

# Health and Social Care Alliance Scotland (the ALLIANCE)

## Briefing on social care and COVID-19 emergency powers

1 July 2020

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### Introduction

Following the introduction of the Coronavirus Act 2020 and the Coronavirus (Scotland) Act in March 2020, and the “switching on” of powers by the Scottish Parliament on 5 April 2020, the Scottish Government has published the first of its progress reports (referred to here as the first Progress Report) to the Scottish Parliament on the use of emergency powers.<sup>1</sup>

Of particular interest to the Health and Social Care Alliance Scotland (the ALLIANCE) and our members is the information in the first Progress Report on the powers to ease some local authorities duties to assess people’s social care requirements. An earlier ALLIANCE report, published on 5 May 2020, outlines our concerns and recommendations on the statutory Guidance and ethical framework intended to be read alongside the use of these emergency powers.<sup>2</sup> This briefing reflects on the content of the first Progress Report (9 June 2020), local authority complaints procedures and experiences reported by our members.

### Use of emergency powers

According to the first Progress Report, 26 out of 32 local authorities responded to a Scottish Government survey on use of the emergency provisions enabled by the Coronavirus Acts to ease some social care duties. Of these, six (across five Health and Social Care Partnerships – HSCPs) reported that they were using the powers: Clackmannanshire, Dundee, East Lothian, East Renfrewshire, Stirling and South Lanarkshire. Subsequent correspondence to the Scottish Government from the six local authorities that were not included in the first Progress Report indicated that none of these were using the emergency powers.

The confirmation of which areas report that they are using emergency powers is welcome. However, the lack of transparency raises some concerns. At the time of publishing this briefing note, none of the local authorities that report using the

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<sup>1</sup> <https://www.gov.scot/publications/coronavirus-acts-two-monthly-report-scottish-parliament/>

<sup>2</sup> <https://www.alliance-scotland.org.uk/blog/news/social-care-assessment-covid-19-human-rights-concerns/>

emergency powers appear to have shared this information with members of the public on their websites or other communication platforms. While emergency powers enable partial assessments for social care, those assessments are explicitly designed to be “temporary” by the stipulations in the Acts, with full assessments to be rescheduled once emergency powers are no longer in use. Therefore, without clear communication of process, to staff and service users alike, there is considerable potential for confusion. Transparency and accountability are key principles in an equalities and human rights approach to legislation and service provision. The ALLIANCE supports and echoes the concerns raised on this topic by the British Institute of Human Rights’ response to the Progress Report.<sup>3</sup>

While the first Progress Report states that the emergency provisions “allow for relaxation of some requirements relating to social work needs assessments”, and wider provision of services, there is a limited amount of information publicly available about how the powers are being used across Scotland. ALLIANCE members report variance in understanding by frontline staff across different local authorities about what constitutes the use of emergency powers. For example, we have heard that some local authorities report that telephone needs assessments are considered “partial assessments”, and thus come under the use of emergency powers, whereas others are carrying out telephone needs assessments under restricted eligibility criteria, and are reporting these as full assessments (without the provision to reassess people’s personal outcomes and decisions following a temporary assessment, as per the emergency legislation and associated statutory Guidance). It is essential that local authorities, frontline staff, people who access services and unpaid carers are given clear and accessible guidance on what constitutes the use of emergency powers, and what that means for service provision and people’s rights.

This variance in defining what constitutes a “partial assessment” is one example of different approaches being taken by local authorities/HSCPs during COVID-19 – but also raises wider concerns about transparency on the use of emergency powers. Local authorities/HSCPS can start using the powers at any time, therefore there is an ongoing opportunity – and need – to improve and refine processes and reporting between now and subsequent Progress Reports. The ALLIANCE recommends greater clarity and publicly available information on the following:

- The specific criteria that individual local authorities/HSCPs have in place to make decisions on whether to use or not use the emergency powers.
- Who is involved in and consulted about decision making.
- The first Progress Report notes that “some of the reasons for the use of the powers included: to support quick access to services where face to face assessment cannot take place, to allow staff to support frontline duties and

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<sup>3</sup> <https://www.bihhr.org.uk/bihr-briefing-use-of-coronavirus-emergency-powers-in-scotland>

reduce bureaucracy, and to avoid delays in the provision of care.” More detailed information is needed on the monitoring and oversight in place to help authorities assess whether using the powers has resulted in these outcomes, or in other (potentially unintended) outcomes.

- More detailed information on the ways in which individual authorities are using the powers is required, for example in relation to “some are using the powers across the whole authority area and all services, while others are using the powers in a more targeted way, for example, on particular services only”.
- Which local authorities did not report by the Scottish Government survey deadline for the first Progress Report? Do they require – and have they received – further support to ensure efficient data tracking?

### **Suspension of local authority complaints procedures**

During May and June 2020, the ALLIANCE, the SDS Collective, and the Scottish Human Rights Commission (SHRC) brought attention to the fact that some local authorities in Scotland had suspended or altered statutory complaints procedures during COVID-19. The SDS Collective and SHRC brought these changes to the attention of colleagues at COSLA and the Scottish Public Services Ombudsman (SPSO). The ALLIANCE was pleased to see responses from those relevant bodies, investigating the issues and working with the local authorities in question to ensure that statutory duties continue to be carried out during COVID-19. In particular, we welcome the fact that East Dunbartonshire, Midlothian, and North Lanarkshire subsequently updated the complaints sections of their websites and online portals to make it clear that people are still able to submit complaints (although with expected delays due to the impact of the pandemic on service provision), following earlier statements that they were suspending complaints processes during the pandemic.

While we welcome the responsiveness of COSLA, SPSO and the local authorities mentioned above, the situation has raised some concerns. The ALLIANCE suggests that greater clarity is needed about how and when information around complaints and alterations to services is communicated – both internally to staff within local authorities, and to the general public. We also support the SHRC and the British Institute of Human Rights’ calls for greater transparency and accountability, and the importance of supporting decision makers to prioritise human rights – particularly when changes are likely to have a disproportionately negative impact on groups of people with protected characteristics, including those that access social care. Should appropriately accessible and transparent complaints procedures not be protected, Scotland runs the risk of inadvertently reducing the choice and control of thousands of disabled people, people living with long term conditions and unpaid carers.

The ALLIANCE understands that complaints are being ‘triaged’ during this period, with the aim of ensuring that complaints that affect people’s immediate access to appropriate care and support are processed as soon as possible. Local authorities

should ensure transparency about who is making these decisions, and what criteria is being used. We would recommend:

- Complaints that concern human rights are addressed promptly.
- Complainants are provided with revised timescales, as per SPSO advice, on when they should expect to receive a response to their submission.
- Accessible information is made publicly available about the triage system operated by relevant local authorities.

We also have concerns about the negative impact of some local authorities explicitly discouraging people from exercising their right to complain. For example, Glasgow City Council currently state that “we would encourage you to refrain from submitting a complaint to our office” if it pertains to specific topics – including “delays in service delivery which are the result of organisations having to cope with COVID-19 and which are non-essential”.<sup>4</sup> Within a social care context, Glasgow City Council has defined essential as matters pertaining to “critical care cover” only, but no definition of that term is provided. People accessing services in Glasgow report that the definition of “critical” is a P1 referral – so-called ‘life and limb’ service provision.

It is important that people know how complaints are assessed, and what eligibility criteria are being used. It is equally important for there to be consistent knowledge of these decision making processes across the workforce, to ensure parity of experience, and that people have equal access to support and the right to complain when it is not provided.

### **Eligibility criteria**

The ALLIANCE remains concerned that, despite announcements of additional resources from the Scottish Government,<sup>5</sup> some local authorities/HSCPs have increased their eligibility criteria for social care and that social care packages have been reduced and/or stopped, sometimes with little or no notice, leaving people in distressing situations.

UK and Scottish COVID-19 emergency legislation allows for an easing of health and social care assessment duties, but not eligibility criteria or existing social care and carer support.<sup>6</sup> Over 230,000 individuals and families (1/24 of the Scottish population) access social care for a wide range of reasons, including personal care,

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<sup>4</sup> <https://www.glasgow.gov.uk/complaints>

<sup>5</sup> <https://www.gov.scot/publications/coronavirus-covid-19-update-health-secretary-statement-parliament-28-april-2020/>

<sup>6</sup> Sections 16 and 17 of the Coronavirus Act 2020 (‘the 2020 Act’) “allow for an easing of health and social care assessment duties in relation to adult social care, carer support and children’s services in Scotland.” These powers were “switched on” by the passing of the “Coronavirus Act 2020 (Commencement No. 1) (Scotland) Regulations 2020/121” on 5 April 2020.

access to education and work. For many disabled people and people living with long term conditions it is essential for their rights to independent living and equal participation in society.

It is imperative for people's rights and wellbeing that narrowed social care eligibility criteria should be relaxed and that social care support should be resumed at – as a minimum – the level it was at before the pandemic began. Packages must be reinstated to at least the level prior to COVID-19, and assessments centred on people's outcomes should be prioritised for people who are expected to continue to shield – often without adequate support arrangements in place or with additional demands upon unpaid carers.

The National Carer Organisations have produced a discussion paper outlining some of the measures that should be implemented to support unpaid carers and those they support as lockdown restrictions are eased.<sup>7</sup> This includes key principles that unpaid carers and those they care for must be at the heart of decision making and that carers' rights must be reinstated and reinforced. Other recommendations cover issues relating to information, service provision, social care, practical and financial assistance, employment and education.

The ALLIANCE believes that the following are key to decision making processes:

- Mainstreaming and embedding equalities and human rights in practice as well as principle – this will mean doing things differently, for example carrying out Equality and Human Rights Impact Assessments before steps are taken, and designing action based on the results
- Taking a human rights based approach to financial decision making, including resource allocation, budgets and expenditure.<sup>8</sup>
- Ensuring people and organisations are actively involved in meaningful decision making, with independent support to do so if required. This goes beyond engagement and consultation to co-production of solutions and decisions.
- Providing specific, inclusive and accessible communications for and with people who access support and unpaid carers. This should not solely focus on blanket communications to the whole population but tailored advice for groups such as people living with long term conditions and disabled people. Communications should be available in multiple languages and formats.

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<sup>7</sup> [https://www.carersuk.org/scotland/policy/policy-library?task=download&file=policy\\_file&id=7108](https://www.carersuk.org/scotland/policy/policy-library?task=download&file=policy_file&id=7108)

<sup>8</sup> <https://www.alliance-scotland.org.uk/blog/news/covid-19-public-finances-and-human-rights/>

- Ensuring any changes – particularly cuts – to health and care provision are properly monitored, and input sought from people with lived experience, following human rights based PANEL Principles.<sup>9</sup>
- Independent monitoring and oversight to ensure accountability and routes for redress if things go wrong.
- Transparency, fairness and non-discrimination in decision making.

We would encourage the Scottish Government, local authorities and HSCPs to ensure that these principles are embedded in how the emergency powers are used during the pandemic, and in how information is shared and tracked.

## Contact

If you would like to discuss any of the topics raised within this briefing, or to request any further information, please contact:

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## About the ALLIANCE

The Health and Social Care Alliance Scotland (the ALLIANCE) is the national third sector intermediary for a range of health and social care organisations. We have a growing membership of nearly 3,000 national and local third sector organisations, associates in the statutory and private sectors, disabled people, people living with long term conditions and unpaid carers. Many NHS Boards, Health and Social Care Partnerships, Medical Practices, Third Sector Interfaces and Access Panels are also members.

The ALLIANCE is a strategic partner of the Scottish Government and has close working relationships, several of which are underpinned by Memorandum of Understanding, with many national NHS Boards, academic institutions and key organisations spanning health, social care, housing and digital technology.

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<sup>9</sup> <https://www.scottishhumanrights.com/rights-in-practice/human-rights-based-approach/>.

Our vision is for a Scotland where people of all ages who are disabled or living with long term conditions, and unpaid carers, have a strong voice and enjoy their right to live well, as equal and active citizens, free from discrimination, with support and services that put them at the centre.

The ALLIANCE has three core aims; we seek to:

- Ensure people are at the centre, that their voices, expertise and rights drive policy and sit at the heart of design, delivery and improvement of support and services.
- Support transformational change, towards approaches that work with individual and community assets, helping people to stay well, supporting human rights, self management, co-production and independent living.
- Champion and support the third sector as a vital strategic and delivery partner and foster better cross-sector understanding and partnership.