

SCOTTISH COVID-19 INQUIRY

Written Statement of Lyndsay Fleming and Sabrina Galella on behalf of JustRight Scotland

1. We provide this statement on behalf of JustRight Scotland (JRS) and the Scottish Women's Rights Centre (SWRC).
2. I, Lyndsay Fleming, am the Senior Associate Solicitor of JRS. I have been employed at JRS since April 2019 and I sit within the SWRC project. I support victim/survivors of gender-based violence with their civil legal issues. Prior to my employment at JRS, I completed my legal traineeship within a civil private law firm specialising in civil litigation and family law. I have been involved with the SWRC project since its inception in 2015, starting as the Co-Student Director of the University of Strathclyde Law Clinic and volunteering for the project. I specialise as a civil legal aid solicitor within the area of gender-based violence. I have a BA in Childhood Studies and an LLB in Scots Law with PgDip.
3. I, Sabrina Galella, am the Policy and Public Affairs Manager of JRS. I began working for JRS in September 2021, and I lead the policy and public affairs work across our four legal centres, with a focus on identifying gaps in access to justice and influencing change. My background is in policy in the third sector, and I was also a researcher at the Scottish Parliament. I have a BSc in Politics and International Relations, an LLM in International Human Rights Law and a specialist diploma in Public Affairs.

Part 1: About JustRight Scotland

4. JustRight Scotland (JRS) is a registered charity (SC047818) established in 2017 by an experienced group of human rights lawyers. We use the law to defend and extend people's rights, working collaboratively with legal and non-legal partners across Scotland towards the shared aims of increasing access to justice, reducing inequality, and developing models of collaborative social justice.

5. JRS provides direct legal advice and representation to people who would otherwise struggle to access justice. We advise on human rights and equalities issues across a range of legal areas including women's legal justice, trafficking and labour exploitation, EU citizen rights, migration and citizenship, disability and trans legal justice. Whilst our work is specific to Scotland, our work covers both devolved and reserved policy areas, and as such we endeavour to respond to policy consultations across both Scotland and the UK, where appropriate.
6. As public lawyers for people who face systemic inequalities, discrimination, and disadvantage, we use the provisions of the Human Rights Act 1998 (HRA) in our work, daily. In addition to providing direct legal advice to clients, we also run outreach legal surgeries and helplines, deliver rights information, training, and legal education, and contribute to research, policy and influencing work.
7. We exist to:
 - a. advance human rights for those who face barriers to access to justice;
 - b. promote equality and diversity for those who experience inequality, discrimination and human rights abuses;
 - c. advance citizenship and community development for those who experience inequality, discrimination, and human rights; and
 - d. advance education.
8. The issues that JRS is seeking to tackle over the longer term are:
 - a. Gaps in the availability of specialist legal advice where people's human rights are being breached, and/or they are experiencing inequality and discrimination;
 - b. a general lack of clear, straightforward, accessible information about human rights and equality, which contributes to people not understanding or having confidence in accessing their rights;
 - c. the need for systematic and widespread changes to laws and policies to better protect everyone's human rights and equality; and
 - d. the need to safeguard the legal protections that currently exist for people's rights and equality.
9. JRS operates four national centres of legal excellence providing direct legal representation, legal outreach, and legal education, as follows:
 - a. The Scottish Refugee & Migrant Centre (SRMC): offers free legal information, advice and representation to refugees, asylum seekers and migrants across Scotland. SRMC runs collaborative projects with Aberlour Child Care Trust's Scottish Guardianship Service, Kids in Need of Defense UK, the British Red Cross Family Reunion Service and Clan Childlaw, targeting four key areas of work: children, women, family reunion and destitution.
 - b. The Scottish Anti-Trafficking and Exploitation Centre (SATEC): is the only specialist legal project in Scotland that provides direct legal advice and representation to child and adult survivors of trafficking and exploitation found in Scotland, regardless of nationality, gender, type of exploitation, and geographical location. SATEC is a member of the UK-wide Anti-Trafficking

Monitoring Group and works closely with key organisations that support survivors of trafficking in Scotland, including the Trafficking Awareness Raising Alliance (TARA) based within Glasgow City Council's Community and Safety Services, Migrant Help and Scottish Guardianship Service.

- c. The Scottish Just Law Centre (SJLC): aims to reduce discrimination and disadvantage in Scotland by helping people use equalities and human rights law as an effective tool for social change by providing legal information, advice and direct representation to individuals and organisations. SJLC challenges discrimination on the basis of age, disability, gender reassignment (trans identity), marriage and civil partnership, pregnancy and maternity, race (including traveller ethnicity), religion or belief, sex, and sexual orientation and works closely in partnership with key organisations including Inclusion Scotland and the Equality Network.
 - d. The Scottish Women's Rights Centre (SWRC): SWRC is a unique collaborative project delivered through a partnership between Rape Crisis Scotland, the University of Strathclyde Law Clinic and JRS. The SWRC works with women who have been affected by abuse and violence in Scotland with the aim of improving their access to justice and experience of the justice system. SWRC offers free legal information, advice and representation to women. The SWRC strives to fill the gaps that exist between women's experiences of gender-based violence and their ability to access justice by working with specialist solicitors and experienced advocacy workers. Its services include helplines, legal advice surgeries, advocacy support and legal representation. Informed by direct work with victims/survivors of violence and abuse, the SWRC seeks to influence national policy, research, and training to improve processes and systems, and ultimately to improve justice outcomes for women who have experienced gender-based violence.
10. JRS also operates a legal policy, research and training hub which supports the work of all our centres, with responsibility for our policy and influencing work, our programme of legal information and professional training and legal education, our strategic communications strategy, and our campaigns around issues of human rights, equality, and inclusion.
 11. Additionally, JRS hosts JustCitizens, a migrant-led initiative advocating for everyone living in Scotland to be able to access and exercise equal rights, regardless of their immigration status. Through co-production and co-creation, which brings people and stakeholders together to identify issues and implement solutions, the JustCitizens' panel works to identify key areas of advocacy and campaigning. The panel draws upon lived and learned experience, community research, and established networks to widen the scope of the work and address important gaps in policy. The panel's work includes supporting the *Our Grades Not Visas* campaign, fighting for the rights of all migrant students and asylum seekers denied access to higher education in Scotland, and launching the *Access to Healthcare Toolkit* in several languages, detailing healthcare rights for all new Scots. The panel is supported by policy, participation, and communications officers to provide additional legal, policy, campaigning, and communications expertise. JustCitizens is funded by the Paul Hamlyn Foundation and the Esmée Fairbairn Foundation.

12. Overall, grant funding from the Scottish Government is used to support our legal centres working on women's rights, anti-trafficking and exploitation, migrants' rights, and anti-discrimination. Funding from charitable trusts and foundations supports our legal centres working on refugees and migrants' rights, anti-trafficking and exploitation, and anti-discrimination. This funding also supports our policy, communications, and participation work.

Part 2: Brief overview of the Impact of COVID-19 and the Scottish Government's response

13. COVID-19, and the strategic response to the pandemic by the Scottish Government and public authorities, has exacerbated existing inequalities, primarily by making the people JRS works with - who were already excluded and marginalised - more vulnerable and isolated. That is the case for people seeking asylum, refugees and migrants, trafficked people, women who experience gender-based violence, disabled people and racialised communities.
14. Throughout the pandemic, key services – delivered by both statutory authorities (including, the NHS (specifically mental health services) and the Scottish Courts and Tribunal Service) and third sector organisations – reduced or limited their capacity to provide necessary support to these vulnerable groups, whether because of challenges imposed by operating remote services, or because of the different staffing requirements necessary to safely operate in-person services. For example, there were serious delays in the civil justice system, where numerous non-urgent civil cases were sisted, increasing the backlog of rape and sexual assault cases, and many solicitors, support and advocacy workers were furloughed. The limited capacity of key services has increased gaps in access to justice, and reduced advice on rights and legal representation, particularly as legal and advice agencies also have reduced or limited capacity to assist.
15. JRS has seen its clients struggling with the impact of delays in judicial processes and administrative systems of adjudication. In some cases, for example in asylum and immigration status determinations, a delay can prolong the period of time during which a person's immigration status is precarious or unlawful, thereby also prolonging the period of time during which they may remain destitute or at risk of homelessness. For survivors of violence and abuse, delays around criminal and civil processes can cause increased anxiety due to the uncertainty about achieving closure – and in some cases, safety – in relation a historic act of abuse or exploitation. Perpetrators often use the civil justice system to continue to perpetrate abuse, and so the added delays caused by the COVID-19 pandemic were a serious cause for concern for victim/survivors.
16. Finally, JRS remains concerned about the increased risk of harm or exploitation facing some groups – notably, women facing gender-based violence and people at risk of trafficking and labour exploitation. We note also the increased risk for other clients who are in danger of destitution and homelessness due to economic losses including job losses, deteriorating physical or mental health, or precarity in their immigration status, and who therefore also experience increased vulnerability to abuse and exploitation.

Part 3: The Disproportionate Impact of COVID-19 on JRS's Client Groups – Survivors of Gender-Based Violence

17. Overall, COVID-19 and the Scottish Government's strategic response to the pandemic has significantly impacted women, and even more so women from ethnic minority groups. The existing barriers to their full participation in society – including issues related to their immigration status, non-recourse to public funds, high rates of unemployment or the restrictions on employment, deprivation and low educational attainment, and limited or no English literacy - were exacerbated by the response to the pandemic. For example, lockdown and other measures led to increased care responsibilities and home schooling for many women, and digital exclusion and the lack of access to crucial services heightened the isolation they felt.
18. To best support JRS's client groups, the SWRC continued providing its services throughout the pandemic and in fact increased service provision to meet demand from March 2020 onwards. It is through direct contact with women across Scotland during this time that JRS and the SWRC were able to witness the impact of the pandemic, and the restrictive measures introduced in response, on victim/survivors and services.

Impact of COVID-19 on Child Contact

19. The impact of COVID-19 on child contact issues should not be underestimated. Guidance has not always been clear or consistent in terms of what would be seen as 'reasonable measures' in changing of contact arrangements. It is understood that the Scottish Government measures during the pandemic were constantly evolving and changing and therefore it was difficult for the Scottish Courts and Tribunal Service to keep up with these changes, interpret them, and implement measures, for example, by publishing timely guidance notes, or updates on court closures or opening hours. The SWRC attempted to clarify measures as much as possible for and service users and survivors through our series of COVID-19 related blogs, including our blog 'Child Contact and Coronavirus: Answers to Common Questions' (Exhibit LFSG/1).
20. The guidance from the Lord President released during the pandemic was that contact arrangements could continue between separated families despite government guidance on lockdown measures. It was stated that if one party unilaterally changed child contact arrangements due to COVID-19 concerns then the courts would expect, where possible, alternative arrangements to be made for contact to take place by video or telephone call (Exhibit LFSG/2).
21. This measure caused significant issues for victim/survivors of domestic abuse as it left perpetrators of abuse free to continue the cycle of abuse via these means. We have heard through our outreach that abusers used this contact to monitor the other parent and to exert control and continue direct abuse towards the other parent. During the pandemic, we were informed by victim/survivors that they felt trapped in their own homes when perpetrators were able to video call inside of their homes. Victim/survivors spoke of perpetrators asking their children to go into different rooms to see inside of the property. This was particularly concerning where victim/survivors had not disclosed their address to the perpetrator due to safety concerns. Victim/survivors often reported feeling bound to be involved in the video call contact due to the young age of their children. Many victim/survivors were unsure of their rights in these circumstances and

had concerns that they would be deemed 'unreasonable' if they did not allow this contact despite the negative impact it was having upon their wellbeing and that of their children. With many solicitors being furloughed or having lower capacity during the pandemic (for example, due to shielding, illness or caring responsibilities), victim/survivors felt left in the dark regarding their rights. Furthermore, through our outreach, we have heard reports of victim/survivors being threatened with and taken through contempt of court proceedings for not strictly adhering to contact orders during the pandemic.

22. Where abusers were aware that the courts were not open for non-urgent business, child contact could be manipulated and used to continue a cycle of abuse. We have heard of some instances through our outreach where the non-resident parent refused to return the child after an agreed period of contact or extended contact periods to their benefit, citing COVID-19 related issues. In these circumstances, during the initial lockdown in 2020, victim/survivors were unable to do anything about this issue due to courts being closed to non-urgent cases. There was also a misconception that courts were closed even to urgent cases, although this was not the case and for example applications could be made for protective orders during this period.
23. In these circumstances it is crucial that guidance is clear and consistent, and that it is widely published to ensure that even where legal representation is not available, victim/survivors are aware of their rights. JRS believes that greater consideration should have been given by the Scottish Government, at early planning stages, to the disproportionate impact of lockdown measures on victim/survivors of domestic abuse. Specifically, engaging with front line domestic abuse services on how measures under consideration may impact their service users would have allowed for informed measures that could be adapted so as to reduce harms for victim/survivors.

Impact of COVID-19 on Legal Representation

24. Prior to the pandemic, there had been an ongoing issue relating to the accessibility of legal representation for women who qualified for legal aid. Fewer solicitors were taking on cases on a legal aid basis due to issues within the legal aid payment structure, which meant that solicitors were not fully recompensed for their work. Many solicitors were unable or unwilling to take on family actions and protective order cases under legal aid due to the 'block fee' system. Nearly all cases of this type require a large volume of work to be undertaken at the start of the case, and specifically, for protective order cases, they do not normally require proceeding to a full evidential hearing. The block fee system does not recognise the front-loaded nature of this type of case and therefore does not adequately recompense the work required by solicitors in these cases.
25. Unsurprisingly, this issue has been exacerbated by the COVID-19 pandemic, and the resulting cost-of-living crisis, which has many solicitors and solicitors' firms facing ever increasing financial demands without adequate increase of fees under legal aid. JRS and the SWRC heard through our outreach (legal helplines and surgeries), and from other violence against women organisations, that sourcing legal representation on legal aid funding was incredibly difficult during 2020, and this was a particular issue for women living in the north of Scotland, where legal representation is generally limited.
26. As a result, JRS and the SWRC experienced an unprecedented increased demand for our legal surgeries and saw increasing numbers of women contacting us who were eligible for legal aid but could not find a solicitor to represent them. During the pandemic,

the SWRC prioritised representation in protective order cases as these were considered an area of strategic need for victim/survivors. However, the SWRC could not (and should not be expected to) represent every case meaning that women and children experiencing abuse were sometimes left without the necessary legal support. Since the pandemic, this issue has only compounded, with victim/survivors reporting that they have contacted anywhere from 35-50 legal aid solicitors and have been unable to source legal representation.

27. Many victim/survivors were faced with having to either privately fund their legal fees or self-represent. Privately funding legal costs can lead to financial issues and is another means by which a perpetrator can continue economic abuse against a victim/survivor. Self-representation, especially in complex domestic abuse cases, can lead to further traumatisation of the victim/survivor and may lead to acceptance of settlement offers which are not in the victim/survivors' or the child's best interests.
28. JRS's position is that there should be greater access to legal representation in cases of gender-based violence. In our written evidence to the Equalities and Human Rights Civil Justice Committee dated December 2020¹, JRS recommended that a review be undertaken of the legal aid fee structure of the Scottish Legal Aid Board for family law matters, to increase funding for solicitors in these cases. Particularly, JRS called for a review of the funding for protective order cases and recommended that, in the interests of justice, protective orders cases should be exempt from means-testing for civil legal aid and that no contribution should be required.
29. People at risk should not face barriers in accessing important protection. Yet JRS is aware from our experience of women contacting our outreach services, that many women in desperate need of a protective order have been unable to raise a court action if they do not qualify for legal aid and additionally may choose not to pursue such an action if they are required to pay a contribution.

Impact of COVID-19 on the Civil and Criminal Justice Systems

30. COVID-19 significantly disrupted the operation of both criminal and civil justice processes; the cessation of court business over lockdown led to a backlog of cases; and delays in justice processes have impacted on survivors. During the initial lockdown phase of the pandemic, from March to June 2020, all non-urgent civil cases were continued or sisted. As the civil courts began to move out of lockdown, cases were resurrected, and hearing dates assigned. The civil courts have worked hard to progress cases where possible, however, despite this, significant delays have resulted². The

¹ The Impact of the COVID-19 Pandemic on Equalities and Human Rights in Scotland Written Evidence to the Equalities and Human Rights Committee Scottish Parliament, December 2020. This evidence was provided to the Inquiry as Exhibit MS/6 to the written statement of Dr Marsha Scott on behalf of the Scottish Women's Rights Organisations dated 11 October 2023.

² In April 2023, Scottish Courts and Tribunals Service data shows the average time from pleading diet to trial is currently: 49 weeks for High Court cases, compared to a pre-pandemic level of 22 weeks, 44 weeks for Sheriff Solemn (Sheriff sitting with a jury), compared to a pre-pandemic level of 11 weeks, 41 weeks for Sheriff Summary (Sheriff sitting without a jury), compared to a pre-pandemic level of 23 weeks. See Exhibit LFSG/3.

delays, and uncertainty that this causes, has placed significant stress and anxiety upon victim/survivors regarding how their cases will be progressed. Some women said to us that they wanted to withdraw from the process because they felt unable to cope with the uncertainty.

31. Service users also considered that the ability of lawyers to obtain witness statements and other forms of documentary evidence, and to put these before the court, was more difficult because of pandemic measures, particularly at the start of the pandemic. All communication moved to online/telephone and information had to be provided remotely, which presented unique difficulties (for example, in obtaining copies of necessary documents or verifying new clients' identities). There were additional barriers to advising or taking instructions from some clients, who did not have access to secure communication methods or a safe space in their home to speak to their lawyer. At the outset of the pandemic, there was also confusion around signing requirements and a lack of guidance on this issue led to delays for some women.
32. Victim/survivors have told us about barriers in reporting to the police regarding gender-based violence during the pandemic and gaps in enforcement leading to increased distress and risk of harm. For example, victim/survivors have reported through our outreach services that despite serious criminal conduct and breaches of bail conditions, and despite reports to Police Scotland, their perpetrator had not been arrested or detained. These accounts were echoed by support workers in the sector who reported that during the pandemic individuals in breach of bail conditions were not remanded, contrary to their experiences of the approach taken before the pandemic. JRS does not hold data on how often this occurred or why, although we received anecdotal reports that it related to COVID-19 infection rates in detention settings. There are continuing difficulties post-pandemic, given the backlogs in cases.

Impact of COVID-19 on Mental Health of Victims/Survivors

33. The real life and human impact of the COVID-19 pandemic has been devastating on society as a whole but people who were already in vulnerable situations have been disproportionately hit. As a result, heightening mental health problems and exacerbated psychological distress are reported amongst those already in vulnerable situations, including the traumatised survivors of domestic violence.
34. Through our outreach, JRS heard from victims/survivors that they struggled to access NHS services including mental health support. During the pandemic, we experienced a significant increase in safeguarding calls - where a victim/survivor presents as unsafe due to suicidal thoughts or thoughts of self-harm, or concerns around the safety of children or vulnerable persons - as victims/survivors were unable to access their usual mental health support, as well as callers presenting with more complex legal queries. JRS does not hold data on the exact level of the increase in calls, although the numbers grew as the pandemic wore on because support services remained limited, and the impact worsened as time went on.
35. In general, prior to the pandemic, calls to JRS' services would come from referrals from other gender-based violence services, such as Women's Aid and Rape Crisis Scotland or health services. This meant that victims/survivors had generally received some front-line support and were able to access our service for the appropriate legal support they required. A direct impact of the pandemic was an increase in demand for gender-based

violence services. With the reduction of in-person NHS services and 'urgent' only appointments, we found that victims/survivors contacting JRS or the SWRC were often in crisis and required safeguarding support, which impacted our ability to provide legal advice and information in these circumstances.

36. In turn, this situation had a knock-on effect on our staff. JRS and SWRC staff members were required to deal with an increasing volume of safeguarding calls, which impacted on their wellbeing. Staff members were considered essential workers and worked throughout the pandemic, dealing with the impact of the pandemic on their own mental health, as well as the trauma experienced by people accessing the service. It was extremely upsetting and disheartening for our staff to witness the lack of front-line support available for service users already in vulnerable situations and the negative impact this was having on their mental health.
37. Through its case work with clients, JRS has seen that the COVID-19 pandemic continues to have knock-on effects upon treatment and diagnosis of mental illness. JRS often represents women in criminal injuries compensation cases and personal injury cases, requiring the provision of evidence of the mental injury sustained by the client. Prior to the pandemic, our clients had generally been able to access mental health services and secure a diagnosis of their mental illness. We have found however that since the pandemic, clients and service users are less likely to be accessing appropriate treatment and are often placed on extensive waiting lists (sometimes lasting over a year). Clients are therefore often presenting as undiagnosed. This is extremely concerning as it has a huge impact upon their recommended treatment and recovery, and it impacts their ability to seek compensation for mental injury under the Criminal Injuries Compensation Scheme and in personal injury actions.
38. While JRS' evidence base is small due to the nature of its service, its case work and outreach have demonstrated the impact of pandemic restrictions upon access to mental health diagnosis and treatment. In the past two years, JRS has been seeking significantly more medical expert reports to secure a diagnosis for clients in order to allow them to access compensation for their mental injury and we have noted an increase of around two-thirds of cases requiring a medical report, compared to before the pandemic.
39. Clients accessing JRS and SWRC services rely on help in instructing medical reports on their behalf, without which they would be unable to access compensation, treatment plans and mental health support. However, as the criminal injuries application process is often seen as a 'DIY' process that victims/survivors can engage with on their own, JRS is concerned about the number of victims/survivors who may be denied compensation for their mental injury due to the lack of supporting medical evidence. A private medical report is generally quite expensive, ranging from £750 to £2,000 depending on the issues requiring consideration, which often makes this option inaccessible for victims/survivors.

Part 4: Intersecting Inequalities

40. The pandemic had a disproportionate impact on women and girls, and deepened pre-existing inequalities compounded by intersecting factors like age, gender, race, class, disability, and migration status.

Survivors of Human Trafficking and Exploitation

41. In 2020, the European Commission reported on the intensification of human trafficking during the COVID-19 pandemic which had, and will continue to have, a disproportionate impact on women and children³ (Exhibit LFSG/4):

“While the full impact of the pandemic is not yet measurable, it is clear that the crisis has given rise to extraordinary challenges, disproportionately affecting the most vulnerable, exacerbating people’s vulnerability to trafficking in human beings, including those of women and children. Civil society organisations, international organisations and EU agencies have voiced concerns about delays in identifying victims, which hinders their access to justice, assistance and support”.

42. In a further report⁴ two years later (Exhibit LFSG/5), the European Commission restated that the pandemic exacerbated people’s vulnerability to being exploited; highlighted that the economic effects of the pandemic would drive increased demand for labour exploitation; noted that trafficking in human beings remained a crime with a significant gender dimension, with women and girls the majority of all victims; and identified that certain categories of people, such as undocumented migrants, seasonal workers, persons in precarious working and living conditions, and persons in prostitution, had been disproportionately affected by measures related to the pandemic, making them more vulnerable to the risk of falling victims of traffickers. The report also recognised the rise in violence against women and girls during the pandemic.
43. The Organization for Security and Co-operation in Europe (OSCE) Office for Democratic Institutions and Human Rights (ODIHR) and the United Nations Entity for Gender Equality and the Empowerment of Women (UN Women) launched a joint report titled, Addressing Emerging Human Trafficking Trends and Consequences of the COVID-19 Pandemic (Exhibit LFSG/6), which noted that the global health emergency had created new risks and challenges to victims and survivors of trafficking. The report noted that the pandemic had worsened and exposed the vulnerabilities of at-risk groups, especially women and children, to trafficking in human beings. According to the report,

³ Report from the European Commission to the European Parliament and the Council, “Third report on the progress made in the fight against trafficking in human beings (2020) as required under Article 20 of Directive 2011/36/EU on preventing and combating trafficking in human beings and protecting its victims” (20 October 2020)

⁴ Report from the European Commission to the European Parliament, the Council and the European Economic and Social Committee and the Committee of the Regions, “Report on the progress made in the fight against trafficking in human beings (Fourth Report) (19 December 2022)

trafficking dynamics were highly gendered and exacerbated by pre-existing gender inequality issues. For instance, there was an increased vulnerability of women and girls to online recruitment by traffickers. The report's findings demonstrated the heightened vulnerability of women and girls to trafficking for the purposes of sexual exploitation.

44. Scotland is not immune from these trends. In its work at Scottish Anti-Trafficking and Exploitation Centre during the period from March to September 2020, JRS noted a sharp decline in new referrals of victims of trafficking to its service due to the pandemic. However, from October 2020, JRS saw an increase in new cases and a new pattern where women had been exploited through pornography in Europe before they were brought to the UK. There was also an increase in women being exploited in cannabis cultivations in the UK and being subjected to gender-based violence. This represented a new trend, as women would routinely be exploited through forced prostitution, rather than cannabis cultivations. Unfortunately, those women were subsequently exploited through forced prostitution once the movement restrictions were relaxed/removed.

Migrants, including Asylum seekers, Refugees, EU Citizens and People with NRPF

45. Studies across several Organisation for Economic Co-operation and Development (OECD) countries found that the risk of COVID-19 has been twice as high for migrants as for "native born" individuals. Migrants were more likely to be living in poverty, living in overcrowded and less safe housing, and employed on precarious and zero-hour contracts, making them more at risk of COVID-19 and destitution. These experiences of deep-rooted inequalities are not new but have been exacerbated by COVID-19 and the continued use of hostile environment policies by the UK Government.
46. To take a genuine equalities and human rights focused approach to COVID-19 response and recovery, migrants (regardless of their status) should have been included with the same access to support and services as any other individual in Scotland. The migrant community has faced some of the worst outcomes from the pandemic, from loss of income to loss of homes to loss of life.
47. Sikh Sanjog, one of JRS' partner community organisations which supports Sikh women, children and young people, reported to us that:

"The Pandemic has had a disproportionate impact on those from black and other ethnic minority communities such as the Scottish Sikh community. More deaths from Covid-19 are reported from black and ethnic minority communities than their white counterparts. Long deep-seated systemic issues have meant that these communities have found it harder to access essential services during the pandemic. Individuals from these communities are also more likely to be employed in 'key worker' status roles such as essential retail and the healthcare sector".
48. COVID-19 has revealed the extent to which state support and welfare services have been eroded over many years, leaving huge gaps in service provision that the third sector has been trying to fill during this period.

49. Refugee and asylum-seeking survivors have experienced unique financial challenges through lockdown, with women, particularly with children in the house, worried about paying for food and utilities.
50. In terms of access to safe, affordable, and warm homes, people seeking asylum have been at the receiving end of dangerous and poorly thought through housing decisions, largely at the hands of the UK Home Office. For example, as an emergency measure at the start of the pandemic, people seeking asylum in Scotland were moved by the Home Office into hotels in Glasgow. For over two decades, Glasgow had been the only dispersal area in Scotland. However, in November 2021, Aberdeen, together with three other local authorities in the central belt, started to accommodate in hotels people seeking asylum. This occurred with very little notice and inadequate funding for the public and third sector⁵.
51. Together with the Roof Coalition, a coalition of frontline and grassroots civil society organisations across Scotland, JRS has repeatedly raised concerns about the use of institutional accommodation by the UK Home Office, particularly following the tragic deaths in accommodation in Glasgow during summer 2020, as well as the inadequacy of the response by the Scottish Government and Scottish local authorities, which falls significantly short of a rights-based approach.
52. Social distancing and social self-isolation measures implemented during the pandemic had severe, negative impact on those seeking asylum, as documented in the initial report of the Independent Commission of Inquiry into Asylum Provision in Scotland (Exhibit LFSG/8). The Inquiry was set up to investigate events that occurred in April 2020 in Glasgow, when 321 people seeking asylum were removed from their homes and transferred to hotels, in May 2020, when a person seeking asylum, who was housed in one of the hotels, died due to suspected suicide, and in June 2020, when what has become known as ‘the Park Inn tragedy’ occurred, where a resident in the hotel was shot dead by police during a stabbing attack. The resident had sought help 72 times due to his deteriorating mental health.
53. Almost all people seeking asylum are prevented from working in the UK, and they can only rely on the less than adequate asylum support rates. If people are in accommodation where food is provided, they receive £9.58 per week; if food is not provided, they receive £47.39 per week (which was £39.63 during the pandemic), and we believe this is a form of state-enforced destitution.
54. During the pandemic, people seeking asylum housed in hotels repeatedly complained about the standard of food, care, and access to information. They were denied additional financial support as the hotel was (according to the Home Office) providing

⁵ This move happened before the UK Government announced its policy shift to full dispersal, a policy currently implemented by the Home Office that is cause for grave concerns. Glasgow has been the only dispersal area in Scotland for over two decades, resulting in the city having services and infrastructure in place to support asylum seekers. Other local authorities across Scotland do not have the right services in place, including a lack of legal, health and housing support. This issue has been compounded by the Home Office *Operation Maximise*, which has seen the introduction of room sharing in asylum accommodation.

all shelter and sustenance required. However, this does not include specific needs they may have in relation to diet or health, and it does not include additional access to data allowing them to maintain connection with their communities here and abroad, which caused further isolation and impacted wellbeing.

Impact of No Recourse to Public Funds

55. The impact of COVID-19 has been felt significantly by the migrant community and in particular those with NRPF (No Recourse to Public Funds). Throughout the pandemic multiple organisations, particularly those working with the most vulnerable migrants, have highlighted the disproportionate impact of COVID-19 for migrants with NRPF. Benefits related to employment impacts of COVID-19 such as statutory sick pay, the furlough scheme and the Self-Employed Income Support Scheme were not accessible to migrants with NRPF conditions (unless they had a work visa)⁶.
56. The impact of NRPF restrictions have continued to be felt disproportionately by women and disabled migrants, who experience intersecting inequalities and consequently are more likely to be in need of access to publicly funded support services. In particular, migrant women experiencing domestic violence risked having to remain with the perpetrator because of a lack of access to publicly funded services and refuges. One of the restrictions that NRPF places on migrants relates to financial and housing support, and the NRPF condition therefore prevents migrant women from accessing the social security safety net that exists to protect the most vulnerable in our society.
57. Without this safety net, some migrant women who depended on their perpetrator to pay for food and accommodation struggled to leave the relationship and support themselves and their children, which meant they were often forced to decide between staying with the perpetrator or facing poverty, homelessness, and destitution.
58. Similarly, the NRPF condition can increase vulnerability to other forms of exploitation, including trafficking and physical or sexual abuse. This vulnerability is compounded where women also have uncertain immigration status and are fearful of contact with statutory authorities, including the police, the NHS, and social services.

⁶ Under UK immigration laws, access to certain public services is dependent on a person's immigration status. Individuals with 'no recourse to public funds' (NRPF) are generally unable to access most social security benefits, homelessness assistance, or local authority social housing allocations. However, in certain situations, they may still be eligible for accommodation and financial support through social services. For instance, local authorities may have responsibilities under social work legislation to provide support to NRPF families with children or vulnerable adults. Even when a person's immigration status allows them to access social security benefits, they may face challenges in obtaining them. These challenges can arise if they do not meet other eligibility criteria related to UK residency, are unable to prove the length of their stay in the UK, or if their entitlements are misinterpreted. JustRight Scotland has written guidance on NRPF in Scotland, commissioned by COSLA, and it can be accessed here: <https://migrationscotland.org.uk/migrants-rights-and-entitlements/foreword/>

Impact of COVID-19 on Disabled People

59. Inclusion Scotland's October 2020 Rights At Risk Report (Exhibit LFSG/9) drew on the lived experience of over 800 disabled people in Scotland, following a survey distributed in April 2020, and it reached the following findings:
- 30% of respondents said that the social care support that they received was either stopped completely or reduced at the start of the pandemic.
 - Parents of children with additional support needs said they felt 'abandoned' and noted the lack of support for disabled children who were not attending school. This led in some cases to increased anxiety which sometimes resulted in violent behaviour or self-harm.
 - Over half (53%) of respondents experienced difficulties accessing food for themselves or those that they care for.
 - Over a quarter of respondents reported having difficulty in obtaining the medicines needed to maintain their health.
 - 1 in 8 people at high risk from COVID-19 reported not being able to effectively shield or isolate themselves because they did not have other support to access food and or medication.

Part 5: The Legal Framework for Evaluating the Disproportionate Impact of COVID-19

60. As human rights lawyers, we ensure the human rights of people we represent are respected, promoted, and upheld, as recognised and enshrined in national and international laws and treaties. JRS and the SWRC advise on human rights and equalities across a wide range of issues, and it is within the context of human rights' protection and violations that our work is informed.
61. JRS recognises the Scottish Government's binding obligations to uphold human rights (including the state's positive obligations to give effect to these rights) as set out in the European Convention on Human Rights, including the rights to life (Article 2), freedom from degrading treatment (Article 3), liberty and access to justice (Articles 5 and 6), and dignity and respect for private and family life (Article 8).
62. As we witnessed the disproportionate impact of the pandemic on particular groups, JRS's position is that these obligations apply regardless of whether specific emergency measures are introduced, or ordinary measures retained during a crisis. Some of these rights – for example, Articles 2 and 3 – are absolute rights which cannot be limited by state action. Even where rights can be limited, and there is justification for their limitation, such limitations must be prescribed by law, which meets the standards of legal certainty, and be proportionate to the needs of the situation and non-discriminatory.
63. Throughout its work, JRS refers and relies on the wider range of international human rights treaties that set out rights and responsibilities in the areas in which we work most closely. They include:

- a. The Convention on the Elimination of All Forms of Discrimination against Women (CEDAW),
 - b. The Council of Europe Convention on Preventing and Combating Violence Against Women and Domestic Violence,
 - c. The Convention on the Elimination of All Forms of Racial Discrimination (CERD),
 - d. The Council of Europe Convention on Action against Trafficking in Human Beings, and
 - e. The Convention on the Rights of Persons with Disability (CRPD).
64. JRS's position is that this legal framework must be taken into account when assessing the Scottish Government's obligations, and its response to the pandemic.

Part 6: Service Response

65. COVID-19 has fundamentally changed the way in which legal advice is accessed by clients and delivered by professionals. At the outset of the pandemic, JRS acted quickly to restructure its services to make it more accessible, seeking new ways of working to reach the people it serves, whilst also protecting the health and safety of staff and service users. JRS' legal staff continued to work from home and delivered legal advice via secure video conferencing, telephone, or email. JRS' clients faced multiple barriers in accessing remote advice, however, a collaborative model has allowed the organisation to work with partners to bridge some of those challenges.
66. JRS embedded a diversified working practice within the organisation, which allowed it to widen its reach to migrant communities across Scotland.
67. The SWRC made various alterations to service in direct response to the pandemic. The outreach service was able to continue remotely and changes to the service were implemented immediately following the announcement of the lockdown and therefore the service was able to continue without any closures. SWRC was also able to move its 'in person' legal surgeries online. This is a change which has remained post-pandemic as it increased the geographical reach of the service and increased accessibility.

SWRC helpline

68. At the beginning of the pandemic, it was recognised that women may need urgent legal advice and so on 14 April 2020, SWRC launched an 'urgent legal advice surgery.' SWRC anticipated an urgent need for women seeking protective orders and child contact issues. This surgery was a temporary response to the 'lockdown' measures put in place by the Scottish Government, and we found that the surgery was busy during lockdown, often being fully booked.
69. The team also anticipated that, given lockdown measures and the restriction on movement, women would potentially find it difficult to contact SWRC's current outreach, for example, if they were living at home with their abuser. In response to this on 24 April 2020, SWRC developed and launched a temporary online advice service. This service

was particularly busy with traffic. From April 2020 until September 2020, it received around 147 online advice contact forms.

70. By moving online, and with the help of our partners, we were able to provide higher client outreach sessions in 2020-21 than the previous year. Demand however continued to rise. For instance, on the daily helpline our lawyers operate for the SWRC, they answered 527 calls between April 2020 and March 2021.
71. Over the course of the pandemic, calls to the SWRC Helplines became notably more complex, often women had multiple legal queries and there was a rise in safeguarding concerns. The increase in safeguarding issues became so concerning that JRS introduced additional training and protocols for all staff in this area, for the benefit of the wellbeing of both clients and staff.
72. One outcome of the pandemic for the SWRC was the re-evaluation of service delivery, particularly for its helpline. SWRC moved to a triage system, where advocacy workers triaged calls and arranged call backs with the solicitors. This allowed SWRC's advocacy workers to provide immediate support and signposting to people using the services and to ensure clients could access necessary legal advice.
73. SWRC found that this has improved its service delivery and the service for victims/survivors. When completing our legal call-backs, service users were in a better position to take on board complex legal advice as they had already received support and signposting from our advocacy service. This is a change implemented in response to the pandemic that we intend to continue.

Website

74. During the pandemic JRS created a new website, which could host all our online content, including factsheets, briefings, legal resources, and the details of our advice lines.
75. The SWRC launched a dedicated section on our website for COVID-19, in which we published blogs and factsheets with information relating to the pandemic. We aimed to keep service users updated on issues such as impacts on the court service and contact measures (Exhibits LFSG/10 to LFSG/12).

Partner organisations

76. COVID-19 reduced access to advice across Scotland. There were and still are significant gaps in capacity of first-tier advice organisations working with disabled people. In response, JRS prioritised outreach to first-tier organisations to provide that initial advice to disabled people.
77. JRS established a weekly two-hour free second-tier advice line for immigration and asylum to help service providers working with migrants obtaining quick, free advice on how to overcome any barriers their clients were facing.
78. Partner organisations have also reported a rise in women requesting support because of increased domestic violence and mental abuse. For example, Sikh Sanjog reported profound impacts on their services due to the pandemic (Exhibit LFSG/13).
79. In April 2020, JRS co-authored an emergency national guidance document for COSLA, to assist local authorities in supporting migrant communities with NRPF throughout the

pandemic (Exhibit LFSG/14). This is a good example of working in partnership to provide a rapid, practical national response to a crisis.

Evidence and submissions

80. JRS and the SWRC provided a written response to a call for evidence by the Local Government and Communities Committee of the Scottish Parliament on the impact of COVID-19 on individuals with NRPF in Scotland (Exhibit LFSG/15).
81. JRS and the SWRC provided a written response to a call for evidence by the Equalities and Human Rights Committee Scottish Parliament on the impact of the COVID-19 pandemic on equalities and human rights in Scotland⁷. The JustCitizens project also provided a response (Exhibit LFSG/16).
82. SATEC authored a national report on best practice principles of gender-specific legal assistance and integration supports to third country national female victims of trafficking for sexual exploitation (Exhibit LFSG/17). This was part of an EU Asylum, Migration and Integration Fund funded project with multiple other European partners (Exhibit LFSG/18) and JRS also produced a downloadable information leaflet on the rights of trafficked women in Scotland (available in hard copy too) (Exhibit LFSG/19).

Part 7: Concluding Remarks

83. COVID-19 has significantly impacted women, even more so women from minority ethnic backgrounds. For women and girls in Scotland, the pandemic has increased vulnerability, domestic abuse and exacerbated gender inequalities. Abuse intensified for those living with abusers during lockdown or occurred with COVID-19 restrictions through online platforms, or via manipulation of child contact arrangements.
84. COVID-19 has significantly disrupted the operation of the criminal justice system in Scotland and elsewhere and increased gaps in access to justice.
85. JRS remains concerned about the increased risk of harm or exploitation facing some groups – notably, for women facing gender-based violence and people at risk of trafficking and labour exploitation.
86. The impact of NRPF restrictions have continued to be felt disproportionately by women and disabled migrants who experience intersecting inequalities.
87. Women, young people, disabled people, and many ethnic minority groups were most likely to have experienced a reduction in earnings through redundancy, a reduction in hours, or being furloughed from a job in a shut-down sector.
88. The COVID-19 pandemic and the response to it by the UK and Scottish governments has led to a cost-of-living crisis which is disproportionately affecting the most vulnerable in society, including women who have experienced gender-based violence. The cost-

⁷ Exhibit MS/6 to the written statement of Dr Marsha Scott dated 11 October 2023.

of-living crisis has also had a knock-on effect impacting the provision of legal aid and compounding issues with the already troubled legal aid system.

89. Through experience of working on the front-line with victim/survivors of gender-based violence, JRS considers that at some levels of decision making during the COVID-19 pandemic, there was a failure to apply an intersectional, gender-competent approach to decisions being taken. For example, we highlight the failures of the Scottish Courts and Tribunal Service, as well as the judiciary, to take into account the impact of domestic abuse upon victim/survivors in their guidance around child contact, which was not clear and consistent and left many unsure about their rights.
90. Pre-existing inequalities were exacerbated and those already vulnerable became increasingly so, with reduced access to support services. JRS encourages the Scottish COVID-19 Inquiry to scrutinise the lack of gender mainstreaming in decision-making throughout the COVID-19 pandemic and the extent to which decisions took account of impacts falling disproportionately on women and girls.
91. JRS encourages the Inquiry to recognise that issues relating to gender and equality permeate all aspects of the impact of the COVID-19 pandemic and the Scottish Government's response. These issues are not uniformly applicable to all women as a homogenous group, but rather intersect with other structural barriers to equality (such as race, disability, sexual orientation, age, location, and migrant status).
92. JRS encourages the Inquiry to pay particular regard to gender equality issues in its analysis of evidence of the impact of the pandemic and the Scottish Government's response to it. In order to uncover how different groups experienced COVID-19 in Scotland, JRS asks the Inquiry to have regard to the intersectional nature of impacts and the fact that some groups have been disproportionately affected as a result of overlapping vulnerabilities.
93. The Scottish COVID-19 Inquiry aims to "*establish the facts, identify the lessons that need to be learned and make recommendations to Scottish Ministers, so we are better prepared in future*". To achieve this aim, JRS believes the Inquiry will need to consider the multiple and compounding discriminations experienced by individuals and to ensure that any recommendations made are fit for purpose for those who need them the most.

Personal Data

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