles that were applied to decision making in an attempt to manage that impact. What I propose to do is briefly to explain to those listening, not the actual decisions, but rather the steps that were taken to minimise the impact, or harm, suffered during the pandemic.

14. Covid-19 posed an unprecedented, systemic threat not only to the health of those susceptible to infection, but also to healthcare systems, economic activity, and wider society. The Scottish Government's strategic aim in dealing with the pandemic and, in particular, in the development and use of NPIs was to minimise the overall harm of the pandemic throughout the *whole* of Scotland - not merely in the urban areas, but also in the most rural and remote areas where people live. In April 2020, building on the *'Coronavirus: Action Plan'* that had been published by the four governments of the UK, the Scottish Government explained the way it would take future decisions on its pandemic response in the *'Framework for Decision Making'*. This document set out the Scottish

Government's principles and approach to dealing with the pandemic, particularly in relation to the use of NPIs.

15. A key part of the approach described and enshrined within the Framework for Decision Making (and in the strategic documents that were produced in the following months) was to marshal the many and various harms of the pandemic into four categories, or 'harms'. The concept of 'Four Harms' (as the strategy became known) was that, broadly speaking, the pandemic, and measures in response to it, could cause harm in four areas, namely:

- (i) Direct Covid-19 health harms: primarily, the mortality and morbidity associated with contracting the disease;
- (ii) Broader health harms: primarily, the impact on the effective operation of the NHS and social care services associated with large numbers of patients with Covid-19, and its consequential effects on the treatment of illness;
- (iii) Social harms: the harms to a wider society, in terms (for example) of education attainment as a result of school closures;
- (iv) Economic harms: for example, through the closure of businesses and workplaces.

16. Indicators chosen as representing key aspects of each harm were reported on a 'Four Harms Dashboard' to support understanding of the impact of the pandemic across the 'Four Harms' – this included key indicators on the direct health impacts such as trends in Covid-19 hospital admissions as well as wider impacts on health and social services, societal impacts, and economic impacts such as the number of Accident & Emergency admissions and planned hospital admissions.

17. Furthermore, I must emphasise that equalities impacts and issues of fundamental human rights were considered *alongside* the Four Harms. Inequalities were regarded as a factor *within* each of the Four Harms. This ensured that equalities issues were included within the assessments made of each of the four harms and not viewed in isolation of the other factors. This approach is consistent with the aspirations of the Scottish Government, both before and after the pandemic, to build equality into policy-making across all areas of government.

18. The complexity of the systemic challenge posed by the rapid spread and evolution of the Covid-19 virus meant that there was no single or individual correct response. The Scottish Government had to address an alarming situation that posed a threat to the whole of society. It had to calibrate its decision-making to address multiple issues, often under great

time pressure. It quickly became apparent, given the nature of the challenges posed by the virus, that there were few, if any, 'harm free' decisions open to governments, including the Scottish Government. Measures designed to curtail the spread of the virus reduced the direct *health* harm but, on the downside, risked causing isolation and loneliness, economic upheaval and disruption to education. On the other hand, a decision not to impose or lift restrictions might be said to lessen wider harms, but only at the risk of possible increasing harm to health. The Four Harms were interlinked, and this was well understood by the Scottish Government at the time. For example, an increase in unemployment and poverty would have, over time, both physical and mental health implications. The challenge was for the Scottish Government, and other governments, to balance risks and benefits and take decisions to reduce overall harm as much as possible.

### **Conclusion**

19. Let me repeat and reaffirm something that I said at the outset of this statement: that the Scottish Government will listen to the evidence given at these impact hearings with great respect and consideration. The Scottish Government is committed to learning from that evidence.

20. The Scottish Government is grateful to the Chair for the opportunity to make this opening statement. My team and I hope that we can be of assistance to the Inquiry in the weeks to come.

**16 October 2023**

**Geoffrey Mitchell, KC**  
**Kenneth McGuire, Advocate**

**Counsel for the Scottish Government**

**(Instructed by Caroline Beattie, Scottish Government Legal Directorate)**