



# **Developing Scotland's second National Action Plan for Human Rights (SNAP 2)**

## **Consultation Feedback: Summary**

**September 2020**

Produced by the Scottish Human Rights Commission on behalf of the  
SNAP 2 Development Working Group

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## 1. Introduction

This report summarises feedback received from consultation and engagement on draft proposals for Scotland's second National Action Plan for Human Rights (SNAP 2).

Scotland's first National Action Plan for Human Rights (SNAP) ran from December 2013 to December 2017. SNAP was a collaboration between over 40 partner organisations and individuals, coordinated and supported by the Scottish Human Rights Commission. Over 50 actions took place over four years in the areas of justice, health and social care, standards of living, human rights culture and Scotland's international human rights obligations.

SNAP was independently evaluated and a series of recommendations for any future SNAP were made<sup>1</sup>. A national participation process also took place during 2017 to inform the future of SNAP<sup>2</sup>.

Between July 2018 and July 2019, a Development Working Group of around fifteen representatives from civil society and the public worked together to review the evaluation, participation process outcomes and other sources of information about human rights in Scotland. They produced a draft proposal for SNAP 2, which was published in Autumn 2019<sup>3</sup>. Appendix 1 lists the members of the Development Working Group.

Between September 2019 and January 2020, around 130 people and organisations gave their views and feedback on the draft proposals. Two engagement events were held, one for people affected by human rights issues and one for organisations with human rights obligations. An online consultation also took place. BSL and Easy Read information about the process was also produced.

We would like to say a very big thank you to everyone who contributed their time to give us their views and suggestions.

## **2. Summary**

This section provides a summary of the general themes from the feedback we received.

### **2.1 Positive support for draft proposals**

- There was strong general support for SNAP 2.
- Provides broad coverage of human rights themes and a helpful cross-section of human rights challenges in Scotland.
- Seems to be strongly co-produced with good criteria for prioritisation.
- Provides a useful distillation of civil society views.
- Level of focus on action is an improvement from SNAP 1.
- An ambitious and challenging plan with a strong direction of travel for human rights work in Scotland.
- Support for recognition of specific groups.
- Welcome mixture of rights themes and a focus on specific groups.

### **2.2 Areas where improvement is needed**

#### **Development and presentation of SNAP 2 draft proposals**

- Needs to be clearer throughout – relies on too much assumed knowledge.
- Proposals should be located with other relevant national and international frameworks.
- Need to connect to current Scottish Government work on the issues.
- Need to improve the presentation and collation of different themes.
- Further prioritisation required.
- Need to review the issues and associated actions to make the links clearer.
- Need to review how group experiences are presented – their needs are not homogenous.
- Needs more of an intersectional analysis.
- Too ambitious?

- Would benefit from some good practice examples.
- Needs to be better evidenced with relevant references.

### **Plans for implementation of SNAP 2**

- Needs adequate and sustained resources
- Needs a clear governance structure
- More work needed on how progress and impact will be measured
- SNAP 2 should be led by lived experience
- Consider developing impact assessments for SNAP 2

### **Themes that are missing or need to be adjusted**

- Right to Food
- Climate Justice/ Right to a Healthy Environment
- Right to Independent Advocacy
- Sensory impairment – to be merged into Theme 3
- Cultural rights - needs to be expanded beyond Scottish Gypsy/ Travellers (SGT)
- People with learning disabilities – need an intersectional approach

All of the specific suggestions for updates, additions and changes of wording for all of the draft themes, issues and actions have been captured and collated in a separate document.

### **2.3 Offers to support SNAP 2**

Many communities and organisations felt they could support SNAP 2 through:

- Academic critique
- Accountability support
- Backing of specific themes
- Lobbying Scottish government and Scottish parliament
- Mapping intersectionality
- Participating in actions

- Participating in implementation structures (e.g. Action or Working Groups)
- Providing evidence or policy development support
- Awareness raising and making connections for SNAP 2

## **2.4 SNAP 2 delivery, governance and resources**

Feedback on these issues included questions and comments on the following:

- The need for adequate resourcing.
- The need to manage expectations and be realistic.
- The need to address specific governance challenges, in particular:
  - the role of government
  - the genuine and supported engagement of rights holders
  - who owns SNAP 2?
  - who is ultimately accountable for the delivery of SNAP 2?
  - the need for a resourced and independent secretariat
- Delivery challenges – what format will delivery groups take?
- Can cross-thematic/issue/group working be better supported in SNAP 2?
- Roles and expectations must be clearly defined.

## **2.5 Relationship with National Taskforce**

There were different views on the role that SNAP 2 should play relative to the National Taskforce on Human Rights Leadership that has been established by the Scottish Government. Some key points made included the need to ensure:

- Productive working relationships and very efficient communication.
- Representation on each other's governance structures.
- Neither a significant overlap nor significant gaps in terms of human rights work – avoid duplication.
- A strong and explicit focus on collaborative working where areas of shared priorities emerge.

- Identification of common goals.
- Attempts to work closely around the areas of public participation and engagement, and around the priority of building capacity within diverse constituencies.

## **2.6 Relationship with the Scottish Parliament**

Many respondents welcomed the potential for the Scottish Parliament to provide scrutiny and accountability for SNAP 2, and for SNAP 2 to support the Parliament to become a stronger guarantor of human rights.

Suggestions for different approaches to this included:

- Holding a launch event at the Parliament.
- Ensuring an annual debate in Parliament on SNAP 2 and wider human rights work in Scotland.
- Linking with work being done by the Parliament's Equalities and Human Rights Committee and other Committees.
- Supporting Committees to take a human rights based approach to their budget scrutiny processes and inquiries.
- Having a Member of the Scottish Parliament attend SNAP meetings at times.
- Enabling active involvement by MSPs in SNAP 2 actions.
- Asking MSPs to take direct responsibility for specific human rights outlined in the SNAP 2 proposal.
- Appointing SNAP 2 rapporteurs in Parliamentary Committees.
- Holding evidence sessions in Committees on SNAP 2 progress.

### **3. Positive feedback**

This section provides more detail about the feedback that provided positive support for the draft SNAP 2 proposals.

There was strong general support for SNAP 2.

The draft proposals were generally described as well-written and easy to follow. They were seen as capturing the essentials, providing a broad coverage of themes and a helpful cross-section of human rights challenges in Scotland.

Comments recognised the proposals as being strongly co-produced and providing a useful distillation of civil society views on the themes and issues.

The criteria for prioritisation were acknowledged as strong and the plan itself was commended for being more action-focused than the previous SNAP.

While seen to be ambitious and challenging, SNAP 2 was seen to provide a strong direction of travel for human rights work in Scotland.

A number of areas were appreciated for their inclusion, such as:

- children's rights
- disabled people's rights
- a focus on groups (although intersectionality with themes needs to be improved)
- thematic and rights-holder focused

It was clear that many respondents were strongly in favour of a mixture of rights themes and a focus on specific groups.

## **4. Areas for improvement**

This section provides more detail about the feedback on areas where respondents felt improvement was needed to the draft proposals.

Many supported SNAP 2 broadly, but with some qualifications and areas identified where improvement is needed.

### **4.1 Development and presentation of SNAP 2 draft proposals**

A wide range of suggestions were made about improving both the development and presentation of the proposals for SNAP 2. These are summarised below.

#### **Don't assume so much knowledge**

Although many found the document read well, there were some concerns voiced over the need for greater clarity on some aspects.

For example, there was seen to be too much assumed knowledge about SNAP and National Action Plans for Human Rights in general. This includes a lack of information about their origin, “duty bearer” responsibilities and the uniqueness of the previous Scottish approach. More information was also requested about SNAP 1 and the road to SNAP 2 with more detail needed on the process of developing the draft actions and why others are not there. More information was also needed on the reality of what SNAP can and cannot tackle.

In relation to SNAP actions being transformational - there was some questioning from duty-bearers of how the Scottish Human Rights Commission will fulfil their duty to promote awareness, understanding and respect for children's rights and encourage best practice. And how the Scottish Human Rights Commission will help citizens claim their rights (e.g. advice, advocacy, complaints procedures) and get redress. Moreover one contribution asked for SNAP actions to be mapped on to the Commission's mandate. This highlights that it remains unclear for

some stakeholders that SNAP and the Commission are not the same thing.

### **Clarify where SNAP fits with other frameworks**

People also wanted to know more about how SNAP maps onto the Sustainable Development Goals (SDGs) and the National Performance Framework (NPF). This is work that has been done but has not been clearly enough (or at all) articulated in the current draft.

Some submissions asked for more connections to be made to the various United Nations conventions - some examples are presented but this is not consistent and perhaps assumed too much knowledge. Hyperlinks could/should be included for people to follow up or for further reading.

### **Reflect connections to current Scottish government work**

It was felt that SNAP needs to better reflect the range and depth of existing Scottish government policy commitments and existing work in key action areas. Useful notes were provided with direction towards key policies and relevant existing work. It was proposed that those involved in developing SNAP 2 meet with relevant policy colleagues across government to look in more detail at these connections.

### **Improve the presentation and collation of themes**

As noted above, many welcomed the breadth of themes and the presentation of actions both under specific rights and in relation to particular groups. Some did however question this presentation, wondering if there was a better way to locate and collate the themes/actions. One suggestion was to present the seven outcomes, the key issues relating to those, and the actions suggested to achieve them. This could also support a monitoring framework that has developed a theory of change towards the 2030 outcomes. This could also potentially better support an intersectional approach.

It could also help to group the themes by rights focus (civil and political, economic, social and cultural, specific groups) as this is the way international human rights treaties are set up.

### **Prioritise more**

Whilst the breadth of themes and actions was welcomed by many, a number of submissions felt that there were too many of both. Others acknowledged that this may be the case if sufficient resources are not made available to cover everything.

At this point further prioritisation would be required. Some questioned if SNAP 2 may lose some impact by trying to address too much and whether it would be useful to further delineate 'actions' and 'aspirations'.

### **Clarify how actions relate to issues**

In many of the thematic areas, there are a number of issues identified but far fewer actions outlined in response. This highlights that the prioritisation that led to these actions, and not others, needs to be explained upfront.

### **Improve intersectional analysis and presentation**

For all the positive commentary around the attempt to take an intersectional approach, there was consensus that this did not yet go far enough. Many suggestions are made throughout the commentary of specific areas as to where intersectional analysis needs to be improved in the final draft.

Given the universality of rights, questions were asked about whether the thematic actions puts up barriers to good intersectionality.

Some specific groups welcomed the recognition of their concerns as an explicit group but also wanted for similar issues not to be seen as separate. Some did not support issues being presented as separate to those for the rest of the population.

### **Include examples of good practice**

Suggestions were made to include case studies of where a human rights based approach (HRBA) has brought about real change in people's lives. This would help to stimulate the culture shift needed for widespread change to happen. Some submissions suggested that more could be made of the positive achievements of SNAP 1 to build on for SNAP 2.

### **Provide stronger evidence**

SNAP 2 needs to be better evidenced. This requires adequate referencing throughout to explain why certain issues are of concern.

## **4.2 Plans for implementation of SNAP 2**

Many people made suggestions about improving the plans for implementing SNAP 2. These are grouped and summarised below.

### **Resources**

Many submissions raised concern about the availability and adequacy of resources for the full vision of SNAP 2 to be realistic and realised.

### **Clear governance**

Questions were also raised about who owns SNAP and who is ultimately accountable for progress and resourcing.

### **Measurement**

Whilst welcoming the action-focused nature of the draft, caution was expressed that these actions must also be measurable and that there must be clear lines of responsibility for identified goals to ensure progress remains on track. Questions were asked about how measurement will work in practice across the 7 outcomes, 12 different types of activity and 25 themes.

As it stands not all actions identified in SNAP 2 include targets which are measurable. This will be vital if progress is to be monitored and to provide clear evidence of progress against each outcome. Assessment of progress against measurable targets will also provide an opportunity to

monitor whether resource allocation is appropriate and, if necessary, provide evidence to support recommendations for increased resourcing.

### **SNAP 2 should be led by lived experience**

Many people felt that implementation and delivery of all SNAP 2 action should engage with and be led by people with lived experience of the issues. SNAP 2 should be more explicit about how this is and will continue to be the case, in order to avoid tokenism.

### **Impact assessments**

Some questions were raised as to whether SNAP 2 will include children's rights or equality impact assessments.

## **4.3 Missing themes/ themes requiring amendment**

Six themes were highlighted by a number of submissions as either missing from the overall draft or requiring amendments/ broadening in scope

### **Right to Food**

The need for a focus on the right to food was discussed in relation to older people's rights (especially re malnutrition and the impact of social isolation on food intake); children's, women's and workers' rights, the right to adequate standard of living, the right to health, and poverty. Considerable evidence literature was provided by a range of submissions on this theme.

### **Climate Justice / Right to a Healthy Environment**

The omission of climate justice and the right to a healthy environment was highlighted by a number of submissions, and seen as important to address, particularly given the current global crisis and attention. This was seen as interconnected to many rights areas and highlighted particularly in relation to children's rights, the right to health and the right to adequate standard of living; and any activity should link to the Just Transition Commission.

## **Right to Independent Advocacy**

This was highlighted as a key missing issue, given the role that independent advocacy plays in relation to human rights both as a rights issue in itself, and as a means of helping others to achieve their rights. Advocacy is mentioned in some themes but not in others so there is a need for consistency where relevant.

## **Sensory Impairment**

It was suggested that the rights of blind and visually impaired people could be made explicit as is the case for D/deaf people. It was suggested that the theme description be changed to sensory impaired and disabled people.

## **Cultural Rights**

A number of submissions noted that this theme needs to be expanded beyond the rights of Scottish Gypsy Travellers, in particular to include island/rural communities.

## **People with Learning Disabilities**

Most themes in SNAP 2 are relevant to people with learning disabilities but mention is limited to coverage in a small number of themes – intersectionality could therefore be improved, especially in relation to barriers to asserting/claiming rights. Particular issues highlighted included: discrimination in law given the potential for detention under the Mental Health Act with no mental health issue; concerns over housing provision with many people still placed in care homes or share accommodation because it is cheaper, or in units or hospitals far from home; society wide prejudice viewing people with learning disability as of lesser value than other citizens.

## **5. Delivery, governance and resources**

This section summarises feedback received in relation to the outline proposals for delivery, governance and resources for SNAP 2.

### **Resources**

There was general consensus that the question of resources must be answered before SNAP 2 can progress to the next full step of development. The ambitions within the SNAP 2 are recognised as highly laudable but without access to proper resourcing are unlikely to be achievable.

Concerns were raised about the proposed resourcing model not taking into account the challenges that were identified in the SNAP 1 evaluation with regards to other organisations, particularly the third sector, being able to participate in delivery.

One suggestion was to pursue longer-term (10-year) funding for 2030 work streams.

### **Manage expectations**

Concerns were raised by many submissions that if uncertainty around resources remains, this could result in disappointment and reduced enthusiasm for the whole SNAP 2 process. This could also lead to less engagement with those whom SNAP 2 is intended to support.

### **Governance challenges**

A number of submissions talked specifically about the governance challenges of SNAP 1 raised in the evaluation and raised concerns that these had not been adequately addressed in SNAP 2. This included: the varying levels of caution and risk in the approach to transformative change displayed by civil society and government representatives; and the inconsistent and reducing commitment and support from the Scottish Government over the course of SNAP 1.

A number of submissions strongly supported the inclusion of a range of stakeholders who offer different experiences within the formal governance structure of SNAP 2. The inclusion of people with lived experience of human rights issues was viewed as especially positive, necessary and a recognised gap in SNAP 1. However, as the evaluation noted, participation must be genuine and supported with adequate resource - adaptations and adjustments will be required to ensure the inclusion of more rights holders in the SNAP 2 process. For genuine participation to be a reality, this will require financial resources, accessible processes involving locations in communities that suit SNAP 2 participants, on and offline documentation in accessible formats, adequate preparation time, and other cultural and process changes.

A question posed by a number of submissions, which remains unresolved, was who 'owns' SNAP. Without a clear understanding of this, it will remain unclear who is ultimately accountable for its delivery. This needs clarity because to be successful SNAP requires clear and consistent leadership. A number of submissions propose that while all organisations involved will have their own accountability structure, there would be distinct benefits to having one organisation who is responsible for championing, reporting and being accountable for SNAP 2 as an approach.

There was considerable support for a resourced and independent secretariat to be created to take forward SNAP 2. The following submission summarised the value of such a secretariat:

*The independent nature of such body would ensure both an ability to be autonomous and flexible to the overarching human rights aims of the whole process. It is extremely important that such a secretariat has freedom and adequacy of resource and capacity to utilise the range of existing and developing media to progress the overall aims and to foster buy-in and wider public engagement. It is further, very important indeed that the ability of diverse actors is promoted and ensured in a way which is both inclusive and extensive. Such activities require a dedicated focus and concentration which is attached to the process rather than an*

*additional part of any stakeholder's workload. It is only with such a resource and a suitably independent secretariat that there will be effective wider public, civic society and we would argue both private and public sector engagement.*

## **Delivery challenges**

Many submissions were supportive of continuing the collaborative approach of the proposed structure of delivery of SNAP 2. Some felt that having multiple stakeholders and partners was a positive step to ensuring that SNAP 2 will be adequately resourced. Others however noted caution about the balance of power between the different partners if the bulk of resources was to come from government (as it needs to). This was felt to be an unresolved issue from SNAP 1 – the collaborative endeavour that made SNAP 1 did not come with a strong resource package from government. If government is to increase resources, what will that mean for the power dynamic?

Questions were also raised around what format delivery groups should take – thematically based, outcome based, or action based. Some suggested a combined approach with: overarching thematic or outcome delivery groups to provide a specific focus and recognition of each of the rights and themes; and, smaller action based delivery groups to ensure that stakeholders and partners can focus their expertise on actions appropriate to their field of work, whilst also contributing to the overall theme or outcome.

A number of submissions also talked about the need to ensure better cross-group working compared to SNAP 1. This may be aided by first having undertaken an intersectional approach to the final version of SNAP 2, and ensuring that the structure for delivery supports an intersectional lens across themes, rights and actions. Creating a delivery model that allows for these connections to be recognised, and actions to be delivered that recognise multiple themes is a necessary step for the success of SNAP 2.

In addition feedback on SNAP 1 highlighted that within SNAP 1, roles and expectations were not clearly defined. Therefore, there is work to do to assign roles and communicate clearly with stakeholders on taking forward the actions identified in SNAP 2.

## **Relationship with National Taskforce on Human Rights Leadership<sup>4</sup>**

Responses to this issue fell into two camps – those who did and did not know what the Taskforce is, its history and its purpose.

For the most part, those who did not know of the Taskforce, its history and purpose, did not see why there were two different things happening and felt they should be one thing. There was no sense in these responses about who was responsible for each and what the governance arrangements of both were. Moving forward, it is clear more information needs to be provided about what the Taskforce is, what it aims to do and how it is governed.

For those aware of the Taskforce, its history and purpose, the majority felt that the two endeavours should be separate and independent, but co-exist and complement each other. Key issues included ensuring:

- Productive working relationships and very efficient communication.
- Representation on each other's governance structures.
- Neither a significant overlap nor significant gaps in terms of human rights work – avoid duplication.
- Strong and explicit focus on collaborative working where areas of shared priorities emerge.
- Identification of common goals.
- Attempts to work closely around the areas of public participation and engagement, and around the priority of building capacity within diverse constituencies for the preparation of new human rights legislation and its implementation.

It was also noted that much of the evaluative work of SNAP 1 and 2 should act as the foundation of the developing of human rights-based indicators for Scotland's National Performance Framework (NPF).

## **Relationship with the Scottish Parliament**

There was welcome support by many for the accountability scrutiny that the Scotland Parliament could play in SNAP 2, as well as the role SNAP 2 action could also play in supporting the Parliament itself to become a better guarantor of human rights. Some suggested a range of different approaches and activities for SNAP 2 to engage effectively with the Scottish Parliament, including:

- Holding a launch event at the Parliament.
- Arranging an annual Parliamentary debate on SNAP 2 and wider human rights work in Scotland.
- Linking in with work being done by the Parliament's Equalities and Human Rights Committee/ other Committees.
- Supporting Committees to take a human rights based approach to their budget scrutiny processes and inquiries.
- Having a Minister of the Scottish Parliament attend SNAP meetings at times.
- Active involvement in the delivery of the actions of SNAP 2 from MSPs.
- Specific MSPs having direct responsibility for specific human rights outlined in SNAP 2.
- Appointment of SNAP 2 rapporteurs in Committees.
- Holding evidence sessions in Committees on SNAP 2 progress.

## 6. Suggested revisions to themes, issues and actions

This section details the wide range of suggestions made for updates, additions and changes to issues and actions across the 25 themes set out in the draft SNAP 2 proposals. The language and references used throughout are drawn from the submissions received with some editing to ensure the meaning is clear.

### Theme 1: Children and Young People's Rights

#### Revisions to existing issues

**Issue 3:** The need to ensure all children and young people (CYP) are able to exercise their right to participate and be involved in decisions that affect them and their wider community, and that their views are given due weight – including those who are disabled, younger, care experienced, from black and minority ethnic (BME) groups, have a parent in prison, are seeking asylum, live in poverty, have experienced trauma and abuse or are involved in the juvenile justice system.

- Include reference to 'empowerment reforms'.
- Include explicit reference to LGBTI CYP and CYP with learning disabilities.
- Be explicit that Care Experienced could mean both as a Looked After Child (LAC) or a young carer.
- Issues for Scottish Gypsy/ Travellers (SGT) CYP – should be mentioned across many of the themes including here.

**Issue 4:** Increasing prevalence of child poverty / failure to respect, protect and fulfil right to adequate standard of living.

- Include references to work already underway by Scottish Government e.g. Child Poverty Act 2017 & Tackling Child Poverty Delivery Plan 2018 -2022 (TCPDP).

- TCPDP outlines that poverty levels can be impacted through 3 key drivers which are: increasing income from work and earnings; reducing household costs and maximising income from social security and benefits.

**Issue 5:** CYP experience barriers to realising their right to education including poverty, discrimination, lack of school resources and lack of adequate facilities and provision for CYP with additional support needs (ASN), or who are D/deaf or disabled.

- This issue should also include ASN barriers to education.
- Minority ethnic children's barriers can be different to the experience of other children – e.g. fear of state/police, cultural, language etc.
- Many schools are not equipped or resourced for learners with visual impairment. Numbers of CYP with visual impairment has increased from 2005 in 2010 to 4575 in 2018 – over the same timeframe specialist teacher numbers has decreased.
- Issues for SGT CYP – should be mentioned across many of the themes including here.

**Issue 6:** CYP experience particular issues in relation to their rights to mental health including inadequate funding for child and adolescent mental health services (CAMHS), failures to address bullying in schools, communities and online, pressures caused by social media use and content, and lack of resources invested to address the problems.

- Mental health in schools – missing in Theme 1 and Theme 9.
- Scottish Government note that, in Scotland, Scottish Government are trying not to carve off online bullying as something separate.
- Reference Scottish Government strategy 'Respect for All'.

**Issue 7:** Particular rights issues experienced by looked after children and young people.

- Issues for SGT CYP – should be mentioned across many of the themes including here.

## Missing issues identified

- Childhood abuse and survivors - not included as an issue in Theme 1 or Theme 7
- Trans inclusion for CYP – transphobic abuse/legal recognition issues.
- Intersectional issue – LGBTI CYP are more likely to experience mental ill-health, homelessness, leave formal education early, etc than their straight/cis peers.
- LGBTI CYP in care face additional rights violations including sharing of information without consent, discrimination, bullying and prejudice.
- All issues relating to CYP in school are equally relevant for CYP outwith the school system – submissions raise this in relation to CYP who are off school sick – but could also include CYP excluded for other reasons – both formal and informal exclusions. [e.g. SGT CYP]
- Acknowledge the role that CYP play as human rights defenders – and the protection and support that they require to carry out that role.<sup>5</sup>
- Positive transitions for CYP and adults with learning disabilities – pertinent given current discussions on the Disabled CYP (Transitions) (Scotland) Bill.
- Climate Justice and CYP’s right to a healthy environment – see Knox’s Framework Principle 11, the obligation to establish and maintain substantive environmental standards that respect, protect and fulfil human rights, including “by taking the best interests of the child... as a primary consideration”. Knox<sup>6</sup> underscored that non-retrogression can support the protection of the rights of children as they are the most vulnerable group to environmental harm.
- Issues that affect CYP with learning disabilities / those who are on the autistic spectrum could be included more. Recent announcement of forthcoming human rights based guidance on restraint and seclusion highlights the importance of this area.

- CYP with learning disabilities have particular concerns about education, employment, relationships, making decisions, housing and hate crime. Young people with learning disabilities suffer significantly higher levels of inequality compared to other young people, have strong feelings of no control or choice and are even less likely than other CYP to be involved in decisions that affect them – with inaccessible processes and negative attitudes.
- The need for CYP who are experiencing difficulties which cause them to be vulnerable or at a disadvantage, to have a right to Independent Advocacy.
- Transition planning for LAC needs to start earlier (13-14) and continue longer (until 18).

### **Revisions to existing actions**

**Action 4:** Instigate proactive action to tackle barriers to CYP's right to good/positive mental health

- This action could be more specific.

**Action 5:** Instigate proactive action to tackle barriers to educational attainment in the context of CYP's right to education

- Include an explicit objective to combat the disadvantages faced by CYP with sensory impairment and other disabilities. The resource implications of this are significant and therefore provision based on budget available rather than need/rights. Might this involve budget analysis work?

### **Potential additional actions**

- Undertake proactive action to educate and raise-awareness – amongst rights holders and duty bearers – of the legislation that gives some children a right to access independent advocacy.
- Action to campaign for all CYP to have a legal right to Independent Advocacy.

- To ensure Article 23 of the UNCRC is fully realised as part of incorporation and monitor progress towards this. [Article 23 of the UNCRC is about children and young people with a disability. All children and young people have the right to be safe and happy. When a child or young person has a disability, people should make sure it does not get in the way of this. They should do this no matter what that disability is].

## **Theme 2: Cultural Rights – Rights of Gypsy/Travellers**

This theme should be broadened to incorporate other cultural rights.

### **Revisions to existing issues**

**Issue 1:** Right to housing: lack of provision of adequate and culturally appropriate stopping sites and other forms of accommodation, and serious issues with habitability and conditions of sites and accommodation that is available e.g. lack of sanitation and clean water.

- Other minority ethnic groups also face significant housing issues e.g. poor quality housing, overcrowding, affordability etc.

**Issue 2:** Right to education: gaps in educational attainment particularly acute for Gypsy/Traveller children; bullying particularly an issue against Gypsy/Traveller children.

- Focus on attainment misses some important considerations (also Theme 13). Significant numbers don't attend formal school or have academic attainment measured.
- Supporting SGT CYP to attend school in the first place does not come through in this draft of issues.
- Measuring 'academic attainment' also not necessarily helpful for those in school. Focus on non-academic achievement/positive destinations post-school could be more valuable indicators of success.

**Issue 3:** Right to health: issues with access to health services and discriminatory attitudes and practices towards Gypsy/Traveller people, particularly affecting women. Life expectancy markedly lower for Gypsy/Travellers compared to settled population.

- Mental health issues for SGT – especially high suicide rates amongst SGT men.

**Issue 4:** Participation: the need to ensure that Gypsy/Traveller communities are involved and listened to in government and local authority policy and decision-making processes that affect them, including planning, housing, education, employment and healthcare.

- There is a clear role for Independent Advocacy here – can this be explicitly recognised and stated here?

**Issue 5:** Discrimination: persistently high levels of discriminatory public attitudes towards Gypsy/Travellers

- Could also address SGT right to a nomadic lifestyle. Greater awareness of SGT culture and history.

### **Missing issues identified**

- Right to private and family life – SGT and the media. Often photos are taken and used in the media without permission, often controlled by a non-SGT site manager.
- Huge poverty issues for SGT in terms of access to social security benefits and barriers to accessing employment.
- Address the rights of other cultural rights holders in Scotland that benefit from international recognition e.g. “local/traditional communities” such as island communities and small-scale farmers are protected by international human rights and environmental law as recognized in Principle 15 of the UN Framework Principle on Human Rights and the Environment.
- Islands (Scotland) Act 2018 and Climate (Scotland) Act 2019.

- Recently proposed National Islands 5 year plan includes compliance with Scotland's human rights obligations.

### **Revisions to existing actions**

**Action 1:** In collaboration with Scottish Gypsy/Traveller communities, hold the government to account for the development, implementation and monitoring of the Scottish Gypsy Traveller Action Plan.

- Can this been done in a co-ordinated way to avoid over consultation/discussion with the same communities?
- This may or may not make sense given what is thought of who Scottish Government have engaged with so far - limited? Inclusive? This should be explored.

### **Potential additional actions**

- Inclusion of culture in school education – e.g. SGT culture.
- Promotion of SGT month increased in media.
- Address education exclusion for SGT and discrimination in employment.
- Support and/or monitor development and implementation of island communities impact assessment guidelines and regulations under the Island (Scotland) Act 2018.

## **Theme 3: D/deaf and Disabled People's Rights**

Can this theme title be amended to Sensory impaired and Disabled People's Rights.

### **Revisions to existing issues**

**Issue 2:** Disproportionately high prevalence of stigma, prejudice and discrimination experienced by D/deaf and disabled people create multiple barriers to their ability to access their rights in multiple contexts including housing, employment, participation in public life, family life, social security etc.

- There is no corresponding action identified which is questioned. This is raised in Section 2.1.6 above.

**Issue 3:** D/deaf and disabled people experience multiple barriers to their rights to autonomy and independent living.

- Concerns over housing provision for people with learning disabilities moving backwards despite Scottish Government report 'Coming Home'. Many people are still placed in care homes or share accommodation because it is cheaper; or in units or hospitals far from home – very far removed from facilitating the right to independent living.

### **Missing issues identified**

- Need to include people with sight loss or dual sensory loss or Augmentative and Alternative Communication (AAC) needs.
- Reference to the Scottish Sensory Impairment Strategy (See Hear) has been in place since 2014 for both CYP & adults.
- Article 19 UDHR Freedom of expression – communication impairment may require augmented or alternative equipment.
- NHS Boards in Scotland have a legislative duty (Part 4 of the Health (Tobacco, Nicotine etc. and Care) (Scotland) Act 2016) to provide or secure equipment and support its use (ACC).
- Social Security (Scotland) Act 2018 gives anyone with a disability requiring support – the statutory right to independent advocacy. Many disabled people, including those with sensory impairments do not identify as disabled and may not recognise this right. many are however marginalised and vulnerable.
- Disproportionately high barriers sensory impaired and disabled people face when trying to access educational and recreational activities. This is also a cross-reference intersectional issue with right to education.
- People with visual impairments have particular concerns over how the built environment and 'shared space' policy affects them compared to people with other types of disabilities – what helps in

terms of removal of kerbs and tactile pavement markings – makes it more difficult to negotiate. UK government has advised Local Authorities in England pause until guidance is reviewed.

## **Revisions to existing actions**

Many of the actions call for more research or exploration through a human rights lens rather than action to rectify – maybe this is about reframing more research orientated actions?

**Action 1:** Support Scottish Government to monitor the implementation of new social security system to assess impact on D/deaf and disabled people's (DDP) rights.

- Possibly include a measure of those who do/don't access independent advocacy.

**Action 4:** Research the extent to which DDP are being pushed towards care home options rather than independent living, in order to inform future actions.

- Scottish Government will be undertaking research into the level and complexity of need for social care support into the future and what this means for the types of support we need to be investing in now. This could go some way to addressing “Research the extent to which DDP are being pushed towards care home options rather than independent living, in order to inform future actions”.

## **Potential additional actions**

- UK government has advised Local Authorities in England pause on rolling out their ‘shared space’ policy until guidance is reviewed – can SNAP 2 support a similar review in Scotland?
- Support development of a contribution to the Public and Social Education review (PSE) or such like on disability rights and the history of activism.

- Research on the extent and in what ways stigma and discrimination create barriers to accessing services – producing policy advice for government/ public services.

## **Theme 4: Equality and Freedom from Discrimination**

### **Revisions to existing issues**

**Issue 2:** Hate crime: need for better systems to encourage reporting, better investigation and more effective ways to prosecute and punish offenders, and a review of what constitutes hate crime.

- Can SNAP 2 recognise the heightened negative experience of trans people in relation to hate crime – especially online hate speech at the current time?
- LGBT youth research in 2017 showed 48% of LGBT youth didn't know their rights under hate crime legislation.

**Issue 3:** Tolerance and respect: need for work to build a stronger culture of tolerance, respect and non-discrimination, and to tackle hateful, discriminatory public discourses, attitudes and behaviours.

- Harmful and hateful speech noted to be especially problematic for certain groups e.g. trans/LGBTI – particularly on social media.
- People with learning disabilities talk often about their experiences of hate crime which has had a significant and detrimental impact on the lives of many people with learning disabilities, often with no action taken even after reporting.
- People suffering from addiction and mental ill health.

### **Revisions to existing actions**

**Action 1:** Develop rights-based intersectionality training/good practice model for public bodies and civil society to show what 'good' looks like

- Scottish government would welcome the opportunity to hear more about this proposal and anticipated timescales for this work.

- LGBT Youth Scotland runs the LGBT Charter, covering many aspects including a Charter of rights and have delivered training to 270 clients including a quarter of state secondary schools in Scotland.

**Action 2:** Intersectional data: bring equalities and rights organisations together with SDG Network and Scottish Government to create a map of gaps in intersectional data (there is nothing but gaps) and a plan of how to fill them and commitment to respond.

- Representatives from Local Authorities / Local improvement service / NHS Scotland's Information Services Division / others who have performance / data and equalities / rights expertise to explore?

### **Potential additional actions**

- Proactively work to raise public awareness about hate crimes – what they are, how you can report them to 3<sup>rd</sup> party reporting centres.
- Awareness raising about rights under hate crime legislation with people with shared protected characteristics, and a review to ensure that reporting mechanisms are suitable and appropriate for all demographics who need to report experiencing hate crimes.

## **Theme 5: Freedom of Expression**

### **Revisions to existing issues**

**Issue 1:** The prevalence and nature of online bullying, harassment and abuse, and lack of adequate legal and policy framework, leading to people not being able to express themselves online in a safe way.

- Links with Theme 4

**Issue 2:** Inadequacies in law and policy relating to hate crime leading to lack of clarity for people about the parameters of limitations on their freedom of expression.

- Links with Theme 4
- Live issue in relation to debate around trans women in particular.

### **Revisions to existing actions**

**Action 1:** Develop a rights-based approach to communications surveillance that brings rights holders and duty bearers together to better understand the rights issues and develop rights-based policy and practice.

- Supporting initiatives to train and educate teachers/youth workers about the UK Government's Prevent Strategy.

## **Theme 6: Freedom of Faith and Belief**

### **Revisions to existing issues**

**Issue 1:** There are changing demographics around religion and belief. A 2018 Humanist Society Scotland report suggested that 59% of the population identify as non-religious. NRS data shows that of the population identifying as having a religion the largest religions in Scotland were Christianity (54%) and Islam (1.4%), with 37% of people having no religion (NRS 2013).

- Humanist Society Scotland report was cited as a source of data for the levels of religious belief. Question asked if there was data from a neutral source?

### **Missing issues identified**

- Need to include the specific experience of Muslims in the context of the rise of Islamophobia across Scotland was raised. Scotland Against Criminalising Communities (SACC) research highlights prevalence of Islamophobia in Edinburgh Schools and lack of consistent policy to deal with it in schools.

### **Potential additional actions**

- Following on from the findings of the Scottish Parliament Cross Party Group on Islamophobia enquiry - could there be a specific action developed to address the issue of Islamophobia?

## **Theme 7: Freedom from Violence, Abuse and Neglect**

### **Revisions to existing issues**

Issues in this section are very specific. Would an overarching narrative be better, recognising that trauma and its impacts on individuals, communities and society as a whole are substantial and that particular sections of the population (e.g. children) are more vulnerable?

**Issue 1:** Women and girls at disproportionate risk of violence including forced marriage, Female Genital Mutilation and domestic abuse and violence, including being killed by male partners and family members. Resources and funding needed for support services and to ensure effective implementation of relevant legislation.

- Can this be improved to articulate the reasons why domestic abuse is against the law?

**Issue 3:** Some evidence emerging of high levels of domestic abuse experienced by LGBTQI people, with more research required to fully understand the issues and their experiences.

- Those LGBTQI people who do suffer domestic abuse face several additional barriers to accessing support and reporting abuse.
- Albert Kennedy Trust found that 69% LGBT young homeless people in UK had experienced violence, abuse or rejection from the family home. See Bateman, W. (2015). LGBT Youth Homelessness: UK National Scoping Exercise. London: Albert Kennedy Trust

**Issue 6:** Use of restraint and pain compliance techniques in Young Offenders Institutions. Lack of publicly available data. Risk of re-traumatising vulnerable young people.

- Abuse and neglect of young people in detention noted in NPM's submission to UN CAT.

**Issue 11:** Restraint and seclusion in schools. Existence of adequate local and national guidance, data collection.

- New rights-based guidance on physical intervention and seclusion being developed in conjunction with stakeholders and the actions that are currently underway within Scottish Government are not all highlighted.

### **Missing issues identified**

- Childhood abuse and adult survivors of childhood abuse – neither theme 1 or this theme address childhood abuse (including sexual abuse).
- The draft plan also does not address the rights of adult survivors of childhood abuse to access support.
- European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) found instances of women in custody being mistreated in Cornton Vale.
- People with learning disabilities are at an increased risk of violence, abuse and neglect in a variety of settings.
- No/no adequate data on abuse in same-sex relationships available, data gathered as one.

### **Revisions to existing actions**

Overall, there was concern from duty-bearers re duplication of effort of work already undertaken. It was also felt that the Actions in this section should be stronger and more practical in focus, with actions building directly onto existing work/work already done.

**Action 1:** Map what is happening already in this area and bring a human rights analysis to this.

- The proposed mapping exercise was felt to have limited practical value; what is now needed is action to help implement agreed national strategies.
- Rather than a mapping, it would be better to bring people together to talk about violence and abuse from a human rights perspective to identify change needed.
- This could be enhanced by an explicit focus on detailing the disparity between policy and practice in relation to independent advocacy and its role in securing human rights.

### **Potential additional actions**

- An awareness raising action of LGBT young people's experiences of domestic abuse and other forms of gender-based violence. This could be targeted at the LGBT community to raise awareness that domestic abuse happens in LGBT relationships, as well as targeting service providers to encourage them to address inclusivity in their services.
- Support the development of human rights based guidance on restraint reduction, building on the Restraint Reduction Network (RRN) Training Standards.
- Action to ensure investigation in deaths in custody / Fatal Accident Inquiries apply a consistent application of human rights principles.

## **Theme 8: Justice – Access to Justice, Policing and Criminal Justice**

This theme would benefit from defining what is meant by “access to justice” to be clear about what is meant.

### **Revisions to existing issues**

**Issue 4:** Issues around presumption of liberty affected by intent to continue to arrest and temporarily incarcerate people pending an interview.

- This is also a lack of community disposal, decline in the use of home detention and withdrawal of through-care.

### **Missing issues identified**

- People involved in the justice system not always able to access (or know about) their legal right to independent advocacy.
- Issues around over-crowding in Scottish prisons, raised by the NPM and its members and cited by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT), following its inspection in 2018.
- Knox's Framework Principle 10 emphasizes that "States should provide for access to effective remedies for violations of human rights and domestic laws relating to the environment," including by taking into account the need for timely reparations to limit any ongoing and future damage to children. Notwithstanding the Courts Reform (Scotland) Act 2014, Scottish NGOs (and the UN Special Rapporteur on Toxics) are still raising the issue of prohibitive costs (in relation to implementation of the EU Environmental Impact Assessment Directive and Art 47 of the EU Charter of Fundamental Rights), as well as the lack of merits-based judicial review to ensure compliance with the access to justice requirements of the Aarhus Convention.
- People with a learning disability are regularly discriminated against when they come into contact with all parts of the criminal justice system. A lack of support throughout the processes, and particularly in relation to communication, means that people with a learning disability are often uninformed and disadvantaged.

### **Revisions to existing actions**

**Action 1:** Frame the whole justice system from a human rights, trauma-informed perspective to work out what it would look like from perspective of e.g. children & young people, people with learning disabilities, people with mental health problems, older people, people from BME communities, women, LGBTQI+ people

- Needs to also reflect that this needs to engage health and social systems.
- Issues for SGT CYP should be mentioned across many of the themes including here.
- To do this, connect organisations working with groups who are particularly vulnerable e.g. people with learning disabilities, children and young people, to inform their work from a human rights lens.

### **Potential additional actions**

- Capture and share people's lived experience of using and accessing the justice system, to inform understanding of barriers and actions needed from a rights perspective.

## **Theme 9: Mental Health**

Why is 'rights' or 'right to' not in this title?

### **Revisions to existing issues**

**Issue 2:** Waiting times generally for mental health services are too long.

- Long waiting times particularly affect LGBT people given the high rates of mental ill health among this group: 50% of LGBT young people and 63% of trans young people experienced suicidal thoughts or behaviours 84% of LGBT and 96% of trans young people, indicated they had experienced at least one mental health problem<sup>7</sup>.

**Issue 3:** Problems with accountability and lack of adequate redress

- Clarity required about where problems of accountability are - Mental Health Act?

**Issue 4:** Lack of access to freely available independent advocacy services/support to facilitate involvement. Key issue is participation in decision-making (e.g. Supported Decision Making like independent advocacy), which needs to be implemented far earlier on in processes;

freely and widely available to people with lived experience; and there's redress and accountability if it's not present.

- Independent advocacy is not a form of supported decision making as seems to be suggested in the draft proposals.
- Anyone with a 'mental disorder' has a statutory right to access independent advocacy under the Mental Health (Care and Treatment) (Scotland) Act 2003, but reductions in funding and increasingly complex case-loads mean that, in reality, capacity can't meet demand. Particularly acute for CYP with 'mental disorders'.

### **Missing issues identified**

- Work around mental health in schools generally is missing from this draft and children's mental health issues.
- Rise in use of detention is now at its highest level since legislation reformed in 2005. Evidence of considerable pressures in system leading to people being unable to access care they need or unable to be discharged from in-patient care to community support.
- Scottish Government mental health strategy for 2017-27 with commitment to human rights based approach, but work still to be done to identify actions to support this.
- Negative impacts of environmental factors on physical human health are well recognised. This includes climate change, air pollution etc and there is also a growing debate on the negative impacts of environmental factors on mental health (e.g. UN Special Rapporteur on the Right to Health has noted the link between mental health and climate change)<sup>8</sup>.
- Many older people with serious mental health conditions are unable to access appropriate services as a result of their age – see “*A Fairer Scotland for Older People: A Framework for Action*” (April 2019). There is a critical need to improve the provision of, and access to, mental health services, including psychological therapy for people over the age of 65.
- Increasing pressures on social care staff which impacts on their own mental and physical wellbeing.

- People with a learning disability often experience poor mental health with direct links between this and the inequality and abuse that are endured throughout life.
- Focused on intersectionality - young people that are LGBTI are more likely to experience mental ill-health, homelessness, leave formal education early etc than their straight / cis peers.
- Sensory impairment, including visual impairment and deteriorating vision, can in itself be an emotionally traumatic experience (Royal Blind research – 80% of 300 impacted emotionally by sight loss/ majority offered no support).

### **Revisions to existing actions**

There are a number of issues identified, but far fewer actions outlined in response

**Action 1:** Support & empower people with lived experience of mental health problems to be at the heart of / have a voice in Mental Health Act review, mental health strategy policy engagement, and other relevant public policy discussions

- The review of the Mental Health Act has moved on and could be updated. It is important to support people with lived experience to contribute to the review, but also a focus on the right to supported decision making would be welcome.
- The focus should not just be on mental health strategy policy engagement but also including voice of lived experience in service design.
- In line with this action can there be tailored, person-centred social care and support plans that address mental health risks and triggers, such as mobility, access to services, employment, economic support and other needs.

### **Potential additional actions**

- An action to draw out the way in which stigma and discrimination prevents people from accessing services.

- An action focused on addressing the service gap identified in the issues re 'lack of access to freely available independent advocacy services/ support to facilitate involvement'.
- An action focused on addressing the service gap identified in the issues re lack of understanding of and access to rights and redress.
- Carry out a human rights budget analysis of health (including mental health) and social care budgets.
- Help address identified lack of knowledge of rights by rights holders and duty bearers. Focused work with lived experience on how to develop new models of care and support which better reflect human rights norms, including positive rights to health and economic, social and cultural rights.
- One of the actions should involve combating mental health stigma and discrimination, as stigma can prevent people seeking help and acts as a barrier to the right to health.
- Human rights based analysis of access to mental health support services, such as counselling.
- Action needed to increase awareness of the mental health needs of people with sight loss in primary care settings, including in low vision services.
- Raising awareness of advanced statements as guarantor for other rights (advocacy, named persons).

## **Theme 10: Older People's Rights**

### **Revisions to existing issues**

**Issue 2:** Impact of technology including increasing digitalisation, automation and growing use of Artificial Intelligence has disproportionately negative risks to older people's rights, particularly in relation to use of technology in care provision and inequality of access to digital services.

- Although there are potential challenges and risks associated with technology use for the older population, research also shows that it is an enabler for social contact and the prevention of loneliness

which is prevalent in older people and can affect mental health (and increase the risk of malnutrition). Increasing accessibility and widespread use of technology could help tackle other issues that affect older people's rights.

### **Missing issues identified**

- Current gap between policy and practice of mechanisms through which older people have and realise their right to independent advocacy.
- Older people in Scotland have unique challenges and needs associated with realising their right to food, particularly in relation to the unacceptable prevalence of malnutrition (connect to Theme 24).
- Significant rise in older people in prison system. Issues of cell adaptations in prison and police custody settings and around the availability and quality of care. See HMIPS 2017, 'Who Cares? The Lived Experience of Older Prisoners in Scottish Prisons'.
- Older LGBTQI people are finding it difficult to find an acceptable care setting, due to a lack of understanding of the LGBTQI needs by staff. Additional fear from the community with dementia and the fear of losing their identity.
- Mental health of older people: the stigma attached to that can trigger mental health issues (not just dementia). Older people's voices need to be heard in any decision-making process.

### **Potential additional actions**

- Work in partnership with A Fairer Scotland for Older People: A Framework for Action, to publicly acknowledge malnutrition and the 'right to food' as a human rights issue affecting older people in Scotland.
- Advocate for the right to food to become a key focus of the change in the current Free Personal and Nursing Care (at home) legislation. This should include clarification of food within care at home.

## **Theme 11: Personal Choice and Autonomy**

## **Revisions to existing issues**

**Issue 1:** The need to replace substitute decision-making for people with impaired capacity with supported decision-making through reform of laws (particularly mental health and incapacity) and provision of supported decision-making measures.

- The phrase 'impaired capacity' is used. Suggest a different wording which reflects the differing levels of support that people may require to make decisions.
- People with learning disabilities and/or autism, are often subjected to substituted decision making by the services supporting them to manage their lives.

## **Missing issues identified**

- Ensuring greater personal choice and autonomy lies at the very heart of the independent advocacy movement and influences its values and practice. It plays a pivotal role in ensuring that people know about their rights, as well as supporting them to enact their rights and hold duty-bearers to account and seek redress if they are violated.

## **Potential additional actions**

- Action to tackle procedural safeguards issue could include work with courts and tribunal system to educate and train about human rights of people affected and look some sort of accountability process.
- Advocate for Scotland to offer all the evidence-based pathways to recovery and not just the medical model.

## **Theme 12: Right to Adequate Standard of Living**

### **Revisions to existing issues**

**Issue 1:** The continued existence and extent of homelessness in Scotland demonstrates a failure to realise the right to housing, which is a crucial component of the right to an adequate standard of living.

**Issue 3:** The stigma and discrimination experienced by people in poverty undermines their ability to access their rights in multiple domains. This is because stigmatising public attitudes and behaviours create a climate where people do not feel empowered and entitled to claim their rights. It is also because people working in public services engage in stigmatising and discriminatory attitudes and behaviours, and are not held to account for this.

### **Missing issues identified**

- No reference to any specific groups that struggle in particular to achieve an adequate standard of living including SGT, BME groups, disabled people, carers, lone parents etc.
- Collective independent advocacy is particularly relevant in the context of housing rights because violations of rights often result in a group of people with shared experiences who face a common problem. Group/collective independent advocacy could play a strong role in promoting and enforcing people's right to an adequate standard of living.
- Scottish Governments has committed to 'Dignity Fairness and Respect' in the new Social Security agency. Critical that vulnerable groups, especially those with accessibility issues, have the opportunity for an ongoing, regular way of feeding into the design of the new social security agency as an organisation. People with learning disabilities have not yet been offered effective ways of doing this.
- Cross reference with Theme 2 - right to adequate standard of living for many Scottish Gypsy/Travellers is not a reality because of refusal of access to water, refusal to remove refuse etc.
- Right to food should be covered here (or cross referenced to a new theme). Affordability of good food/ healthy food, accessibility of food locally and in schools and hospitals and prisons, availability of fresh food locally, ensuring dignity in access to food.

### **Potential additional actions**

- Action to further share the findings and encourage other councils to take that approach.

## **Theme 13: Right to Education**

It would be helpful if SNAP 2 referenced existing and already-planned actions to do with the School Empowerment Reforms and Education Scotland's activity to promote and support good practice in learner participation in schools.

Plan could start by saying that human rights are relevant to the work of schools in terms of education's role in maximising children's rights and that there is perhaps something to say about ensuring that Scotland's children are 'rights aware'. This latter point is further illustrated by the long-term work undertaken in connection with the "Rights respecting Schools" programme.

There are important shortcomings in how successfully the right to education is realised (specifically human or children's rights education) in Scotland.<sup>9</sup>

### **Revisions to existing issues**

**Issue 1:** Attainment gap. The attainment gap still remains prevalent across the Scottish school population. Educational attainment has been identified as a priority for children and young people. Increasing attainment via tackling barriers to attainment is key. Barriers include: child poverty, poor resource availability, lack of disability and/or Additional Support Needs support, discrimination.

- The focus on 'attainment' of Gypsy/Travellers misses some important considerations (e.g. Theme 2, Theme 13). First, a significant number of Gypsy/Traveller children don't attend school at all and therefore don't have their 'attainment' measured. For those in school, measuring 'attainment' (qualifications) isn't helpful. Although some Travellers do chose an academic route, lifestyle and culture means many don't, and we need to be respectful of such

choices. Non-academic achievements and positive post-school destinations should be valued as indicators of success in the same way that academic achievements are.

- Supporting children and young Gypsy/Travellers to participate in education in the first place is a key point which does not come through in this plan.

**Issue 2:** Informal exclusions found to be used when schools are unable/unwilling to provide support for pupils with additional support needs. Children and young people given reduced timetables and thus their right to education is not being upheld.

- For children and young people with learning disabilities, exclusion from education and further opportunities is an ongoing and unchanging issue. Findings from “Included in the Main” highlighted the exclusion of children and young people with learning disabilities from mainstream education. 503 parents surveyed, 40% said their child with a learning disability, had been excluded from school. 19% said that this was a regular occurrence.

**Issue 3:** Healthcare needs of pupils with additional support needs are not always being met. This can be down to a lack of resources, lack of appropriately trained staff members or the local authority not being aware of their duties towards children and young people with additional support needs.

- Work around mental health in schools generally may be missing from the document.
- When children with learning disabilities move on from school, there are significant concerns regarding transitions and what is available for adults with learning disabilities in terms of further opportunities, employment and support services. This issue is getting significant attention currently as a result of the proposed the Disabled Children and Young People (Transitions) (Scotland) Bill.

- Equally important are the healthcare needs of children formally and informally excluded, and children who are off school through ill health.

**Issue 6:** Use of physical restraint and seclusion in schools (see freedom from violence, abuse and neglect).

- One respondent noted serious circumstances in which children and young people with learning disabilities across Scotland and the UK are experiencing restraint and seclusion in schools.

### **Missing issues identified**

- The Education (Additional Support for Learning) (Scotland) Act 2004 gives some children and young people the right to access independent advocacy in some educational contexts. However, this provision is very poorly funded with demand far outstripping supply.
- D/deaf and disabled children experience barriers to realising their rights to education, including discrimination, lack of appropriate mainstream resources
- Some children with disabilities are educated separately from their peers, which is contrary to their rights under CRPD.
- Young transgender people experience barriers to education through stigma, discrimination and failure to respect their human rights both from teachers and peers.
- Intersectionality – cross thematic - young people that are LGBTI are more likely to experience mental ill-health, homelessness, leave formal education early, etc than their straight/cis peers.

### **Potential additional actions**

- Accountability and transparency in use of restraint. Research into best practice and non-punitive approaches, such that excellent policy can be commonplace. (Cross reference with Theme 7).
- Support training through the Schools LGBT Charter and have LGBT Youth Scotland resources widely available for schools, such as

Addressing Inclusion and LGBT Youth Coming Out guides for example.

- Work with schools on their behaviour policies, especially regarding autistic people.

## **Theme 14: Right to Employment / Workers' Rights**

Is it possible to include hyperlinks where relevant to highlight the connection with other areas of work? The Race Equality Framework is just one example.

### **Revisions to existing issues**

**Issue 1:** Discrimination and inequality in access to good work for disabled people, people with mental health problems, people living with long term conditions and unpaid carers (negative attitudes/prejudice, lack of reasonable adjustments, insecure work, unequal pay, discrimination at work).

- Rights to employment/ Workers' rights: reference is made to "good work". A key focus for Scottish Government and partners is that of "fair work" and it is suggested this is more appropriate terminology and consistent with national policy (e.g. Fair Work Convention and the Fair Work Action Plan).
- People who have a learning disability rarely get the support to find and maintain employment.
- Reports which describe statistics for employment do not always recognise people with learning disabilities.
- SCLD reported in November 2018 that the number of school leavers with a learning disability who are unemployed is double that for other school leavers.

**Issue 3:** Inequality of access to good work for parents (parental leave provisions, suitable and affordable childcare, flexible working arrangements).

- Need for better childcare for children of school-age – i.e. wraparound care.
- There is also an issue of the culture around childcare and flexible working.

### **Revisions to existing actions**

**Action 2:** Initiate an independent human rights based review of commissioning and procurement practice

- This is overarching and it's not clear how this action will help to address the issues highlighted. Would have expected for example to see specific actions e.g. Promote examples of effective recruitment practices which address discrimination in recruitment processes.

### **Potential additional actions**

- No action to address the impact of AI on future work or potential negative impacts on the future workforce.
- From an employability perspective, it would be useful to see action that involves employers in helping to develop solutions.
- Engage with communities of and supporting people with learning disabilities to support barrier breaking training.
- Conduct a national awareness-raising campaign on the skills people with learning disabilities as well as disabled people can bring to the workforce.

## **Theme 15: Right to Housing**

### **Revisions to existing issues**

**Issue 1:** Homelessness including particular problem with 'gatekeeping' by local authorities i.e. where people are discouraged from making a homelessness application or refused temporary accommodation to which they are entitled.

- Add reference to Scottish Government Ending Homelessness Together High Level Action Plan which was published in November 2018 (also in January 2020 annual report should be published, which sets out progress towards delivering the actions).

**Issue 2:** Urgent lack of affordable and adequate housing – approximately 160,000 people are on local authority waiting lists.

- The lack of available housing and particularly social housing puts pressure on all parts of the housing system: meaning many are forced to stay in homes that don't meet their needs or are substandard, spend long periods in temporary homeless accommodation, or in accommodation which is unaffordable for them.
- Scottish Government would caution against the 160,000 figure, in particular linking this figure to the statement “urgent lack of affordable and adequate housing” because of the multiple-counting issues and because not everyone on waiting lists will necessarily be requiring housing urgently.
- The latest figures from the Scottish Household Survey are considered more robust as they cover the whole of Scotland and do not include any double counting show that 130,000 households reported to be on a housing list in 2018, and an additional 10,000 had applied for social housing using a choice based letting system.

**Issue 3:** Inequality of access: some groups experience greater barriers than others when it comes to accessing appropriate housing provision including Gypsy/Travellers, people in rural areas and disabled people.

- The right to housing refers only to Gypsy/Travellers, whereas there are issues for other Minority Ethnic (ME) groups, such as poor quality housing, overcrowding, affordability etc.

**Issue 4:** People with complex support needs are negatively affected by the lack of effective interaction between housing and social care provision i.e. they experience greater barriers when it comes to accessing housing

and associated support required to realise their rights to liberty and independent living.

- Welcome recognition of complex needs but the situation is more complex than the theme conveys, and would welcome an acknowledgement that whilst housing is an integral part of the solution, it can only be effective if every part of the system plays its part – social work, education, employability, NHS, justice system, etc.

**Issue 5:** Fuel poverty – being unable to afford to heat your home – remains prevalent at over one quarter of the population, with around 7-8% of people in extreme fuel poverty.

- Add reference to the Fuel Poverty (Targets, Definition and Strategy) (Scotland) Act which included a new definition of fuel poverty, which means there are new estimates of fuel poverty under the new definition available.

**Issue 6:** Habitability of social housing, and housing in the private rented sector: evidence from lived experience indicates that poor conditions are more widespread than is suggested by regulatory data collected.

- Explicitly identify adequacy of housing in temporary accommodation, in addition to what is listed.
- It would be helpful for the report to present the cited evidence from lived experience.

**Issue 7:** Datasets on homelessness and habitability are partial and do not reflect lived experience e.g. homelessness data is based on presentations of homelessness rather than hidden homelessness, and housing conditions data contradicts evidence from lived experience.

- Scottish Government are taking forward development work on a new national case management system which will help provide local authorities and third sector with ‘real time’ information about the people they are supporting. This should enable faster more effective

support to be provided and will include a reporting element so that there is a better understanding of people's experiences which will help to report on Scottish Government progress towards delivering the 49 actions in the Ending Homelessness Together High Level Action Plan.

### **Missing issues identified**

- The action plan should highlight the links between domestic abuse and homelessness – domestic abuse / violence is the main reason women make homelessness applications. Scottish Government has committed to taking forward gender-specific policy analysis and development of gender sensitive actions, acknowledging the impact that woman's experiences of domestic abuse and sexual violence has on their experiences of becoming and being homeless, including how they access available support services. More detail on this will be available in the Scottish Government annual report which will be published mid-January.
- Include recognition of the role that group/collective independent advocacy has to play in driving forward housing rights, including the right to housing itself.
- LGBT young people are more likely to find themselves homeless than their non-LGBT peers, comprising up to 24% of the youth homeless population. Whilst homeless, they are significantly more likely to experience targeted violence, sexual exploitation, substance misuse, and physical & mental health problems than other homeless youth.
- Cross reference with Theme 20 – critical issues for young people with a learning disability are the lack of housing choice and the inaccessible processes around realising their rights to housing. Young people with learning disabilities need support to build up those skills in the right environment and support to find and identify appropriate housing options. Limited choice on where and who to live with impacts on both existing and future relationships. Young people with learning disabilities are effectively denied

independence, choice, control and privacy on where they live and who they live with.

- Ensure adequate provision of clean water and sanitation (Scottish Gypsy/Travellers pay council tax but don't get services).

### **Potential additional actions**

- Could an action focus on supporting easier access to relevant case law – develop a free searchable database of all important decisions?
- Action to support training of homelessness services in LGBT awareness – ensuring that LGBT people are consulted and included in service and policy development? Making use of LGBT Charter Mark Awareness raising of housing rights.
- An action on raising awareness of people's existing housing rights, as well as tackling affordability issues, are both areas of work that should be undertaken – whether by SNAP 2 or by organisations outwith this process is a matter for further discussion (for example, Shelter Scotland focuses on both these areas in its work) however it may be valuable to just raise awareness by including reference to the issues.
- Action to support a more proactive approach to planning and commissioning services for people with LD. This should include supporting children services and transitions teams; the use of co-production and person-centred approaches to commissioning; and Health and Social Care Partnerships working together to jointly commission services.<sup>10</sup>

## **Theme 16: Right to Participation**

### **Revisions to existing issues**

**Issue 1:** Inadequacy of current participation in decision-making and public life recognised as both a rights issue in itself and fundamental to people accessing other rights, particularly for people whose voices and views are

typically underrepresented in policy and decision-making including children and young people, Gypsy Travellers, homeless people, and Deaf and disabled people.

- Include in the issues section list: LGBT Youth; People with LD; those who experience poverty and disadvantage; people with lived experience of recovering from addiction.

**Issue 3:** Advocacy stressed as important way of enabling participation particularly for people who lack power or face particular barriers. Housing, homelessness, mental health services and social security all highlighted as key contexts where advocacy important to accessing rights.

- Clarity required that this refers specifically to independent advocacy (i.e. advocacy carried out by a trained independent advocate working for an organisation that delivers no other services) rather than general advocacy (i.e. advocacy services that could be delivered by someone with no advocacy training, or by an advocate working for an agency that delivers other services).
- SNAP 2 mentions advocacy as a process through which individuals may be better able to articulate their thoughts, feelings and wishes. However, in terms of access to independent advocacy for those who may have difficulty in protecting their own rights, face barriers to participation or who may perceive themselves (or be perceived by others) to lack power, SNAP 2 does not appear consistent (advocacy mentioned in some themes but not others). Independence is crucial factor for those who wish to challenge decisions being made by others and in support of the pursuance of individuals' human rights. Without independence, the ability to challenge may be diminished through conflict of interest or the restraints of organisational policy and/or professional practice.
- The right to participation is a fundamental tenet of the independent advocacy movement, underpinning all its work. There should be a more explicit recognition of the pivotal role of independent advocacy in supporting greater participation.

- This theme be enhanced by making explicit links between the PANEL principles and SNAP 2 approach.

### **Missing issues identified**

- The risk of regression on human rights and environmental standards post-Brexit. The Aarhus Convention Compliance Committee has considered admissible and is currently reviewing allegations by UK environmental NGOs that the preparation of the 'Great Repeal Bill' (without formal public consultation, and without evidence of other ways to take into account the general public's views) was in violation of the above obligations. Should the Committee find a violation, this would raise concerns for the preparation of other generally applicable legally binding normative instruments related to Brexit that could potentially lower environmental protection standards enshrined in EU law to the disadvantage of human rights protection.
- People with a learning disability are often excluded from decision-making processes on every level. Despite regular meetings with colleagues in Scottish Government and opportunities to respond to consultations responses – the processes are often inaccessible and make it difficult for to provide fully informed responses. Easy Read versions of consultation documents often come later than the standard version or consist of very limited or different content. Impact assessment processes are similar - too late and not done in an accessible or effective way.
- The benefit of independent advocacy is not necessarily limited to individuals. Groups of people who may face similar challenges in life can be supported to exercise their rights and support their needs through working in a group setting which is facilitated by independent advocacy. Collective advocacy could be mentioned as an enabler / action point throughout the appropriate themes in SNAP 2.
- SNAP 2 should give explicit consideration of LGBTI young people and their right to be involved in decisions that affect them.

Particularly around affirming gender identity of young trans people in education contexts. Ensuring this right is upheld and balanced equally against parental rights. It is important that those with lived experience are put at the centre of legislation and policy surrounding their rights. The voices of young trans people have not been heard over those in opposition and even advocate for the rollback of trans rights.

### **Potential additional actions**

- Support recommendation for public bodies including Scottish Government to make information and recommendations available online and in a simple format for third sector organisations to use.
- Run workshops for groups of people who face barriers to participation and feedback to participants about the outcomes of their involvement.

## **Theme 17: Right to Participation in Democratic Process / Voting**

### **Missing issues identified**

- Lack of support for certain groups to participate in the democratic process, e.g. people with a learning disability are discriminated against because of inaccessible information and processes. Political parties do not routinely produce accessible manifestos and when they do, they are published at a later date than the standard manifesto.

### **Revisions to existing actions**

**Action 1:** No specific actions were identified for SNAP 2. Many of the issues above have been addressed through actions under other themes.

- There was support for the distinction made between themes 16 and 17, and recommend that the work on the actions under theme 16 (and other SNAP 2 actions relating to participation) proceeds on the

basis that participation can be in terms of either, or both, taking part in democratic structures and having a meaningful voice in decision making. More specifically, it may be helpful to have similar actions under theme 17 to under theme 16, except focusing on participation in democratic processes and voting. This would help ensure any learning and modelling covers good practice under both themes.

## **Theme 18: Right to Physical Health**

Change the name to 'right to highest attainable standard of physical health' (otherwise implies right to be healthy).

### **Revisions to existing issues**

**Issue 1:** Concerns about inadequate funding allocated to NHS, resource allocation imbalance across services and decisions not being made based on a rights based approach.

- Suggestion that this is moved to the top as a key priority.

**Issue 2:** Discrimination taking place within health care: lack of access to specific services and for specific groups e.g. disabled people across all services, obesity services for CYP, chronic pain services and second appointments, palliative care for people who are homeless and in the prison system, prenatal & reproductive health services (including sexual & reproductive rights in school curricula) [especially women with disabilities, women seeking asylum & Traveller women], older people, people with dementia.

- LGBT and intersex young people should be included here
- This section should also include stigma towards people with lived experience of mental health issues affecting the healthcare they receive, including issue of diagnostic overshadowing.
- Disabled people **and** people with learning disabilities.
- Waiting times for gender identity clinics/surgery.

**Issue 3:** Carers' rights

- The term 'carer' needs to be clearer - if this is unpaid family carer or paid care worker.

**Issue 6:** Some issues are in the area of inhuman and degrading treatment.

- Concerns about the continued detention of people with a learning disability, an issue that is a significant factor in all aspects of their health.
- This bullet point is not clear? What are the issues?

**Issue 8:** Concerns about inadequate participation in decision-making by people accessing services and lack of access to independent advice and independent advocacy (and other forms of supported decision-making).

- Welcomed issue which highlights inadequate participation in decision-making by people accessing services as well as the lack of access to independent advocacy. There will be groups of people for whom this issue is particularly acute such as BME people, children and young people and people for whom English is not their first language because there are more barriers (or perceived barriers) in place preventing them from participating fully in the decisions that affect them.

**Issue 9:** Lack of adequate data (e.g. waiting times for specific groups) and need to challenge current focus on mortality stats vs e.g. quality of life indicators.

- At the same time recognition of poor (and avoidable) life expectancy rates is important.
- People with learning disabilities face a lot more health issues than most people without a learning disability and many health conditions are preventable. Their life expectancy is significantly lower than for other citizens (around 20 years lower).
- Similar concerns for minority ethnic groups including SGT.

**Missing issues identified**

- Cross-reference Theme 13 Right to Education - regarding healthcare needs of CYP both within and outside of school (formal/informal exclusions).
- Negative impacts of environmental factors on physical human and mental health (cross-reference with new theme on Right to a Healthy Environment).
- Concern over the way people with learning disabilities are treated within the health system, which often prevents people with learning disabilities from getting the treatment that other citizens do, for example, inaccessible information and processes often result in inadequate care and treatment. Examples provided include –
  - Doctors letters that have one address at the top and one at the bottom may leave people confused about where they have to go.
  - Calls to switchboards which keep passing people from one department to the next or leave people on hold.
  - Inaccessible signage in hospitals which make it impossible to find out where people are supposed to go.
  - Health professionals who don't take the time to explain things to people with learning disabilities or don't even expect that they should want to understand what is wrong with them.
- It is commonplace for significant delays in discharge of people with learning disabilities from hospitals where no appropriate action is taken to address those failings.
- Current existing gaps in data collection which means services are not best better equipped to plan, deliver for and meet the needs of marginalised groups.

### **Revisions to existing actions**

**Action 2:** Carry out a human rights budget analysis of health and social care budgets related to physical health

- Change “Carry out a human rights budget analysis of health and social care budgets related to physical health” to “Carry out a human rights budget analysis of health and social care budgets”.

## Potential additional actions

- Action to tackle the existing gaps in data collection to better equip NHS services to plan and deliver for - and meet the needs of - marginalised groups.
- Monitor access of D/deaf and disabled people to employment, educational and recreational activity opportunities in the prison estate. Monitor prisons against communication standards and practices mentioned in proposal.

## Theme 19: Right to Private and Family Life

### Revisions to existing issues

**Issue 1:** People with learning disabilities are experiencing disproportionate barriers to exercising control over their life choices and relationships at home including lack of transport, flexible support and inclusive, accessible information and communication.

- Scottish Government highlights that there are a number of stakeholder initiatives that enable people with learning disabilities to engage nationally and locally on matters relevant to them and they engage with Scottish Government policy to promote and embed rights based approach.
- However other evidence submitted from people with learning disabilities criticised their ability to meaningfully engage due to lack of (or delay in producing) accessible materials and inaccessible processes – cross-reference with Themes 16 and 17.
- Scottish Government have commissioned the Scottish Learning Disability Observatory (SLDO) to do research on the number of children of parents with learning disabilities in Scotland who are removed from their parent's care. This will be completed in 2020.
- Odd combination of issues. Can there be a separation between talking about relationships which needs to include sexual relationships, and the right to family (with support) including adoption, without combining that with transport.

- In particular there should be a focus on people with learning disabilities' need for meaningful relationships, including sexual ones. However, they are often viewed and treated as childlike, commonly not given the privacy or support to seek out and develop personal and or sexual relationships.
- When people with a learning disability do start a family they are often at an increased risk of children being removed, often due to a lack of support to help them develop as parents and to care for their children.
- People with a learning disability are also regularly placed in settings that afford them no privacy.

### **Missing issues identified**

- There is a significant gap around the provision of high-quality Relationship, Sexual Health and Parenting Education (RSHP) for children and young people with learning disabilities (cross reference with Theme 9 - Right to a Private and Family Life).
- There does not appear to be anything on privacy rights on digital technology. There is a mention of surveillance and data/information sharing – this should be expanded to incorporate privacy rights and digital technologies.

### **Revisions to existing actions**

Agreement with the actions identified but people would like to see further actions that reflect the wider right to private and family life issues as highlighted above.

**Action 1:** People with learning disabilities: choice and control - engage with Scottish Government policy to promote and embed rights based approach

- Although welcoming the focus, people with a learning disability were not sure if the first action really addresses the issues they have described as problematic (see notes above) They agree that Scottish Government policy overall needs to recognise the

inequality and discrimination faced by people with a learning disability. They feel that the laws in Scotland directly contribute to that inequality and discrimination. People with a learning disability need to be recognised as human beings with the same needs, wants and desires as other people.

### **Potential additional actions**

- Support SCLD and the Scottish Government to ensure national adoption of '*The Scottish Good Practice Guidelines for Supporting Parents with Learning Disabilities*'.<sup>11</sup>

## **Theme 20: Right to Social Security**

### **Revisions to existing issues**

**Issue 2:** The need for stronger accountability mechanisms in relation to the right to social security including at UK and Scottish Government levels – including ensuring effective mechanisms for complaint and redress when things go wrong and monitoring the system as a whole for compliance with human rights standards.

- People with learning disabilities have said that they would like to have an ongoing, regular way of feeding into the design of the new social security agency as an organisation but they have not yet been offered effective ways of doing this. It is essential that people with a learning disability are involved in this process as they have so much information and experience to offer on how to make the new system fair and accessible.

**Issue 3:** Ensuring that people who use social security are enabled and supported to participate actively and meaningfully in the ongoing monitoring and development of Scotland's social security system including via access to independent advocacy and other forms of supported decision-making.

- This could be enhanced by an explicit statement of who has been afforded the right to access independent advocacy via the Social Security (Scotland) Act 2018 i.e. people who, because of their disability, need the support of an independent advocate to engage with the Scottish social security system.
- It would also be an excellent opportunity to recognise concerns with access to independent advocacy being dependent on people self-defining as having a disability. Evidence shows that it is quite common that people with mental health conditions, learning disabilities or sensory impairments do not think of or define themselves as disabled. This could present a significant barrier to engagement with independent advocacy, effectively stopping people getting the support they need in order to fulfil their right to social security.

### **Missing issues identified**

- Support, empower and protect those with different experiences of social security to hold Scottish Government and other agencies to account for delivery of obligation to fulfil right to social security - public, transparent, protective approach that uses SNAP to amplify voice of lived experience and involves people-led monitoring and accountability.
- Work with the Scottish Government to identify potential routes away from using existing indicators in social security assessments.

### **Potential additional actions**

- Work with the Scottish Government and other civil society partners to ensure Social Security Scotland follows the highest possible accessible information standards.

## **Theme 21: Rights of LGBTQI People**

Scottish Government notes that the action plan supports policy on education of LGBT inclusivity and safe and healthy relationships and suggest that it would be helpful if the plan reflected existing Scottish

Government policy commitments. Work on some of the actions identified are already being taken forward.

Can non-binary be included in this theme?

It is jarring that this theme is not looked at through the lens of specific rights, unlike the themes relating to other minority groups. If done, this would be helpful both in terms of consistency of approach, but also because it would shine a light on potential areas of concern e.g. LGBTQI people have higher rates of poor mental health, yet are less likely to access the support available.

Many would welcome an intersectional approach to LGBTI issues as recognition that LGBTI people face multiple breaches of their human rights and whilst it is important to consider the group as a whole in a standalone theme, it is also important to consider how the different Themes and resolutions can be found and implemented.

### **Revisions to existing issues**

**Issue 4:** Mental health services and treatment, especially in relation to self-harm and impact of stigma on people's mental health

- Important to understand that tackling prejudice and discrimination is essential to a young LGBTI person's mental health as well as providing gender affirming healthcare is essential to a young trans person's mental health.

**Issue 5:** Problems accessing sexual health and reproductive rights

- Especially for trans youth

**Issue 6:** Discrimination and stigma in public services and wider society, with a particular issue for LGBTQI children and young people in relation to education and parenting

- Explicit consideration of LGBTI young people and their right to be involved in decisions that affect them. Particularly around affirming

gender identity of young trans people in education contexts (cross reference with Theme 13 – Right to Education). Ensuring this right is upheld and balanced equally against parental rights. Young transgender people experience barriers to education through stigma, discrimination and failure to respect their human rights both from teachers and peers.

- The Care Inspectorate have an equalities group and an LGBT Charter group to support specific pieces of work in these areas. They also have an Involving People group and an inspection volunteer programme so that the voices of people who have first-hand experience of social care can be heard. Their Young Inspection Volunteers have been heavily involved in strategic inspections and have engaged with young people in partnerships areas to hear their views and opinions of the services being provided to them.

### **Missing issues identified**

- There is considerable evidence to suggest that transgender youth experience more discrimination compared to Lesbian, Gay and Bisexual groups.
- LGBTI young people in care face additional rights violations including sharing information without consent, discrimination, bullying and prejudice.

### **Revisions to existing actions**

**Action 1:** Public awareness raising around human rights of LGBTQI people - highlighting that these are human rights violations as well as equality issues

- This is pretty broad. Be more specific if possible, especially around harassment and safety.

### **Potential additional actions**

- More needs to be done specifically to promote awareness around individuals who identify as transgender.
- Targeted initiative to empower LGBT asylum seekers to claim their rights.
- Targeted initiative on trans health allowing trans persons and clinicians to have discussions and coproduce? Human rights lens so important here.

## **Theme 22: Rights of People from Black and Minority Ethnic Groups**

Suggest that there needs to be clarity about who is covered in this section – Scottish Government tend to refer to Minority Ethnic as the broadest term (reflecting the legal definition and including non-visible minorities) as opposed to BME.

### **Revisions to existing issues**

Given the list of specific rights which are singled out under this theme, question asked as to why the right to mental health, right to physical health and right to social security have not been included? This seems like an obvious and unhelpful omission, given the evidence indicating that people from black and minority ethnic groups have poorer health outcomes and are more likely to be living in poverty.

**Issue 8:** Right to housing: there is a lack of appropriate and culturally sensitive accommodation for Gypsy/Traveller families.

- The right to housing refers only to Gypsy/Travellers, whereas there are issues for other Minority Ethnic (ME) groups, such as poor quality housing, overcrowding, affordability etc. Also no reference to right to adequate standard of living, and we know many ME communities experience high levels of poverty.

### **Missing issues identified**

- Additional discrimination faced by intersecting groups, including LGBT people of colour and racism within LGBT communities.

## **Revisions to existing actions**

**Action 1:** Undertake programme of long-term, sustained engagement and participation with people from BME groups so that relevant issues are well understood, people understand the HR framework and can develop solutions with meaningful support from HR community - ensuring intersectional approach and diversity of experiences heard.

- This action is around engagement and participation of ME communities, with a view to developing solutions. It's not clear who will be responsible for resourcing and taking forward this programme of work, and how it will fit with work the Scottish Government will be taking forward as part of the REAP.

**Action 2:** Engage with Scotland's Independent Race Equality Framework Advisor to establish where and how SNAP could align with and add value to the existing Race Equality Framework, which runs to 2030.

- Reference to the Independent race equality adviser should be revised as they have officially stood down from that role. They have continued as a member of the Programme Board. Scottish Government feel it would be more appropriate to work with Scottish Government officials to support greater linkage between the REF and the REAP. This is something Scottish Government have committed to doing ahead of their Year 2 update (scheduled for March 2020) and it would be helpful to know what help the SHRC and/or the Human Rights Taskforce could offer.
- Interesting reference to SHRC again rather than SNAP – clarity needed...

## **Potential additional actions**

- Cultural awareness and sensitivity training - empowerment through education, information and participation.

- Action to tackle discriminating employment practices – explore current action in NHS England and learn from/ apply this to Scotland.
- Action to raise awareness of human rights based approach with further and higher education and employers to tackle barriers to employment.

## **Theme 23: Rights of Refugees and People Seeking Asylum**

### **Revisions to existing issues**

**Issue 1:** Right to housing: accommodation provided on behalf of UK government often poor standard and does not meet specific needs of disabled people; pregnant women; families; victims of trafficking, rape or torture; or people with mental health conditions. Reports of bullying and threatening behaviour by staff. People can be moved to new accommodation with little notice, ending established relationships with support services (Home Affairs Committee, 2017).

- References here – and yet this is missing throughout most of the document for other ‘issues’. The validity of issues could be challenged if this is not done throughout the document.

**Issue 2:** Newly recognised refugees are at high risk of homelessness as asylum accommodation is withdrawn after a 28 day ‘move on’ period following granting of their status. However, barriers to the private rental market (such as lack of income or savings for a deposit) and low likelihood of being considered for social housing can leave many people homeless for some time (All Party Parliamentary Group on Refugees, 2017).

- They face the barrier of Local Authorities incorrectly applying local connection restrictions to their housing applications as well as a lack of specialised support out with dispersal areas.

**Issue 3:** Right to adequate standard of living: Refugees and people seeking asylum are at risk of poverty because of prohibitions accessing

employment and reliance on Home Office provided asylum support at £37.75 per person per week, well below the relative poverty line (Asylum Matters *et al.*, 2018). There is concern that the level of support available is contributing to increased destitution among asylum seekers (British Red Cross, 2017). Evidence to the Scottish Parliament's Equalities and Human Rights Committee found that people seeking asylum were at risk of destitution throughout the asylum process, in particular when their asylum claim had been refused and they had no recourse to public funds.

- At present many people who live on asylum support or section 4 rely heavily on charitable support or the help of local authorities to find indirect means of alleviating the worst impact of poverty and the impact on their health and standard of living. This is unsustainable and puts those living outside of areas with the numbers of refugees to support a broad and resourced third sector. As asylum seekers and people with insecure immigration status continue to spread beyond the major cities and dispersal areas, the impact of this will become exacerbated.

### **Missing issues identified**

- Young unaccompanied asylum seekers and young people who are being trafficked.
- Local authorities who don't normally accommodate asylum seekers don't know what to do.
- While this theme only covers refugees and asylum seekers, as the EU settlement scheme gathers steam and finally closes to new registrations it is likely that there will be a number of EU nationals subjected to similar issues.

### **Revisions to existing actions**

**Action 1:** Convene a workshop of key stakeholders to identify the human rights issues affecting refugees and people seeking asylum, which can be fed into new SNAP workstreams/activities

- Only likely to be effective if people currently navigating the asylum system are involved and are part of the process.
- This is particularly important due to the speed at which changes occur in asylum support and the often subtle changes to immigration support practice which go unnoticed can have a big impact on the lives and rights of refugees and people seeking asylum.

### **Potential additional actions**

- Monitoring of those who are destitute to see what is happening to them and report on that and keeping them engaged.

## **Theme 24: Social Care and Right to Independent Living**

### **Revisions to existing issues**

It was suggested reference is made to the reform of adult social care, how it has been fully co-produced with people who use social care support, unpaid carers, and the social services sector, as this work has led to the development of activities and related outcomes, for example, regarding the investment in adult social care.

The current reform agenda is not adequately reflected in the detail of the document and it would be helpful if links to the reform work were more directly drawn.

**Issue 1:** Lack of distinctiveness of social care vs. clinical intervention through health - a more holistic outcomes focus is needed.

- The need is really for outcomes (1) which more explicitly incorporate Social Care and (2) are focused on outcomes for the person, not solely outcomes for the system. In 2018, CCPS Chief Executive Annie Gunner Logan summarised the issue, noting that “we have proxy measures ... but these remain partial and (critically) they exclude social care almost entirely”.
- In November 2018, Audit Scotland’s Report on Health and Social Care Integration noted that performance measures for integration

“do not themselves provide a direct indication of whether people’s outcomes have improved”.

- The Review of Progress with Integration of Health and Social Care for the Ministerial Strategic Group has touched on this problem under its proposal 5 (iii) which states that “A framework for community based health and social care integrated services will be developed”.

**Issue 3:** Social care issues generally and the AAAQ – multiple issues that need to be reviewed and reframed in rights terms.

- Question asked about whether we still need to review/reframe social care issues in rights terms when we have National Care Standards that are rights-based and provide us with a framework for assessing social care in those terms.

**Issue 8:** Differences between statutory provision of SC and Third Sector.

- Where reference is made to third sector, are you including independent providers? It should possibly say “Third and Independent Sector”.
- The focus on differences between local authority provision of social care and voluntary sector provision is to be welcomed, but - the distinction needs to be framed carefully.
- Due to the nature of the mixed economy in social care, much of the care and support provided by the voluntary sector is delivered under contract to the local authority. Whilst the voluntary sector may operate under different conditions and restraints, it is still delivering a service on behalf of the Local Authorities, so supporting them to discharge their legal duties.
- In some cases the difference is to be encouraged due to the flexibility afforded the voluntary sector care providers as a result of their different organisational structures, their place within the community and their ability to reach those who may not feel comfortable approaching a local authority.

- The distinction between local authority ('in-house') care and support and voluntary sector care and support is the difference in how the two sectors are perceived and treated.
- A fundamental distinction between the two is that voluntary sector ('external') providers are subject to a quasi-market where the purchaser (the local authority) controls both price and specification. 'In house' care and support, by contrast, is not generally subject to the same market and price pressures. Although procurement law and practice calls for a balanced approach to best value (quality, price and efficiency) in practice tender exercises focus too much on price and do not take into account the implications of low hourly rates on the workforce and the Fair Work agenda. In terms of national debate, those supported by the voluntary sector can be too easily ignored.

**Issue 11:** Monitoring and accountability including of new Health and Social Care Standards, integration of health and social care services, independent living, and holding public services to account.

- May also think to include the Principles of Integration here.

### **Missing issues identified**

- Include something around the right to palliative and end of life care at home (where appropriate). This is around the commitment to reduce the number of people dying in hospital. Also the right to personal choice in care decisions/right to be part of that conversation.
- Social Care is intrinsically connected to food and the specific issue of malnutrition in older age, over 80% of individuals who received meal support in 2017, through Social Care, were over 65.9 6,390 people received meal services, according to the 2017 census, with recognition in the census, in reality this number is likely to be higher. Therefore, the additional issues identified in the proposal for SNAP 2 including, "the rising eligibility criteria for access to social care" and "the impact of high turnover in the social care workforce" are

directly connected to accessing food and Older People. (X-ref with Theme 24: Social Care and Right to Independent Living).

- Issues exist around the availability and quality of social care provision for those in detention. The specific needs of those in detention facilities are currently not routinely being met, with resourcing a key issue.
- There is no mention of the independent care sector which is surprising considering the independent care sector in Scotland employs over 103,000 people; more than half of the total social services workforce, including approximately 5,000 nurses and the provision of 88% of care home places for older people. The size and scale of the support provided by the independent care sector workforce to enable people to stay independent for longer and it SNAP 2 specifically include the independent care sector within the proposal.
- Over the years there have been many different names for support that people with a learning disability might be offered, or the way that plans and payments are put together for support they do or do not end up getting. The list of terms include; self-directed support, day options, residential support provision, support for living, individualised support, personalised support, support at home, home care, tailor made support, person-centred support and community care, amongst others. Often large changes have happened without people with a learning disability being meaningfully consulted, informed or involved. Each time that support has been organised differently, or called something new, they have had to deal with a period of change and uncertainty in their lives. Almost without fail, a change in name, in approach or department has meant that the amount of time and support on offer, or the availability of the support, has been reduced.
- People with a learning disability need services that communicate with each other and work in cooperation rather than in isolation.
- Procurement and commissioning “an ever-present tension to balance our aspirations for the people we support and the requirements of the social care commissioners”. Urge consideration

for including procurement and commissioning as one of the core issues for this theme. Whilst procurement is touched on in possible actions, it is a core structural barrier to people having their rights supported within the social care system. Procurement focuses primarily on best value. While this is arguably an effective approach to purchasing goods, purchasing services for supported people needs to be much more personalised. Current approaches to commissioning and procurement work against both individual choice and control; provider sustainability and the fair work agenda.

- Concerns over the reductionist approach of electronic call monitoring - this has become increasingly popular as an attempt to achieve savings within social care. Whilst there are positives about such a system such as more effective route planning techniques, the unintended consequences of its implementation are having such a dire effect that it is causing some providers to exit the market.
- Much of the complexity is created by time and task commissioning called out recently in the report by the Fair Work Convention Social Care Working Group, in part because it results in the non-payment of travel time to social care staff. Time can never measure impact. Instead of knowing how long you spend with someone, we should be capturing the meaningful difference that our time spent with them made.

### **Revisions to existing actions**

Many of the actions in the Social Care section are very similar to existing workstream activities in the adult social care reform programme. How can we ensure they complement and strengthen each other? For example Scottish Government have funded Social Work Scotland to cover the action 'Work with local authorities, health boards, health & social care partnerships and integrated joint boards to ensure rights based law & policy is translated into practice'.

Do not see the connections between the issues and action in this theme: Actions need to address the issues e.g. Carer's rights - what's the action to address this?

**Issue 1:** Monitor and evaluate the new Health and Social Care Standards from a rights based perspective to interrogate a. how local authorities are using new standards b. how Care Inspectorate using standards c. impact on people

- There are lots of other measures that could be included here e.g. principles of integration, Ministerial Group Indicators, National Health and Wellbeing outcomes.

**Issue 2:** Carry out human rights budget analysis of spending on health & social care in one Scottish region over two budgetary cycles.

- While this action offers a helpful perspective, it isn't exactly the same as what the Scottish Government co-production process has produced and doesn't allow much room for flexibility or adaptation.

**Issue 3:** Work with local authorities, health boards, health & social care partnerships and integrated joint boards to ensure rights based law & policy is translated into practice.

- Every time it mentions “local authorities, health boards, health & social care partnerships and integrated joint boards”: Take out “Health and Social Care partnerships” – you do not need this and IJB.
- Replace “integrated joint boards” with “Integration joint boards”.

### **Potential additional actions**

- Action supporting people with a learning disability - when developing the information about services for health and support being offered, produce these in an accessible manner. ‘Alternative versions’ can then provide less accessible or more specialist information with the expectation that support to access that will be on offer.
- Explore more collaborative models of allocation of social care resources. Other collaborative contracting models exist, such as those used in the oil industry and could be explored as a first step

towards a workable alternative to competitive (re)tendering on to a framework.

- Supporting human rights commissioning would be first and foremost in helping to create a person-led approach to procurement and commissioning.
- An action focused on campaigning for the collection of disaggregated data by protected characteristics about who accesses social care, in order to provide a more meaningful picture of who is – and who isn't – realising their right to independent living. This would then allow better and more targeted work to support the most vulnerable and marginalised to realise this right.
- Work to ensure the accessibility of the four Self Directed Support options to people with learning disabilities.
- Support rights-based approach to electronic call monitoring which has become increasingly popular as an attempt to achieve savings within social care.
- Monitor and evaluate the new Health and Social Care Standards from a rights-based perspective.

## **Theme 25: Women's Rights**

Whilst understanding that the State party is the UK Government, there is scope for the Scottish Government and Scottish civic society to make more use of the frameworks provided by both the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) and the Istanbul Convention, and to seek to achieve the commitments contained in these international instruments, and to continue to lobby the UK government accordingly.

Progress on women's rights must be underpinned by recognising and reiterating that women are disadvantaged and discriminated against on the basis of their sex, and the importance of continuing to collect data that allows policy development to tackle this discrimination should be picked up in SNAP Action Plan 2.

### **Revisions to existing issues**

**Issue 1:** Violence against women and its impact on women's homelessness, access to justice for victim-survivors, and access to specialist support and refuge services.

- Need to ensure adequate housing provision for women fleeing from domestic abuse.

**Issue 2:** Issues affecting women and girls' right to education including inadequate sexual and reproductive health education, and the prevalence of sexualised bullying and sexual assault in school settings.

- Also raised under other themes – cross-reference earlier comments regarding people with a learning disability & LGBTQI people.

**Issue 5:** Rights of women who are care affected by lack of adequate financial support, lack of entitlement to breaks from caring, and lack of an appropriate mechanism, such as a social care tribunal, to which they can appeal decision-making around care.

- This also displays features which appear to be add odds with a human rights ethos, and internationally-recognised rights. In particular it would be important to empower supported people themselves (not just their carers) and give them access to an appeal mechanism for social care support. Not all supported people have a carer, and by no means all carers are women. The theme itself arguably relates more closely to disabled people rather than women and might be better addressed under Theme 3 (disabled people's rights) or Theme 24 (social care).
- Too much concentrating on 'unpaid carer' role which in itself is pretty patronising. Latest data shows there are an increase in number of male unpaid carers - by putting the issue of unpaid carers under women's rights perhaps needs rethought.

### **Missing issues identified**

- Women with a learning disability are denied rights in many areas of their lives (especially private and family lives) as they are viewed as

: not capable, more at risk, childlike (e.g. in relation to socialising, sexual/ relationships, having/keeping a family) rather than being supported to fulfil these rights. Cross reference with Theme 3 (disabled people's rights) and Theme 24 (social care).

- Women's safety and low prosecution rates for rape/sexual assaults.

## **Revisions to existing actions**

**Action 1:** Unpaid Carers' rights: scope models for a social care tribunal, drawing on international examples and using a carer-led process, and develop consensus around an appropriate Scottish model.

- While this might be useful activity which could in theory support change, establishing a tribunal would require significant change to primary legislation, and intense work with a broad range of stakeholders, including COSLA and justice stakeholders. Creating a Tribunal also has substantial costs. However if SNAP 2 could create the described consensus then that would be powerfully helpful in preparing the ground for legislative change.

**Action 2:** Right to health: Convene a review of current information about disabled women's access to reproductive, sexual and maternal health services and information.

- As noted elsewhere, respondents would welcome a more intersectional approach embedded throughout SNAP 2. Consequently, support for the point relating to a review of disabled women's access to reproductive, sexual and maternal health services. However, given the data demonstrating higher birth mortality rates for BME women, suggested expansion of this action to include also a review of these services for women from black and minority ethnic groups.

## **Potential additional actions**

- Action missing for the following issues:

Gender based violence,

Poor rates of pay,

Lack of affordable childcare

## **7. Offers to support SNAP 2**

This section details the types of support offered by people and organisations who responded to the consultation on the draft proposals for SNAP 2. Specific details have been captured and saved separately for future reference.

### **Academic critique**

A range of offers were made to provide informed critique and discussion within academic circles.

### **Accountability support**

Scrutiny bodies and others offered support in holding Scottish government to account; embedding monitoring in existing frameworks; providing accountability structures; monitoring progress, providing evidence and supporting the development of best practice; and identifying emerging concerns.

### **Backing for specific themes**

Many organisations and groups noted that they could identify a number of key areas for collaborative working. These have been captured separately for future reference.

### **Engaging with the Scottish Parliament**

Some organisations offered to support engagement with MSPs.

### **Participating in actions**

Numerous groups noted a willingness to engage in actions.

### **Providing further support with policy, research and analysis**

Rights holders and civil society organisations offered to provide further research evidence and monitoring support, and public authorities also offered to provide support with further analysis of intersectionality issues.

## **Awareness raising and supporting connections for SNAP 2**

Multiple offers of support were made to raise awareness of SNAP 2 with other networks and communities.

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<sup>1</sup> <http://www.snaprights.info/wp-content/uploads/2019/07/SNAP-Evaluation-vFinal-16-July-2019.docx>

<sup>2</sup> <http://www.snaprights.info/wp-content/uploads/2019/03/7.-SNAP-All-Our-Rights-Report-vFinal-Word-March-2018.docx>

<sup>3</sup> [http://www.snaprights.info/wp-content/uploads/2019/09/SNAP-2\\_Online.pdf](http://www.snaprights.info/wp-content/uploads/2019/09/SNAP-2_Online.pdf)

<sup>4</sup> <https://www.gov.scot/groups/national-taskforce-for-human-rights-leadership/>

<sup>5</sup> "Promote. Protect. Defend." 2018 publication by Children and Young People's Commissioner Scotland <https://rightsdefenders.scot/report-promote-protect-defend/>

<sup>6</sup> A/HRC/37/58, para 72 and 69.

<sup>7</sup> Lough Dennell, B.L., Anderson, G. and McDonnell, D. (2018) Life in Scotland for LGBT Young People. LGBT Youth Scotland.

<sup>8</sup> See, e.g., UN Office of the High Commissioner on Human Rights, <https://www.ohchr.org/EN/Issues/Health/Pages/IssuesFocus.aspx>.

<sup>9</sup> Daniels, S. (2019) Human Rights Education in Scotland: Challenges and opportunities. CR&DALL Working Paper. CR&DALL WP601/2019, CR&DALL, Glasgow (UK). Available: <http://cradall.org/workingpapers/humanrights-education-scotland-challenges-and-opportunities>.

<sup>10</sup> For Reference: [Coming Home A Report on Out-of-Area Placements and Delayed Discharge for People with Learning Disabilities and Complex Needs](#).

<sup>11</sup> [Supported Parenting: Refreshed Scottish Good Practice Guidelines for Supporting Parents with a Learning Disability](#) [Our bodies, our rights: Identifying and removing barriers to disabled women's reproductive rights in Scotland](#) recommendations on parental rights which included "Explore statutory underpinning for the good practice guidelines for supporting learning disabled parents, and integrate them across wider parenting, social care and child protection frameworks." (Engender, 2018, p.35)

## **Appendix 1: Development Working Group Members**

- Adequate Standard of Living Reference Group (3 members)
- CoSLA
- Engender
- Equality and Human Rights Commission
- Health and Social Care Alliance Scotland (the ALLIANCE)
- Human Rights Consortium Scotland
- NHS Health Scotland
- Police Scotland
- SCVO
- Scottish Care
- Scottish Councils Equality Network
- Scottish Government
- Scottish Human Rights Commission (including Chair and secretariat support)
- Together: Scottish Children's Rights Alliance
- Unite