

Briefing Note - Experiences of the Adequate Standard of Living Reference Group during the first five weeks of lockdown (March 23rd – 28th April 2020)

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About the Adequate Standard of Living Reference Group

The Adequate Standard of Living (ASL) Reference Group is made up of people with lived experience of poverty from across Scotland. It was created as part of the activity under the banner of Scotland's National Action Plan for Human Rights (SNAP) in the autumn of 2015. The group meets every 6-8 weeks and discusses a diverse range of human rights issues, particularly in relation to economic, social and cultural rights. The group regularly submits policy responses to Scottish Government and Scottish Parliament consultations and has met with the Minister for Housing about fuel poverty and the former UN Special Rapporteur on Extreme Poverty, Professor Philip Alston.

The group describe themselves as follows:

We are a group of people with lived experience of poverty. We have come together to act as a reference group on the right to an adequate standard of living (Article 11, International Covenant on Economic, Social and Cultural Rights), as part of Scotland's National Action Plan on Human Rights (SNAP). We are supported by the Scottish Human Rights Commission. We take a human rights based approach to tackling poverty in Scotland. In doing so, we use the PANEL principles of Participation, Accountability, Non-discrimination, Empowerment and Law as a guide.

Our collective experiences include (but are not limited to):

- disability and poverty
- mental health and poverty
- Minority Ethnic identities and poverty
- LGBTQI identities and poverty
- caring and poverty
- homelessness
- in-work poverty
- rural poverty

- poverty of opportunity
- food poverty
- age poverty; and
- fuel poverty.

Purpose of the Briefing Note

This briefing note is intended to capture the group's experiences and concerns in the immediate aftermath of the lockdown imposed by the UK and Scottish Governments, with a view to drawing Government and Parliament's attention to the experiences of people in poverty during the pandemic and hearing their suggestions as to how best to take a human rights based approach to directing resource over the coming months.

The Human Rights Framework

The human rights framework sets out a comprehensive set of obligations upon States to protect rights, including rights to health, social security, an adequate standard of living, housing and food, as well as to life, liberty and free expression among others.

The response to the Coronavirus pandemic engages civil and political, economic, social and cultural rights, all of which are inter-related and interdependent. For example, the restrictions on liberty which have been introduced as public health measures to protect rights to life and health, have implications for the rights to adequate food, housing, employment, social security and an adequate standard of living. It should be noted that all rights are subject to a general prohibition on discrimination, meaning that people who identify as having particular characteristic(s) should not experience worse rights 'outcomes' on the basis of e.g. race, faith, disability or gender.

To be considered as fulfilled or 'realised', economic, social and cultural rights, such as the rights to an adequate standard of living, health, housing or social security are measured through consideration of the following standards:

- Available – are the resources needed to realise a right available in sufficient quantities?
- Accessible – can people access these resources?
- Acceptable and adaptable – are the resources available in a way that is culturally and socially acceptable?
- Quality – are the available resources of an adequate and safe standard?

In general, economic, social and cultural rights can be described as having a set of important characteristics or norms, which are as follows:

- the realisation of these rights does not have to occur overnight but should continuously improve (progressive realisation)
- the realisation of these rights depends on governments using the ‘maximum of available resources’
- the realisation of these rights should not get worse (non-retrogression)
- as set out above, discrimination in the realisation of these rights is prohibited.

When there is a crisis, such as the current pandemic, some retrogression of rights may occur. However, any retrogression in rights is **also** subject to important human rights standards and principles.

Retrogressions of rights must:

- be temporary and time-limited
- be necessary and proportionate
- be non-discriminatory and mitigate inequalities
- ensure the protection of a minimum core content of rights
- consider all other options, including financial alternatives.

The Scottish Human Rights Commission, which supports the Reference Group has called for a rights based framework to guide policy and practice during the pandemic. You can read more on this work here:

<http://www.scottishhumanrights.com/news/briefing-coronavirus-scotland-act-2020/>

<http://www.scottishhumanrights.com/news/commission-flags-human-rights-implications-of-coronavirus-emergency-laws/>

<http://www.scottishhumanrights.com/news/statement-human-rights-in-times-of-crisis/>

Immediate Support Needs

Immediately after the restrictions on leaving the house were introduced, members of the reference group fed back on a number of challenges which they were facing. Many of these were interconnected and included caring responsibilities; access to food; registering as being in a 'high risk' group, securing sufficient gas and electricity under lockdown. It should be noted that many of the experiences group members, or their networks, were having were exacerbated by already existing inequalities, for example, discrimination and lack of access to services for Gypsy/Traveller people. A short summary of these issues follows below.

Access to food¹

The group noted that before the crisis, much of the work around food insecurity had placed an emphasis on ensuring that the way people could access food was dignified.² While the crisis situation meant that many new systems were being set up in a very short time, the group felt that it was important that respecting people's dignity remained important, including by allowing people who could afford to buy food to do so (for example by broadening the eligibility criteria for people who need

¹ Right to food under ICESCR Art 11 – food is available, but not accessible to everyone, and not always acceptable, some groups such as carers and disabled people are finding it more difficult to access.

² See Nourish Scotland, <http://www.nourishscotland.org/projects/dignity/>

The principles around emergency food provision should include: Involve in decision-making people with direct experience.

Recognise the social value of food.

Provide opportunities to contribute.

Leave people with the power to choose.

support and therefore access to online food shopping services). The group also noted that many people who need emergency food may also have special diets due to health conditions, allergies, religious beliefs such as requirements for halal or kosher food, or other cultural requirements and that, as much as possible, provision should be made appropriately in line with this.

Many members of the group live in more rural areas and have noted the additional challenges to accessing food in these areas, especially where people are in the 'shielding' group. One member noted that in Skye, while people could register for supermarket home delivery, many supermarkets were not able to deliver around all parts of the island and that a compromise had been made to collect shopping from local pick up points. While useful for some, it relied on volunteers being willing to take deliveries to people who were self-isolating.

Carers on the group noted that in the initial days of the lockdown it had been extremely difficult to buy sufficient food for themselves and the person they care for where there were restrictions on item numbers, and had experienced challenges from shopkeepers and customers. Members discussed taking some form of proof of carer status out with them, such as eligibility for Carers' Allowance. In some cases this situation continued well into April and carer members who were able to go out continued to experience challenges by shop staff when trying to purchase multiple items, even when they carried such documentation. More recently group members and people in their networks have heard from carers who are unable to leave the house as they support someone else, but who are not eligible for support through the shielding scheme. See the section below on registering as being in a 'high-risk group' for more on this.

One member of the group noted that growing their own food over the summer was an important and regular part of managing food insecurity, ensuring a healthy diet and managing mental health needs, as well as removing some of the strain from the food system in the current context. They expressed frustration that garden centres selling fruit and vegetable plants and compost had had to close and asked if this could

be reviewed, as it would deliver a range of benefits to communities and people on low incomes.

Registering as being in a ‘high risk’ group³

With respect to shielding, the group felt that **the eligibility criteria for access to support such as access to food had been drawn too narrowly**; while people who require to be shielded due to their health needs should of course be able to access support, there were many others, for example carers and people with long-term conditions, who were neither eligible for support through shielding nor eligible through other schemes, and who could not access online delivery of food or indicate that they were in need of help. **The group felt that eligibility criteria should be widened to include people who needed support, for example because they require support with day to day living because of a disability, or long-term health condition, including mental health, visual or hearing impairment.⁴ The group also felt that this would more closely align with a social model approach to disability.⁵**

In addition, the group felt that the process of identifying individuals who required to be shielded through GP and local authority services had been slow and patchy, and had resulted in people being missed. Group members reported that in some cases letters had taken 4-5 weeks to come through. They also noted that creating 32 local authority level lists made it more challenging to share data with private sector bodies such as supermarkets. The group pointed to the registration scheme in

³ Right to Health under [ICESCR Art 12](#) – health services are available but not accessible to everyone, and some people may be experiencing discrimination on the basis of age, race and disability, as well as rural status. Also Right to Independent Living, CRPD, Article 19

⁴ See for example Professor Chris Hatton of the Centre for Disability Research, University of Lancaster, 30th March 2020, ‘Health condition does not equal vulnerability does not equal need for support’ <https://chrishatton.blogspot.com/2020/03/health-condition-does-not-equal.html?m=1>

⁵ As set out in Article 1 of the Convention on the Rights of Persons with Disabilities.

England which had been set up more quickly and in a less piecemeal way, albeit that it still presented challenges to families.

Energy Pre-payment Meters⁶

Fuel poverty engages the right to adequate housing under both the 'habitability' and 'availability of services' elements of the right to housing. The group has previously submitted consultation responses to the Scottish Government on this issue, which called for a rights based approach, including appropriate accountability for targets and affordability for people on low incomes. Some members of the group had significant challenges in topping up pre-payment meters, since they could not leave the house due to self-isolating and were unable to contact the electricity company due to very high call volume. The group also noted that people on low-incomes often have pay as you go phones and being on hold for long periods of time to chargeable numbers used up people's credit. This issue was also exacerbated through digital exclusion, meaning that there were no practical ways to resolve it. In the interim, one member reported that the local authority had stepped in to provide assistance through pre-paid energy top up cards, which was a good immediate solution but is unlikely to be sustainable in the long-term.

The right to work and the right to just and favourable conditions of work

The group noted the enormous impact that the restrictions were having on employment and the knock-on effect that this would have on the right to an adequate standard of living. They called for a rights based approach to social security from the UK Government, based on the

⁶ See Right to Housing, ICESCR, Article 11, also General Comment 4, Committee on Economic, Social and Cultural Rights
https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=INT%2fCESCR%2fGEC%2f4759&Lang=en

principles set out in [General Comment 19 of the Committee on Economic, Social and Cultural Rights](#).

The group were very concerned that those people still delivering essential services, as well as those delivering unpaid care, should have the appropriate Personal Protective Equipment, as an essential way to keep safe in the workplace and to reduce the likelihood of the transmission of the virus. This should include retail and transport workers, as well as front-line health and social care staff and unpaid carers.

The group also felt that it was important that everyone who was now working from home should receive appropriate support, guidance and equipment to enable them to do their job safely and effectively.

Domestic Violence and Violence against Women

The group were extremely worried that the current restrictions and the strain on incomes would further endanger people experiencing domestic violence, the majority of whom are women and children and young people. This engages the Government's obligations to protect rights to life and to physical and mental integrity. The group were pleased to see that there has been additional financial investment in organisations who support people as they leave abusive relationships but wanted to add their voice of support and to advocate for continued clear, accessible and visible information for women and their families about their options and the support available.

Longer term concerns

The group faced a number of initial challenges, as described above. Many of these were partially addressed after the first two weeks of the crisis, although progress was patchy and was described as 'two steps forward, one step back' in trying to access support. When the group met together, on the 31st March and 28th April they also discussed a number of longer-term concerns, as follows.

Mental Health

The group identified managing mental health and well-being during the crisis as the **key challenge** for them and for other communities. They noted that the right to health includes the highest attainable standard of physical **and** mental health⁷ and felt that it was important that the Government took steps to support people to maintain good mental health in other ways where the usual supports of family, friends and community are hard to access. The group were concerned that some people would turn to alcohol and drugs to manage the difficulties of living under restrictions.

The group were also extremely concerned that in the most serious cases, risks to mental health include an increased risk of suicide, and that this engages the Government's responsibilities to protect life. At the end of April, group members reported speaking to friends and contacts with longstanding mental health needs who were feeling suicidal because of the restrictions on daily life. The group members felt that it needed to be clear that receiving in-person support for mental health, where the support worker or professional concerned had access to PPE and respected social distancing, is entirely legitimate and that care for someone with mental health problems should be considered in just the same way as care for someone with physical health needs.

Management of long-term health conditions and access to medicines

Some members of the group had experienced difficulties in managing their health, where they experienced long-term health conditions requiring regular interaction with primary care staff and regular prescriptions. While the group all accepted the severe strain which the

⁷ Committee on Economic, Social and Cultural Rights, 2000, General Comment No 14, 'The right to the highest attainable standard of health (article 12 of the International Covenant on Economic, Social and Cultural Rights)' available at https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=E%2fC.12%2f2000%2f4&Lang=en

NHS was under due to people becoming unwell with Coronavirus, they were also concerned that the restrictions on movement and social distancing requirements made it much more challenging for people to access non-acute health services and medicines.

Group members have not been able to access regular health services, such as podiatry, phlebotomy etc. While members fully understand the reason for this, they are concerned that this could lead to some less serious conditions developing and also affecting carers' ability to care. One member of the group described how he was now struggling to walk without pain because he has not been able to access regular podiatry services. This had the practical impact of making it more difficult to support his wife, who is unwell.

Interaction of the Equality Act with Coronavirus Act(s)

The group had questions about how the protections from discrimination available under the Equality Act 2010 interact with the current provisions under the Scottish and UK Coronavirus Acts. One member of the group is blind and requires a sighted person to support them for example when accessing food at the local supermarket. It has become increasingly difficult for this support/reasonable adjustment to be put into place in light of public scrutiny of social distancing measures; an additional challenge is that online supermarket software is often not accessible to screen readers, and that visual impairment itself is not a criterion for shielding. It would be helpful if the UK Government could consider whether additional guidance is required for these kinds of circumstances. The Commission notes that the mandate for equality lies with our sister NHRI, the Equality and Human Rights Commission Scotland.

Transitioning from measures introduced during the restrictions

The group noted that while some groups, such as people who require support from social care organisations, have seen a loss of support, affecting their right to live independently, others such as homeless

people, have in many cases seen an increase of support, for example through offers of housing in hotels to enable people to self-isolate as appropriate. The group were keen to advocate that there should be some planning to ensure that:

- those people who have experienced detriment should regain the support they need, for example to live independently in the community.
- those who have experienced improved realisation of their rights should not experience any detriment to this once the restrictions are lifted. For example, support for homeless people should include proper, participatory transition planning which enables people to access their right to housing. The group were concerned that homeless people who were rough-sleeping should be able to keep their pets with them in any transition to housing, as a key support for a person's well-being and mental health.

The group fully understand that public authorities have had to make decisions quickly and without being able to undertake the usual participation and engagement with people affected. However, they are strongly of the view that people who have been affected disproportionately by the restrictions on daily life, such as disabled people, carers, people with long-term conditions, homeless people and people experiencing poverty among others have a right to participate in ongoing discussions about the support that they need and the best and most appropriate way to deliver this in lockdown and beyond.

The group recommends that national and local governments should set up regular, effective listening and monitoring mechanisms and continue to have regard to the experiences of people, communities and organisations to ensure that realisation of economic, social rights is maintained as far as is possible.⁸

⁸ Participation and accountability are core principles of a rights based approach.

Work by other organisations to capture the impact of Coronavirus on communities

The group notes that there are a range of organisations documenting and monitoring the impacts of law and policy with respect to coronavirus, including , Glasgow Disability Alliance, Inclusion Scotland, Poverty Alliance, SCVO and SCDC, among others. It will be vital to have regard to the findings of this kind of monitoring work to inform policy decisions.

Summary of Recommendations

The group recommends that current and future responses to the crisis adopt a human rights based approach which upholds all human rights including economic, social and cultural rights, such as health, housing, an adequate standard of living and social security. In line with this, the group recommends that the following principles, which cover retrogression of rights, should guide decision making. Any intervention should:

- be temporary and time-limited
- be necessary and proportionate
- be non-discriminatory and mitigate inequalities
- ensure the protection of a minimum core content of rights
- consider all other options, including financial alternatives

The group recommends that the eligibility criteria for receiving additional support to access food and medicine should be broadened to include people who need support with day to day tasks because of age, disability, or long-term health conditions, and that this non-exhaustive list should be developed in response to the experiences of grassroots communities.

The group also recommends that the transition planning away from the coronavirus crisis should be based upon human rights principles and standards. These should ensure that those who have experienced detriment to their rights should have this addressed, and those who have received more support should continue to benefit.

The group recommends that national and local governments should set up regular, effective listening and monitoring mechanisms and continue to have regard to the experiences of people, communities and organisations to ensure that realisation of economic, social rights is maintained as far as is possible.