

Individual and Organisation Responses

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Name: ORG-0002a-GUniSch-100

Schools (S6 pupils) event at Glasgow University.

- giving parenting support/ education to adults who discipline their children by smacking
- recognising the opportunities and threats to free speech by the internet (“keyboard gangsters”)
- a fairer asylum determination process
- the importance of maintaining free, universal healthcare at the point of delivery
- flexible educational provision for young parents/ teenage mums and dads
- concern at the establishment of ‘super-homes’ for older people in Glasgow (100+ residents) and not properly involving older people and their families about where they want to live
- inclusive education for people with learning disabilities
- more rehabilitation as an alternative to prison sentences for some offences (part of interesting discussion about whether the right to vote for some prisoners could be part of rehabilitation)

Name: ORG-0003a- Action Scotland Against Stalking-000

Based on the evidence presented in the report Getting it right? Human rights in Scotland, or your own experience, what do you consider to be the most urgent human rights issues which should be addressed in Scotland's National Action Plan for Human Rights?

Inconsistency and post code lottery of services and variations in standards of service

What specific and achievable actions do you consider would best address the concerns you identify in your response to question 1?

Identifying community needs and providing and standardizing the quality of services offered.

Comments on Scottish National Action Plan (SNAP) for Human Rights; Glasgow Caledonian University, MSc Citizenship and Human Rights Students

Please note that the perspectives recorded below are personal comments by the students and do not necessarily represent the views of the organisations in which the individuals work

Summary: The comments below focus on the following:

- The overuse of secure accommodation in Scotland for young women and its potential to create institutionalised lives
- The importance of the plan in the development of the equality agenda and the importance, in particular of promoting equality through educational opportunity and fair treatment and pay at work
- The failure to include issues about asylum seekers in the document constitutes a jurisdictional shrug of the shoulders and ignores the collective responsibility of the community to campaign for the rights of asylum seekers; suggesting that the SNAP agenda embodies professional rather than grass root priorities
- Lacunae in the HR agenda in Scotland and the possibilities for civil action in relation to the enhancement of rights outcomes
- How responsible business might and should support the right to education for every child
- How poor access to digital communication, through poor broadband speeds, in rural areas in Scotland undermines access to information
- The relevance and importance of theme 4 in the plan for the lives and opportunities of women and especially young women and young mothers in Scotland
- How social work practice in the context of budgetary constraint and the culture of 'care management' can impact negatively on the principle of balancing rights for clients and can damage self-directed support

1) Scotland's National Action Plan for Human Rights rightly draws attention to the needs of Scotland's young people in Secure Accommodation. Secure Accommodation in Scotland is used as a method of detaining young people who meet certain criteria, deeming them to require detention in an institution due to their vulnerability and risk. While the Children's Hearing System has brought about many positive changes in regards to vulnerable young people, important issues remain which must be addressed.

Time for Change is a project which aims to support very high risk and highly vulnerable young women in the West of Scotland. One of the aims of this project is to help girls successfully make the transition from secure to the community by providing intensive, relationship based support. One of the main issues which TFC identify is the overuse of secure for girls who are a risk to their own safety, rather than that of society. Not only is there an over reliance on secure orders, but not enough focus is given to 'alternative to secure' services such as TFC, resulting in many girls spending their teenage years repeatedly entering secure units. This acts to create serious institutionalisation for such girls, preventing them from developing social skills and appropriate coping mechanisms. While it is true that those over the age of 16 are often on a path to prison as a result of the repeated removal of their liberty, it is important to note that this process starts early, with girls as young as 13 secured for their own safety without much regard to the services which exist to support them in the community.

2)YWCA Scotland has a strong focus on equalities and human rights within its mission, aims and strategic direction. YWCA Scotland works with girls and young women in programmes and initiatives which aim to build self-confidence, well-being and leadership skills to challenge the barriers they face in society and claim their rights. YWCA Scotland also builds capacity of other youth-based organisations by leading on training which aims to ensure greater understanding of the discrimination and inequalities faced by girls, young women and women in Scotland and to ensure gender inclusion within youth work. As YWCA strives for greater equality for young women and women in Scotland, **theme 4 Education and work** within the action plan has critical significance for the organisation, particularly under subsection **Fair pay**. The action plan highlights the fundamental right of equal pay for work of equal value whilst also highlighting the significant gender pay gap in Scotland. Women are paid on average 11% less than men in full time work and 32% less if they work part time and continue to undertake a disproportionate amount of unpaid work e.g. childcare and care for older or incapacitated relatives (Engender, 2012). The action plan also suggests that ‘young people and those with dependent children are more vulnerable to poverty in unstable and low paid employment’ (p. 16) – amplifying the situation for young Mothers. This has critical significance as YWCA Scotland works with and on behalf of girls and young women to overcome such barriers and a woman’s current position within Scotland’s economy is a cause and effect of wider discrimination against women

3)Social Work as a profession involves balancing rights: between children and parents; carers and cared for; the state and the family. Within that, principles of dignity and care should be paramount. However, service reform within Social Work in Glasgow has led to the creation of a ‘care manager’ culture, where money is juggled and ‘packages of care’ are put together with the aim of being affordable while still meeting peoples’ needs. Managerial control of budgets is strong. Clients need strong advocacy to stand up for what they need.

Is self directed support the answer? It might be if it was not being introduced at a time of financial restraint. Professional social work staff will make the final needs assessment which will also take into account available budgets. If unhappy, clients can complain, but there is no appeals process. Is there a human rights issue related to fair hearings there?

Personalisation also individualises and compartmentalises people. How do you know how your treatment compares with everyone else’s? Hopefully service users will still find ways to organise to keep their collective issues live and monitor how the service is responding to their needs. We are a long way from the days when the local authority wanted people to press from below for change. Now Social Work talks about ‘involvement’ and ‘co-production’ but in practice this means, for example, the creation of a ‘carers’ reference group’: staff hand pick the carers; the group has no autonomy and no formal accountability to or representativeness of, other carers. As an aside, the Department’s 10 year strategy for social care commissioning (2012) does not even reference the Human Rights Act 1998 until appendix 3, never mind include a human rights based approach to its aims and outcomes.

4) My comment is not about a particular right but about the infrastructure which enables people, particularly those in rural areas, to realise their rights. The SHRC report recognises the significance of digital technology in accessing services, citing differential rates of internet access for groups such as older and disabled people (Myant, 2011). Myant recognises that fewer rural households have the potential to access the internet and that geographical disparities in accessing services potentially raise human rights concerns.

However the report accepts Scottish Household Survey data which indicates that access to the internet does not vary significantly between rural and urban areas, concluding that internet non-use is not related to infrastructure.

This overlooks the significance of broadband speed for accessing services. Although having internet access many rural areas have very low bandwidth speeds e.g. in the community of Applecross no users are currently able to receive a standard broadband service in excess of 0.5Mbps. Ofcom's research on Broadband Speeds reports average UK speeds for consumers in urban areas of 5.8Mbps and in rural areas only 2.7Mbps (Ofcom, 2010). Community Broadband Scotland is currently supporting communities in the 10-15% least likely to benefit from a next generation broadband (Highlands and Islands Enterprise, 2012) as commercial suppliers are unlikely to provide adequate coverage.

As Myant points out "digital exclusion reinforces other forms of social and economic deprivation and reliance on technology may increase inequality rather than address it". It is important that the SHRC proposals do not overlook the significance of rural and urban disparities in service access when considering digital participation.

5) Due to not working in the United Kingdom - and being employed within the finance sector in a multinational organisation – the provisions of the Scottish National Action Plan are not immediately applicable or critical to my professional life. However, as the Plan touches on many human rights issues that are topical to business as a whole, it is possible to identify an area of relevance for the organisation for which I work.

A key human right outlined in the Report (section 3.4) is the right to education, and the importance of facilitating access to education for every child. The statistics concerning minority groups in Scottish society that have restricted access to education or no formal educational qualifications at all (pages 129-130) are alarming, and present real barriers for future development, social advancement and economic well-being for these communities.

My employer, the Association of Chartered Certified Accountants (ACCA), is built on the premise of "open access": allowing people of ability opportunities to develop themselves without the imposition of educational or social hurdles that may restrict the profession to only select social groupings. This resonates with the one of the principles outlined in the Scottish National Action Plan, and could be something that is further encouraged to business and academia as a whole: encouraging them to provide access to education and professional development to those for whom it might otherwise be denied.

6) While SNAP offers the potential of bringing human rights further into the mainstream of Scottish cultural and political life the issues raised by the research report 'Getting it right: Human Rights in Scotland', in my view miss a significant number of key areas in which I believe human rights dialogue could and should be developed.

The report recognises that the most significant area in need of development is in *outcomes* e.g. in delivering the impact of a human rights approach and human rights legislation in the lives of people and communities (Summary p5). The focus of the SNAP however still remains on the structural and legal issues involved in developing a human rights approach. My employer Glasgow Life has the potential to

engage positively with the human rights agenda across a significant number of areas. Children and young people's rights through our youth and play provision, rights of minorities to education through English as a secondary or other language (ESoL) provision, work with adult learners and those with additional learning needs, provision of recreational and cultural opportunities to people in poverty and those with disabilities the list is extensive.

The Chief Executive of the company Bridget McConnell is addressing an event entitled **A richer understanding of Article 31: Launching the new General Comment in Scotland on the 28th March 2013** at Our Dynamic Earth, in Edinburgh

The aim of the conference is to celebrate and raise awareness of the adoption of the UN General Comment on article 31: children's right to culture, leisure and play; and to explore how policy-makers and practitioners can make the expectations of the UN General Comment a reality in Scotland. The event combined with the Glasgow City Council's engagement with UNICEF's Children Rights Partnership (attached), offer opportunities for development.

In addition I will be linking the work of the Community Learning and Development Skills Council with the SNAP consultation process. This will hopefully lead to a proactive dialogue developing around community development and human rights work.

7) 'Other than in narrow circumstances where rights are explicitly limited to citizens, human rights apply to everyone in the jurisdiction without discrimination on any ground. Asylum does not fall within the competence of the Scottish Parliament.' (Getting it right: 2012: p 18)

Human rights are rights that all persons are meant to enjoy equally, yet people who seek asylum are subject to immigration control. Immigration is not a human right however seeking asylum is. Asylum seekers face many more restrictions on their basic rights than the citizens of Scotland.

I find it disappointing that the SHRC is not brave enough to address the consistent human rights abuses asylum seekers suffer. When I asked this question at a recent event I was told it was not a devolved matter. So I am to assume the SNAP will not deal with issues that matter most to people, cuts to support /benefits and the bedroom tax being a concern for many 'marginalized' groups.

There are a number of people who are left destitute in Scotland due to an asylum system that does not take a human rights based approach to a Human Rights issue. Surely if human rights apply to everyone this should also include those people living in Scotland who came seeking asylum but find themselves destitute.

Alan Millar talked about SNAP setting the level for travel in Scotland with an outcome focus re Human Rights. However Asylum seekers have not been invited on this journey, and continue to be left behind. What are their human rights outcomes while they live in Scotland?

It is left to individuals and charities that cannot access funding through the usual channels to support destitute asylum seekers. As the SHRC are independent from government It would have been helpful if the SHRC acknowledged this in some way.

I am also concerned about the lack of involvement of people from the grassroots level. Is this a case of the professionals seeking to empower people? As oppose to creating opportunities for people to set the agenda and make the decisions about what goes into a Human Rights Action plan for Scotland.

8) The biggest issue for us raised in Scotland's National Action Plan for Human Rights is the issue of **realisation** of human rights which requires urgent attention (developing strategies and policies to assure realisation and resources allocation).

Generally, the biggest impact to our work will be when **power will be given back to public**.

In the **legal context**, the proposal for integrated consistent effective process assessing impact of work on client group for all practitioners is crucial in working towards equality (enjoyment based strategy).

In the **social context**, improving equality of education outcomes (challenging barriers) will mean fair access to public services which will in turn eradicate poverty and social exclusion. **Additionally**, in the social context, challenging gap between perception of fairness (of Scottish people) and reality will eradicate discriminatory attitudes. We believe that this work has to be done with the majority. Although it directly affects the quality of life of minorities, the improvement of the situation is not an issue the minorities.

Theme four, education and work, and its improvement seems to be the most important one. The obligation that **education is adaptable** means equal realisation of the right to education to all. Gaps in this field include **challenging prejudicial attitudes** in schools to make education more inclusive. Lastly, **access and fair treatment at work** (including fair pay and non-discrimination) and adequate support mechanisms to assisting marginalised groups to gain employment and be treated fairly are crucial for our work.

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<http://stakeholders.ofcom.org.uk/market-data-research/other/telecoms-research/broadband-speeds/broadband-speeds-2010/>

Based on the evidence presented in the report Getting it right? Human rights in Scotland, or your own experience, what do you consider to be the most urgent human rights issues which should be addressed in Scotland's National Action Plan for Human Rights?

TOTALITARIAN BUREAUCRACIES ie ORGANISATIONS WHO ACT ABOVE THE LAW OR COMMON LAW
eg - ZERO TOLERANCE POLICIES - NO RIGHT TO DEFEND YOUR ACTIONS IF
'BARRED' FROM A SETTING eg DRs. SURGEON 'NO PUNISHMENT WITHOUT
LAW' [HRA]

- I AM DOING A RESEARCH PAPER ON THIS AND SHALL FOCUS ON
COMPLETION.

PRIVATE CARE INDUSTRY - A COMPLETE OVERHAUL OF THIS TO PROTECT PATIENTS AND
WORKERS ALIKE. COMPANIES USE UNFAIR DISMISSAL & CONSTRUCTIVE
DISMISSAL AND 'BLACKLISTING' OF STAFF TO ERASE DETECTION.
ALSO THE CARE COMMISSION OR CARE INSPECTORATE OF SCOTLAND ARE
IMPOTENT. THEY NEED TO BE EXAMINED AND THEIR ROLE EXTENDED TO
PROTECT NOT ONLY PATIENTS, BUT WORKERS WHO ARE VICTIMISED.
I CAN PERSONALLY ADVISE OF ONE MAJOR COVER-UP IN S. LANDERBURNING

What specific and achievable actions do you consider would best address the concerns you identify in your response to question 1?

MORE REALISTIC OVERVIEW OF ORGANISATIONAL POWER ESPECIALLY

- ZERO TOLERANCE: IS THIS FOUNDED IN LAW? WHO DECIDES
THAT AND CIRCUMSTANCES?

'INAPPROPRIATE BEHAVIOUR' IS FRUSTRATION / INAPPROPRIATE?

- IF A DOCTOR / SURGEON MIXES UP YOUR BLOOD TEST RESULTS,

- COMPLETE REVIEW AND OVERHAUL OF PRIVATE CARE COMPANIES
AND INVOLVED IN 'CARE IN THE COMMUNITY' - WORKERS RIGHTS
ARE BEING ABUSED.

- SADLY, MOST OF THESE SERVICES ARE CONTRACTED OUT
TO 'SAVE MONEY'. LA WORKERS GET ABOUT £8-00/hr
IN PRIVATE CARE GET ABOUT £16-20 FOR DOING THE SAME
JOB.

Name: ORG-0010a-Human Rights Lawyer Scottish Green Party-000

Comments on "getting it right"

Policy approaches

Human rights based approaches to policy measures are crucial. Effective assessment of policy measures for their human rights impact, as well as budget reviews from a human rights perspective, seem to be important tools in order to achieve better human rights implementation in Scotland. We want to establish structures where human rights are taken into account right from the beginning and are the top priority for all policy makers. It will be helpful if such approaches are promoted as the preferable option for policy makers in the Action Plan for Scotland.

On the institutional level

Given that the referendum on independence is coming up in 2014, it is difficult to predict whether the Scottish Government might have the political power to ratify international treaties or whether this power will continue to rest with the UK. However, the Action Plan should address the necessity to ratify the OP to the ICCPR to allow access to the individual complaints mechanism. Furthermore it should accept all those individual complaints mechanisms and incorporate those human rights treaties it has ratified

If these steps are not taken the ratification of the treaties appears to be mere symbolism without any deeper commitment. To properly bring the rights into effect, incorporation and remedial structures are necessary. The Individual Complaints mechanisms have to be regarded as an additional opportunity for access to justice and empowerment of the people affected by human rights violations. Within a democratic society such structures are crucial to stimulate long-term awareness and possibilities for change.

As a next step it will be crucial to inform the people about the possibility of individual complaints mechanisms. Australia, for example, developed a very good brochure regarding the Convention on the Elimination of Discrimination against Women (CEDAW). A similar brochure could be drafted and distributed to the Scottish population.

Being aware of the financial constraints and budgetary difficulties in the current climate, a further realistic step might be to find other ways of making these mechanisms accessible for the people. It is proposed that Scottish Universities jointly with the Human Rights Commission could set up a Law Clinic - as a network of Scottish Universities has already done for some areas of law - to provide legal support for those who are victims of human rights violations.

In the long run though the responsibility rests with the state to provide proper information, education and sufficient legal aid to access these mechanisms.

Some major issues to tackle:

Poverty

The effects of poverty in all its forms are tremendous. The report rightly remarks: "*Barriers to realising human rights drive and deepen poverty...*" (p 44). But this is only one side of the coin. On the other it has to be stated that poverty is just as much the direct cause of human rights violations.

The impact of poverty on various human rights, whether it is health, living, education or equality, is great. I want to recall some of the relationships between poverty and human rights, *Getting it Right* shows:

- Lifestyle choices and their negative effects on health are related to poverty and deprivation. (p 86)
- Patterns of illness are inequitably spread across the socio-economic spectrum, with those living in poverty more likely to die early and to suffer from a range of health problems. (p 96)
- It proves difficult to secure access to adequate housing, particularly for those living on low incomes or in poverty. (p 107)

From a human rights perspective it seems obvious that the state at least has to provide an effective welfare system, which guarantees help to those in need no matter what the circumstances. The current UK policy of further cuts in the welfare system and, for example, reducing unemployment benefits to zero in certain situations, has to be stopped and reversed because it will further erode the human rights of the poor.

A Human Rights Action Plan should demand a long-term obligation of the state to provide fairer and more even income distribution.

Fuel Poverty

Linked with poverty but nevertheless distinct from it is the issue of fuel poverty. Although policy makers have considered this topic in recent years, not enough has been done to date. Fuel poverty affects, in extreme cases, the right to life and – each winter again – causes the death of far too many people in Scotland. Additionally, there is an obvious relationship to health issues as living in a cold, damp home can cause short term as well as long-term health problems.

The Scottish Human Rights Action Plan should emphasise the importance of action. Given the severe impact of fuel poverty on human rights and the number of people affected by it, it will be important to demand action on three levels:

- Increase household incomes -> tackle poverty (see above);
- Improve poor housing stock -> set up (as partly underway) schemes for more energy efficient buildings which would also be of long term benefit for achieving climate justice;
- Control fuel prices -> regulate the energy markets and control the pricing policies of the big energy companies.

Violence

Violence in all its forms and shades affects a number of human rights like the right to life, safety, security, and private and family life. Violence as a problem is for example reflected in the occurrence of hate crime, domestic abuse and sectarianism but the report does not seem to perceive it as a cultural phenomenon. The bigger picture seems to be lacking. Violence seems to be very much part of everyday life. And indeed, violence and prejudices are entangled.

An observable general "culture of violence" in Scotland urgently needs to be addressed beyond the specific categories of domestic abuse, hate crime or sectarianism. Violence against women has a major role to play in this.

The CEDAW Thematic Shadow Report on Violence against Women observed:

The Scottish Executive (now Government) has for a number of years run an annual domestic abuse advertising campaign; the Zero Tolerance (ZT) campaign has run in much of Scotland over a

number of years (although whether or not to run the campaign was decided by local, not central, government). The lessons from ZT, on which other countries have drawn extensively, are that: an integrated violence against women campaign is both cost-effective and has value-added outcomes; strong uncompromising messages are welcomed by survivors and generate debate widely; and such campaigns are regarded as a positive use of public funds by local communities.

It will be important that the Human Rights Action Plan recommends a rigorous anti-violence campaign on various levels. Advertising campaigns like the one mentioned above should be coupled with general anti-violence and awareness training/programmes in schools, sports clubs, local community groups. The topic should be part of the Scottish school curriculum for primary as well as for secondary schools. Furthermore research should be funded which is designed to give guidance about how lessons could be learnt from pilot schemes like one developed by Strathclyde Police's Violence Reduction Unit and to turn anti-violence education into a success.

Summary

- Human rights based approaches to policy measures are crucial.
- The Action Plan should address the necessity to ratify the OP to the ICCPR to allow access to the individual complaints mechanism.
- Combatting poverty is a major human rights obligation. A Human Rights Action Plan should demand a long-term obligation of the state to provide fairer and more income distribution.
- In order to tackle the severe impact of fuel poverty the government has to take regulatory measures targeting the energy markets and control the pricing policies of the big energy companies.
- A rigorous anti-violence campaign is necessary. The topic should become part of the Scottish school curriculum.

ORG-0011a-Together-000 **endorsed by Children in Scotland

Together (formerly known as the Scottish Alliance for Children's Rights) was set up in 1996 to seek the full implementation of the UN Convention on the Rights of the Child (UNCRC) in Scotland. It began as a small, informal network drawn from Scottish children's organisations and has grown to have over 200 members and registered supporters, providing a focal point for non-governmental organisations in Scotland on children's rights issues. In consultation with our members, Together prepares NGO alternative reports to the UN Committee on the Rights of the Child on Scottish and UK government progress in implementing in the UNCRC. Together produces an annual *State of Children's Rights* report to provide a non-governmental perspective on the progress made in Scotland towards implementing the UNCRC.

This response specifically looks at consistent violations of children's rights in Scotland, drawing evidence from Together's annual *State of Children's Rights* reports from 2010-12. The following 98 NGO members and supporters contributed to these *State of Children's Rights* reports:

Aberdeen Council of Voluntary Organisations
Action for Children
Action for Sick Children Scotland
Amnesty International
Angus Women's Aid
Article 12 in Scotland
Barnardo's Scotland
BEMIS
British Red Cross
Buddies Club Playscheme Glasgow West
Caledonia Youth
Care and Learning Alliance
CELCIS
Child Poverty Action Group in Scotland
ChildLine
CHILDREN 1st
Children Are Unbeatable
Children in Scotland
Children's Parliament
cl@n childlaw
Connecting Young Carers
HCCF
Contact a Family Scotland
Corner Young People's Health and Information Service
Drumchapel Children's Rights Project
Dyslexia Ayrshire
East Pollokshields Out Of School Care
ENABLE Scotland
Kidz Stop Nursery and Out of School Clubs
Legal Services Agency
LGBT Youth Scotland
Lochmaben Playcare

Loreburn Housing Support Service
 Moffat Childcare
 Moray Carers Project
 National Autistic Society Scotland
 National Deaf Children's Society (NDCS)
 Scotland North West Carers Centre
 NSPCC
 Partners in Advocacy PEACE Childcare Play
 Scotland Primary PlayCare Ltd
 Quarriers
 Rathbone
 respectme,
 Scotland's Anti-Bullying Service SASW
 Save the Children UK
 Schools Out Shotts After School Club
 Scottish Network of Alcohol Practitioners for the Young (SNAPY)
 Scottish Out of School Care Network
 Scottish Refugee Council
 Scottish Women's Aid
 Scottish Youth Parliament
 Shakti Women's Aid
 Engender Families Outside
 Freedom from Torture Scotland (Medical Foundation)
 fSDC liaison project
 Geeza Break
 Glasgow Association for Mental Health
 Glasgow South West Carers Centre
 Grampian Society for the Blind
 Headway (Dumfries & Galloway) Association Ltd
 Highland Children's Forum
 Includem Inclusion Scotland
 International Play Association
 IPA Scotland
 Jordanhill Out of School Service
 Keys to Inclusion
 Shelter Scotland
 Skye & Lochalsh Community Care Forum
 Young Carers Service Stonewall Scotland
 The Bridge Dumfries & Galloway (DG Play)
 The Corner
 The Kidz Stop Nurseries and Out of School Club
 The Place 2B
 The Princess Royal Trust for Carers in Scotland
 UNICEF UK
 Waverley Care
 West Lothian Young Carers Partnership
 Who Cares? Scotland
 With Kids Youth Borders
 YouthLink Scotland

1. Based on the evidence presented in the report *Getting it right? Human rights in Scotland*, or your own experience, what do you consider to be the most urgent human rights issues which should be addressed in Scotland's National Action Plan for Human Rights?

Together considers the following issues as being the most urgent human rights issues that should be addressed in Scotland's National Action Plan:

Human Rights Context:

- | | | |
|--------------------------|------|---|
| Legal context | 1.1. | Incorporate the UNCRC into Scots law |
| | 1.2. | Ratify the Optional Protocol on the UNCRC complaints mechanism |
| Social context | 1.3. | Set a pathway to tackle child poverty |
| Political context | 1.4. | Ensure child rights impact assessments are a statutory requirement in all policy-making |

Dignity and care:

- | | | |
|---------------------------|------|---|
| Dignity and care | 2.1. | Provide training of professionals in line with the Common Core of Skills |
| Self determination | 2.2. | Improve children's participation in decision-making and the provision of advocacy |

Health:

- | | | |
|---------------------------------|------|---|
| People with disabilities | 3.1. | Promote the inclusion of children with disabilities |
| Mental health | 3.2. | Underpin the Mental Health Strategy with the UNCRC |

Education and work

- | | | |
|--------------------------------|------|--|
| Socio-economic status | 4.1. | Reduce the effects of the social background of children on their achievement at school |
| Inclusive education | 4.2. | Provide sufficient resources and support to children with additional support needs |
| | 4.3. | Use General Comment on Article 31 to strengthen the right to leisure, play & culture |
| Private and family life | 5.1. | Improve outcomes for looked after children |
| Domestic abuse | 5.2. | Embed the National Domestic Abuse Delivery Plan into core Scottish Government work |
| Parental imprisonment | 5.3. | Secure the rights of children of prisoners |

Safety and security

- | | | |
|--------------------|------|---|
| Asylum | 6.1. | Improve support for asylum seeking children |
| Abuse | 6.2. | Give children equal protection from violence in law |
| Trafficking | 6.3. | Child trafficking |

Access to justice and the right to remedy

- | | | |
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| Age of criminal responsibility | 7.1. | Raise the age of criminal responsibility |
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These violations of children's rights have been repeatedly identified by Together's members and raised in a number of *State of Children's Rights* reports between 2010-12.

1. Human Rights Context:

1.1. Incorporate the UNCRC into Scots Law

In Together's 2012 *State of Children's Rights* reportⁱ, a recommendation was given to the Scottish Government to aim for full incorporation of the UNCRC by the UK's next reporting round to the UN Committee on the Rights of the Child. This recommendation appeared in Together's *State of Children's Rights* reports in 2010ⁱⁱ and 2011ⁱⁱⁱ, and was submitted to the UK Government during the previous three UN Committee on the Rights of the Child Concluding Observations; most recently in 2008^{iv}. The UN Committee favours direct and full incorporation as a method of implementation, thus giving full legal effect to the binding commitments made by Governments when ratifying the UNCRC.

During recent consultation of the Children and Young People (Scotland) Bill, there have been positive policy proposals around furthering the implementation of the UNCRC in Scotland, including a proposed duty on Ministers to take '*appropriate steps to further the rights of children and young people.*' In the *Getting it Right? Human Rights in Scotland* report, the Scottish Human Rights Commission (SHRC) refers back to a previous proposal from the Scottish Government to place a duty on Scottish Ministers to pay '*due regard*' to the UNCRC in all of their functions. This proposal has now been replaced by the proposals included in the Children and Young People Bill. However, the SHRC states that even this previously stronger proposed duty on Ministers was still '*not an alternative to incorporation.*'^v

A UNICEF UK report was launched in January 2013 and looks at the implementation of the UNCRC in 12 countries beyond the UK. It concludes that the process of incorporation raises awareness of children's rights in Government and civil society; increases the likeliness of children to be perceived as rights holders and generates a culture of respect for children's rights. The main value of UNCRC incorporation was seen to be '*the strong message it conveyed about the status of children and children's rights, and the knock-on effects for implementation of children's rights principles into domestic law and policy.*'^{vi}

At the 2012 UK Universal Periodic Review (UPR) reporting round, Slovakia recommended that the UK incorporate fully, as a matter of urgency, the UNCRC into domestic law.^{vii}

1.2. Ratify the Optional Protocol on the UNCRC Complaints mechanism

The third Optional Protocol (OP) of the UNCRC is a communications procedure to allow individual children to submit complaints regarding specific violations of their rights. It opened for signature on 28th February 2012 and thus far, 35 states have signed and a further two have ratified the OP. At the 2012 UPR reporting round, Slovakia urged the UK to ratify the third OP; a recommendation that was also made in Together's 2012 *State of Children's Rights report*.^{viii}

1.3. Set a pathway to tackle child poverty

The UN Committee's Concluding Observations to the UK in 2008 recommended that, in line with Article 4 of the UNCRC, the UK should allocate the maximum extent of available resources for the implementation of children's rights, with a special focus on eradicating poverty and reducing inequalities across all jurisdictions.

Despite this recommendation, children's organisations felt that the UK Government's *Child Poverty Strategy*, published in April 2011, failed to set out a clear pathway towards reaching the 2020 target. This concern was highlighted in the UK's UPR round in 2012, where Norway urged the UK to set out a clear pathway to meet the goal of ending child poverty in the UK by 2020.^{ix} SHRC sees this as an indication of the UK's failure thus far to tackle child poverty.^x

The Scottish Government *Child Poverty Strategy* lacks targets or actions that will be taken to achieve the outcomes, and it is not clear what indicators are used to monitor progress against these outcomes. Commenting on behalf of Scottish children's organisations, Together highlighted that the 2012 *Child Poverty Strategy* progress report presented by the Scottish Parliament lacked information on progress against outcomes at national level and failed to provide a comprehensive overview of progress. It is therefore left unclear how the measures in the *Child Poverty Strategy* are actually delivering direct action to tackle child poverty in Scotland.

The 2012 *State of Children's Rights report*^{xi} recommended that a robust process for driving and monitoring progress at local and national level against key outcomes and measures must be put in place (as also recommended in the 2011 *State of Children's Rights report*)^{xii}. This would fulfil the recommendation given by the UN Concluding Observations in 2008 for the UK to adequately implement the Scottish Government *Child Poverty Strategy* by establishing measurable indicators.

1.4. Ensure child rights impact assessments are a statutory requirement in all policy-making

Together has consistently urged the Scottish Government to make a Child's Rights Impact Assessment (CRIA) a statutory requirement to ensure that children's rights are integral in all policy-making at local and national level. CRIs provide a valuable tool for looking at legislation and identifying and measuring its effect on children and young people and permit impacts to be predicted, monitored and,

if necessary, avoided or mitigated. During recent consultation for the Children and Young People Bill in Scotland, Together reaffirmed the need for CRIAs to be used across national and local government in order for policy-making to be meaningful.

The UN Committee's Concluding Observations (2008) emphasise that the UK must conduct regular child rights impact assessments, with reference to the evaluation and monitoring of budgeting; the realisation of policy developments and the implementation of legislation.^{xiii} The SHRC promotes the use of human rights impact assessments and particularly with regards to health inequalities and the NHS. Working in partnership with the European Human Rights Commission (EHRC), the SHRC are developing an Equality and Human Rights Impact Assessment to support the integration of human rights into decision making, monitoring and accountability. This model should specifically include children's rights to ensure children's rights are integral in all policy making.

2. Dignity and care

2.1. ProvidetrainingofprofessionalsinlinewiththeCommonCoreofSkills,KnowledgeandUnderstanding

The UN Committee's Concluding Observations (2008) state that the UK must '*reinforce adequate and systematic staff training about the UNCRC for all professional groups working for and with children*'.^{xiv} Together has continually advised the Scottish Government that child rights training must be provided by all organisations working with and for children. Together further recommend that child rights training should fall in line with the Common Core in its 2012 *State of Children's Rights report*.^{xv}

The SHRC *Getting it Right? Human Rights in Scotland* report recognises the need for human rights-based training approaches to training, yet there is no recognition that this approach should be extended to children's rights.^{xvi} Any human rights based training must be underpinned by the UNCRC and use the Scottish Government's Common Core of Skills, Knowledge, Understanding and Values to ensure a broad understanding of children's rights.

2.2. Improve children's participation in decision-making and provision of advocacy

The Scottish Government's *Do the Right Thing UNCRC progress report*^{xvii} refers to legislative examples where children and young people are playing an active part in decisions affecting them, showing a general acknowledgement of the importance of the principle of participation and of article 12 across policy and some areas of practice. The recognition of a cultural change necessary to promote full participation in less formal settings is absent in the report.

With regards to participation relating to advocacy, Together has recommended that the Scottish Government should ensure that principles and standards for advocacy are put in place in a way that ensures that children and young people are able to enjoy their right to be heard. It should take account of the UNCRC General Comment 12:

“The right to be heard applies both to proceedings which are initiated by the child, such as complaints against ill-treatment and appeals against school exclusion, as well as to those initiated by others which affect the child, such as parental separation or adoption. States parties are encouraged to introduce legislative measures requiring decision makers in judicial or administrative proceedings to explain the extent of the consideration given to the views of the child and the consequences for the child.”^{xviii}

3. Health

3.1. Promote the inclusion of children with disabilities

The UN Committee's Concluding Observations (2008) urged the development of a comprehensive national strategy for the inclusion of children with disability, and action to raise awareness of their rights and special needs to prevent discrimination and institutionalisation. They also urged that programmes and services for children with disabilities must be effectively implemented.^{xix} A national strategy for children with disabilities has not been realised to date. The *National Review of Services for Disabled Children and Young People* action plan was referred to in the Scottish Government's recent *Do the Right Thing* progress report.^{xx} Despite welcoming the action plan, Together has found that progress has been slow and that improvement is necessary in areas including GIRFEC practice briefings, staff training, children's service plans and engagement and participation of disabled children and young people. Together gave recommendations in the 2012 *State of Children's Rights report*^{xxi} in all of these areas (as similarly echoed in Together's *State of Children's Rights reports* in 2010 and 2011).

SHRC's report *Getting it Right? Human Rights in Scotland* recognises that children with disabilities do not fully enjoy their right to education. It is also made clear that as cuts in disability premiums and cuts in benefits continue, this will have a profound effect on families with a disabled child (also highlighted in Together's 2012 *State of Children's Rights report*).^{xxii} There is mention of the *UN Convention on the Rights of Persons with Disabilities* (UNCRPD) and in particular with regards to people exercising their rights in care. The report includes information that work is being done to identify the gaps for the rights of older people: this should be extended to include children and young people.

3.2. Underpin the Mental Health Strategy with the UNCRC

The UN Committee's Concluding Observations (2008) state that additional resources and improved capacities be employed to meet the needs of children with mental health problems throughout the country, with particular attention to those at greater risk (including children of deprived care, children

affected by conflict, those living in poverty and those in conflict with the law).^{xxiii} Mental health was rarely referred to in the *Do the Right Thing* progress report, which reinforced the lack of joined-up thinking with child rights and mental health. The need to give particular attention to mental health services for vulnerable groups such as asylum-seeking children, children of prisoners and children from ethnic minority communities was a recommendation made to the Scottish Government in Together's *State of Children's Rights* report in 2011.^{xxiv}

Scotland's *Mental Health Strategy* was released in summer 2012. The SHRC's *Getting it Right? An Overview of Human Rights* report notes that the *Mental Health Strategy* contains a number of commitments, including that the Government will:

"work with the Scottish Human Rights Commission and the Mental Welfare Commission to develop and increase the focus on rights as a key component of mental health care in Scotland."^{xxv}

In Together's 2012 *State of Children's Rights* report a recommendation was made to ensure that the *Mental Health Strategy* is underpinned by the UNCRC and promotes sufficient preventative measures to stop more serious mental health problems developing later in life.^{xxvi xxvii} Framing the strategy alongside others including the *National Parenting Strategy* and the forthcoming *Children and Young People's Bill* will help to recognise the impact of parental mental health on children.

Scotland had a target to ensure access to specialist Child and Adolescent Mental Health Services within 26 weeks by March 2013, yet there are concerns that long waiting lists remain for children in need of support.^{xxviii} What's more, the Scottish Association for Mental Health (SAMH) has raised concern at reported increases in the numbers of young people admitted to adult psychiatric wards in some areas.^{xxix}

4. Education and work

4.1. Reduce the effects of the social background of children on their achievement at school

Together has welcomed the positive steps associated with the Curriculum for Excellence with regards to children being able to exercise their rights, encouraging child-centred learning and individual participation. Yet there is still a gap between policy and practice, with participation often tokenistic and non-inclusive. This was highlighted in the UN Committee's Concluding Observations (2008) which urged the UK to strengthen children's participation in all matters of school, classroom and learning which affect them.^{xxx}

The UN Committee has recognised the efforts in Scotland to ensure the right to education for all children, yet express concern that such effort must be strengthened to reduce the effects of the social background of children on their achievement in school.^{xxxvi}

By the time pupils leave school, the attainment of those pupils from the richest areas in Scotland is 137 per cent higher than those from the most deprived areas. Those from the most deprived areas achieved attainment levels 65 per cent below the national average.^{xxxvii}

In its 2012 *State of Children's Rights report* Together recommended that the Scottish Government used current policy reform to support parents in deprived areas to engage in their children's education and to provide affordable, high quality and extensive early education and care provisions for all children in poverty from a young age.^{xxxviii}

4.2. Provide sufficient resources and support to children with additional support needs

As stated in the Scottish Government's *Do the Right Thing* progress report, the Scottish Government published a report to the Scottish Parliament on the implementation of the Additional Support for Learning legislation in early 2012.^{xxxix} The report revealed that not enough was being done to support children and young people with 'hidden' additional support needs, as well as a lack of shared practice in the identification of, and provision for additional support needs. In the SHRC mapping exercise '*Getting it Right? Human Rights in Scotland*', gaps in additional support for learning legislation are highlighted. These include:

- the omission of duty to be placed on schools to know which children are disabled if they do not face barriers in addition to their impairment in the Education (Additional Support for Learning) (Scotland) Act 2004.
- the Co-ordinated Support Plan and its ability to neglect children who face severe disability barriers but from only one type of service. If a child or young person does not qualify, the Individualised Educational Programme is offered; however due to a lack of statutory status it cannot guarantee additional support to ensure that education is accessible for all.^{xxxv}

During the 2012 UK UPR reporting round, Costa Rica advised the UK to adopt a strategy so that children of vulnerable groups are not excluded from the education system.^{xxxvi} This includes children and young people and the inclusive access to additional support for learning.

Representing the experience of children's organisations, in its 2012 *State of Children's Rights report* Together recommended that the Scottish Government addresses the need for specialist and adequate support for teachers in terms of learning support teachers, classroom assistants and links to other professionals, and to include an extensive monitoring and evaluation framework to build a national picture of the provision of additional support for learning to feed back into improving provision and developing practice.

4.3. Use the UN General Comment on Article 31 to strengthen the right of the child to leisure, play & culture

The UN Committee's Concluding Observations (2008) recommended that efforts must be strengthened to guarantee the right of the child to rest and leisure, to engage in play and recreational activities appropriate to the age of the child and to participate freely in cultural life and the arts. The UN Committee also focused particular attention on children with disabilities whilst recommending that the UK should provide adequate and accessible playground spaces.

The Scottish Government's *Do the Right Thing* progress report refers to *PlayTalkRead* and the *Go Play* funds, which have been welcomed by the children's sector. However, as stated in Together's 2012 *State of Children's Rights* report, the lack of longer-term funding commitments present a concern that a universal play service may be unattainable in the future and that services will lose skilled play professionals.^{xxxvii} The SHRC's *Getting it Right? Human Rights in Scotland* report recognises the lack of access to outdoor play for children in care^{xxxviii}, yet there is a noticeable lack of information relating to Article 31 of the UNCRC.

In March 2013, the UN Committee on the Rights of the Child published a General Comment on Article 31. Guidance from the General Comment should be used by the Scottish Government to fulfil the concluding observation given to the UK by the UN Committee in 2008.

5. Private and family life

5.1. Improve outcomes for looked after children

Getting it Right? Human Rights in Scotland recognises the needs of looked after children in areas including 'life after care' services and semi-independent living units, with reference to SCCYP's call for changes to prevent councils placing young people in homeless hostels and B&B establishments.^{xxxix} It

also highlights concerns regarding poor educational outcomes, low income and employment rates, and poor health and early pregnancy of looked after children.^{xi}

The *Do the Right Thing* progress report outlines a number of steps taken by the Scottish Government in this area, including challenging stigma and reducing discrimination and improving support for care leavers.^{xli} Despite this evident commitment, there is still a long way to go.

Together's *State of Children's Rights* reports have repeatedly raised issues regarding looked after children. Amongst these have been:

- the need for ongoing monitoring and evaluation of policies affecting looked after children;
- ensuring that there is a clear pathway underpinned by children's rights that illustrates how these policies produce tangible outcomes for looked after children.

5.2. *Embed the National Domestic Abuse Delivery Plan for Children into core Scottish Government work*

The UN Committee's Concluding Observations (2008) advised the UK to establish mechanisms for monitoring the number of domestic abuse cases and the details of these cases in the family/school/institutional or other care; ensure that professionals working with children receive training on their obligation to report and take appropriate action in suspected cases of domestic violence affecting children, and to provide adequate services for recovery, counselling and reintegration.^{xlii}

Getting it Right? Human Rights in Scotland raised questions about the definition of domestic abuse in law, as well as the adequacy of policy attention to perpetrators and specific groups of victims/survivors including minority ethnic women, transgender people and men. Furthermore, victims/survivors of domestic abuse discuss a range of problems in accessing accommodation and avoiding homelessness, including extended time periods in refuges waiting for accommodation.^{xliii}

Although SHRC found that policy attention has increasingly addressed the impact of domestic abuse on children, there are continuing problems in access to support services for children. In its *State of Children's Rights* reports (2011 and 2012), Together recommended that the priorities of the three-year *National Domestic Abuse Delivery Plan for Children and Young People* (which was produced in 2008 by the Scottish Government and COSLA) should be embedded into the core work of the Scottish Government, with adequate funding and resources.

5.3. Secure the rights of children of prisoners

The UN Committee's Concluding Observations (2008) urged the UK to ensure support to children with one or both parents in prison; to maintain contact (unless contrary to their best interests) and to prevent their stigmatisation.^{xliv} Two recommendations were also given to the UK in its UPR round in 2012 to highlight similar concerns: Slovakia urged that the best interests of the child be taken into account when arresting, detaining, sentencing or considering early release for a sole or primary carer of the child, whilst recognising that visits to a parent in prison are primarily a right of the child rather than a privilege of the prisoner. Germany furthered this recommendation by urging the UK to take steps to improve support for children with imprisoned parents.^{xlv}

As recognised in the SHRC *Getting it Right? Human Rights in Scotland* report, Article 9 of the UNCRC protects the right to the child not to be separated from his or her parents except by competent authorities subject to judicial review. Paragraph 4 of Article 9 further acknowledges that such separation may arise from the detention or imprisonment of one or both parents.^{xlvi}

Within the 2012 *State of Children's Rights report*^{xlvii} Together recommended that the Scottish Government:

- increase efforts to work with SCCYP to further their recommendations from the 2008 and 2011 reports 'Not Seen, Not Heard, Not Guilty';^{xlviii}
- ensure that direct support is provided for children of prisoners at school, including improving engagement from schools with parents in prison;
- raise awareness throughout the statutory and voluntary sector of the impact of imprisonment on children and their roles and responsibility for addressing this, including amongst adult-focused services;
- recognise quality contact with parents in prison as a child's right rather than as a tool for prison discipline.
- Child & Family Impact Assessments should be conducted and acted upon throughout the criminal justice process, starting with arrest and continuing through the release of a prisoner (including impact assessments for non-custodial penalties);
- The Scottish Prison Service should establish good quality, independently staffed prison visitors' centres at every prison in Scotland to support children and families of prisoners.

6. Safety and security

6.1. Improve support for refugee and asylum seeking children

The issue of asylum, for the most part, is reserved to Westminster. However, SHRC's *Getting it Right? Human Rights in Scotland* report recognises that the implementation of asylum seeker/refugee policy and matters such as education, health and child protection, housing and provision of services, all contribute to the successful integration of asylum seekers and refugees living in Scotland. It includes recently published research stating that the cut by UKBA in asylum support and resources for support services has left many stuck in destitution but unable to return to their home country^{xlix} and highlights the difficulties faced by unaccompanied asylum-seeking children in Scotland.

In its 2012 *State of Children's Rights report* Together commended the guidance on age assessment introduced by the Scottish Refugee Council and has welcomed the partnership work that has taken place with UKBA, the Scottish Government and COSLA.

Together advised that the Scottish Government should continue to support the roll-out of the new guidance on age assessment alongside monitoring and evaluation of its use. This work should be included within SNAP.

6.2. Give children equal protection from violence in law

The UK is coming under increasing international criticism for its failure to give children equal protection. It is one of only four European Union countries not to have committed to introduce a ban to prohibit corporal punishment. The UK is violating UN and EU treaties by not abolishing corporal punishment: law reform is now seen as an obligation under international law by both European and United Nations human rights monitoring bodies. However, the issue has not been recognised in the SHRC's *Getting it Right? Human Rights in Scotland* report.

During the UK UPR reporting round in 2012, Norway, Finland and Sweden advised the UK to reconsider its position with regards to the continued legality of corporal punishment of children, and to take measures to ensure the freedom of children from violent behaviour.^l This echoes the UN Concluding Observation (2008) which stresses that the UK must prohibit, as a matter of priority, all corporal punishment in the family, including through the repeal of all legal defences.^{li}

In its 2012 *State of Children's Rights report*, Together recommended that the Scottish Government should accept these recommendations and give children equal protection from assault in law.

6.3. Combat child trafficking

In 2011 the UK Government adopted its Human Trafficking Strategy.^{lii} The UK Children's Commissioners have criticised the fact that this is the first UK Government anti-trafficking strategy that only covers England and Wales.^{liii} Scotland is not part of the UK strategy and the Scottish Government has not responded to calls for a Scottish anti-trafficking strategy or action plan. This could leave gaps in the implementation of a number of the UK's international obligations.^{liv} There have been three key Scottish-wide reports on human trafficking (including child trafficking) in the last two years.^{lv} All call for the Scottish Government to take a strategic lead in tackling this hidden crime and to look at all aspects, from identification to protection to prosecution. Children's organisations are concerned that there has continued to be no prosecutions on child trafficking grounds in Scotland in 2011 and 2012. The capacity of professionals to initially identify possible victims of trafficking is seen to be an unaddressed problem. It is urgent, because failure to identify the victims results in their continued exploitation.

7. Access to justice and the right to an effective remedy

7.1. Raise the age of criminal responsibility

As reported in the 2011 *State of Children's Rights report*,^{lvi} the age of criminal responsibility in Scotland currently remains one of the lowest in Europe. This issue has been repeatedly raised by Together. In the *Do the Right Thing* progress report, the Scottish Government has committed to give 'fresh consideration to raising the age of criminal responsibility from 8 to 12'.^{lvii}

This addresses the 2008 UN Committee's Concluding Observation (2008) that the UK should raise the minimum age of criminal responsibility in accordance with the Committee's General Comment no. 10.^{lviii} It would also address the recommendations made in the 2012 UK UPR round, where both Belarus and Chile stressed that the age of criminal responsibility should be raised.^{lix} This has been raised in the SHRC's *Getting it Right? Human Rights in Scotland* report and should be included in the SNAP as a matter of priority.

2. What specific and achievable actions do you consider would best address the concerns you identify in your response to question 1?

<u>Getting It Right Thematic Area</u>	<u>Together's priority issue (as per question 1)</u>	<u>Suggested action for SNAP</u>
<u>Human Rights Context:</u>		
Legal context	1.1. <i>Incorporate the UNCRC into Scots law</i>	Outline a roadmap towards the full incorporation of the UNCRC into Scots law. Ensure the UNCRC is enshrined in any future Scottish constitution.
	1.2. <i>Ratify the Optional Protocol on the UNCRC complaints</i>	Outline the Scottish Government's commitment to take forward its support for signing the Optional Protocol, including a roadmap indicating the timescale and process involved with regards to ratification.
Social context	1.3. <i>Set a pathway to tackle child poverty</i>	Identify measures to be put in place by the Scottish Government to monitor and evaluate the Child Poverty Strategy at a local and national level.
Political context	1.4. <i>Ensure child rights impact assessments are a statutory requirement in all policy-making</i>	Outline a process whereby the use of CRIAs can be developed and implemented within Human Rights Impact Assessments.
<u>Dignity and care:</u>		
Dignity and care	2.1 <i>Provide training of professionals in line with the Common Core of Skills</i>	Outline a comprehensive strategy through which the Scottish Government can take forward its commitment to promote and raise awareness of the UNCRC among professionals. This should include ensuring that all organisations working with and for children provide child rights training in line with the Common Core's skills.
Self determination	2.2. <i>Improve children's</i>	Outline a strategy through which all levels of Government will listen to the views of children and

	<i>in decision-making and the provision of advocacy</i>	making and services. Specifically relating to access to advocacy, the Scottish Government should take forward and implement actions resulting from the consultation on ‘Improving Advocacy Support for Children and Young People: principles and minimum standards’ in order to ensure that children and young people have access to high
Health:		
People with disabilities	3.1. <i>Promote the inclusion of children with disabilities</i>	Outline a timescale in which the Scottish Government introduces mandatory training on basic behaviour strategies, autism/learning, disability awareness and communications strategies for all staff involved in the education of children with a disability.
Mental health	3.2. <i>Underpin the Mental Health Strategy with the UNCRC</i>	Outline a pathway through which all stakeholders working on the Mental Health Strategy develop and increase the focus on children's rights as a key component of health care in Scotland, taking into account those affected both directly and indirectly by
Education and work		
Socio-economic status	4.1 <i>Reduce the effects of the social background of children on their</i>	Outline a pathway towards providing affordable, high quality and extensive early education and care provision in both mainstream and additional support for learning schools for all children in poverty from an early age.
Inclusive education	4.2. <i>Provide sufficient resources and support to children with additional support needs</i>	Outline a long-term plan to support the implementation of the Additional Support for Learning legislation that includes: <ul style="list-style-type: none"> • specialist and adequate support for teachers in terms of learning support teachers, classroom assistants and links to other professionals • extensive monitoring and evaluation framework to build a national picture of the provision of additional support for learning to feed back into improving provision and developing practice. Local authorities should ensure that all looked after

	<p>4.3.</p> <p><i>Use General Comment on Article 31 to strengthen the right to rest, leisure and play</i></p>	<p>Scottish Government should draw from the General Comment on article 31 and raise wider awareness of its implications across public bodies to ensure vulnerable children and young people are included in recreation,</p>
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		strategies.
<u>Private and family life</u>	5.1. <i>Improve outcomes for looked after children</i>	<p>Actions relating to looked after children and young people in SNAP should:</p> <ul style="list-style-type: none"> • Be underpinned by a children's rights framework and show how they will produce tangible outcomes; • Encourage collective responsibility for looked after children; • Closely monitor and evaluate the effectiveness of corporate parenting.
Domestic abuse	5.2 <i>Embed the National Domestic Abuse Delivery</i>	All SNAP actions relating to domestic abuse should take into account its impact on children and young people.
Parental imprisonment	5.3. <i>Secure the rights of children of prisoners</i>	SNAP should bring together duty bearers to further the recommendations from SCCYP's 2008 and 2011 reports 'Not Seen, Not Heard, Not Guilty.'
<u>Safety and security</u>		
Asylum	6.1. <i>Improve support for asylum seeking children</i>	Guidance on age assessment introduced by the Scottish Refugee Council should be adequately funded and resourced.
Abuse	6.2. <i>Give children equal protection from violence in law</i>	Outline a timescale in which the Scottish Government gives children equal protection from assault in law and to commit to providing information and support to parents and organisations providing support to families.
Trafficking	6.3. <i>Combat child trafficking</i>	<p>SNAP should ensure that the Scottish Government commits to a number of steps to combat child trafficking, including:</p> <ul style="list-style-type: none"> • Actively look for trends and learning in the Scottish Guardianship Service and Legal Services Agency project and utilise this to create better identification and protection systems for trafficked children • Keep abreast of discussions held at the Cross Party Group and consider the group as a useful vehicle to push forward many of the unresolved and complicated issues • Update Scottish Government guidance 'Safeguarding Children in Scotland who may

Access to justice and the right to remedy		
Age of criminal responsibility	7.1. <i>Raise the age of criminal responsibility</i>	Outline a timescale in which the Scottish Government agrees to raise the age of criminal responsibility, in line with the UN Committee's General Comment No. 10

ⁱ <http://togetherscotland.org.uk/pdfs/TogetherReport2012.pdf>

ⁱⁱ http://togetherscotland.org.uk/pdfs/Together_Report2010_online.pdf

ⁱⁱⁱ http://www.togetherscotland.org.uk/pdfs/Together_Report_2011_PDF.pdf

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Name: ORG-0014a-Scotland's Commissioner for Children and Young People-000

Based on the evidence presented in the report *Getting it right? Human rights in Scotland*, or your own experience, what do you consider to be the most urgent human rights issues which should be addressed in Scotland's National Action Plan for Human Rights?

I welcome this opportunity to contribute to Scotland's National Action Plan for human rights. I see SNAP as a potentially powerful mechanism to facilitate progress on improving Scotland's human rights record, and on closing the gap between rhetoric and reality in terms of human rights in Scotland. It will sit alongside a wide range of other activities by diverse groups of actors, which drive towards that same goal. Its timing is especially pertinent, as the constitutional future of Scotland is being debated, and new opportunities and risks may present themselves in terms of the legal and constitutional protection of human rights, whatever the outcome of the independence referendum.

In my response, I will focus on issues relating to the human rights of children and young people, particularly those included in the United Nations Convention on the Rights of the Child (UNCRC). This reflects my statutory remit to promote and safeguard the rights of children and young people in Scotland, with particular regard to the provisions of the UNCRC (s. 4(1) and 5 (1) of the Commissioner for Children and Young People (Scotland) Act 2003 respectively).

As documented in the UK Children's Commissioners' shadow report to the UN Committee on the Rights of the Child in 2008, my office's contribution to the recent UPR, reports from the children's sector and the NGO alliance Together, and many other sources, there are a range of matters of concern from a children's rights perspective in Scotland. Some of those are on the level of law, governance structures and national policy-making and budget-setting; many others are below that level and concern national and local policies and guidance, and critically the implementation and resourcing of national and local direction on the ground.

Rather than attempting to convey anything like a comprehensive exposition of children's rights issues in Scotland today, this response will briefly highlight a number of issues which in my view would be well suited for inclusion in SNAP. This can only be a snapshot, and certainly is not an exhaustive list of concerns about the human rights of children and young people. I would also wish to note that my office participated in a recent event on human rights issues faced by looked-after children organised by CELCIS, and I agree with the important issues raised in their response.

I will discuss my snapshot of children's rights introduced above under two broad headings: (1) Law and Governance; (2) Children's Rights Issues in Law, Policy and Practice.

(1) Law and Governance

As *Getting it Right?* states, the UNCRC does not at present form part of the UK's or Scotland's domestic law. The SHRC will be aware of the four UK Children's Commissioners' long-standing position in favour of full incorporation of the UNCRC

into our domestic law, and my office has been making this argument proactively for a number of years, latterly in the context of proposed children's legislation. We have also called on the UK Government to ratify Optional Protocol 3 to the UNCRC, which will establish an individual communications procedure.

I am in agreement with the finding in *Getting it Right?* (p. 35) that measures such as a duty on Scottish Ministers to have due regard to the UNCRC in the exercise of their functions would be welcome but would not obviate the need for full incorporation or answer the increasingly broad-based call for it. It appears that the Scottish Government has significantly downgraded its previous proposals for a due regard duty, all the more highlighting the need for a broader campaign for the full incorporation of the UNCRC into domestic law. The same goes for other unincorporated conventions which would bring direct benefits for children and young people, such as CEDAW and CRPD. The benefits of incorporation are manifold and increasingly well-documented (see, for example, the ROCK Coalition's publication *Why Incorporate?* and recent research undertaken for UNICEF UK, Lundy et al. (2012), *The United Nations Convention on the Rights of the Child: a study of legal implementation in 12 countries*). Crucially, they include the important conceptual shift that children are recognised as rights-holders, which has not been comprehensively achieved in Scotland, despite progress on children's rights in some areas of law, policy and practice over the years.

A key mechanism of ensuring that children's rights are respected, protected and fulfilled in policy-making, budget-setting and service design and delivery, is the Children's Rights Impact Assessment (CRIA). My office published its own CRIA model and tool (Paton & Munro 2006, *Children's Rights Impact Assessment: The SCCYP Model*) drawing on international good practice, in 2006. This has sparked recent interest from public authorities and others in Scotland, the UK and further afield. However, CRIA has not been embraced as a standard procedural step in national and local government and key public services whose service users include children, and/or whose services affect children. This is regrettable, and I see the negative effects of non-adoption of CRIA processes on a regular basis, in enquiries to my office raising often significant and entirely foreseeable children's rights concerns. In my view, CRIA should have a place in SNAP, and I am open to discussion as to how this approach may sit alongside (or be integrated with) other similar approaches relating to equality and human rights, not least in recognition of the realities of staffing and resources in the public sector at this time.

Finally on issues relating to law and governance, CRIA and related processes and initiatives, as well as better performance of public authorities on human rights generally, are obviously greatly advanced by officials who have a sound understanding of human rights, and who experience visible, positive leadership on human rights. Society as a whole benefits from people of any age who know and understand their human rights and those of others. This requires effective and high-quality training of professionals, human rights education at school and in community settings, and awareness-raising across society. Despite some good examples of this sort of work, there is much left to be desired in this area.

(2) Children's Rights Issues in Law, Policy and Practice

In this section, I will raise a number of children's rights issues which may be well-suited for inclusion in SNAP. I would reiterate that this list is by no means exhaustive, and issues are presented in no particular order.

(a) Participation and advocacy

The UNCRC's provision on the child's right to express their views in all matters that affect them (article 12) is a key provision of the Convention, and one of its four general principles. It encapsulates the child's right to increasing levels of autonomy in line with their 'evolving capacities', relating to their age and maturity, and growing understanding and capabilities. It is also critical in the proper construction of other central provisions of the Convention – for example, in relation to the best interests principle (article 3) the UN Committee on the Rights of the Child remarked that 'there can be no correct application of article 3 if the components of article 12 are not respected' (*GC12: The right of the child to be heard*, 2009, para 74).

Children's article 12 rights are frequently referred to in relation to a wide range of public services in Scotland, and there are many examples of a variety of approaches being tested, applied and developed by public bodies and voluntary organisations across the country. Moreover, a number of references to children's participation can be found in Scots Law; for example in relation to school education (Standards in Scotland's Schools etc. Act 2000), children's hearings (Children (Scotland) Act 1995; Children's Hearings (Scotland) Act 2011) and adoption (Adoption and Children (Scotland) Act 2007). However, there are gaps in legislation (notably the absence of any participation rights relating to additional support for learning under the Education (Additional Support for Learning) (Scotland) Act 2004) and there is generally wide variation in practice.

Recent and ongoing initiatives such as a work programme in the Scottish Government relating to the wider provision of advocacy support for children and young people (*Improving Advocacy Support for Children and Young People: Principles and Minimum Standards*) are welcome and should be built upon to ensure both that: (i) public services proactively and consistently seek and take due account of children's views in line with their 'evolving capacities' in every aspect of their services, and (ii) that children and young people have access to adequate support to enable them to express their views including advocacy support and (depending on the issue at stake, and the forum in which it is considered) legal advice or representation. In line with the emphasis on participation in various contexts in *Getting it Right?* I would consider that children and young people's participation rights could be advanced through inclusion in SNAP.

(b) Age of criminal responsibility

Scotland's age of criminal responsibility, at 8, is to my knowledge the lowest of any country in the European Union. My office, along with partners, has made significant efforts to effect an amendment to that position across two recent major pieces of legislation, the Criminal Justice and Licensing (Scotland) Act 2010 and the Children's

Hearings (Scotland) Act 2011, seeking an increase of the age to 12 in the first instance. While my and my predecessor's calls to that effect were not heeded by a majority of the Scottish Parliament, amendments were made which changed the position in relation to children aged 8-11 who offend. As *Getting it Right?* correctly states, there is now a minimum age for prosecution at 12, meaning that it is no longer competent to prosecute a child aged 8-11 in the criminal courts. However, criminalisation of children in that age group continues through the children's hearings system.

Once in force, further changes made in relation to the 'criminal records' effects of children's hearings disposals in terms of the link to the Rehabilitation of Offenders Act 1974 and the Disclosure Scotland regime will bring some progress by removing the stigmatising effect of a criminal record from a significant number of children (regulations are to be laid before Parliament imminently). However, it does so by a process which I have previously criticised as flawed in light of both international law and the strong evidence from the Edinburgh Study on Youth Transitions and Crime (McAra & McVie 2007, 2010, 2013). Moreover, the law in this area is now much more complicated than previously, and it will be even more difficult for panel members and others to explain its potential consequences to children and relevant persons attending children's hearings. In any event, it does not change the position that in Scotland some children as young as eight are regarded as criminals, which is simply unacceptable.

I therefore welcomed the announcement in *Do the Right Thing: Progress Report 2012* that the Scottish Government is now intending to give 'fresh consideration' to raising the age from 8 to 12 (DTRT2, p. 55). This will be a worthwhile issue for inclusion in SNAP for a number of reasons, including the strong international law imperative (UNCRC 2002, 2008; UPR 2008, 2012) and the strong evidence base in favour of raising the age.

(c) Equal protection from assault for children

The continuing legality of corporal punishment in the home in the UK has repeatedly and consistently been highlighted as a human rights concern by the UN Committee on the Rights of the Child (1995, 2002, 2008), during the UPR process (2008, 2012) and by the Council of Europe (2001, 2005, 2008). In Scotland, s. 51 of the Criminal Justice (Scotland) Act 2003 provides a defence of 'justifiable assault' to a charge of assault on a child by their parent, excluding certain specific forms of assault (e.g. use of an implement, blows to the head, or shaking). There is ample evidence of the negative effects on children, as reported by children themselves, and increasingly in medical research in terms of long-term physical and mental health consequences. I have repeatedly stated my view that violence against children is wholly unacceptable and that children should be entitled to legal protection from assault on at least an equal level to adults.

However, in its input to the UK response to the recommendations made in the course of the 2012 UPR the Scottish Government simply stated that it believed that the existing law is adequate, and that Ministers have no plans to amend it. Previously, in

response to the UN Committee on the Rights of the Child's Concluding Observations (2008), the Scottish Government denied that the level of physical punishment which remains permissible after the 2003 Act cannot be appropriately described as 'violence' (Scottish Government (2009), *Detailed Response to the UN Committee on the Rights of the Child's 2008 Concluding Observations*, p. 20). I disagree with both this statement and the contention that the legal protection of children from assault is adequate (see also the UN Committee's *GC13: The right of the child to freedom from all forms of violence*, 2011), paras 17 and 24 on this point). The non-inclusion of any strong position on the matter in the Scottish Government's National Parenting Strategy (2012) suggests no progress in the meantime. I would reiterate my support for law reform in this area and suggest that this would be an appropriate issue for inclusion in SNAP.

(d) Child poverty

According to Save the Children, 220,000 children in Scotland live in poverty, including 90,000 children living in severe poverty. It is now well-documented that there was a marked improvement in the overall numbers in the mid-2000s, however, this did not appear to benefit those living in severe poverty, and progress stagnated at an unacceptably high level (IFS 2011). It is expected that there will be a significant increase in the number of children living in poverty over the next few years, with about 50,000 additional children in Scotland falling into poverty by 2020 (Save the Children 2013).

Child poverty is a particularly pernicious infringement of children's human rights, as it is capable of undermining the realisation of every other right they hold, including the right to life, survival and development (art 6 UNCRC), the right to the highest attainable standard of healthcare (art 24), and the right to education (arts 28 & 29). Article 27 requires the state to guarantee 'the right of every child to a standard of living adequate for the child's physical, mental, spiritual, moral and social development'. It spells out the lead role of parents in securing this for their children, but firmly puts responsibilities on the state to put appropriate systems and provisions in place to support the realisation of this fundamental right for every child.

Despite some positive measures, such as the Child Poverty Act 2010 and the Scottish Government's *Child Poverty Strategy*, there is a lack of clear actions and outcomes, and there are risks that positive contributions of existing initiatives are being eclipsed by the adverse effects of the UK Government's current welfare reforms on children. Concerns about the levels and impacts of child poverty in the UK have been expressed by the UN Committee on the Rights of the Child (2008), the Committee on Economic, Social and Cultural Rights (2009) and during the UPR (2008, 2012), and it has been a widely-shared domestic concern in Scotland. I would therefore consider the need for a human rights-based approach to poverty, explicitly including child poverty, as a suitable area for SNAP.

(e) Child Trafficking

As noted in the report (p. 179), I published *Scotland: A safe place for child traffickers?* in 2011. This scoping research into the nature and extent of child trafficking in

Scotland found low awareness of child trafficking and low capacity of key public services to identify victims. 'Competent authority' status under the National Referral Mechanism has been assigned to organisations that are not best placed to make determinations as to whether a child is a victim of trafficking from a children's rights and child protection perspective. For law enforcement agencies to successfully tackle child trafficking greater priority and resources needs to be allocated to this issue, as highlighted by the fact that there has not been a single conviction for a child trafficking offence to date.

Further, the research highlighted significant training needs across a range of public services likely to encounter children who may have been trafficked, and criticised the shameful occurrence of prosecution and even imprisonment of victims of child trafficking, which clearly runs counter to a human rights-based approach to tackling the crime of trafficking as well as the provisions of the relevant EU Directive and the Council of Europe Convention. My report's recommendations included a call for updated national guidance, awareness-raising and training for a wide range of professionals, local inter-agency protocols to facilitate detection and effective responses to child trafficking, 'competent authority' status for Child Protection Committees, and reconsideration of the Lord Advocate's guidance on prosecuting victims of trafficking.

Trafficking is an abhorrent crime. Several recent reports cited in *Getting it Right?* are in broad agreement as to how to tackle it effectively and in a manner which protects and promotes the rights of those whose human dignity and rights are so gravely violated by traffickers (pp. 177-180). I would welcome the inclusion of some of those reports' recommendations in SNAP.

(f) Children affected by parental imprisonment

As referenced in *Getting it Right?* (p. 162f) my predecessor and I have undertaken a significant amount of work on the rights of children affected by imprisonment (SCCYP 2008, 2011: *Not Seen, Not Heard, Not Guilty/Review*). This child population, estimated to be as large as the total population of children in care in Scotland at any one time is adversely affected by their parent's offending, the state's response to it through imprisonment, and the failure of the state to adequately protect and promote the rights of children of offenders (and alleged offenders) in the criminal justice system, which is seen as an 'adult' public service.

It is this last aspect which, I would suggest, highlights a particular set of issues which will be of interest in respect of SNAP – it demonstrates very clearly that laws, policies, practices and individual decisions about adults in what may be seen as 'adult' fora can have profound and direct effects on children and their rights. Children's rights are not confined to children's issues or services. Children's rights considerations must not be seen as the sole responsibility of children's policy departments. Where other services are dealing with people who may be parents, they are in effect children's services.

This work, and notably the work done by Families Outside, highlighted the close connection between children's rights and such issues as ever-rising prisoner numbers, remote locations of prisons, poor transport links, and restricted visiting times, which present barriers to the realisation of children's article 9 UNCRC rights. This work also showed that there is a need for the potential impacts of arrest, remand, sentencing and temporary release/Home Detention Curfew on an (alleged) offender's children to be considered at the point of decision-making, and that this should be informed, where possible and appropriate, by children's views; for prisons' physical design and regimes to take account of the need to maintain relationships between child and parent (unless this is counter to the child's best interests); the need for criminal justice policy to be influenced by children's rights considerations, and prison policy to be subject to CRIAs.

Besides providing opportunities for action in its own right, this issue may also lend itself to illustrate the interconnectedness of human rights of different groups in society in SNAP.

I trust that my comments are of help to the Commission and the SNAP process. My office and I are delighted to be involved in the process through this response, and future engagement including by nominating a member of my team to join the drafting group.

Qu002:

What specific and achievable actions do you consider would best address the concerns you identify in your response to question 1?

- (1) Progressing full incorporation of the UNCRC and other unincorporated treaties into Scottish/UK domestic law; Ratification by the UK Government of Optional Protocol 3 to the UNCRC.
- (2) Adoption of Children's Rights Impact Assessments by national and local government and key public services for/affecting children and young people.
- (3) Comprehensive human rights training for all those involved in public services, and a whole-society approach to awareness-raising and human rights education, both explicitly including the rights of children and young people.
- (4) Strengthening children and young people's participation rights in all areas of policy and service provision that affects them, in line with article 12 of the UNCRC.
- (5) Increasing the age of criminal responsibility from 8 to 12 (in the first instance).
- (6) Repeal of all defences to assault on a child alongside a programme promoting positive, non-violent discipline and the benefits to children of a non-violent upbringing.
- (7) Adopting a human rights-based approach to eradicating child poverty, setting out clear, effective and measureable actions.
- (8) Implementing a comprehensive human rights-based approach to tackling child trafficking, based on the recommendations of recent reports by Amnesty International, SCCYP and the EHRC.

(9) Ensuring that all actors in the criminal justice system recognise their responsibilities in respect of children and young people and their rights under the UNCRC.

Name: ORG-0015a-Dorothy-Grace Elder: Scottish Parliament's cross party group on chronic pain -000

1. I would appeal to the Human Rights Commission to investigate the "health watchdog", Healthcare Improvement Scotland (HIS) for its secretiveness, concealment of adverse facts and abuse of the public's right to know. They should also be questioned on why their recent "Update Report on Scottish Chronic Pain Management" supported treatment of some Scottish chronic pain patients taking place in NHS Bath.

- This means continuing to send people in severe pain on 1,000 mile return journeys to Somerset, surely breaching "degrading and inhumane treatment" stipulations. In January, 2013, the health secretary, Alex Neil, promised to create the first Scottish inpatient centre, to prevent sufferers from chronic pain being sent as far as Bath. Mr. Neil's intervention was welcomed warmly by campaigners.

- But officials, rather than politicians, have long been the problem with chronic pain. There is a strong lobby among officials for continuing with Bath. One example is shown here in a 31st Jan letter (below) from the "Quality Unit" of the Scottish Govt to the Public Petitions Committee – towards the end of this useless letter, there is only praise for the Bath centre,

- NO mention of the Health Secretary's promise on January 21. and the inference that, as only 30 patients a year are sent to Bath, a Scottish inpatient centre isn't needed. This is total misinformation. Many will not – cannot - go as far as Bath for two or three weeks; Wales's inpatient centre for Welsh patients has no problem in getting referrals from a much smaller population than that of Scotland. A Scottish centre would relieve our day centres, as it's admitted that part of the reason for sending people to Bath is that Scotland's few day centres are over stretched and underfunded. This "Quality Unit" is heavily linked to HIS and its outdated views. Work by the Public Petitions Committee springs from Petition PE1460 by Susan Archibald, a severely affected chronic pain sufferer. Her evidence to the Committee was on Jan 8, 2013, Official Report, Public Petitions Committee, also at Holyrood TV archive. I was a fellow witness.

- [PE1460/E: Scottish Government Letter of 31 January 2013 \(100KB pdf\)](#)

- I appeal to the Commission to keep a watching brief on "progress" by officials. When a Scottish inpatient centre could be selected, then opened, is not yet known. Officials are charged with examining the situation but are delaying until, vaguely, "end of summer" to report. Journeys to Bath will continue until a Scottish centre is open. Wales, on half Scotland's health budget, has for many years had an inpatient service at Powys. The effect on patients from Scotland sent as far as Somerset (a 1,600 miles round journey for one patient sent from Shetland two years ago) go beyond even the arduous journeys for people at the severe end of the pain spectrum.

2. They are away from families and visitors for several weeks, living in basic hospital accommodation. One spoke to me of being depressed and lonely and finding the treatment unsuited to her. You can't go by one patient but there are no facts on others. The Welsh service allows people home at weekends to keep up their spirits. Scottish patients are shipped to Bath for two reasons: severe shortages in the few

pain day centres here and lack of any Scottish inpatient beds for the minority who need residential treatment. Cross border referrals are NOT supposed to be for very common conditions, where there is an expectation of proper local access and treatment. Patients are also moved around Scotland because of shortages of funding of clinics and staff. Chronic pain affects an officially estimated 700,000 in the Scottish community, including some 80,000 children. It is a MAJOR neglected condition. Only a minority (over 35,000) is referred to NHS specialist day pain clinics and GPs are not encouraged to refer, presumably because of the known shortages. Yet £1.1 million was spent over the last few years paying for treatment of 119 patients at NHS Bath. (Scottish Govt. figures) excluding travel. That is double the per patient cost of the Welsh local service.

DEMOCRAT REQUEST IGNORED

3. It is ten years since, in February 2002, a record 130,000 people emailed the Parliament urging as a priority better chronic pain services and an end to sending people from Scotland as far as Liverpool and now Bath. Since that response, the largest the Parliament has had to the present day, only tinkering round the edges has been done. Mainly, this is through hidebound officials behind scenes. There is no push to tackle health boards who don't finance CP treatment (ten out of 14) That is one reason why many want Healthcare Improvement Scotland's hands off the chronic pain issue.

4. This quango has virtually taken over the pain agenda. The other group involved is The Chronic Pain Steering Group, set up by Government but now heavily populated by quango appointees – NINE are involved, including the chair, Dr Steve Gilbert. Even one of the mere three "patient representatives" is from the quango. The Quality Unit is also represented on the Steering Group. So the same people make all the decisions and these decisions have brought little improvement but much secrecy and spin doctoring of facts.

5. This quango has recently caused public and Parliamentary anger over TWO health Reports it watered down. We cannot have a "watchdog" charged to protect patients if it censors bad conditions in the health service.

It produced the now infamous Ninewells Report and an earlier report in October, 2012, on chronic pain management.

6. The quango showed the same sort of censorship as at Ninewells in excluding key facts from a Report they published as "Update Report on Chronic Pain Management", co authored by the lead pain clinician, Dr Steve Gilbert, who also represents the quango. That report omitted "bad news" submitted by health boards, including the fact that ten out of 14 boards did not list having a budget to treat chronic pain. Essential info such as numbers of staff and patients in Scottish pain clinics were also excluded from the Report and, while waiting times for first appointments were claimed to average eleven weeks, six Boards did not submit waiting times, making a Scottish average impossible. The report was spin doctored to look as if a service which one Holyrood health spokesperson called "rock bottom" was really improving.

7. **IGNORING PATIENTS:** The quango, pledged to "consult patients" did not survey pain patients on their experiences for this report. I believe they have broken what they call their "legal duty of user focus" not only on excluding patient experiences but, six weeks after the Report, the data sent by Health Boards was forced out, but

hidden away on an obscure website. This was in spreadsheet form, impossible for anyone (e.g. patients) unaccustomed to NHS analysis. I analysed it; so did the Public Petitions Committee separately and the exclusion of key “bad news” was found.

8.

Healthcare Improvement Scotland has a budget of £20 million annually, it claims to produce “the strongest evidence”.

9. On the welfare of the elderly at Ninewells Hospital, the quango refused to publish its first report which, it emerged later, had listed 35 elderly patients the inspectors had found on trolleys and in wheelchairs in corridors of one area. The quango changed this to “some patients”. The changes followed a meeting with Tayside health board’s chief executive, Gerry Marr, who is also on the board of Healthcare Improvement Scotland.

10. Subsequently, four from the hospital inspection teams resigned, reportedly in protest. This is well documented at Holyrood and in the Sunday Herald. The health secretary voiced his dissatisfaction in Parliament.

11. Now, Mr Robbie Pearson, acting deputy CEO of the quango, is the person replying to the Public Petitions Committee’s many questions on how they handled the chronic pain report. Avoidance of clear answers is shown throughout.

12. Mr. Pearson was one of the quango’s officials who decided to “defer” /shelve the earlier Report on Ninewells after he visited Tayside chief executive Gerry Marr, who is on the HIS board. This is not a confidence inducing situation.

13. Please see below my evidence to the Public Petitions Committee in February, 2013, and a belated response by Robbie Pearson to the Committee’s questions on March 14, 2013. (now online, Public Petitions website)

From Page 4 of the HIS response onwards, a list of questions by the committee pinpoints time and again exclusion of bad news and manipulation of figures.

Example: item 23/26 shows how an HIS claim that 75% of the Scottish public now had access to pain management programmes, making this look like a Scottish average. But the committee points out this refers to only seven out of 14 health boards. And the 75% turns out to be only 64%. As with waiting times, claimed to average eleven weeks in Scotland, the committee illustrates that only six boards submitted waiting times but this reads as if it is a Scottish average.

The Report ignored facts which had been submitted to the linked, and equally secretive, Steering Group – e.g. in August 2012, a clinician reported to them that waiting times to see a pain psychologist were “between 72 and 82 weeks” in the Greater Glasgow area.

They also ignored the FOI figures for waiting times, up to 30 weeks for a first appointment in some areas, but now state in this letter that the FOI information was accurate. The Update Report was delayed seven months and could have included FOI answers issued March 2012 . But these answers were bad news.

[PE1460/I: Healthcare Improvement Scotland Letter of 14 March 2013 \(335KB pdf\)](#)

[PE1460/H: Dorothy-Grace Elder Letter of 19 February 2013 \(131KB pdf\)](#)

Chronic pain is a massive problem in Scotland, with an officially estimated 700,000

suffering in the community and the few specialist NHS chronic pain clinics underfunded and understaffed.

Only a minority of patients – but over 35,000 new and continuing patients annually– get the chance of these services, which can be of great benefit.

In itself, that is a human rights issue.

Three official reports since 2004 backed strong action.

(Professor Jim McEwen’s report, 2004/5, commissioned by the Scottish Executive; the GRIPS reports (Getting to Grips with chronic pain of 2007 and 2008, by Quality Improvement Scotland)

But a fourth report on Oct 26, 2012– by Healthcare Improvement Scotland– caused controversy as it is the only one to conceal the severe shortages and produce no call for radical improvement.

Campaigners have faith in the present health secretary; he has a long personal record of concern over inequalities. However, what happens with officials remains a huge problem. Umpteen replies to Parliamentary questions on chronic pain come via this quango and are remarkable for their failure to give a direct answer, even on simple matters. They still, for instance, refuse to state who exactly appoints people to the Chronic Pain Steering Group in replies to MSP Jackie Baillie (who is co chair of the cross party group on chronic pain).

Chronic pain devastates lives. People can, despite the conditions from which they suffer, have reasonable, functional lives – it is long-term pain that wrecks the person. This is what forces sufferers to give up their jobs; many plunge into poverty, some lose their homes and social lives. Marriages or partnerships often split, as suffering constant or regular pain affects personalities. The cost to the country of inadequately treated pain runs into billions in lost wages, working time, and drain on mental health services as many suffer from depression. Suicide rates are high.

Chronic pain is defined as pain continuing more than three months and set to last. Some specialists say “more than six months”; the majority state “more than three months”

However, as older people make up one of the highest percentages, the case for widespread, accessible chronic pain help in the NHS is linked with a failure to prepare for an extra multitude of elderly people; the “demographic time bomb” hitting us now, with ten million in the UK currently over 65 and a projection for 5.5 million more in 20 years time. Longer life is good news. But it is the quality of longer life which is of concern.

Name: ORG-0016a-Family Fund-000

Based on the evidence presented in the report *Getting it right? Human rights in Scotland*, or your own experience, what do you consider to be the most urgent human rights issues which should be addressed in Scotland's National Action Plan for Human Rights?

Rights related to disabled children, young people and their carers in the areas of:

- Independent living
- Carer's Rights
- Health care, including mental health, care and services
- Education
- Access to play and inclusion in leisure

What specific and achievable actions do you consider would best address the concerns you identify in your response to question 1?

As outlined within 'Getting it Right', The full realisation of human rights requires the adoption of effective measures or processes such as the development of appropriate strategies and policies, and the allocation of adequate resources. Awareness and capacity building can also be an important vehicle to put human rights into practice, as can practical approaches such as impact assessment.

As stated, a human rights based approach has been explicitly integrated in some strategies and policies in particular areas in Scotland, such as the National Dementia Strategy. This approach should be replicated in relation to disabled children, with their particular needs being explicitly addressed within all relevant policy and legislation, for example Scotland's National Play Strategy.

A national strategy for children with disabilities has not been realised to date.

The continued implementation of the *National Review of Services for Disabled Children and Young People* action plan should continue and if possible, SNAP should outline clear timescales in relation to areas for improvement, such as participation and consultation with disabled children and young people, their parents and carers, with a view to increasingly opportunity those children and young people:

- to make their own choices and take part in everyday life
- to be included in the decisions that affect and involve them
- to be included in the development of services and provision

In addition:

the rights of all children, including disabled children, should be specifically included within SNAP for Human Rights

In relation to ensuring that disabled and seriously ill children and young people can realise their right to an education:

- SNAP should outline a timescale for the Scottish Government's introduction for mandatory training for teachers and education support staff (in initial teacher education and continuing professional development) on general topics of additional support needs, inclusion and

equalities and specific topics of behaviour management strategies, communication strategies and learning disability/autistic spectrum disorder awareness, as recommended within ENABLE Scotland's Teacher Education Campaign Report 'Bridging the Training Gap' March 2011

-
- SNAP should outline what steps are being taken to ensure that parents and carers of children with additional support needs are fully informed of their rights in relation to the Additional Support for Learning Legislation
-
- SNAP should outline the Scottish Government's plans to improve access to necessary personal care and medical treatment within education establishments
-
- SNAP should outline how Scottish Government plans to address the widespread practice of unofficial suspensions/exclusions from school in relation to children with additional support needs
- In relation to health:
- SNAP should outline what actions are to be taken to improve access to and equality of service in from CAMHS services for disabled children and young people, those living with long term conditions or serious illness, and their families.

In relation to carers rights:

SNAP should outline what steps are being taken to ensure adequate information and service provision to carers, in particular in relation to the right to assessment.

SNAP should also outline what plans are in place to ensure equity of support in relation to accessing self directed support.

Scotland's National Action Plan for Human Rights

This letter constitutes a submission to the consultation on the above submitted by Community Land Scotland. The submission perhaps best relates to the section of the consultation regarding 'Where we live'.

Community Land Scotland does not profess any expertise in legal human rights issues but our interests stem from what we regard may be a lack of recognition of community rights in land and where, currently, private rights to enjoy land seem to have greater prominence and protection in our society than community rights to access land to help create a sustainable future for communities.

In property rights, where ownership confers enormous rights and privileges, that ownership is often and substantially protected as a human right, even where it may be argued it is against the interests of the wider community.

The question for us is when individual ownership rights should or should not transcend community rights – basic human rights for a community to be able to provide housing for its people, to access land for the development of economic opportunity, to use its resources in supporting the local economy and social advance for the future of the community and their culture. Issues determined by the community, not the whim of a single owner. All this takes us to the question whose rights should prevail, what value we attach to individual rights, and what to collective, community, rights.

You will be aware that Scotland has a land ownership pattern in which a tiny minority of the population owns the vast majority of the land. According to Warren (2002), 608 people own half of Scotland. This ownership pattern, we believe, limits opportunity for many people and, we believe experience demonstrates, can create the conditions for economic, social and population decline in many, principally rural, communities. In such circumstances the rights, pleasures and privileges enjoyed by generally wealthy and sometimes absentee owners, take precedence over the needs and interests of local people, to the disadvantage of such people.

In exercising comparatively recently granted community rights in relation to land purchase, quite properly, compliance with ECHR was a consideration in the construction of the law by the Scottish Parliament. It is right that ECHR is properly observed. Fundamentally, however, as matters stand what we would regard as rights fundamental to the sustainable future of a community, rights to have access to the resources of the land need to have greater weight than they currently do. In short there would appear to be a need for a re-balancing of rights over land with the interests of the wider community given greater weight. It may be that in the wider understanding of human rights there are other principles from international obligations that would benefit from being incorporated into Scottish practice, standing alongside ECHR and its current interpretation in relation to individual rights to enjoy significant property which impacts on community interests.

In developing Scotland's National Action Plan we would urge the Commission to have regard to community land rights, giving community and collective interests greater weight when seen against individual rights.

Community Land Scotland is willing to discuss the issues with the Commission and to assist further consideration of these issues of principle.

Based on the evidence presented in the report Getting it right? Human rights in Scotland, or your own experience, what do you consider to be the most urgent human rights issues which should be addressed in Scotland's National Action Plan for Human Rights?

While there are many important points made within the report about access to human rights for different groups within Scottish society, we felt that the report was relatively poor in relation to gender.

We were disappointed to see in the report such an apparent lack of understanding of current approaches to violence against women. Throughout the report there is a conflation between violence against women and domestic abuse (for example the suggestion that the Violence Against Women team at the Scottish government be renamed the 'domestic abuse unit'). Domestic abuse is one form of violence against women – to restrict approaches to violence against women solely to domestic abuse is to ignore the experiences of many women who for example experience rape by a neighbour, an uncle, a work colleague. It also ignores other very important aspects of the definition of violence against women which the Scottish Government has adopted - forced marriage and FGM, and prostitution and commercial sexual exploitation. We do not consider the approach in your report of putting the term violence against women in quotation marks to be particularly helpful.

We were also disappointed to see SHRC put forward the view that the current requirement for corroboration acts to protect complainers of sexual offences. This is an argument we have come across before which is being put forward by legal bodies opposed to the removal of the requirement for corroboration. How can a legal system claim to provide access to justice to sexual offence complainers when the requirement for corroboration has such a limiting impact on cases being prosecuted? According to Crown Office figures, only 25% of rapes reported to the police are prosecuted. In our experience, the most common reason survivors are given for their case not reaching court is lack of corroborating evidence. By its nature, rape is a crime which is very difficult to corroborate. It often happens in private, with no witnesses. Where there is no significant physical injury, it can be very difficult to prove by corroborated evidence that the complainer did not consent and that the accused knew that the complainer was not consenting. Corroboration is a significant barrier to rape survivors being able to access justice; this is a barrier that disproportionately affects women. There is an issue about how rape complainers are treated in court – in our view, this is not a reason to support the requirement for corroboration, it should instead act as a prompt for a human rights organisation such as SHRC to consider what action is needed to protect sexual offence complainers from degrading treatment when they try to seek legal redress for the crime inflicted upon them. There remain significant issues about how rape complainers are treated in court, particularly in relation to the use of sexual history and character evidence and medical records.

There needs to be far greater focus on the rights to privacy and family life for complainers reporting rape and other sexual offences, and we look forward to the SHRC's contribution to this

What specific and achievable actions do you consider would best address the concerns you identify in your response to question 1

Previous research into the use of sexual history and character evidence, published by the Scottish Government in 2007, found that 7 out of 10 rape complainers were virtually guaranteed to be asked about their sexual history or character in court. Since then, the Crown Office has published new guidance recommending that a robust approach be taken to defence applications to introduce this type of evidence. What is badly needed is an up-to-date examination of what is happening with the use of this type of evidence, as well as the use of complainers' medical records. An independent evaluation should be commissioned into how well the privacy rights of sexual offence complainers are being protected within Scottish courts. Crucially, this evaluation must also seek the views of complainers. While there have been sustained attempts to improve legal responses to rape, complainers' voices have been missing from this process. We need to hear directly from complainers about their experience of the justice process and how well they felt their rights were being protected.

We believe that there is a strong argument for introducing independent legal representation for sexual offence complainers in respect of sexual history and character applications and access to medical records. Rape Crisis Scotland considers that this is the only way of complainers' being able to actively seek protection for their privacy rights.

Name: ORG-0020a-Intlife-000

Based on the evidence presented in the report *Getting it right? Human rights in Scotland*, or your own experience, what do you consider to be the most urgent human rights issues which should be addressed in Scotland's National Action Plan for Human Rights?

The right to choose non-pharmacologic treatments especially – but not exclusively - for chronic pain regardless of affluence or where the patient lives (as part of *“freedom to select an alternative form of treatment”* and *‘economic accessibility’*).

Currently, patients in England and Wales can opt to have non-pharmacological treatments (including CAM) through the NHS (GP referrals).

In Scotland, only those who can afford it can have access to a variety of therapies and other non-pharmacological interventions. Meanwhile, those who cannot afford it – especially chronic pain patients, have to rely on (demonstrated) ineffective palliative interventions which mostly cause further damage to their health and even death in some cases.

What specific and achievable actions do you consider would best address the concerns you identify in your response to question 1?

- Regulation of Complementary and Alternative Medicine (CAM) and Referral pathway
- Development of specific coding for pain

The Scottish Government already acknowledges that *“CAM may offer relief to some people suffering from a wide variety of conditions”*. . . . stating that *“a GP or hospital clinician may refer a patient for alternative treatment”* (but *“The GP or hospital clinician would require to be satisfied of the value of the treatment and the competence of the practitioner, and would remain responsible for the patient's medical care”*) and encourage the use of CAM (*“Chief Executives are asked to take this into account in the planning of services”*). (NHS Circular: HDL(2005) 37)

New SIGN draft guidelines on chronic pain recommends the use of some forms of CAM (such as massage and acupuncture) as did NICE some years ago.

The Clinical Standards Advisory Group (Services for Patients with Pain, March 2001) and QIS (Best Practice Statement - Management of Chronic Pain in Adults, February 2006) also confirm CAM effectiveness, the need for regulation and GPs willingness for CAM referrals.

This recognises effectiveness of CAM.

The Department of Health in Whithall helped and sponsored the creation of a nationwide regulatory organization for CAM (the Complementary and Natural Health Council – CNHC) to allow GP referrals and protect the public. The Scottish Government have stated that they do not recognise the CNHC and that they see no need for the creation of an Scottish equivalent.

It would be easy to adopt an organisation such as the CNHC (or create a Scottish equivalent) to regulate CAM and facilitate a referral pathway so that GPs could refer patients to non-pharmacological/CAM interventions ending the current financial inequality to health and the right to choose non-pharmacological treatments.

Based on the evidence presented in the report Getting it right? Human rights in Scotland, or your own experience, what do you consider to be the most urgent human rights issues which should be addressed in Scotland's National Action Plan for Human Rights?

Inclusive communication for all citizens in Scotland. Inclusive communication must be embodied in this action plan as without inclusive communication none of the other rights/themes make sense. Communication is a fundamental right as without communication, a person cannot take up their other rights.

For example, "human dignity is an underlying principle relevant across all rights and all spheres of life"

<http://www.scottishhumanrights.com/actionplan/themedignityandcare> If someone cannot understand what this means or cannot express how their dignity is not being considered, then how can they decide whether or not their human rights are being breached?

Or if a person does not understand what "Self-determination, autonomy and participation are central principles in human rights law. Issues which arose from the scoping project included legal capacity, the use of guardianships and end of life decisions" means, how do they know if the principles are being applied in their own life and that of their family or if the issues refer to them?

Inclusive communication is a human rights issue that needs to be addressed urgently as it is still the case in Scotland that too many of its citizens are excluded from civic society; and from being active citizens if they have a communication need – for example, a low literacy level, or are a Deaf BSL user whose first language is British Sign Language not English, or cannot understand complex language, or has aphasia, or have lost their hearing, or English is not their first language and the person has a disability that makes it difficult to learn another language, or a person is unwell and cannot concentrate; the list is endless. But there are ways to make sure the majority of people with a language/communication difficulty/need have all the information they need and to make sure that those with the knowledge communicate it in such a way that everyone has the same opportunity to understand and to take part.

What specific and achievable actions do you consider would best address the concerns you identify in your response to question 1?

Include the Principles of Inclusive Communication in the SNAP with the recordable outcomes - www.scotland.gov.uk/Publications/2011/09/14082209 and for more information - <http://www.inclusivecommunicationscotland.org.uk/wp-content/uploads/2012/04/ICIS-Report.pdf>.

Achievable actions – making sure that all documentation that is produced about the SNAP on Human Rights is written in plain language and is produced in accessible formats, including Braille, Easy Read and in BSL on DVD.

Production of information about human rights and what individuals can do to make sure that their human rights are upheld should be easy to understand and available in physical locations, not just online. There needs to be a commitment from the Scottish Government that this will happen.

Local authorities and health boards (and other public bodies) should be able to show how they involve all the communities of interest in the human rights impact assessment of their work including the services they provide and this information should be available to all.

Public bodies should be held accountable for the ways they expect service users and members of the public to reach/communicate with them. For example, the majority of deaf people no longer have textphones as they are difficult to use and have to be attached to a landline and if there is no direct textphone number the person has to use TextRelay; they now have mobile phones and use SMS and cannot use TextRelay. But many public bodies still have a textphone number or TextRelay as the “extra” option for those who cannot use a telephone. The public body should have to publish their reasoning for this so that deaf people and others can challenge this.

Name: ORG-0022a-name redacted-010

Based on the evidence presented in the report Getting it right? Human rights in Scotland, or your own experience, what do you consider to be the most urgent human rights issues which should be addressed in Scotland's National Action Plan for Human Rights?

An outcome that significantly increases the number of children who are sent to compulsory boarding school. (Reference Shetland Island Blueprint for Education, which does not even mention the enforced boarding as a welfare issue.)

An outcome that so centralizes schooling that children spend hours travelling and cannot participate in after-school events.

What specific and achievable actions do you consider would best address the concerns you identify in your response to question 1?

Councils have to consider how to educate children without compulsory boarding school. Scottish Government considers it an exceptional event when councils increase the number of compulsory boarders and only allow it in rare cases and when the costs and effects on family life have been fully evaluated. Likewise for extreme centralization.

Introduction

Scottish Land & Estates is a member organisation representing the interests of land owners and managers in rural Scotland. Scottish Land & Estates has over 2,500 members with interests in a variety of land uses, from farming, forestry and sporting to housing, conservation and renewable energy. Our members range from traditional, private landowners and farmers to community owners and a wide variety of other land-based trades and professions.

Landowners are members of wider society so the impact of human rights in terms of dignity and care, health, where we live, education and work, private and family life, safety and security, detention and access to justice are all relevant to our members as individuals as well as in their capacity as employers, housing providers, land managers and as part of the communities in which they live and operate their businesses.

Some recent developments in Scotland have focused minds on the right to property as a human right. The decision of the Supreme Court in the Lord Advocate's appeal of the Scottish court's decision in the *Salvesen v Riddell*¹ case is eagerly awaited. In addition the ongoing review of land reform by Dr Allison Elliott and her team² has raised some interesting questions about if, when and how it can be justified in a modern democracy to deprive one person of his or her right to property.

We therefore welcome the opportunity to respond to this consultation at this time. In this response we concentrate on the right to property as a human right. We recognise however that it is difficult to examine one human right in isolation from the others and that landowners are members of wider society who will have an interest in all human rights and particularly how they can be upheld and promoted in rural areas.

¹ <http://www.scotcourts.gov.uk/opinions/2012CSIH26.html>

² <http://www.scotland.gov.uk/About/Review/land-reform/ReviewGroup>

We would refer the Commission to the Scottish Land & Estates response to the Land Reform Review Group for more information about the work of this organisation and our members.³

Answers to Consultation Questions

Questions 1: Based on the evidence presented in the report *Getting it right? Human rights in Scotland*, or your own experience, what do you consider to be the most urgent human rights issues which should be addressed in Scotland's National Action Plan for Human Rights?

"Getting it Right? Human rights in Scotland" provides a very useful overview on the status of human rights within the Scottish legal and policy framework. It is clear that in Scotland a lot of positive work has been undertaken particularly since devolution in terms of incorporating a human rights approach to policy and law making, but that further progress can be made. We see the Scottish Human Rights Commission ("the Commission") as having an important role to play in the promotion and safeguarding of human rights for all in Scotland, assuming adequate resources are made available to perform this role.

The report makes reference, and rightly so, to the places we live and associated issues such as security of tenure and affordability. These are all mentioned in the context of an individual's access to adequate housing. However, there are wider aspects of the right to property which we think could be examined in more detail from the Scottish perspective and this is a potential "gap" in the current analysis.

The right to property is a diverse bundle of rights ranging from outright land ownership, a tenancy or other occupational right to recreational access rights. As an organisation, we strive to promote private property rights as well as best practice in the exercise of those rights. We view land not just as an economic resource but also an important social and cultural resource. We acknowledge the history of land ownership in Scotland, particularly in the Highlands and Islands, and we recognise that rights and responsibilities are flip sides of the same coin. Landowners' motivation and management practices are often misunderstood or deliberately misrepresented. In our experience they generally have a very keenly developed social conscience and operate with often very long term perspectives. It is common for traditional estate owners to refer to their role as "stewards" or "keepers" of the land for the benefit of future generations and to develop 50 or even 100 year whole-estate plans. Facilitating or providing environmental and community benefits are often core to their activities. In some cases landowners play a role in facilitating access to basic services where the public sector is unable or unwilling to do so. For example, in rural and remote areas access to affordable housing can be a significant issue. Not all social housing providers are able or willing to make housing provision. In these cases it is the private landowner who often fills the gap through the provision of affordable rented housing.

In our view, any rights exercised in respect of land carry responsibilities, whether exercised by the owner, occupier or member of society at large. Our members demonstrate that responsible and progressive land management contributes significantly to the success of rural Scotland, economically, socially and culturally and that integrated estate management can deliver better outcomes for the rural economy than alternative more fragmented policies.

³ http://www.scottishlandandestates.co.uk/index.php?option=com_content&view=article&id=1933&Itemid=228

The right to property is of course not absolute in a modern democratic society but the extent to which it is justifiable to deprive an individual of his or her rights and in what circumstances, is fundamental. Land is nearly always managed, to some extent, in the wider public interest by private owners and occupiers (for example through delivery of environmental benefits, built heritage, affordable housing, community benefits, renewable energy, safe food supply etc). However, there is often a perception that the public interest in Scotland would be served by using absolute right to buy legislation to attempt to reverse historical events which predated, sometimes by hundreds of years, our current awareness of human rights and social justice. This perception of the public interest seems to be motivated by negative views of private ownership rather than a genuine social justice agenda and is not necessarily in the best long term interests of the people of Scotland.

Developing a human rights based approach to land policies in Scotland is undoubtedly a challenge given the broad spectrum of political views and the historical perspective. If given the luxury of developing a new system of land tenure, it is probably fair to say that no government would start from where we are now! We have farm tenancy legislation, so tightly regulated that it is now at the point of stifling the sector and crofting legislation so complex that it is difficult to administer effectively. Political instability, excessive, retrospective legislation and protracted litigation have all influenced land management decisions and practice in Scotland, arguably to the detriment of rural and wider society generally.

A political and legislative framework which respects the right of the individual as well as the reasonable aspirations of society need not result in one group of individuals being deprived of their rights against their will. Society can enjoy the benefits of land without owning it and landowners need not be deprived of ownership in order for their land to deliver benefits in the public interest.

Question 2: What specific and achievable actions do you consider would best address the concerns you identify in your response to question 1?

While all Bills should be vetted for compatibility with the Human Rights Act before being laid in the Scottish Parliament, there appears to be no such safeguard for amendments to Bills, as the Salvesen case has demonstrated. This appears to be a clear gap, in human rights terms, in the parliamentary process particularly non-government amendments submitted at stages 2 and 3.

The Commission has a role in intervening in the parliamentary process so its existence is a potential safeguard where there are amendments lodged which may be incompatible with human rights. The Commission was not in existence when the Agricultural Holdings (Scotland) Act 2003 was passed so it is not clear how, or if, it could have prevented the *Salvesen v Riddell* litigation. It is also not clear what power the Commission would have to prevent amendments from being passed which it felt would render the Bill or part thereof as incompatible with human rights. There is also a resourcing issue if the Commission was to be expected to scrutinise all amendments to all Bills before the Parliament.

There is a further window of opportunity for Bills to be scrutinised for human rights compatibility after they have been passed and before they receive Royal Assent, but again it is not clear whether there is a robust procedure to be followed at this stage or whether it is a more ad hoc process depending on an interested party having the resources or expertise to mount a challenge.

Some transparent procedures therefore for scrutinising amendments and Bills pre Royal Assent, for compatibility with human rights would be a desirable safeguard in the current parliamentary process, whether this is carried out by the government, Commission or some other suitably qualified and resourced body.

We would be happy to provide further information or to elaborate or clarify any of the matters raised in this response.

Name: ORG-0024a-Shakti Women's Aid-000

Based on the evidence presented in the report *Getting it Right? Human rights in Scotland*, or your own experience, what do you consider to be the most urgent human rights issues which should be addressed in Scotland's National Action Plan for Human Rights?

Inequality is still one of the biggest human rights issue in Scotland, in particular structural inequalities that create and/or perpetuate social inequalities, and in our experience we see how this especially impacts on the rights of women and children affected by abuse.

Inequality affects people in so many ways but particularly denies people access to safety and security, with particular consequence for children and young people. We support children from black minority ethnic communities in Scotland who are trying to escape abuse but who often feel trapped; practically due to lack of culturally-aware support or lack of knowledge leading to incorrect advice given (e.g. around immigration issues affect themselves or a caring parent), and emotionally, from racial and gender-based expectations of family, community and wider society. While their status as part of Scottish society is not always considered, or even denied, they face yet another layer of inequality preventing them from realizing many human rights as set out in the UNCRC, UN Declaration of Human Rights and the European Convention (right to life, security of person, to play, to a safe home, to not face torture, degradation, etc).

Domestic abuse (as gender-based abuse) is a huge human rights issue in Scotland, with almost 60,000 incidences reported to police in 2011-2012 (Scottish Government Statistics) and with firm roots within gender inequality, disproportionately affecting the rights of women and children.

Bringing change that further assists **children to access their rights** is also vital. One young person using our service remarked on children's rights, saying "Children don't always get their rights because adults don't know about them".

What specific and achievable actions do you consider would best address the concerns you identify in your response to question 1?

There needs to be much greater commitment to recognising, connecting with and supporting the many communities that make the wider Scottish 'community', based on real knowledge and without employing stereotypes or political rhetoric. This could be more achievable now in schools for example, with the new Curriculum for Excellence but it requires teaching staff to be better aware themselves: equality issues are often not part of student teacher's curriculum, with safety issues for ethnic minority young people often not discussed in schools. In fact, a review of core learning for all those training to work with the Scottish public, and particular in child protection agencies (health, education, police, social work) is needed to prevent continued lack of knowledge, stereotyping and the incorrect understanding of Scottish society as being 'homogeneous'. This can help to ensure that more young people in Scotland have *their* particular issues considered when frameworks are created to increase young people's safety, hopefully improving practice for *all* young people who may ever need information or support.

There also needs to be a commitment from our government to help ensure there is continued support available for those affected by safety issues such as gender-based abuse including rape and sexual assault.

Based on the evidence presented in the report *Getting it right? Human rights in Scotland*, or your own experience, what do you consider to be the most urgent human rights issues which should be addressed in Scotland's National Action Plan for Human Rights?

The evidence from *"Getting it right? Human rights in Scotland"* notes three areas - structure, processes and outcomes - that should be considered in terms of ensuring Human Rights. The evidence notes that there has been progress made in terms of processes and structures but expresses serious concerns in terms of outcomes. We would agree from the evidence provided in the report and evidence examined in identifying the Council's Equality Outcomes for 2013-2017 that this analysis is broadly correct.

At the moment there is a unique alignment between Human Rights Legislation and equalities legislation in Scotland. Additionally the Equality Measurement Framework developed by the Equality and Human Rights Commission and others identifies three key domains of equality - outcomes, process and autonomy. Conceptually and practically there is strong consistency between human rights and equality. This provides great opportunities for advancing equalities and human rights.

The Equality Act 2010 (Specific Duties) (Scotland), Regulations 2012 require listed public authorities in Scotland to set equality outcomes by April 30th 2013. In addition these authorities are required to assess the impact of policies on protected groups. These can be seen as two key tools that can be used to advance outcomes both for equality and human rights if a coordinated approach is adopted.

West Dunbartonshire Council's Equality Outcomes for 2013-2017 (**Appendix 1**) indicate the major areas of concerns on equality and fairness, and these overlap with ensuring human rights. We would suggest that the National Action Plan for Human Rights should be focused on delivering on the key areas of overlap between Equality Outcomes and human rights such as equity of access.

What specific and achievable actions do you consider would best address the concerns you identify in your response to question 1?

There are specific key actions that require to be taken forward by SHRC & EHRC as well as by Scottish Government and all public bodies. These are:

For the Scottish Government

- Continue to provide strong explicit and public support for advancing equalities via the Scotland Specific Equality Duties;
- In giving this support make explicit links between Human Rights and equality and fairness, highlighting that their importance increases in difficult economic times;
- Set indicative national outcomes on equalities and human rights;
- Strongly support the work of the SHRC;

- Ensure that the new direction set out for Community Planning properly incorporates equality and human rights considerations.

For Public Authorities covered by the Scotland Specific Equalities Duties

- Mainstream Equality and Human Rights and make them explicit considerations that are adequately resourced. These considerations need to be concretely represented in corporate plans, department plans, service plans and single outcome agreements, and form part of performance and risk management processes;
- Ensure the involvement of vulnerable and disadvantaged groups in service planning discussion as this will advance equality, fairness, good relations and efficient allocation of resources;
- Expand service monitoring and involvement and consultation processes to cover all relevant protected characteristics explicitly;
- When carrying out screenings and equality impacts, consider at the same time potential Human Rights impacts; this will aid joined up policy formation and review. Budget proposals and decisions must also be properly influenced by assessments.
-

For the Equality and Human Rights Commission and Scottish Human Rights Commission

- engage with all public bodies to ensure consistent leadership in relation to human rights and equality
- Provide guidance on carrying out equality impact assessments that incorporate Human Rights explicitly

Appendix 1 2017

West Dunbartonshire Council Equality Outcomes 2013-

<p>1. Greater participation and Involvement of people from under represented Groups in influencing Decision Making in the Area</p> <p>Protected characteristics; Race, Sex, Sexual Orientation, Religion and Belief, Disability, Gender reassignment, Age</p>
<p>2. Increase the proportion of Council employees who are from currently under represented groups</p> <p>Protected characteristics; Race, Disability, Sex</p>
<p>3. Reduce the gender pay gap</p> <p>Protected characteristic; Sex</p>
<p>4. Reduce the levels of gender segregation in employment</p> <p>Protected characteristic; Sex</p>

<p>5. Improve the speed and effectiveness of reasonable adjustments for disabled employees</p> <p>Protected Characteristic; Disability</p>
<p>6. Increase the use of flexible working arrangements</p> <p>Protected characteristics: Pregnancy/Maternity and sex</p>
<p>7. Increase in the proportion of carers from each group who feel supported and are capable of continuing their role as a carer</p> <p>Protected Characteristics; Sex, Age</p>
<p>8. Decrease the Number of Hate Crimes West Dunbartonshire</p> <p>Protected characteristics: Race, Sexual Orientation, Religion and Belief, Disability, Gender reassignment</p>
<p>9. Reduce identity based bullying and harassment in schools</p> <p>Protected Characteristics; Race, Sex, Sexual Orientation, Religion and Belief, Disability, Gender reassignment</p>
<p>10. Reduce the attainment gap between students with and without additional support needs</p> <p>Protect Characteristic; Disability</p>
<p>11. Reduce gap between attainment levels of boys and girls at school leaving age</p> <p>Protected Characteristic; Sex</p>
<p>12. Better meet the educational needs of Gypsy Travellers</p> <p>Protected Characteristic; Race</p>
<p>13. Better meet the accommodation needs of Gypsy Travellers</p> <p>Protected Characteristic; Race</p>
<p>14. Improve the accessibility of transport for women, older people and disabled people</p> <p>Protected Characteristics; Sex, Age and Disability</p>

Name: ORG-0026a-People First (Scotland)-000

People First (Scotland) is a Disabled Person's Organisation of people with learning disabilities. It is entirely controlled and governed by people with learning disabilities. Our submission on this consultation is wholly in respect of people with learning disabilities and how access to, and denial of, human rights in Scotland affects us and impacts on our lives.

The background to our submission is that the people with learning disabilities regularly have less access to Human Rights than other citizens. This has been recognised and acknowledged by several reports from a number of bodies including the Scottish Human Rights Commission, the Equality and Human Rights Commission, the House of Commons and House of Lords Joint Committee on Human Rights and in a large number of research reports by academic institutions and others (e.g. Lemos and Crane and Norah Fry Research Centre).

The fact that we still do not have access to the same rights as other citizens is not because no-one has heard that we don't get our rights. Report after report has said so, but it continues to be the case we are denied our rights. Our view is that this is allowed to happen because we are still not seen as fully human beings in our society and there is a general view that we are so different from other people that the usual rules do not apply to us.

We will comment on specific areas of rights below but, in the most general sense, our response to the consultation questions is:

Based on the evidence presented in the report Getting it right? Human rights in Scotland, or your own experience, what do you consider to be the most urgent human rights issues which should be addressed in Scotland's National Action Plan for Human Rights?

People with learning disabilities should be seen and accepted as fully human beings with the same rights as other citizens in Scotland.

What specific and achievable actions do you consider would best address the concerns you identify in your response to question 1?

Scottish Government should take responsibility for the attitudes of Scottish citizens and seek to create and foster attitudes of acceptance and inclusion and understanding so that everyone accepts that human rights apply to people with learning disabilities in Scotland.

We will make specific points about the key Themes identified in the 'Getting it Right?' report.

1. Dignity and Care in the lives of people with learning disabilities

Based on the evidence presented in the report Getting it right? Human rights in Scotland, or your own experience, what do you consider to be the most urgent human rights issues which should be addressed in Scotland's National Action Plan for Human Rights?

We agree that Article 8 of the European Convention is relevant here and the right to private and family life is often not respected and observed in care for people with learning disabilities. We also think that Article 3 – the right not to be treated in

degrading and inhumane ways is often breached. We all know about the scandal of Winterbourne View but we know that degrading and inhuman treatment and being punished for things that no other citizen would be punished for are common in care settings and through the care systems.

People with learning disabilities, especially in care settings but sometimes in family homes with informal carers, are kept in a child-like, dependent, state; being told what they must do, having to ask permission for nearly everything they do and punished if they disobey the sometimes complicated rules they have to follow. This is not the experience of everyone but it happens to people with learning disabilities much more often than to any other citizen and is acknowledged by most research and investigation.

In 2000 the Same As You review for services for people with learning disabilities recommended to end institutionalisation in Scotland by 2005. Eight years after the deadline, there are still people with learning disabilities living in institutions and this is not good enough. Many people who lived in long-stay hospitals have been simply moved into other kinds of institutional life and we will say more about this in later sections.

Care settings are not always safe places for people with learning disabilities. There is much evidence of bullying and of physical and sexual abuse of people with learning disabilities within these settings. In care settings where people are grouped together it is easy to lose sight of the fact that people are individuals with individual needs. Abuse and mistreatment in care settings is a reflection of wider social attitudes towards people with learning disabilities.

While recognising that many care services are not safe and do not provide good quality care, some services which do provide good and respectful care find themselves terminated due to open tendering of the service contract purely as a way of reducing commissioner budgets. As prices and costs are driven down, wages and job satisfaction of care staff, as well as other benefits including supervision and support to staff are reduced, creating more dangerous conditions for vulnerable people dependent on services.

Self-determination and decision-making

We agree with the Getting it Right report that there are some serious problems in this area, especially for people with learning disabilities. Despite the very positive intention of the Adults With Incapacity Act and the protective principles established for the Act, we firmly believe that the Act and the principles are not working as they were intended.

Generally, most people with learning disabilities find we have limited powers to decide things about our own lives and our own futures. Many people with learning disabilities are subject to Guardianship and we are told that the numbers are growing rather than reducing. The obligation on guardians to assist people to develop their capacity to manage their own affairs is generally ignored so that guardianship actually reduces people's capacity and potential. We are told that no-one is able to monitor the principles of the Act and that seems very odd to us. It makes us wonder if there is any value in having a set of principles which are not monitored or enforced.

We agree with Article 12 of the UN Convention on the Rights of Persons with Disability that there should be a basic right to legal entity and legal capacity and that the idea of **supported** decision-making should replace the current approach of **substitute** decision-making.

There are a number of pieces of legislation containing restrictions on the rights of people with learning disabilities to make decisions and manage their own affairs and some of these are contradictory to each other and not compatible with the UN convention:

Adults With Incapacity Act

Mental Health (Care and Treatment) Act

Adult Support and Protection Act

Sexual Offences Acts

Criminal Procedures Act

Management of Offenders Act

There should be a review of all of these Acts and a new act dealing specifically with the rights and needs of people with learning disabilities should be drafted.

New initiatives like Self-Directed Support which claim to increase service user choice are wholly dependent on the budget allocated and we see clear signs that SDS budgets are decided as a way to reduce Local authority spending. The freedom of movement of people with learning disabilities is restricted due to it being difficult to transfer care packages between local authorities. People are still living in institutions and this is wrong. The culture of Care settings can sometimes breach our right to dignity and protection from degrading and inhumane treatment. The wrong attitudes and false assumptions about people with learning disabilities contribute greatly to the mistreatment.

What specific and achievable actions do you consider would best address the concerns you identify in your response to question 1?

All institutions should be closed and appropriate community based services should be put in place.

Commissioners and providers should work together to create a career structure and reasonable pay structure for care staff so that supporting people with learning disabilities is a valued and attractive career.

Training for care staff and health care staff and for scrutiny inspectors should involve people with learning disabilities as trainers as acknowledged in the Westminster Government's Concordat with other learning disability organisations.

People with learning disabilities should be included in any inspection or scrutiny teams for learning disability services.

The Care Inspectorate, Mental Welfare Commission Scotland and any other inspection or scrutiny bodies should be required to keep up unannounced visits.

Whistle-blowing policies should be in place for care staff and whistle-blowers should be listened to and protected.

Care and support services, including independent advocacy, for vulnerable people should not be put out to open tender unless the existing service has been found to be of an unacceptable standard.

Independent advocacy should be properly funded and supported and be available to anyone receiving learning disability services and not be subject to care service agreement (including Responsible Medical Officers).

There should be an urgent review of guardianship, attorneyship and the legal framework which impacts on people with learning disabilities and their treatment and right to self-determination and a new, comprehensive piece of legislation should be drafted in consultation with DPOs of people with learning disabilities.

2. Health

Based on the evidence presented in the report *Getting it right? Human rights in Scotland*, or your own experience, what do you consider to be the most urgent human rights issues which should be addressed in Scotland's National Action Plan for Human Rights?

Article 2 of the European Convention on Human Rights says that States must do *"all that it can to prevent a person's life from being avoidably put at risk in health care"*. Health services must prohibit torture, inhuman or degrading treatment or punishment. The Patient's Rights (Scotland) Act 2011 says that health facilities, goods and services are accessible to all without discrimination. Article 25 of the UNCRPD gives the right to health for disabled people and includes a range of rules that States must obey to protect that right. These include: the same quality of care is provided to disabled people and that disabled people have the right to informed consent.

However these rights are often breached for people with learning disabilities. We know this because the Health statistics for people with learning disabilities are devastating.

People with learning disabilities are 58 times more likely to die before the age of 50 than other citizens. 46% of doctors and 37% of nurses say that people with learning disabilities receive poorer health care than other people. 35% of health workers reported that they had not been trained in making adjustments to support people with learning disabilities. 70% of GPs receive no training to help them treat people with a learning disability and 90% felt that a person's learning disability made it more difficult to make a diagnosis.

People with learning disabilities have been excluded from involvement in decision making about services that affect their lives. Information is often given to their families rather than to them. Some health workers are not patient enough with people with learning disabilities and do not give them enough time to explain how they are feeling.

There have been some very good attempts recently to produce information and advice in easy-read and accessible formats. Much more of this needs to happen.

Additional payments to GPs for appointments with people with learning disabilities suggests that we are different from other patients they meet. We think this is a dangerous message to give to medical professionals. There are many people with

additional communication needs who need good attention and good diagnoses and treatments from GPs just as we do.

People with learning disabilities do not receive the same quality of care as the rest of society and we are not always involved in decision-making about our health.

We agree with the Getting it Right report that the See Me campaign has done much to reduce the stigma of mental ill-health. There is no such equivalent campaign for learning disability and the stigma and discrimination around this condition is far greater than stigma around mental illness and ill-health.

What specific and achievable actions do you consider would best address the concerns you identify in your response to question 1?

The Government should make sure that there is better communication training for all health professionals and greater awareness of learning disability. Our own DPOs should be involved in the training and awareness-raising.

The NHS should stop making additional payments to GPs for meeting people with learning disabilities in surgeries and instead expect good diagnoses and treatments for all people regardless of difference. Medical professionals should see people with learning disabilities as ordinary patients.

More easy-read and accessible documents about health services and screening facilities need to be made widely available.

There should be an anti-stigma campaign around learning disability like the See Me campaign for people with mental health problems.

3. Where we Live

Based on the evidence presented in the report Getting it right? Human rights in Scotland, or your own experience, what do you consider to be the most urgent human rights issues which should be addressed in Scotland's National Action Plan for Human Rights?

Most people with learning disabilities do not get to have a choice about where and with whom to live despite the fact that Article 19 of the UN Disability Convention protects this choice and being able to live in a community that supports inclusion and participation. This should include a range of options for individual tenancies and setting up homes with partners, residential, shared or sheltered accommodation, and for providing the same choices as are available to others. This right is breached when: people with learning disabilities are not allowed to live in the community because they need support in their everyday lives; support is provided in a way that takes away people's control from their own lives; support is not given, people with learning disabilities have to fit into public services and structures rather than these services and structures being organised to suit their individual needs and when development of unusual behaviours is seen through a medical lens and treated as if the person is unable to learn or change and the person is funnelled into "specialist" accommodation where their condition will be "understood" as in secure challenging behaviour services.

People should be able to choose to move near family and friends because it is important for inclusion in family life. However, if the local authority is paying for your support it makes it difficult to move.

Some people with learning disabilities have lived in care homes for older people. In 2009 it was estimated that around 869 people with learning disabilities were resident in care homes for older people. Many of these residents were found to be around twenty years younger than the other residents. Staff in these homes lacked specialised training in supporting people with learning disabilities. Often the activities on offer in care home environments were found to be infrequent and unsuitable for younger people with learning disabilities. We do not agree that conditions in these homes are suitable for older people, either.

We have heard many stories about social workers across the country saying that single tenancies were no longer possible for people with learning disabilities and that group homes are becoming the only possible model.

What specific and achievable actions do you consider would best address the concerns you identify in your response to question 1?

People with learning disabilities should be able to make their own choices about where and with whom we live. We should be able to live on our own with appropriate support and not be forced to live in shared housing with people we do not want to live with. We should be supported to find housemates or flatmates we get on with and have the option of shared living arrangements. It should be made easier to transfer care packages between local authorities to make it easier for people to move. People with learning disabilities should never live in homes for older people when they are not old.

Group care settings, where people are made to live together should not ever be an option. Whatever the living arrangement, it should be safe and well managed and supervised so that it is individualised and person-centred and helps people achieve their personal outcomes.

4. Education

“Education is both a human right in itself and a way of ensuring other human rights.”

Based on the evidence presented in the report Getting it right? Human rights in Scotland, or your own experience, what do you consider to be the most urgent human rights issues which should be addressed in Scotland’s National Action Plan for Human Rights?

People with learning disabilities are disadvantaged by segregated ‘special’ schooling. People First believes that supporting children and young people with additional needs is best achieved through adapted and supported provision within mainstream schools rather than placing pupils in special schools.

Even though the Scottish Government says that it wants to bring all children into mainstream schools, in 2011 there were 6,800 pupils in 163 special schools in Scotland.

There is a lack of choice for people with learning disabilities about what school they go to. Some are forced to attend special schools even if they want to attend mainstream schools.

In mainstream schooling there is not a proper inclusion approach. People are still left to follow what they can and are often excluded from significant parts of the school experience. Allowing disabled children to be there but not change anything to take account of their differences is more common than full inclusion and schools seem to be unwilling to adjust what they do to meet the needs of different people.

During school there seems to be very little attention to what students with learning disabilities want from life. The special education system prepares us for a life as a different and disabled person rather than preparing for fully human adult lives like other citizens. For children with learning disabilities, transition appears to be about a move from child services into adult services rather than from school to work as other students expect.

We do understand the fears that many parents and families have about their children who have learning disabilities. The Government uses parental rights and choice as an excuse for special schools still being the first choice. This is because it is still seen as the safer option where children with learning disabilities will be less likely to be bullied and frightened and nothing will have to change in ordinary schools for teachers and other students. Guidance and advice given by other professionals adds to the parents' worries and influences their decisions.

The UK Government declared that the general education system in the UK includes mainstream, and special schools, which they argue is allowed under the Convention. It will be decided whether it is ok to have both mainstream and special schools at the Disability Convention in 2014. We don't know yet if the UN Committee will consider that the "goal of full inclusion" means abolishing separate special schools altogether. We believe that they should be abolished and that their very existence gives a loud and clear message to the community that we are so different from other people that we are not fit for inclusion in society.

The right to Education requires that everyone must have access to primary, secondary and higher education and that education buildings and the way the subjects are taught must be accessible to all without discrimination. This includes a duty to prioritise the people who will find education most difficult such as people with a disability. This right is often breached for people with learning disabilities.

Article 24 of the UN Disability Convention provides for the right to education of disabled people. It says that:

- Disabled people cannot be excluded from the general education system because of disability
- Disabled people can access an *inclusive*, quality and free primary education and secondary education on an equal basis with others
- Effective individualised supports are provided in environments that maximise academic and social development, *consistent with the goal of full inclusion*.

People with learning disabilities do not enjoy these rights. Not all aspects of the right to Education outlined above are protected in law. The UN Committee on Economic, Social and Cultural Rights raised concerns about those who could not fully enjoy their right to education, including children with disabilities.

What specific and achievable actions do you consider would best address the concerns you identify in your response to question 1?

Getting education in mainstreams schools should be a right. Parents' choices for their children should be made within the mainstream system like everyone else. Inclusion is not just about being allowed to watch a game you can't play; you have to change the game or the rules of the game. There should be a proper inclusion approach in mainstream schools that offers sufficient additional support for those that need it.

Parents' and families' fears about bullying should be listened to and addressed by Government and local authorities taking responsibility to ensure that **all** schools are safe places for **all** children to be.

There should be more training in mainstream schools on additional support for learning, equalities and inclusion. Human rights need to be spoken about and considered more in schools so that teachers, schools and colleges give greater respect to children with additional support needs and their parents and see people with learning disabilities as a positive contribution to everyone's learning experience rather than treating them as a nuisance.

The years towards the end of school should pay attention to preparing people with learning disabilities for adult life including paid work just like any other student instead of preparing them for segregated adult services and a "different and disabled" life.

Colleges should offer people with learning disabilities access to the kind of courses that will get them proper qualifications and real jobs as at present they do not.

5. Work

Based on the evidence presented in the report Getting it right? Human rights in Scotland, or your own experience, what do you consider to be the most urgent human rights issues which should be addressed in Scotland's National Action Plan for Human Rights?

The right to work contains the right to access to employment without discrimination, free choice of employment, and support that aids access to employment. Article 7 of the International Covenant on Economic, Social and Cultural Rights (ICESCR) includes the right to fair wages, to equal pay for work of equal value, as well as equality of treatment in employment.

Despite these rights and laws, employment amongst people with a learning disability is significantly lower because we face many barriers in accessing employment. These barriers include: a lack of training and education, a lack of support, the welfare benefits system, the attitudes of employers and other employees and discrimination.

People with learning disabilities often have to overcome negative attitudes held by employers about how much work we are able to do and the assumption that employing us is risky. Many disabled people do not feel that potential employers are willing to make the effort to make the reasonable adjustments that they need to support us in employment.

Nearly 90% of people with learning disabilities are unemployed compared with less than 10% of the general population. Only 7% of people with a learning disability currently work although 65% say they would like to (MiEnterprise). Almost 50% of disabled people as a whole are in work but only 10% of people with a learning disability have a job.

People with learning disabilities are subject to discrimination in accessing employment and are not given the same opportunity as the rest of society to participate in employment due to a lack of support. They are also often paid less or not paid at all for the same work that others are getting paid for.

What specific and achievable actions do you consider would best address the concerns you identify in your response to question 1?

The Benefit system must be made easier to understand and it must allow people to be paid and not be worse off in employment.

Public sector employers should set an example by employing more people with learning disabilities.

Supported employment services should be available to all people with learning disabilities.

Scottish Government should put pressure on Local Authorities to make good quality supported employment services available.

Agencies that call themselves supported employment agencies need to make sure that people get supported to enter the real employment market and get real paid jobs rather than only voluntary work.

It is important that schools, colleges and employers understand the importance of employment on an individual's well-being and the importance of support to get and keep employment.

6. Private and Family Life

Based on the evidence presented in the report Getting it right? Human rights in Scotland, or your own experience, what do you consider to be the most urgent human rights issues which should be addressed in Scotland's National Action Plan for Human Rights?

As part of the general prejudicial attitudes towards people with learning disabilities in our culture, there are some preset images of what's acceptable and unacceptable in our lives. It's OK for us to be children and live with our parents. It's not OK for us to have our own adult lives with adult relationships and to have sexual identities and sexual experience. Many of the restrictions (and protections) applied to people with learning disabilities have their roots in the disquiet and disgust of professionals and other community members that we might be sexual. If we have relationships with people who are not disabled, we are considered to be at risk and exploited. If

we have relationships with other people who have learning disabilities, we can be accused of exploiting each other, depending on what level of capacity each partner is assessed as having. There is no clear message about what kinds of sexual experience are healthy and encouraged but there are plenty of messages about what we're not allowed to do.

One of the biggest barriers to family life we experience is when people with learning disabilities have children. Seeing this as a problem has its roots in the Eugenics movement.

People First (Scotland) Parents' Group for parents with learning disabilities has been meeting since 2006. The group currently has over 20 members. Members support each other, run training sessions for students and professionals, sit on a range of local and national strategic decision making groups and meet with MSPs and others to push for better support for families where there is a parent with learning disabilities.

Article 8 of the ECHR says that:

Everyone has the right to respect for his private and family life, his home and his correspondence.

Interference with this right must therefore be lawful and proportionate.

Article 23 of the UN Convention on the Rights of Persons with Disabilities (UN Disability Convention) says that:

1. States Parties shall take effective and appropriate measures to eliminate discrimination against persons with disabilities in all matters relating to marriage, family, parenthood and relationships, on an equal basis with others,
4. States Parties shall ensure that a child shall not be separated from his or her parents against their will, except when competent authorities subject to judicial review determine, in accordance with applicable law and procedures, that such separation is necessary for the best interests of the child. In no case shall a child be separated from parents on the basis of a disability of either the child or one or both of the parents.

These rights are breached when:

- Families are told there is no support available or they are not eligible, and children are then taken into care when the parents struggle to meet their needs
- Support is only provided after a crisis when it is too late to turn things around and so the children are removed.

Many parents with learning disabilities struggle to access the support they need when they need it. They are told that because they have children they cannot get support for parenting through adult services, and that their children are not enough at risk to meet the eligibility criteria for support through children and family services. It is often hard to access the support needed without a supervision order being put in place. Services struggle to meet the needs of parents with learning disabilities.

- Families are provided with short-term support and the children are then taken into care because the parents have not taken everything on board

- Families are provided with support at a children and families centre and the children are then taken into care because the parents are not able to transfer their learning to the home environment
Many professionals do not understand the nature of learning disabilities and so set parents up to fail by providing the wrong sort of support that is only short-term

- Parenting capacity is not assessed on the basis of whether the parents can parent well enough 'with support'. The parents' need for support is held against them and the children are removed.

Many parents become fearful of asking for support because of the negative attitudes of professionals. Many assessments focus on what the parents cannot do because of their learning disabilities. These deficits are then held against them rather than looking at what support could be provided to supplement their parenting and keep the family together.

- Professionals assume that the parents cannot learn, and so remove children without providing training and/or ongoing support.

The removal of children from parents with learning disabilities is often based on two incorrect and invalid assumptions; that parental learning disability is evidence of parental incapacity or risk of harm to the child, and that parental learning disability means the parent can't learn or change. This has been established by research. (Booth, McConnell and Booth, 2006)

- Accessible information about parenting is not made available to parents with learning disabilities. Letters and information from schools and health and social care services are often not in easy read formats.

Parents with learning disabilities are often discriminated against in terms of their needs for accessible information.

What specific and achievable actions do you consider would best address the concerns you identify in your response to question 1?

There needs to be recognition that people with learning disabilities are fully human beings with all of the emotional, intellectual, spiritual and physical needs that other human beings have. Part of this is acceptance that sexual and intimacy needs are equally present in people with learning disabilities.

There should be clear and unambiguous messages about the kinds of sexual activity that are acceptable in our society and supports available to assist people with learning disabilities to develop healthy sexual identities and experiences.

There should be dedicated supported parenting services in each local authority area providing tailored, ongoing, flexible support to families where there is a parent with learning disabilities together with an entitlement to support if you are a parent with a learning difficulty.

Parents with learning disabilities are clear about the sort of support they need (Scottish Consortium for Learning Disability, 2009). They want ongoing, flexible one to one support, right from the start, in their own home, from someone they trust and who has experience of working with people with learning disabilities. Dedicated Supported Parenting services would enable parents to receive this support so that families are not separated unnecessarily.

Training in supported parenting and anti-discriminatory practice with parents with learning disabilities is needed, including user-led training and input on research evidence, Scottish Good Practice Guidelines for Supporting Parents with learning disabilities and Human Rights issues. A National Supported Parenting Strategy similar to Healthy Start in Australia could also help address prejudicial and discriminatory attitudes and practices.

Anti-discriminatory training needs to be provided to all professionals involved with parents with learning disabilities including Children's Panel members. We think that the provision of supported parenting service in each area will also help to shift attitudes.

NHS Health Scotland needs to raise awareness amongst midwives and health visitors to ensure that the CHANGE resources are made available to parents with learning disabilities. Accessible resources about looking after children age 5-12 and teenagers need to be created and provided free of charge.

There needs to be a way of enforcing the duties under the Equality Act 2010 to ensure that schools, health and social care services and Scottish Children's Reporter services make reasonable adjustments to the processes they follow and the information that they provide so it is in accessible formats for parents with learning disabilities. Letters to parents with learning disabilities, reports about their children and children's plans must also be sent in a format that the parents can understand.

Article 23 of the UN Convention on the Rights of Persons with Disabilities says that for people with physical, mental or learning disabilities, States should:

"Take effective and appropriate measures to eliminate discrimination against persons with disabilities in all matters relating to marriage, family, parenthood and relationships, on an equal basis with others".

However in practice, the UN Committee recognizes that the rights to marry and found a family for people with learning disabilities are frequently ignored or denied.

Professionals and carers need to consider carefully whether their interference in this area of people's lives is ethical, lawful, needed and in proportion to the risks.

7. Safety and Security

Based on the evidence presented in the report Getting it right? Human rights in Scotland, or your own experience, what do you consider to be the most urgent human rights issues which should be addressed in Scotland's National Action Plan for Human Rights?

Article 16 of the UN Convention on the Rights of Persons with Disabilities

The right of disabled people to freedom from exploitation, violence and abuse is guaranteed in Article 16 of the UN Convention on the Rights of Persons with Disabilities. Article 16 says that:

States shall put in place effective legislation and policies to ensure that instances of exploitation, violence and abuse against persons with disabilities are identified, investigated and, where appropriate, prosecuted.

Furthermore, some hate crimes will reach the threshold of cruel, inhuman or degrading treatment or punishment which is prohibited under Article 3 of the ECHR.

In the recent case of *Dordevic v Croatia*, the European Court of Human Rights found that acts of harassment taken in their entirety may breach the threshold of Article 3 and that Croatia failed to protect this right because “No serious attempt was made to assess the true nature of the situation complained of, and to assess the lack of a systematic approach which resulted in the absence of adequate and comprehensive measures”.

Even where the incidents of harassment do not reach the threshold of Article 3, an obligation exists under Article 8 to put in place adequate measures to prevent further harassment. While we recognise the problems that the Police Service of Scotland faces, we believe that there is often a failure by police to view the entirety of the experience of people with learning disabilities and only single incidents are looked at.

Not enough public information is available about what Hate Crime is, what can be done about it; and the importance of reporting incidents. There is often conflicting advice about what is a Hate Crime and disagreement between police officers and within the Crown Office procurator Fiscal’s Service about what constitutes Hate Crime.

It is not always made clear who to report Hate Crime to.

There is often fear of repercussions and fear that the police or others will not believe the victim.

Many people with learning disabilities do not in fact recognise that what happens to them may be an offence, or may be motivated by prejudice, malice or ill-will.

The UK has failed to recognise the extent and impact of disability-related crime and harassment, to take action to prevent it happening and to intervene effectively when it does occur.

The vast majority of reported disability hate crimes are crimes against people with a learning disability.

Statistics show that hate crimes against disabled people are less recognised, less reported and less prosecuted than any other forms of hate crime.

Late last year, figures for the number of crimes aggravated by prejudice towards disabled persons in Scotland for the last 12 months were released. They were much fewer in number than everyone expected and clearly did not reflect the true picture of crimes committed against disabled people.

Most people with learning disabilities have experienced Hate Crime at some point in their lives and some have to deal with it every day.

Research by Mencap found that nearly **9 out of 10** people with a learning disability (88%) reported being bullied in the last year.

What specific and achievable actions do you consider would best address the concerns you identify in your response to question 1?

The government recognises that an individual may be targeted because of their vulnerability but says this should not be automatically interpreted as a hate crime.

We believe that addressing crimes against vulnerable people is just as important as a hate crime. We don't think there's a clear difference between a crime motivated by prejudice and a crime committed because somebody is an easy target.

We believe that people with learning disabilities have the right not to live in fear of harassment, assault or mistreatment.

Lower level crimes such as name-calling are what lay the groundwork for the much more serious incidents we see in the press.

We agree that if a crime is perceived to be a hate crime by the victim or any other person, including a police officer, it should be recorded and investigated as such.

However, there have been many occasions when our members have reported incidents and they have been told that what is happening is not a hate crime. It is just young people acting up because they are bored and if it is ignored it will go away.

We believe there needs to be a change in attitudes towards people with learning disabilities by showing everyone that treating people with learning disabilities as targets for abuse is not acceptable and is NEVER going to be ignored.

As a short-term measure, there needs to be a single definition of what constitutes disability-related Hate Crime and there needs to be resources and efforts applied to address the significant under-reporting.

As a longer-term measure, there should be a system to include proper recording and managing incidents of all disability-related crime, including low-level incidents regardless of whether active prejudice can be established.

8. Living in Detention

Based on the evidence presented in the report *Getting it right? Human rights in Scotland*, or your own experience, what do you consider to be the most urgent human rights issues which should be addressed in Scotland's National Action Plan for Human Rights?

Firstly, we are disappointed that the *Getting it Right?* report does not look at detention of people with learning disabilities. If the idea is that people with learning disabilities are detained under Mental Health Law, that is true but the way it happens, the conditions of detention and the treatment in detention and the circumstances of discharge are all quite different for people with learning disabilities than people with a mental health problem.

We believe the prevailing social prejudice about people with learning disabilities – that we are different from other people and we cannot change or learn – applies equally in service settings and especially when people with learning disabilities are detained. We think what happens then is that individuals are treated as if they were much more dangerous than they actually are and labelled as if that was true in order to justify the excessive security under which they are held.

Even when individuals are discharged from secure facilities, the application of MAPPA restrictions and SOPO conditions are much more excessive than would be applied to offenders and ex-offenders who do not have learning disabilities.

In lay terms, restrictions and detention are applied to individuals with a Mental Disorder (as defined in the Mental Health (Care and Treatment) Act 2003) until the person recovers from the mental disorder or until the treatment they have been given is effective in limiting the mental disorder. The massive never-discussed secret is that there is no recovery from a learning disability and detention or restriction on the grounds of learning disability as a mental disorder is a simple lifetime sentence with no genuine effort to understand the roots or cause of any behaviour dysfunction or offence committed by the person with a learning disability.

Our view is that the legal profession does not take its obligation to offer defensive argument, when learning disability is involved, seriously and instead, elects to believe and act as if handing over to medical care is a “good thing” in the interests of the person with the learning disability without understanding that this often means a protracted and sometimes life-long withholding of human rights.

The right of appeal, without active advocacy or active and rigorous legal representation is effectively meaningless to someone with an intellectual impairment.

What specific and achievable actions do you consider would best address the concerns you identify in your response to question 1?

We think that the main Acts currently covering the condition of learning disability should be urgently reviewed to ensure compliance with Human Rights.

Specifically, the Mental Health (Care and Treatment) (Scotland) Act 2003 should be repealed or amended so that learning disability is redefined as a lifelong disability of intellectual impairment rather than a mental disorder.

A new piece of legislation, specifically aimed at the care, treatment and management of persons with learning disability should be drafted, based on the understanding that intellectual impairment requires a different and more intensive approach to learning and rehabilitation rather than being based in a wrong assumption that intellectually impaired human beings cannot learn or change.

9. Access to Justice and the right to an Effective Remedy

Based on the evidence presented in the report Getting it right? Human rights in Scotland, or your own experience, what do you consider to be the most urgent human rights issues which should be addressed in Scotland’s National Action Plan for Human Rights?

When people with learning disabilities are tried for a crime they can be diverted under the criminal procedures (Scotland) act 1995 on an assessment order. This will determine whether the person has a mental disorder and whether they were able to “appreciate the nature or wrongfulness of the conduct”.

If it is found that they have a “mental disorder” (learning disability), then the function of the court hearing changes – it is only to establish whether the individual

carried out the offence. This excludes a very significant part of any fair trial – establishing the reasons for the offence and any mitigating factors.

We believe that everyone with a learning disability who is charged with an offence should have the right to a proper trial like anyone else. It should examine both guilt and any reasons for or explanations for the offending behaviour or mitigating factors in the offence. The accused person should receive appropriate support throughout this process.

From our work with lawyers, they generally believe that being deferred from normal court proceedings and punishments is the best result for people with a learning disability and leads to “treatment” and positive outcomes.

This is not the view of our members. They would like the chance to be treated like everyone else, with time limited sentences if found guilty of the offence.

If a person is assessed to be mentally disordered and found guilty of an offence they may be referred to a secure hospital setting for “treatment”.

For people with learning disabilities this means they are likely to spend significantly longer locked up than someone without a disability who commits a similar offence. An example of this is one of our members who was sentenced to 2 years in prison but because of his disability he was transferred to hospital. He has now been detained for 12 years. The psychiatric test becomes “is the person likely to offend again?” This is a test not applied to other citizens before they are released. If it were, it would be clearly in breach of the person’s human rights and we do not understand why it is not considered a breach of human rights just because the person has a learning disability.

Even when someone with a learning disability is released from a forensic hospital they are likely to be given a very restrictive support package and are constantly scrutinised. Any challenging of this situation is likely to result in them being returned to hospital – We do not think this is conducive to any “medical treatment”.

The reason for this is that current legislation in Scotland uses the definition of mental disorder which covers both mental illness and learning disability. However detention in hospital for treatment under the Mental Health Act is based on the assumption of treatment leading to recovery from a condition. This is only applicable to a mental health condition and not to a learning disability.

We do not believe that people with a learning disability commit crime because of their disability. They mainly commit crimes for the same reasons as anyone else. They may commit crimes because of a failure to provide understanding of appropriate boundaries and behaviour growing up – But not directly because of their disability.

Prisoners with learning disabilities within the prison system are more likely to be victims of bullying or be harassed into committing further crime. They are more likely to face punishments for not understanding or obeying instructions.

Prisoners with a learning disability are likely to be refused access to courses due to educational ability. Many courses have a minimum IQ requirement for participation.

This can mean prisoners with learning disabilities miss out on the opportunity for early release and privileges such as weekends home, which are linked to participation in courses. This is a breach of the Equalities Act and has been successfully challenged in England (Gill vs Secretary of State for Justice 2010) This has to change in Scotland too.

There are no standards relating to Prisoners with learning disabilities which can be measured during prison inspections. This means that it is difficult to measure progress and there is limited impetus to improve the situation.

There are currently no formal guidelines to ensure support for prisoners with a learning disability when they are released from prison. Without accommodation, social work or housing support and any specialist courses it is unsurprising that there is a significant rate of recidivism.

We are aware of good work done by prison staff to build links with support organisations outside but this is often done on their own initiative and in their own time.

What specific and achievable actions do you consider would best address the concerns you identify in your response to question 1?

We would like people with a learning disability removed from the Mental Health Act – unless they also have a mental health condition (dual diagnoses). Instead, we would like new legislation which recognises that a learning disability is a life-long condition from which people will not recover. Offenders with a learning disability who are not deemed to require hospital “treatment” may be sentenced to prison or to the range of sentences available to the courts.

More training for prison staff is required so that they are able to identify and support prisoners with a learning disability.

We would like there to be a learning disability liaison worker for all prisons. Their role would be supporting prisoners, providing accessible information about prison and training other prison staff. There needs to be adapted versions of all courses and appropriate support available to allow prisoners to learn. Nobody with a learning disability should be excluded from courses or education. We are aware that the same is true for courses addressing offending behaviour based in the community. We believe that all the same court disposals need to be available for people with a learning disability as for anyone else found guilty of a crime. Extra supports need to be available to allow these things to happen.

We would like all prison inspections to specifically consider the care of prisoners with learning disabilities.

All prisoners with a learning disability should have a social work referral prior to their release. We would like to see national standards or a checklist to ensure appropriate support on release. This should set in place accommodation, further training and support for the person on their release.

The through-care support needs to be understanding and flexible, not bullying or prejudicial. Support must not be treated as a continuation of an offender's punishment. It should be provided by staff who are well trained and committed to developing independence. It must not make the person feel like a prisoner in their own home.

If Scottish Government and the SHRC are serious about applying Human Rights to people with learning disabilities in Scotland in an even-handed way comparable to other citizens, there must be a legal framework which makes sense for this section of the population and there must be a genuine commitment to equal application of Human Rights which recognises our common humanity with other Scottish citizens.

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1. Based on the evidence presented in the report *Getting it right? Human rights in Scotland*, or your own experience, what do you consider to be the most urgent human rights issues which should be addressed in Scotland's National Action Plan for Human Rights?

The right to health, peaceful enjoyment of one's home and to the fundamental human needs of sleep and good health are currently being actively denied to many thousands of Scottish residents.

The consequences of noise exposure have been published by the World Health Organization in 1999, 2005, 2009, 2011. In the last publication, **Burden of disease from environmental noise. Quantification of healthy life years lost in Europe**, noise was upgraded to the environmental pollutant with the second highest burden of disease in Western Europe. It also noted, that whilst other pollutants are being tackled and the impact decreasing, harm from noise is increasing. On the railways much of this comes from increasing levels of night freight. On one line surveyed, ten to fifteen trains run between 23.00 and 07.00. This appears typical. Children are exposed to significantly more train passes due to their longer sleep requirements.

Key bodies in Scotland refuse to acknowledge scientific and medical evidence regarding noise and vibration exposure for residents and the need to protect against chronic sleep deprivation.

The Scottish Government, through one of its agencies, Transport Scotland, promotes high noise-level standards for night rail traffic that bear no relation to any modern health standards. Their argument, based on a 20yr old report, is that it is appropriate to allow unlimited levels of noise, twice an hour (in excess of 82dBL_{max}) during the night without mitigation for residents. This contradicts all modern health standards and defies common experience: loud noise awakens people. Official noise assessments show levels are **four times louder** than the 60dBL_{max} level at which the WHO advises conscious awakenings start to occur. The result, not surprisingly, is repeated awakening by residents and chronic sleep deprivation.

Network Rail has a policy of running trains 24/7 and claims that it is unable to refuse freight access if paths are available on the line. It also refuses to accept any responsibility for noise or vibration exposure to residents. Repeated enquiries to NR eventually ascertained that they acknowledge no noise or vibration standards. Regardless of how high the exposure to residents, NR does not regard it as a fault or a reason to cease operating. NR were asked as to what residents should do, when, having been woken repeatedly night after night, they are faced with driving, operating machinery, or performing tasks that require concentration, judgment or responsibility. Do they put themselves and others at risk or phone in sick? Network Rail refused to advise. Residents have to make that choice.

The Office of Rail Regulation requires Network Rail to have a sustainability policy but emphasizes that they do not do environmental monitoring and that the local authority are the body charged with dealing with environmental health problems.

Local authorities deal with domestic noise issues but are extremely reluctant to do so for noise or vibration from bodies who have statutory authority. In one instance in Scotland, on a modern railway line, where standards in the Environmental Statement

approved by Parliament are being exceeded every night, repeated requests by residents to serve noise abatement orders have been refused. The environmental health officers said that they'd taken legal advice and had been told that they'd have no chance of winning if they took the case to court. Instead of a court deciding, the decision was made without the chance of those afflicted to present evidence, based, not on the consideration of a judge but on the advice of an anonymous expert, with no record taken of the discussion or points made and no public or independent scrutiny.

Many public health officers and even doctors in the UK are not aware of the problems caused by noise and sleep deprivation. This is surprising. A huge amount of detailed analysis and documented evidence has been published by the WHO over the past 14 years; many internationally-recognized research groups, University-based, have presented studies. The public, however, are largely unaware of the impact of noise beyond that of damage to hearing and presume wrongly that they are not harmed if they 'get used to' the levels of noise. The WHO advises of stress, high blood pressure, ischemic heart disease, physiological, psychological and social deterioration. A Cambridge study in 2013 found that sleep deprivation for just one week caused several hundred changes in the DNA of the human body. A study into HIV immunization in the USA in 2012 found, as have several other studies, that sleep deprivation has a highly adverse impact on the immune system. The British Medical Journal states that there is now no doubt that sleep deprivation has a serious impact on health. Children are worst affected and suffer significant developmental and educational issues in addition to the health problems.

The noise and vibration pollution caused by traffic can be difficult to attribute but for railways it is both attributable and systematic in nature. Studies of parliamentary and business communication (FOISA) indicate that ignoring or downplaying the issue is part of a deliberate policy by promoters, often the Government working with private companies, and operators, to avoid the cost of providing protection from the noise and vibration they produce. Mitigation measures are available and are employed widely in the EU. When asked to apply practices or measures by petitions committee PE1273 at the Scottish Parliament during 2009-2011 the response from the organizations involved was that it was not commercially viable. It is viable in mainland EU.

A framework of complaint bodies and regulations exist but, whilst some daytime noise issues are addressed, night noise is almost unregulated. The public are left to suffer. If a corporation were to release toxins or ionizing radiation into residents' homes at levels far exceeding those advised by health bodies to prevent physiological, psychological and behavioural problems, there would be immediate action and prosecutions. Strangely, once the label 'noise' is added, there is intransigence, disbelief, denial of medical evidence, failure to monitor and refusal to apply legal measures. What is particularly insidious is that there is no escape for residents: this is a pollutant that relentlessly penetrates their homes, their place of rest and refuge; they are subjected to this in the commercial interests of the polluters.

2. What specific and achievable actions do you consider would best address

the concerns you identify in your response to question 1?

The government should act, through legislation and enforcement to protect the human right to the peaceful enjoyment of a person's home from arduous and harmful levels of noise and vibration. In addition, the Government should uphold the rights of the child with regard to these issues.

The government must recognize modern scientific and medical evidence and standards in its decision making, planning and legislation, and, in particular, must recognize modern-health based levels of peak night noise (dBL_{max}) and average daytime noise levels (dBL_{Aeq}) and must put in place clear standards, laws and monitoring to ensure these standards are not exceeded.

The government should ensure that statutory authority is not used to avoid the cost of providing mitigation measures and that clear, modern, health-based standards must be agreed when any such authority is awarded.

The government should set guidelines that do not allow noise and vibration standards and policy to be influenced by consultants or advisory bodies who also work for commercial companies or Government departments with a vested interest in less onerous standards of noise and vibration.

Existing railways and tram infrastructure that has been approved by Parliament with the allowance to exceed 82dBL_{max} twice per hour at night [to an unlimited level] should be scrutinized with regard to ECHR compliance and challenged by human rights groups or appropriate bodies to assess the validity of the legislation in question.

The government, local authorities and health bodies should be proactive in warning and passing on information to the public, to doctors, education authorities and enforcement officers about noise, vibration, sleep deprivation, health and child development issues.

Mitigation measures such as those employed across mainland Europe should be implemented in Scotland and incorporated into planning and regulation.

The government should not present planning, intentions and programmes such as noise mapping as addressing the problem: they don't, they are not mitigation, and are often cited as an excuse for present day inaction. Instead, active, effective measures that support health, peace and sleep for Scotland's residents should be implemented as a matter of urgency.

[A body of documentation has been gathered to support this issue. Lawyers are acting on behalf of a number of residents with regard to breach of human rights on the Stirling Alloa Kincardine line. Most residents have given up trying to resolve this issue.]

Introduction

Victim Support Scotland is the lead voluntary organisation in Scotland helping people affected by crime. It provides emotional support, practical help and essential information to victims, witnesses and others affected by crime in every Scottish local authority area, and in every High and Sheriff Court in the land. The service is free, confidential and is provided by volunteers. In 2011/12 we supported nearly 200,000 victims of crime and witnesses attending court.

Victim Support Scotland welcomes the comprehensive report produced by the Scottish Human Rights Commission and the chance to influence the ongoing debate.

Victims of Crime and Human Rights

Victims of crime, by definition, have their bodily integrity, personal safety or rights to enjoyment of their property denied to them without their prior consent. While it is not the state that deprives them the state has a responsibility to protect individuals from infringements of their human rights. The state should, as a matter of utmost priority, seek to restore victims to their original position, before the crime was committed. Where the state has an opportunity to do this and fails to do so, it is not only failing to uphold the human rights of victims, it is constructively contributing to the further degradation of these rights.

Within the criminal justice system the right of an accused person to a fair trial has dominated human rights discourse, perhaps understandably so given that imprisonment and other criminal sanctions are state-condoned deprivations of human rights for public policy reasons.

However, it is hoped that the spirit of the 'Getting it Right?' report, with its emphasis on fostering a culture of human rights throughout public services rather than simply concentrating on the narrowest, formal interpretations of these rights, provides an opening into that discourse to take on board the wider considerations of how the state can uphold the human rights of crime victims.

Question 1: Based on the evidence presented in the report 'Getting it Right? Human rights in Scotland', or your own experience, what do you consider to be the most urgent human rights issues which should be addressed in Scotland's National Action Plan for Human Rights?

Given that being a victim of crime, by definition, means a person has involuntarily had their bodily integrity, safety or property rights violated, restoring victims to their previous state, prior to the crime being committed, should be seen as the hallmark of a state which responds positively to human rights violations.

Restoration may be financial – such as compensation for property damaged or taken – or it may require medical or other practical support. The right to a fair trial should apply equally to the victims (and other witnesses called) as it does to accused persons. This has been made explicit by the EU in the Charter of Fundamental Rights, article 47. The procedural rights guaranteeing fairness to an accused person are separate from the rights of victims (and other witnesses), and a human rights-

based approach to aiding victims and witnesses need not in any way reduce the rights of the accused person. It is not a zero sum game.

Question 2: What specific and achievable actions do you consider would best address the concerns you identify in your response to question 1?

For the purposes of this response we have commented under each of the eight broad thematic areas from the SHRC report. Inevitably there is overlap, and a degree of repetition.

Dignity and Care

All victims of crime need to be treated with dignity and care from the moment of telling someone about the crime through and beyond any potential court case. Dignity and care should not be rationed by artificial distinctions between 'vulnerable' and other victims.

For example, currently the opportunity for witnesses in court to give evidence in the way they choose (i.e. by TV link, from behind screens, with a supporter present) is artificially restricted by legislation which affords this only to 'vulnerable' witnesses. 'Vulnerability' is not assessed on an individual basis, but by reference to crime types and personal characteristics of the witness. An approach which focussed on the dignity and care of witnesses would give the choice of how to give evidence to the witnesses themselves individually and not rely on artificial notions of 'vulnerability'.

In terms of protecting human rights, those members of society who rely on formal state care services (such as the disabled, the elderly and children in the care of social work departments) are at greater risk of victimisation than the population as a whole. Victim Support Scotland has supported numerous victims of, for example, theft where elderly people have had money stolen from their homes or bank accounts by bogus callers or even by the care professionals who should be supporting them. Young people in social work care are particularly vulnerable to sexual exploitation and abuse, and are often targeted specifically by sexual predators. Elder abuse, in care homes or in their private homes, is an increasing area of concern for organisations which support victims.

It needs to be recognised that vulnerability increases the risk of victimisation, and there should be a proactive duty on the state to pay extra regard to protecting the most vulnerable from crime.

There are still too many cases where crimes are not prosecuted because of the exceptional vulnerability of the victims, as the state presumes that these victims will be unable to give evidence. Victim Support Scotland believes that, rather than expecting vulnerable victims to be able to meet the needs of the trial process, the trial process should be modified to meet the needs of vulnerable victims.

For example, the use of professionals trained in communicating with severely disabled people who have speech or cognitive problems should routinely be offered in trial settings, just as interpreters are made available for those witnesses who do not speak English as a first language.

We would also like to see far more use made of evidence taken on commission, which would obviate the need for witnesses to attend court at all.

The behaviour and attitudes of professionals working with victims of crime (prosecutors, judiciary, police, etc.) can be crucial in ensuring that the dignity and care of victims is protected. As such, Victim Support Scotland believes that all such professionals should receive training in victim awareness, the impact of crime and how to identify and limit the risk of revictimisation.

Health

The impact of violent crime on the health of a victim is often obvious and our health services spent a lot of their resources on treating the physical manifestations of crime such as wounds, dental problems, broken bones, etc. The impact on the psychological wellbeing of victims is often less visible, but nonetheless considerable. Crime is one of the key causes of PTSD in the UK, with many victims mentally affected for years after a crime. This has knock-on effects on demands for health services and on the costs to the state of welfare benefits to support those no longer able to work.

While considering how health services might operate in a human rights culture, it is imperative to remember that many of the users of these health services will be doing so because they have suffered the social injustice of victimisation. When scarce resources – such as counselling and psychological services – are rationed by the state, it is imperative that victims of crime are given due prominence and do not have access to these services limited.

Victims of crime should not be left out-of-pocket as a result of their victimisation, so it is important that they receive not only those services which are routinely free at the point of delivery, but that they also are compensated for the costs of non-free services such as dental reparation work or therapies to restore mental wellbeing.

Education and Work

For some victims, the impact of crime is such that they are unable to return to their previous work or educational placement, at least not without support. Victims of crime must be a priority for services which seek to help vulnerable or discriminated against people access education and work, and support mechanisms must be designed with the needs of victims of crime in mind.

Private and Family Life

Victim Support Scotland welcomes SHRC's recognition that crime in the home, such as domestic abuse, must be recognised as such. The right to private and family life cannot be used by abusers as an excuse for their actions within the domestic setting.

But victimisation in a domestic setting carries with it particular difficulties for our criminal justice system which developed largely as a way of protecting individuals and property in the public sphere. Women, who for centuries were largely confined to the domestic sphere, have suffered particularly. It is worth noting that there was

no protection for women from rape by their spouses in Scotland until as late as 1989; before then spousal rape was not generally criminal.

Victim Support Scotland has welcomed the state's increasing role in preventing and prosecuting domestic abuse, and supports the current Scottish Government's proposals to end the need for corroboration in the Scottish legal system, which will enable more victims of crimes in private to seek justice. Of course, it will always be for a jury or judge to decide if an accused person has been found responsible for any reported crime beyond reasonable doubt, but corroboration as it operates currently actively prevents viable cases from going to trial, and the victims in these cases are disproportionately women and children.

We do not underestimate the problems of getting sufficient evidence to meet this standard of proof where crimes have been carried out in private, without witnesses and we welcome the approaches and development of forensic policing and are cheered by the ever-more sophisticated techniques of evidence gathering which modern scientific developments make possible. To protect the rights to family and private life of everybody, police investigators must continue to develop and implement these new approaches, and the courts must also continue with their developments, including the development of more specialist courts for crimes such as domestic abuse.

One further abuse of the right to privacy which the criminal justice system (and the civil justice system to an extent) inflicts upon victims is where the court requires access to their private medical records. This is often the case in crimes such as rape, domestic abuse and stalking. Victims do not have rights to any independent legal representation to protect their privacy if the accused's lawyers want the victim's medical records, including information about previous psychiatric or other illness, led in evidence at the trial.

In a recent high-profile stalking case in order to receive civil compensation for the harm suffered, the victim was forced to undergo psychiatric assessment, the outcomes of which were shared with the accused. This was necessary for her to be able to prove the impact of the crime upon her, but it was necessarily invasive and resulted in information getting into the hands of the accused which, given his previous obsessive behaviour towards this victim, made her feel very upset indeed.

Any injuries sustained by a victim become evidence in court, and the accused has a right to full access to these records. Often this is uncontroversial, but where an assault has been sexual in nature it is clearly upsetting for victims to realise that the person accused of assaulting them has full access to these records, and there is anecdotal evidence of some offenders using these records for further personal gratification even inside prison when they have access to notes, records of interviews, etc.

Of course, one of the most high-profile ways that victims of crime have their rights to private and family life violated is by the media. The recent UK Government Leveson Inquiry heard very powerful evidence from victims of crime as to how they had been further victimised by media intrusion. Regularly outside courthouses we see 'media scrums' photographing and filming victims and witnesses attending court; these images can be and are widely broadcast without the consent of the victims.

Once there has been a public trial, the media can - and do – use images of victims to illustrate further stories without the consent of the victims often many years afterwards. For example, the family of a solicitor murdered in Glasgow in 1993 were horrified ten years later to read in the newspapers a long story about how the prison service was rehabilitating offenders prior to release, with the key interviewee being the man who was serving a sentence for the murder of their loved one. This caused huge distress among the bereaved family, who had not been advised that the story of the murder was to be rehashed, and the murderer painted in a positive light.

The balance between a free press and the privacy of victims of crime is a difficult one, with basic rights at play on both sides, and currently both the Scottish and UK Governments appear to be struggling to find a solution which offers a suitable balancing of those rights. But where the media are able to publish the private diaries of Kate McCann, the mother of a child missing for years in a high-profile case, without Mrs McCann's consent, serious questions need to be answered about how we can protect the privacy rights of victims of crime from an intrusive and sensationalist media.

Safety and Security

The infringement of an individual's safety and security is the sine qua non of victimisation.

A human rights approach to policing and prosecuting would mean full investigation and rigorous prosecution of all reported crimes. Additionally, as discussed above, it would also mean full restoration of victims, financially, physically and emotionally. The impact of crime is deep and often long, so it may be utopian to imagine that a person, once victimised, can ever truly feel safe and secure again, but that it is difficult should not be a reason for not trying.

As well as financial compensation and access to medical and support services, the criminal justice system itself can help protect and restore the human rights of victims by moderating its processes. The SHRC report identifies the importance of making it easy to report crimes such as hate crimes, and new initiatives and good practice. How can we make it less intimidating for victims of all crimes?

Victims' recovery can also be aided by them receiving timely and accurate information. Too often we support victims who have discovered that the person they have accused of harming them has been released on bail only when they see that person walking about in their community. Even in domestic abuse cases, there are still too many times when abusers return to the homes where their victims are without the victims being pre-warned that they have been released.

Too often victims will report the crime and make an initial statement, only to hear nothing for months or even years when they are cited to appear in court. The trial that they are cited to attend will be identified only by the name of the accused. Sometimes the victim will not know the name of the accused and this will cause confusion. This is particularly the case when a person may be a witness in more than one forthcoming trial; they turn up at court unaware of which incident they will be asked about.

Equally, when nobody is detected or charged for a crime, a victim may hear nothing. Ever. There is no agreed mechanism for reporting back to a victim that 'their' crime has been unsolved, or dropped due to a lack of evidence (although it is good practice and many individual police and COPFS staff members will try to keep victims informed.) It would be far preferable for victims to have an explicit right to be kept informed of the progress of their case, as is made clear in the recent EU Directive on Victims and Witnesses which the Scottish Government are seeking to enact into domestic legislation in the forthcoming Victims and Witnesses Bill.

Crime is experienced by victims as personal. When a formal and formalistic system takes over and complex legal rules come into play, too many victims are left confused, uninformed and still unrecovered. The state must recognise that the victim is also a right-bearer, with fundamental human rights. This acknowledgement of victims as rights holders suggests some radical new thinking is required about criminal justice processes. Is it enough to only call a victim as a witness, or should the victim also have a right to legal representation to protect their fundamental rights? This is seen most sharply in the cases referred to above where the victim's private medical records become evidence at the behest of the defence, with no independent voice protecting the victim's right to privacy.

To fully restore safety and security for victims of crime, it is imperative that every victim of crime is offered independent support from an agency such as Victim Support Scotland as a matter of right. Current arrangements across Scotland vary from area to area, and while the creation of a single national police service is a real opportunity to enhance support for victims and roll out best practice across the country, our experience is that policing priorities will not always include ensuring that victims receive support. This could be addressed by creating a new duty for police services or by creating a new right for victims.

Another time when the safety and security rights of victims are jeopardised is when offenders are released into the community, on bail prior to trial, after a non-custodial sentence is passed or after they have served a custodial sentence. Currently the safety and security of victims is not a crucial factor. It should be. Every judicial decision which results in an offender being released into the community should weigh up the safety and security of the victim(s) in the case as one of the factors to be considered. Victims should be informed as a matter of course when the offender in 'their' case is being released, regardless of whether or not a custodial sentence has been served, and regardless of the length of that sentence.

Living in Detention

It is known that, particularly in the case of crimes of street and gang violence which disproportionately affect younger people, victimisation can be a factor which leads to subsequent criminality. Supporting and restoring victims at the time of victimisation can be an effective way in preventing those victims from becoming offenders.

Of course, victimisation can also lead to offending behaviour in other ways and it is striking that a very high proportion of females incarcerated in Scotland have previously been victims of crimes such as childhood sexual abuse and domestic violence. When a victim is not recovered, they can abuse drugs and alcohol to try

to dull the pain of victimisation leading to their own subsequent offending behaviour.

These kind of cycles of victimisation-offending can be broken when victims are helped and supported to recover from their crime.

Many people currently held in prison today would not be there – and would not have created more victims – if their prior victimisation had been identified and tackled.

Once an offender is again at liberty, his or her rights should s/he be subsequently victimised are reduced, with regard to the payment of state compensation to victims of crime under the Criminal Injuries Compensation Scheme, and so the cycle continues.

Clearly rights to support at the earliest possible stage of victimisation would serve to enhance a nationwide rights-based culture.

Access to Justice and the Right to Remedy

Although much of what Victim Support Scotland has said in this response could equally be said under this heading, it is important to show that victimisation affects the rights of people under all the heading themes of the SHRC report, not just Theme 8.

When a person is victimised by crime, they should have rights to full and timely information about the case; they should be treated as a human being, not regarded as ‘evidence’. The state should ensure that, as far as possible, victims are restored to their previous situation through compensation, access to support and access to health and other services. Victims’ rights will only be protected when the police fully and comprehensively investigate the crimes committed against them using all the tools that scientific progress offers. Victims of crime should have a right to be referred to appropriate support services.

We have argued that the right to a fair trial should apply equally to victims and witnesses, as well as to accused persons. Specifically this would mean that the victim’s privacy was protected to a greater degree (e.g. when private medical records are required), and that they were entitled to give evidence in ways that enabled them to participate in the trial fully.

It should be recognised that it is not just the accused person who must attend court; it is also compulsory for victims and witnesses to attend when cited and, every year, victims are imprisoned and temporarily lose their liberty if they are perceived as reluctant witnesses. We have supported victims who have simply confused the date of their trial, failed to attend and have subsequently been arrested and held in custody until they give their evidence. When the state has such powers to hold people against their will, this must be tempered with strong rights for the individuals concerned, just as it is for accused persons.

Victims should also have the right to have the outcome of any court hearings relevant to the crime committed against them explained to them in language they can understand. As discussed above, the sharpest example of this is the right to

know when the person accused of offending against them has been released into the community. Schemes such as the Victim Notification Scheme (whereby a victim can be told when a person convicted of a crime against them is to be released from jail and similar information) must be available to all victims. Currently this is only available for victims where the accused is sentenced for longer periods. The current Victim and Witness Bill will make this available to more victims but it will still not be a universal right for victims.

Conclusion

Victim Support Scotland welcomes the broadening out of the discussion about human rights, moving away from narrow, formalistic interpretations of human rights laws to a new approach, where the human rights of everybody are proactively considered. We believe that the criminal justice system, perhaps more than any other, throws into sharp focus how the narrow approach has resulted in the protection of the human rights of some groups of actors more than others.

Scotland's National Human Rights Action Plan:
Getting it Right for Looked after Children, Young People and Care Leavers March

2013

1. Overview

In 2012, the Scottish Human Rights Commission launched a national consultation to develop Scotland's first National Action Plan on Human Rights. We strongly support the development of Scotland's National Action Plan to improve the realisation of rights for all, especially the most marginalized in our society. On Wednesday 13th March 2013, the Centre for Excellence for Looked after Children in Scotland (CELCIS) hosted a roundtable event to consider the key areas of concern and develop actions specifically for looked after children, young people and careleavers. Developed in collaboration with Scottish Throughcare and After Care Forum (STAF), Includem, Clan Child Law and others, this paper sets out our response identifying human rights issues that require urgent action and proposing specific actions. We specifically acknowledge the detailed responses provided by Together (Scottish Children's Rights Alliance) and Scotland's Commissioner for Children and Young People (SCCYP) addressing an overarching range of human rights issues for children and young people.

2. Why focus on looked after children, young people and careleavers?

There are many human rights issues highly pertinent for children and young people who are 'looked after' by the state. As of 31st July 2012, there are 16 248 children and young people who are 'looked after' in Scotland (this equates to 16 children per 1000 under 18s) (see Appendix One for more detail).¹ Children and young people who may at some stage of their lives be 'looked after' are not a homogenous group. Their own individual and familial experiences and associated reasons for state intervention can be diverse. As set out principally in the Social Work (Scotland) Act 1968, Children (Scotland) Act 1995 and Adoption and Children (Scotland) Act 2007, there are a range of legal mechanisms by which children and young people can, through voluntarily or compulsory measures, become 'looked after' by the state. We also consider children and young people who may become 'looked after' by the state who may be 'at the edge' of the care system, children and young people who may become adopted (hence no longer legally 'looked after' by the state) and young people who cease to be looked after as they move into adulthood.

We would continue to advocate for the full incorporation of the United Nations Convention on the Rights of the Child (UNCRC) in Scots law. As identified in Table One, there are specific risks of human rights violation for this group of children and young people. The incorporation of the European Convention on Human Rights (ECHR) in the Human Rights Act 1998 (as embedded through the Scotland Act 1998) also provides key articles for 'looked after' children and young people: Article 6 – The right to a fair hearing and Article 8 – The right family and private family life which can be used directly in Scottish Courts. As set out in the Children (Scotland) Act 1995, there is also a duty to work in partnership with parents where it is in the child's best interest.

Table One

UNCRC: Key Articles relevant for Looked after Children, Young People and Care Leavers	
Article 9	Children must not be separated unless it is in their best interests. Every child has the right to stay in contact with parents, unless this might harm them
Article 12	Every child has the right to express their views in decisions affecting their lives and for these views to be taken seriously
Article 16	Right to privacy
Article 19	Governments should ensure children are protected from all forms of violence, abuse, neglect and mistreatment by their parents or anyone else that looks after them
Article 20	If a child cannot be looked after by their family, they must ensure they are looked after properly by people who respect the child's religion, culture and language
Article 25	If a child is placed away from home, they have the right to a regular check of their treatment or care
Article 34	Governments should protect children from sexual abuse and sexual exploitation

3. Reflections on the SHRC Evidence Review

We are in broad agreement with the framing of human rights issues through the eight thematic areas. Although we recognise there are many human rights issues for different groups in Scottish society to consider, we are keen that children and young people are fully acknowledged across Scotland's National Action Plan. Three urgent human rights areas were identified at our roundtable event:

- Entitlement of rights for young people leaving care with a specific focus on the provision of a safe and affordable home;
- Meeting the mental health needs of all looked after children, young people and care leavers;
- Improvements in the infrastructure up to and including full incorporation of the UNCRC are needed for rights to be fully realised.

The Scottish Human Rights Commission consultation on the Scottish National Action Plan (SNAP) poses two questions:

1. Based on the evidence presented in the report Getting it right? Human rights in Scotland, or your own experience, what do you consider to be the most urgent human rights issues which should be addressed in Scotland's National Action Plan for Human Rights?
2. What specific and achievable actions do you consider would best address the concerns?

To respond fully to these questions, we consider the eight areas identified in the evidence review with our collective reflections on gaps in evidence and proposed actions. More details are provided in each section with a set of proposed actions. As indicated we use a SMART model of actions (Specific, Measurable, Achievable, Realistic and Time specific) to support the development of a realistic road map for human rights in Scotland.

Table Two: Overview of Evidence, Gaps & Proposed Action

Thematic Areas	SHRC Evidence Review Identified	Summary of Key Gaps Identified by Roundtable	SMART Actions
Dignity & Care	High numbers of looked after children; provision of support for careleavers; multiple disadvantage.	Expanded on the right to care for looked after children, young people and care leavers. Specific concern about the age of leaving care.	<ul style="list-style-type: none"> • Addressing the stigma and discrimination that some looked after children, young people and care leavers face in Scottish society • Legal recognition of the role of corporate parent underpinned by a human rights based approach • Improved monitoring of outcomes of looked after children, young people and careleavers • National monitoring of the age of leaving care • Extending the right of support to care leavers up to the age of 25 and monitoring rates of request, process of refusal and provision of redress.

Health	<p>Poor health outcomes; higher pregnancy rates; unnecessary restrictions on play due to health & safety; mental health & suicide (not specific for children and young people).</p>	<p>Mental health & suicide for Looked after children, young people and care leavers. Right to access health information through a variety of means. Consideration of the rights of looked after disabled children and young people.</p>	<ul style="list-style-type: none"> • All looked after children, young people and care leavers have access to low intensity, relationship based counselling in combination with high intensity CAMHS intervention • Mental Health Assessment completed for all looked after children (as already indicated in the CEL 16 Letter but not implemented) • Taking a human rights based approach, mental health training is provided for all those working with, or caring for, looked after children, young people and care leavers • All children and young people have timely access to CAMHS services • National guidelines and monitoring of provision of mental health services for children, young people and care leavers who move across different health board areas.
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			<ul style="list-style-type: none"> • National collation of data and analysis of Significant Case Reviews of looked after children, young people and careleavers. The SCR process and separate process for review of the deaths of LAC should be better aligned. • Amendment to Looked after Children Regulations 2009 (Part 6) to require reporting of all careleavers deaths to Scottish Ministers, Care Inspectorate and relevant bodies • Recording of pregnancy rates of looked after children, young people and careleavers in Scotland (currently no national data)
Where we live	Contact with birth families, specifically an issues for island and rural communities. Right to housing (not spec for children and young people).	Multiple placement moves. Specific issue to address of contact with siblings. Right to a home for care leavers. Inadequate provision in unsafe areas for care leavers.	<ul style="list-style-type: none"> • Quality assurance of provision of housing for care leavers • Access to legal and quasi-legal remedies for contact with birth families, including sibling contact • The Care Inspectorate should consider this development and the accountability of Community Planning Partnerships on children's rights reporting.
Education & Work	Poorer educational outcomes; exclusions from school.	Poor employment and training opportunities for care leavers. Additional barriers to accessing opportunities.	<ul style="list-style-type: none"> • Right to education – exclusion rates of looked after children to be addressed • Education (Additional Support for Learning) (Scotland) Act 2009 implemented to assess additional support needs of looked after children & equitable access to tribunals • Equitable access to Additional Support for Learning tribunals for looked after children and young people • Review of disclosures and the operation of the PVG scheme to ensure young people are not unduly penalised from future work opportunities due to misdemeanours or charges at younger ages.

Private & Family Life	Nothing specific identified (Some relevance - Parental & children's	A vital area to consider for this group. Right to family life, including for those within the care system to feel loved and nurtured. Concern that often the	<ul style="list-style-type: none">• Recognition of particular human rights violations for looked after children, young people and care leavers.• Article 6 (ECHR) – Right to a fair hearing – for young looked after/care leaving parents whose children are at risk of removal
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	rights/parents with learning disability/domestic abuse & imprisonment).	care system does not convey these qualities. Specific concern about safeguarding rights of young people in care who become parents.	<ul style="list-style-type: none"> • Provision of accessible information, advice and support for young parents – including legal advice when children are at risk of being removed.
Safety & Security	Unaccompanied asylum-seeking children; LGBT; child trafficking.	Some concerns about safety during contact. Safety issues for young people living care.	<ul style="list-style-type: none"> • Provision of independent advocacy support and access to complaints procedures in a range of formats (see Access to Justice) • Amend Section 51 of the Criminal Justice (Scotland) Act 2003 that allows ‘justifiable assault’ on children as it is clearly incompatible with ratification of the UNCRC 1989.
Living in Detention	Less children detained in Scotland – concern about 16 & 17 year olds; high proportion with care background; 106 secure care places (can be appropriate to meet needs); Importance of managing transition.	Physical restraint of children and young people.	<ul style="list-style-type: none"> • Reconsidering Regulation 4 of the Regulation of Care (Requirements of Care) (Scotland) Standards on physical restraint having regard to article 37 of the UNCRC • National monitoring of the use of restraint in care settings and investigation of complaints • Transitional planning for young people leaving secure accommodation – specifically address cross local authority placements
Access to Justice	Legal advice and Legal Aid (not specifically highlighted for children though); child witnesses & suspects; Children’s Hearings; survivors rights; historic child abuse.	Children and Young People’s access to legal advice and legal aid. Equitable access to justice for historic abuse. Access to advocacy for all children and young people – including younger children, disabled children, children ‘looked after’ at home and in kinship care placements.	<ul style="list-style-type: none"> • Full ratification of UNCRC Optional Protocol 3 on complaints procedures for children and young people • Ensuring access to legal assistance and advice for children and young people – specifically addressing legal aid applications • Implementing and monitoring of National Advocacy Standards for Children and Young People

3.1 Dignity and Care

Dignity and care is relevant for all looked after children and young people and can impact on all aspects of their lives. We welcome the acknowledgement in the SHRC evidence review of looked after children and young people as a specific group. We highlight the multiple disadvantages facing many children and young people with care experiences and would encourage further consideration of their human rights. For example, there can be specific issues relating to respecting the privacy of children and young people in care² and the inappropriate sharing of information amongst professionals with a disregard to a child's right to privacy.³ There is specific concern about the stigma and discrimination surrounding children and young people with care experiences these must be challenged.

We strongly agree with the recognition of unmet care needs for care leavers in Scotland and remain concerned that the rights of this group of young people are particularly vulnerable. Despite the current legislation and guidance, there has been little progress on the average age at which young people leave care.⁴ Although there is a legal duty to support care leavers up to the age of nineteen under the Children (Scotland) Act 1995 and a right to request assistance up to the age of twenty-one, the implementation of this legislation across Scotland is inconsistent. We would strongly encourage the inclusion of a duty to support care leavers up to the age of twenty-five to be part of the new legislation proposed in the Children and Young People (Scotland) Bill. The specific challenge is ensuring current and new legislation actually translates into a meaningful difference for young people. Therefore, we recommend the duty to inform care leavers of their rights, the provision of advocacy and channels by which to challenge decisions and seek redress.

Looked after disabled children and young people remain a hidden group. In a recent programme of work, we heard directly from a group of young people using forum theatre about their experiences of not being heard.⁵ We are particularly concerned that article 12 of the UNCRC is overlooked for children who use a range of communication strategies to express their views and presumptions are made about their competency. For looked after disabled children and young people, we highlight the importance of respecting their right to be assisted in appropriate ways. As highlighted in the work of Scotland's Commissioner for Children and Young People Children and young people described feeling embarrassed, humiliated, undignified and excluded due to moving and handling difficulties.⁶ All looked after disabled children and young people have a right to respectful and appropriate medical treatment in any contact with health services.

Furthermore, in the development and delivery of services, we would welcome a human rights based approach to involve children and young people in design, delivery and evaluation of a wide range of services. The legal definition of the role of the corporate parent may provide a helpful framework if consistently implemented.

Actions

- Addressing the stigma and discrimination that some looked after children, young people and care leavers face in Scottish society
- Legal recognition of the role of corporate parent underpinned by a human rights based approach

- Improved monitoring of outcomes of looked after children, young people and careleavers
- National monitoring of the age of leaving care
- Extending the right of support to care leavers up to the age of 25 and monitoring rates of request, process of refusal and provision of redress.

3.2 Health

Suicide and mental health are key areas to address for looked after children and young people, as well as careleavers. Children and young people who are looked after have experienced difficulties in their lives. We know that a significant number of looked after children will have suffered abuse and neglect which is highly detrimental to their mental health and wellbeing. We also know that looked after children can overcome adversity in childhood and lead successful adult lives.⁷ Whilst there has been recognition of the poor mental health of looked after children in comparison to their peers, there is still considerable work to be done to ensure that all looked after children, young people and care leavers across Scotland have their mental health needs met. We strongly advocate that all looked after children, young people and care leavers have access to low intensity, relationship based counselling in combination with high intensity CAMHS intervention.

The key findings of the first national survey of the mental health of young people looked after by local authorities in Scotland⁸ found:

- 45% of children and young people (aged 5 – 17) looked after by a local authority has a diagnosable mental disorder;
- Amongst children aged 5- 10 years, 52% of children had a mental disorder compared to 8% of children living in private households;
- 44% of children placed with birth parents, half of children placed in foster care and two fifths of children in residential care had a mental disorder;
- Children with mental disorders were more likely to be boys and aged between 5 and 10 years old;
- A quarter of children had been in touch with a specialist in child mental health;
- A third of all children had sought help because they were worried or unhappy;
- Over a fifth (22%) of looked after children surveyed had tried to hurt, harm or kill themselves; this rate was higher for children living in residential unit (39%) compared to those with birth parents (18%) or foster carers (14%).

This study highlights the scale of the challenge in meeting the mental health and well-being needs of children and young people who are looked after. In a briefing on looked after children, the confidential counselling service ChildLine highlighted that 1 in 26 looked after children phoned ChildLine and many of them felt ‘completely alone’. Compared to their peers, looked after children were five times more likely to talk about running away and twice as likely to be self-harming.⁹ We should also be aware that children and young people who are ‘looked after’ may have a parent or carer who experiences mental health problems.

The Mental Health Strategy for Scotland 2012-2015 included a section on looked after children and young people. However, we should remember that previous commitments have been given and may not have been fully implemented; in Delivering for Mental Health (Scottish Government, 2006), the Government made a commitment to provide basic mental health training to all those working with, or caring for, looked after and accommodated children and young people. The Strategy also committed to:

Commitment 9: We will work with a range of stakeholders to develop the current specialist CAMHS balanced scorecard to pick up all specialist mental health consultation and referral activity relating to looked after children.

Commitment 11: We will work with NHS Boards to ensure that progress is maintained to ensure that we achieve both the 2013 (26 week) and the 2014 (18 week) access to CAMHS targets.

There are specific challenges for looked after children and young people accessing CAMHS. A recent report on the Mental Health Care Needs Assessment of Looked after children in residential special schools, care homes and secure care was commissioned due to concerns about the health needs, and more specifically mental health care needs, of children in these placements.¹⁰ The Scottish Directors of Public Health had raised a specific concern about this group of children's access to CAMHS. The report concluded that the picture was complex where 'children may not receive timely care because of the lack of clarity about which Health Board is responsible for their health care'. The report found looked after and accommodated children may be four times higher than the general population to need a specialist intervention, such as psychotherapy (Lachlan et al., 2011:40). The report concluded there is a need for specialist CAMHS for children who are looked after and accommodated. A key challenge that is not identified in the strategy is the delivery of services to successfully facilitate the transition between CAMHS and adult mental health services. Across research studies, these transitions have been identified as a particularly challenging time for young people, parents and carers.

One of the challenges for a proportion of looked after children and young people are ensuring a continuity of mental health care when there are changes in placements. This has been highlighted as particularly problematic when children move to a different health board area. In some cases, children are awaiting a CAMHS service and during a move begin the referral process again in a new health board area. A further concern raised has been the discontinuation of a service because a child moves out with a specific health board area. We have very specific concerns about these children and young people who may have some very serious mental health needs that remain unmet.

Actions

- All looked after children, young people and care leavers have access to low intensity, relationship based counselling in combination with high intensity CAMHS intervention
- Mental Health assessment completed for all looked after children (as already indicated in the CEL 16 Letter but not enacted)
- Taking a human rights based approach, mental health training is provided for all those working with, or caring for, looked after children, young people and care leavers
- All children and young people have timely access to CAMHS services
- National guidelines and monitoring of provision of mental health services for children, young people and care leavers who move across different health board areas.

Almost one fifth of Significant Case Reviews conducted for children who die or are seriously injured were conducted for children who were looked after or formerly looked after. There are anomalies in the reporting of deaths of looked after children, young people and care leavers. The only national audit of Significant Case Reviews found that some deaths of looked after children did not proceed beyond Initial Case Reviews (ICRs) and this may be due to a separate process led

by the Care Inspectorate; however, there was inconsistency in decision making of whether a SCR was conducted in these cases. The authors recommend these anomalies are remedied at a national level.¹¹

Actions

- National collation of data and analysis of Significant Case Reviews of looked after children, young people and care leavers. The SCR process and separate process for review of the deaths of LAC should be better aligned
- Amendment to Looked after Children Regulations 2009 (Part 6) to require reporting of all care leavers deaths to Scottish Ministers, Care Inspectorate and relevant bodies
- Recording of pregnancy rates of looked after children, young people and care leavers in Scotland (currently no national data).

3.3 Where we live

Young people who have care experiences have a right to housing. In our roundtable discussion, we identified that this is beyond 'bricks and mortar' but should be a right to a home that also includes emotional and practical support. There was a specific concern about the quality, suitability and safety of accommodation being offered to young people leaving care. As identified in a recent study with young people in the care system entitled 'Young People Creating Belonging', a positive living environment was central to their sense of self-worth.¹² Four young people in the study were living independently and 'hated where they lived, but felt obliged to stay due to housing law provisions on intentional homelessness. One respondent reported panic attacks when alone in her flat; another was on medication for anxiety' (Milne and Wilson, 2013:8). David provided this illustration to show arriving at his new flat:



Figure One: Arriving at my new flat, David. Illustrated in Milne, EJ. & Wilson, S (2013) Young People Creating Belonging: Spaces, Sounds & Sights, Stirling: University of Stirling (Pg7).

In the National Audit of Significant Case Reviews, housing was a significant issue in 29 (out of 56) cases and a specific issue highlighted for looked after young people; for example, one young person who died at 17 from a possible drug intoxication had been looked after and accommodated since the age of four and had moved continually. At the time of her death she was living in Bed & Breakfast accommodation. It was found a number of looked after young people died at a time of considerable uncertainty about where they were going to live.¹³ In our roundtable discussions, the limited options for young people were highlighted with concern that they had few opportunities to challenge the decision-makers. Some young people returned to families where there were concerns about their safety. This has also been highlighted commissioned by SCCYP where transitional planning for disabled young people was found to be poor.¹⁴

Drawing on the experience of cl@n childlaw in providing legal advice and assistance for looked after children and young people in Edinburgh, contact with birth families including siblings and extended kin is a very common human rights issue. Multiple placement moves and geographical distances can present many challenges to remaining in contact with families for children. Furthermore, many children and young people may be unaware anything can be done to maintain or establish contact and may not have access to legal advice and advocacy to help them do this (discussed in Section 3.8). There was also a significant concern for the wellbeing of children and young people who experience multiple placement moves.

There is a specific role of the Care Inspectorate in ensuring looked after children and young people are living in appropriate accommodation to meet their needs. Given the development of new inspection processes, we encourage the consideration of a human rights approach and the specific role of Community Planning Partnerships on children's rights reporting.

Actions

- National quality assurance of the provision of housing for care leavers
- Access to legal and quasi-legal remedies for contact with birth families, including sibling contact
- The Care Inspectorate should consider the accountability of Community Planning Partnerships on children's rights reporting

3.4 Education & work

There are significant inequalities in the educational attainment and opportunities for looked after children and young people. The low attainment of looked after children in Scotland persists and therefore it remains an important cause for concern. Only a small proportion of looked after children progress to higher education - around 3% of all looked after

children, compared with 36% of non-looked after children - and the high proportion who are neither in education nor in employment upon leaving school - 36% compared to 11% of non-looked-after children.¹⁵

There is a direct correlation between attendance at school and educational attainment. The attendance at school of looked after children in Scotland overall is poorer than average: 88.6% compared with 93.1% for all pupils in 2010-11.¹⁶ The figures show that the attendance of children in foster placements (95.9%) is above average while the attendance of children in local authority residential homes (90.3%) is below average. But it is the very low attendance of children looked after at home with parents (79.1%) which contributes significantly to the low overall average attendance of looked after children. Furthermore, the attendance figures do not show the extent of part-time education among looked after children; for example, it may have been decided that a child should attend school or an out of school alternative education project.

The Education (Additional Support for Learning) (Scotland) Act 2009 gives legal force to the entitlement of looked after children and young people through the assessment of additional support needs. However, there is a need for advocates who are independent of the local authority in relation to the appeals process. We remain concerned that looked after children and young people's rights are limited in accessing the Additional Support for Learning Tribunal process. Anecdotally we are not aware of any cases involving looked after children and young people. As parents are often the key advocate in instigating the process, we are concerned that the conflict of interest arising for looked after children may severely limit their equal right to a fair hearing.

Another matter of concern is the delays associated with out of authority placements. This appears to be a particular problem where the child has additional support needs and the respective placing and host authorities have not reached agreement about funding arrangements. There is a clear need for a more explicit protocol in relation to this group of looked after children who may be denied their right to education in the interim.

There is a key role of the corporate parent in ensuring that looked after children, young people and care leavers have access to work and training opportunities. A particular human rights issue is the impact of criminal behaviour at a young age limiting work opportunities when disclosures are later required for working with children and young people. Many young people will not be aware of the future consequences of police records and without access to legal advice, may not make an appropriate challenge. In recent English Case Law this issue has been raised:

"He was 11 when he received warnings in connection with the two stolen bicycles. He was and remains otherwise of good character. Some 7 years later, he wanted to enrol on a sports course. It is difficult to see what relevance the fact that, as a young child, he had received these warnings could have to the question whether he was suitable to be enrolled on a sports course and have contact with children when he was 18 years of age. The disclosure regime was introduced in order to protect children and vulnerable adults. That objective is not furthered by the indiscriminate disclosure of all convictions and cautions to a potential employer, regardless of the circumstances."

English Court of Appeal case *R (T) v Greater Manchester Chief Constable & others*.

Notwithstanding the forthcoming “alternatives to prosecution” following admissions or findings in respect of offences committed by children and referred to a children’s hearing, concerns remain about the potential impact of disclosure many years on. Furthermore, we need to ensure that response to PVG and guidance on the revealing of ‘soft information’ is proportionate in the aim of protecting children and young people.

Actions

- Right to education – exclusion rates of looked after children to be addressed
- Education (Additional Support for Learning) (Scotland) Act 2009 implemented to assess additional support needs of looked after children
- Equitable access to Additional Support for Learning tribunals for looked after children and young people
- Review of disclosures and the operation of the PVG scheme to ensure young people are not unduly penalised from future work opportunities due to misdemeanours or charges at younger ages.

3.5 Private and Family Life

We recognise the themes of domestic abuse, parents with learning disabilities and imprisonment specifically highlighted in the evidence review. However, we would like to raise the possibility of looked after children, young people and care leavers as meriting greater consideration given the complex interplay of human rights issues surrounding the rights of children, rights of parents and right to family life for this group. Specific issues to consider are:

- Right to have views heard and experience effective participation in decision making processes;
- Right to family life being supported through appropriate services;
- Access to legal advice and assistance and right to a fair hearing;
- Contact with birth family and extended family (where safe);
- Role of independent advocacy;
- Opportunities to challenge decisions and make a complaint.

Young people with care experiences are more likely to have children at a younger age.¹⁷ This can be a positive experience and as corporate parents, every level of support should be provided. It can also pose significant challenges with young parents due to limited financial support, lack of informal support from the wider family, having poorer educational outcomes and a reluctance to trust and engage with professional services. Young parents have an equal right to information, advice and support to meet their and their children’s needs. These rights are enshrined in the United Nations Convention on the Rights of the Child 1989 and specific regard must be given to article 17: the right to appropriate and reliable information, including public health education, article 24: the right to good quality health care and article 28: the right to education. Article 12, often described as the ‘linchpin’ on the Convention, states that due account is taken of the views of children and young people in matters affecting their lives. Specific adherence should be given to General Comment no 4 of the UNCRC

on Adolescent Health which provides excellent guidance on the support that should be provided to address sexual health needs and to young parents.¹⁸

Actions

- Recognition of particular human rights violations for looked after children, young people and care leavers.
- Article 6 (ECHR) – Right to a fair hearing – for young looked after/care leaving parents whose children are at risk of removal
- Provision of accessible information, advice and support for young parents – including legal advice when children are at risk of being removed.

3.6 Safety and Security

Key human rights areas for the safety and security of looked after children and young people relate to their mental health and wellbeing in a range of placements (as discussed in Section 3.2). Another consideration is ensuring the safety of children through regular checks on their standard of care as clearly outlined in article 25 of the UNCRC. An audit of Significant Case Reviews found four children had been abused in a long term foster care placement where there had been concerns about the standard of care; concerns included: 'rigid approaches to control behaviour including prolonged periods of grounding, locked doors, controlled diet, rigid bathroom routines, removing bedroom lighting, use of CCTV'.¹⁹ Although a rare example, this illustrates the importance of regular checks by adequately resourced Children and Family Social work teams to ensure regular monitoring and accountability of all involved and responsible for care of children is required. Too often if actions were taken at an earlier stage, many situations could be alleviated or resolved appropriately before reaching crisis, or indeed before abuse permeates. It is also important to provide various ways in which children and young people can disclose abuse. For many children, foster care provides a place of safety and security following abuse within families. Furthermore, there can be physical safety concerns for young people living in inappropriate independent living accommodation.

Action

- Provision of independent advocacy support and access to complaints procedures in a range of formats (see Access to Justice)
- Amend Section 51 of the Criminal Justice (Scotland) Act 2003 that allows 'justifiable assault' on children as it is clearly incompatible with ratification of the UNCRC 1989.

3.7 Living in Detention

For young people living in detention, there are specific human rights issues. As provided in our response to Together's (2012) State of Children's Rights in Scotland report, we identified the use of physical restraint to be an area where vigilance is required.²⁰ There is a gap in knowledge between the use of Holding Safely guidance (for example, using physical restraint as a 'last resort') and knowing what might be happening on the ground.²¹ The National Care Standards: Care homes for children and young people (2005; revised 2008) refers to restraint in Standard 6 – Feeling Safe and Secure (Point 11):

You can be assured the care home has a written policy and procedures on the conditions where restraint may be used. Staff are fully trained and in the use of restraint. If it is necessary to restrain you at any time, this is written in your care plan. Records are kept of any incidents involving your restraint. You can expect to be supported after any episode of restraint.

These standards are central to the care inspection process now led by the Care Inspectorate. Although aimed at adult services, the Care Commission (2010) Guidance on the regulation and use of restraint may be useful as reporting duties are in place.

In developing national guidance on the roles and responsibilities of the external manager for residential care, we know the importance of external management in monitoring any use of restraint. This should be considered in a responsibility to monitor the experiences of children and young people; meeting the training needs of staff and creating a positive culture. The Kerelaw Inquiry specifically highlighted the inappropriate use of restraint on children and the absence of effective external managers in a safeguarding role.²² One of the recommendations of the Kerelaw Inquiry to the Scottish Government related to the national collation of complaints from residential units to identify patterns of complaints and allegations. The provision of accessible advocacy services to ensure all children and young people have an opportunity to raise any concerns should also be highlighted.

There have also been specific concerns raised about transitional planning from young people in secure settings. There should also be consideration of the appropriate placement of young people at risk or with experience of sexual exploitation and self-harming behaviours in secure or 'close support' accommodation.

[Actions](#)

- [Reconsidering Regulation 4 of the Regulation of Care \(Requirements of Care\) \(Scotland\) Standards on physical restraint and having regard to article 37 of the UNCRC](#)
- [National monitoring of the use of restraint in care settings and investigation of complaints](#)
- [Transitional planning for young people leaving secure accommodation—specifically address cross local authority placements](#)

This is an area of considerable concern for looked after children and young people, as well as care leavers. Under a Freedom of Information request, cl@n childlaw has acquired information illustrating the extent to which fewer and fewer children and young people are able to obtain legal aid. From 31 January 2011 the way that a child is assessed for civil and children's legal assistance was altered by the Advice and Assistance (Scotland) Amendment Regulations 2010 and the Civil Legal Aid (Scotland) Amendment Regulations 2010. Previously, a child would be assessed in the same way as an adult, on the basis of their own personal disposable income and capital. Many children and young adults would therefore easily qualify for both A&A and legal aid on the basis of being in full time education and being supported financially by their parents. Since January 2011, a solicitor assessing a child or young person who applies for any civil or children's legal assistance must take into account the financial circumstances of anyone who owes a duty of aliment to that child or young person. This duty to aliment a child does not just fall on parents, but can extend to anyone who has accepted the child as a child of their family, such as step-parents, or in some case grandparents, aunts, uncles etc. This could have consequences for children and young people in kinship care arrangements. There is an exception: where it would be "unjust and inequitable" to assess the financial circumstances of someone who owes the child a duty of aliment then that person's finances can be disregarded. However, it is not always straightforward to persuade the Scottish Legal Aid Board that the exceptions should apply.²³

The numbers of children and young people applying to the Scottish Legal Aid Board and for legal aid to be granted have fallen considerably. This will impact on the ability of children and young people, including those who are looked after, to obtain legal advice and assistance to ensure a fair hearing.

Table Three: cl@n childlaw (2013) FOI request: Legal Aid for children and young people

Percentage of applications granted by the	Under 16s	16-17 year olds
2009/10	68%	70%
2010/11	62%	48%
2011/12	57%	32%

Another area of concern is access to advocacy for looked after children and young people and care leavers. The role of advocacy for looked after children and young people is vitally important. Quality advocacy services can provide a key role in empowering children and young people to fully participate in decisions that affect their lives. For some children, these decisions may involve living in a new place, changing schools, accessing specialist health services and making choices about the future. Often there can be many different and divergent views of families and professionals; the views of children and young people may be at risk of not being heard. Elsley's (2010) scoping study of advocacy services for children and young people across Scotland specifically highlighted gaps in provision for:

- Children and young people 'looked after' at home
- Children and young people with disabilities
- Children attending Children's Hearings
- Provision for younger children and young people aged over 16

- Black and minority ethnic children and young people.²⁴

Looked after children and young people face particular challenges; for some, expressing their views can be incredibly difficult. Advocacy can support and facilitate children's understanding and involvement in decision-making processes (such as at Children's Hearings). A key role of advocacy is providing an opportunity to raise comments and complaints about their care. We know that this has been recognised as an important safeguard for children, especially for those children living away from home. For example, a specific recommendation of the Kerelaw Inquiry (2009) was to improve avenues for listening to children through easily understood and accessible complaints procedures; effective monitoring and review of complaints; and adequately resourced children's rights and children's advocacy services.²⁵

Actions

- Full ratification of UNCRC Optional Protocol 3 on complaints procedures for children and young people
- Ensuring access to legal assistance and advice for children and young people – specifically addressing legal aid applications
- Implementing and monitoring of National Advocacy Standards for Children and Young People: Principles and Minimum Standards

Conclusion

We welcome the opportunity to contribute to Scotland's first National Action Plan on Human Rights. Throughout this paper we have raised many human rights issues raised on behalf of looked after children, young people and Careleavers. We hope that this is a valuable contribution and would be delighted to assist in further development of this work.

Appendix One

Children and young people can live in a variety of placements and have a wide range of needs:

- 5 153 children are 'looked after' at home with parents (31.7%);
- 5 279 children live in foster care (32.5%);
- 4 076 children are in formal kinship care placements (25%), although many more children are in informal kinship care are not legally 'looked after' by the state;
- 1 433 children live in residential accommodation (including residential schools, secure accommodation, local authority and voluntary homes, crisis care and other) (almost 9%);
- Over 2012-2012, there were 237 admissions to secure care with an average of 87 children; 93% of children had at least one additional support need;
- Just over one quarter (27%) of children on Child Protection Registers are 'looked after'.

Endnotes

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- ¹⁷ This draws on English research. See for example, Knight, A., Chase, C & Aggleton, P (2006) Teenage pregnancy among young people in and leaving care: Messages and implications for foster care, Adoption & Fostering 30(1):58-69; Chase, E., Warwick, I., Knight, A. and Aggleton, P. (2009) Supporting Young Parent: Pregnancy and Parenthood among Young People from Care. London: Jessica Kingsley Publishers.
- ¹⁸ United Nations Committee on the Rights of the Child (2003) [Adolescent health and development in the context of the Convention on the Rights of the Child: GeneralComment4](#).
- ¹⁹ Vincent, S & Petch, A (2012) Audit and Analysis of Initial and Significant Case Reviews, Edinburgh: Scottish Government (pg 59).
- ²⁰ Together (2012) State of Children's Rights in Scotland 2011-2012, Edinburgh: Together.
- ²¹ Davidson, J., Steckley, L., McCullough, M. & Warren, T (2005) Holding Safely: A guide for residential child care managers and practitioners about physically restraining children and young people, Glasgow: SIRCC.
- ²² Scottish Government and Glasgow City Council (2009) Jointly commissioned report by the Scottish Government and Glasgow City Council of the Independent Inquiry into Abuse at Kerelaw Residential School and Secure Unit, <http://www.scotland.gov.uk/Publications/2009/05/08090356/0> [Accessed 26.03.13]
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²⁴ Elsley, S. (2010) 'Advocacy makes you brave': Advocacy support for children and young people in Scotland, Edinburgh: Scottish Government.

²⁵ Scottish Government and Glasgow City Council (2009) Jointly commissioned report by the Scottish Government and Glasgow City Council of the Independent Inquiry into Abuse at Kerelaw Residential School and Secure Unit, <http://www.scotland.gov.uk/Publications/2009/05/08090356/0> [Accessed 26.03.13]

Name: ORG-0030a-Scottish Kinship Care Alliance-000

Based on the evidence presented in the report *Getting it right? Human rights in Scotland*, or your own experience, what do you consider to be the most urgent human rights issues which should be addressed in Scotland's National Action Plan for Human Rights?

Our response focuses on the section in the report entitled *Dignity and Care* and regards the Human Rights of children in Kinship Care in Scotland. We represent Kinship Care support groups across Scotland and are an organisation run by and for Kinship Carers.

We believe the rights of children in Kinship Care is one of the most urgent Human Rights issues in Scotland today. We say this because we know, and the 2011 Buttle UK report '*Spotlight on Kinship Care*' has proven, that there are huge numbers of children living permanently with another family member or friend in Scotland. The Buttle report uses 2001 census data to show that 1 in 77 children in the UK is in Kinship Care, and this is likely to be much higher in deprived areas of Scotland. Yet only 1,736 of these children is formally recognised as a 'Looked After Child' in Kinship Care and provided with any services or support. The rest are unseen and unsupported.

The point we wish to make is that many of these children are living with poverty and a lack of essential support as they are un-recognised and un-provided for by Local Authority services who see this arrangement as a family matter. In addition there is outright discrimination in the provisions available for a) children in non-relative foster care and those in 'family foster care' (Kinship Care), b) children who have 'Looked After' status and those who are not 'Looked After' despite comparable need.

The *Dignity and Care* report highlights the issues facing un-paid carers and notes the Scottish Government's work around a Carer's Strategy. The vast majority of Kinship Carers fall into the category of un-paid carers as they do not receive a weekly or monthly allowance and remain either un-seen or ignored by Local Authorities, yet Kinship Care (or 'informal Kinship Care' to use the current legal distinction) was not included in the Carer's Strategy and informal Kinship Carers were not invited to be part of the Carer's Parliament. This is indicative of the ongoing approach of the Scottish Government on the matter – which is largely to ignore it. We are also surprised that such a significant group as Kinship Carers was not mentioned in the *Dignity and Care* Report.

Kinship Care usually occurs when a family member (usually a grandparent) takes care of a child from an unsafe situation with its parents. This is often due to drug or alcohol addiction, abuse, or bereavement. There are several ways this can occur:

- a) Grandparent (or other family member) removes child for its safety, then contacts Social Work to make the aware.
- b) Grandparent (or other family member) removes child for its safety and does not contact social work.
- c) Social Work or the Police place a child with a Grandparent (or other family member) – this can happen suddenly in the middle of the night.

The children facing these situations are usually of very comparable needs, yet, depending on how the arrangement was made they will be treated completely differently. Each Local Authority takes a different approach but in general financial support (ranging from £0 to £40 to £200/week in different LAs), training and access to some psychological and educational services are only available to those children who are given a section 70 or Supervision Order which makes the child legally 'Looked After'. Most Kinship Care children are on a section 11 or Residence Order, which generally comes with less

support if any. Many more Kinship Carers are told that the Local Authority was not involved in the placement and therefore they are entitled to nothing. Other Kinship children are taken off a section 70 once they are settled and the support drops away.

The current system of legally defining Kinship Carers is unfair and discriminatory and is leaving Kinship children without the very basic levels of support they require. This usually includes:

- Money for nappies, beds, shoes and basic provisions.
- Psychological services to help them with early days/years trauma which they have often experienced
- Educational support as they are often suffering with behavioural problems due to foetal substance damage and early life traumas.
- Basic support with housing – some Kinship carers we know have up to 5 grandchildren living with them in 2 bedroom houses.

We note that there is a reasonable amount of statutory guidance on Kinship Care which suggests that any carer to whom the Local Authority is made aware is entitled to a range of assessments, a child's plan and a variety of support. However, in practice this very rarely happens. On the one hand we would agree with the report that '*not enough carers are aware of their rights*' (and we have been demanding that Local Authorities provide Kinship Carers with clear information on their entitlements from the first moment of the placement). But we would also add that in many cases Social Work departments are not proactive in supporting Kinship carers or making them aware of their rights, and even try to avoid supporting them with their basic entitlements. One of the key ways this happens is that Social Work will deny that they placed a child or move a child from a section 70 to a section 11. We believe this is due to overstretch on the part of Social Work who have not been adequately resourced to support Kinship Carers and others properly.

Finally, we have experienced repeatedly that Kinship Carers (like many other groups) are not adequately consulted or involved in policy making and service design that affects them. Consultations are often hugely biased towards tertiary educated people from Third Sector groups and much of the access to politicians on the issue is dominated by large charities who Kinship Carers often feel do not really represent their views and needs. There should be guidance about who is consulted and asked to sit around the table when policy and practice is being discussed and drawn up, and this should ensure that those directly affected are at the heart of the process, and not just third sector who claim to represent them.

2. What specific and achievable actions do you consider would best address the concerns you identify in your response to question 1?

- 1) Review the distinction between 'formal' and 'informal' Kinship Care placements and ensure that all children of comparable need have access to financial support and services. We would suggest that all children in a Kinship Care placement (whether s11 or s70) are defined as 'Looked After' children and supported accordingly as long as they are in the placement and still in need of support.
- 2) Ensure that children in Kinship Care placements have parity of life chances with children in non-relative foster care and are not unfairly discriminated. This means offering a 'living-rate' financial payment to Kinship carers, providing start up funds for the very basics such as beds and clothes, and providing access to psychological and educational services.

- 3) Adapt the rules on consultations and reviews of policy and practice so that those directly affected by the policy area must be present around the table and at consultations.

Name: ORG-0031a-NSPCC-000

NSPCC Scotland response to the Scottish Human Rights Action Plan

NSPCC Scotland welcomes the opportunity to feed into the development of the Scottish Human Rights Action Plan. We strongly support the development of a plan of action to further the realisation of human rights by all in Scotland, based on robust evidence and the establishment of collectively identified priorities, with specific and achievable actions.

About NSPCC Scotland

The NSPCC aims to end cruelty to children. Our vision is of a society where all children are loved, valued and able to fulfil their potential. We are working with partners to introduce new child protection services to help some of the most vulnerable and at-risk children in Scotland. We are testing the very best intervention models from around the world, alongside our universal services such as ChildLine, and the NSPCC Helpline. Based on the learning from all our services we seek to achieve cultural, social and political change – influencing legislation, policy, practice, attitudes and behaviours so that all children in Scotland have the best protection from cruelty.

NSPCC Scotland response

The report is immensely helpful in establishing that whilst at ‘structural steps’ level, references to human rights are frequent and explicit in the Scottish context, it is at strategy, policy and outcome level where action to take human rights forward is most needed, or as the report so succinctly states, *“in areas that matter to people most; where we actually lead our lives.”*

NSPCC Scotland would tentatively suggest that child specific law and child policy have both broadly developed within a children’s rights context, since the Children (Scotland) Act, and are generally set within a UNCRC context. Nevertheless, we are crucially aware that rights, as described at policy level, are not realized at the level of where children live their individual lives. There are of course a vast range of complex reasons for this, not least in the lack of resourcing for arguably rights based, aspirational strategy such as early intervention, and getting it right for every child - and the report of course clearly identifies some of the key areas where rights based child policy has failed to become realized for specific groups of children, including disabled children, looked after and accommodated children, vulnerable children and children in need of protection.

NSPCC Scotland subsequently believes that an urgent priority for the human rights action plan is working towards achieving full incorporation of the UNCRC into Scots Law. This would, at the very least, begin to address the core issue that children’s rights must be considered across all legislative and policy development. This is of crucial importance in the economic climate described in the report. NSPCC have recently noted that there are a raft of legislative proposals under consideration which potentially change the future landscape for children and family support services. We are concerned that these are being advanced in policy contexts where the impact in terms of the needs and rights of children are not guaranteed to be prioritized or even considered. To take one example, we believe that the refreshed national Child Protection Guidance must be synchronized with the impending integration of adult health and social care and self-directed support guidance to ensure that all relevant secondary legislation takes an integrated approach to the needs and rights of children.

Whilst many changes need to happen to ensure children’s rights are at the heart of all policy development, NSPCC Scotland would consider fundamental structural steps need to be taken, most notably the full incorporation of the UNCRC into Scots Law and means of redress for children whose rights are violated.

We are aware that the Scottish Government has a responsibility to observe and implement obligations under international human rights conventions, under the Scotland Act. This report, as well as the work

of Together, SCCYP and other key organisations, has firmly established that despite such existing obligations, implementation of the UNCRC across Scotland is patchy and inconsistent. NSPCC Scotland therefore strongly supports these organisations in their aspirations for the plan to prioritise the further embedding of the UNCRC in Scots Law, as being imperative to further the cause of human rights in general.

Specific Priorities

Theme 2: Health

Infant mental health

NSPCC Scotland strongly believes that infant mental health should be a priority within the The National Action Plan on Human Rights. Infant mental health is the fundamental building block of child wellbeing. Yet we are not aware of many mental health services for infants, and none aimed specifically at maltreated infants. This is despite the fact that:

the promotion of good infant mental health is now firmly embedded in Scottish policy – as reflected in the Early Years Framework^[1], Pre-birth to Three^[2], and A Pathway of Care for Vulnerable Families^[3], which reference the developing evidence base about the emotional, social and cognitive development of infants **the Scottish Government aspires to early intervention and prevention**; yet many abused children identified at the earliest age and stage as in need of help are unable to access the intensive therapeutic services they need.

Infants and one-year olds in Scotland are the single largest age group of children who require compulsory measures of supervision for safety and welfare reasons.^[4] According to the Children's Reporter, the reasons are usually complex, but often involve domestic violence, parental substance use and parents unable to provide a safe and stable environment.^[5]

The preventative agenda is not only about primary and secondary prevention but also about early tertiary interventions.^[6] The emphasis, quite rightly given by GIRFEC to universal services, must not mean we ignore the mental health needs of abused infants and children. Addressing these is also a crucial part of the preventative agenda, as it will help children to recover from the effects of abuse and help prevent abuse reoccurring.

We need to recognise that the effects of early maltreatment can amplify across the lifespan:

- abused or neglected children are at greatly increased risk of mental health problems such as conduct disorder and physical disorders.^[7]
- between a third and 90% of children who offend have been found to have experienced some form of past or current maltreatment.^[8]
- 'aggressive children' commit more than 50% of violent offences in adulthood.^[9]
- early maltreatment is associated with drug and alcohol problems and risky sexual behaviour in adolescence and adulthood.^[10]

Early childhood adversity and associated disorders carry a heavy social cost. Mental health services are one of the most cost-effective ways of improving mental and physical health and tackling health inequalities.^[11]

Young people's access to health care

NSPCC Scotland strongly supports Together's call for more ambitious targets for access to CAHMS. Specifically in the light of the increase in contacts to ChildLine about the issues of suicide and self harm. The most recent figures show that the number of young people seeking help about self-harm has soared by more than two-thirds (68 per cent) in the last year and counsellors have also handled a 39 per cent rise in contacts about suicide.

Research indicates that young people do not seek help from formal agencies or professionals, for example GPs, because they do not know they are available; they are unsure what help they can get from them; or they worry about losing control over the information they share. NSPCC Scotland believes that the issue of confidentiality needs to be understood as a rights issue, however, research indicates that often this is not the case. In, *'Finding the balance: children's right to confidentiality in an age of information sharing'* (2011), Wales & Hill found that that decisions about information sharing and breaching children's confidentiality are often not being driven by consideration of the best interests of the child. This is in spite of the UNCRC highlighting the need for a proportionate response when acting to protect a child where action 'must avoid causing the child undue distress or adding unnecessarily to any harm already suffered'.

Therefore, NSPCC Scotland would like to see the introduction of multi- agency child protection training for professionals with a clear emphasis on confidentiality and information sharing to increase practitioner confidence and support professional judgement. There is also a need for self-referral sources of support, which are tailored specifically to young people's needs around confidentiality and which young people have ownership of. We would like to see these measures delivered alongside an increased focus on children's rights as a key component of all health care in Scotland, taking into account those affected both directly and indirectly by mental health issues.

Theme 6: Safety and security

Full protection for children from physical assault

NSPCC Scotland notes the Scottish Human Rights Commission's conclusion that Scotland needs to better promote the influence of human rights laws in areas that matter most to people e.g. where we actually lead our lives: in our homes, neighbourhoods, workplaces, schools and other areas of day to day lives. There is perhaps no case better to illustrate this than the case of the status of children in the law as regards their right to protection from assault.

Law reform to abolish all corporal punishment of children is now seen as an obligation under international law by both European and United Nations human rights monitoring bodies. Over the last 18 years, the UNCRC reporting process has 3 times led to the Committee on the rights of the child strongly urging the UK to give children equal protection from assault (in 1995, 2002 and 2008). The Committee on the Rights of the Child stated in its concluding observations on the UK:

"The Committee emphasises its view that the existence of any defence in cases of corporal punishment of children does not comply with the principles and provisions of the Convention, since it would suggest that some forms of corporal punishment are acceptable."

NSPCC Scotland believes the continued acceptance of hitting children is detrimental to attempts to protect children from physical abuse. The current acceptability of physical punishment within Scots' law hampers attempts to protect children because it is difficult to draw the line between legal chastisement and physical abuse. This was reflected in the report into a case of serious child abuse in the Western Isles which spoke about difficulties in intervening to reduce physical punishment because the parents had a legal right to do so. Therefore NSPCC Scotland would like the Scottish Government to set out a

timescale in which it gives children equal protection from assault in law and to commit to providing information and support to parents and organisations providing support to families.

Rights of babies

Very young children are particularly vulnerable to their rights being breached. They have no voice with which to speak out about maltreatment, are physically frail relative to other groups of children, and are completely reliant on their parent or carer to meet their needs.

Greater consideration must also be given to the competing paradigms of child and parents' rights. A recent report by Ofsted^[1] raised the question of the balance of rights between parents and babies. In some cases these rights are compatible, and the rights which will protect babies, are those which will support parents. For example if a teenage parent is identified as a child in need who therefore has a right to receive adequate support, this support structure should also help to protect their baby. However, the report also highlighted the fact that there are cases in which the rights of parents and the rights of babies need to be balanced with evidence of models of practice with a strong focus on the needs of the parent/carer, in some instances to the exclusion of the needs of the baby.

Similarly, when a young child is removed from parental care, important and often difficult decisions have to be made about subsequent contact between child and parent. A human rights perspective suggests that visits with parents should provide a benefit to the infant and no physical or emotional costs or risks for the child. Visiting arrangements also need to ensure that the infant has the best chance of recovery from abuse and neglect. NSPCC Scotland believes that a rights-based perspective requires us to ensure that the rights of infants who have been harmed by abuse and neglect take precedence over parents' rights.

Given the high rates of maltreatment and babies' inability to speak up for themselves, NSPCC Scotland would urge that, in the application of the proposed duty on Scottish Ministers, specific consideration is given to the need to respect and promote all babies' rights but particularly those of babies' who become looked-after and accommodated. Raising awareness of the specific needs of babies could help drive broad change in attitudes and behaviours at a number of levels.

The National Action Plan on Human Rights should seek to take account of the rights of all children, including those who may be especially vulnerable, in order to better protect them from abuse. NSPCC Scotland is keen to work with all relevant stakeholders to explore how we can better respect babies' rights in both policy and practice, particularly in terms of protecting them from maltreatment.

Looked after children

Outcomes for looked-after children are consistently unacceptably low. Getting it Right? Human Rights in Scotland highlights concerns regarding poor educational outcomes, low income and employment rates, and poor health and early pregnancy of looked after children. NSPCC Scotland believes that actions pertaining to looked-after children should be underpinned by a children's rights framework which shows how the Scottish Government will produce tangible outcomes to encourage collective responsibility for looked after children and to closely monitor and evaluate the effectiveness of corporate parenting strategies.

Other areas of interest

3.5.7 Parental imprisonment

Theme 8 access to justice and right to effective remedy

The rights of the children of prisoners under the UNCRC are not currently at the forefront of the law, policy and practice relating to offenders who are parents, nor are the complexities of these children's predicament reflected adequately in the design of the mechanisms in place to support children. Therefore NSPCC Scotland would like to echo calls made by Scotland's Commissioner for Children and Young People to consider:

1. That the principles and provisions of the UNCRC apply directly to the law, policy and practice relating to the police, the administration of justice and prison services, particularly that the best interest of the child must be a primary consideration in everything they do that affects children;
2. Should conduct Children's Rights Impact Assessments on all existing and proposed legislation and policy, including on criminal justice, and evaluate the actual impacts of such law, policy and practice on children, with particular regard to the children of incarcerated parents;
3. Ensure that securing the rights and welfare of the children of offenders needs to be at the forefront of judicial and administrative decision-making on pre-trial detention, sentencing and release (including early and temporary release). Conducting Child Impact Assessments in court or as part of pre-sentence reports, which also serve to highlight the child's care and support needs, should be the norm.
4. Explore good practice examples of non-stigmatising support mechanisms for the children of prisoners in terms of emotional, social and health issues and at school or in other learning environments, with a view to identifying international best practice which can guide other state parties.
5. Raising awareness and promoting understanding of the UNCRC among professionals who work with children and young people or those whose work affects them, children and young people themselves and the wider public.

Name: ORG-0032a-Care Inspectorate-000

Based on the evidence presented in the report Getting it right? Human rights in Scotland, or your own experience, what do you consider to be the most urgent human rights issues which should be addressed in Scotland's National Action Plan for Human Rights?

The Care Inspectorate consider **Theme 1: Dignity and Care** to be the most urgent human rights issue for address within Scotland's National Action Plan.

The Care Inspectorate was established in April 2011 under the Public Services Reform (Scotland) Act 2010. We are the independent scrutiny and improvement body for the whole range of care and social work services for people of all ages. We believe that people in Scotland should experience a better quality of life as a result of accessible, excellent services that are designed and delivered to reflect their individual needs and promote their rights.

Based on the evidence presented in the report under Theme 1: Dignity and Care, and on our own experience, we consider there to be increasing need to protect and promote the rights of people who use care and social work services and those of their carers.

Children and young people, older people and people with disabilities who use care, support and social work services, have a right to life, freedom from torture, inhumane or degrading treatment or punishment and the right to respect for private and family life under the terms of Article 8 of the ECHR. In the year April 2011 to March 2012 we received 2,801 complaints about registered services. Of the complaints we completed, 70% were upheld or partially upheld. We identify many complaints as being about protecting people and this tells us that urgent action in dignity and care is necessary in terms of upholding human rights.

Funding "free" personal care and the moves towards Self-Directed Support present significant challenges in promoting and protecting the rights of people who use services and their carers. Increases in home care and support service registrations show that more people are exercising their rights under Article 19 of the UN Disability Convention, living independently, choosing where and with whom to live. There is a need to ensure effective regulation of home care and support services from a human rights perspective to ensure choice, safety and dignity for older people and adults with disabilities.

We recognise the increasing pressures for unpaid carers including the right to adequate standards of living, the right to work and the right to respect for private and family life. Urgent action to protect the rights of carers is needed.

What specific and achievable actions do you consider would best address the concerns you identify in your response to question 1?

Firstly, the development and publication of a full set of human rights based national care standards would best address the concerns raised in question 1.

We aim to

- provide assurance and protection for people who use services and their carers
- deliver efficient and effective regulation and inspection

- act as a catalyst for change and innovation
- support improvement and signposting good practice

We use national care standards to ensure minimum standards for registration and to measure the quality of care being experienced by the people using the service.

The development of a set of human rights based national care standards for all care services would support us to achieve our aims. Specifically through an inspection programme targeted at raising awareness and use of human rights in over 14,000 care services across the local authority, private, voluntary and not for profit sectors in Scotland.

Our current reporting processes are designed to measure how well our regulation and scrutiny activity impacts on the quality of care and social work services experienced by people who use them and their carers.

With the development of a human rights based set of national care standards our inspection reports could be used to indicate and measure the extent to which peoples human rights are being promoted and protected regarding dignity and care across the sectors and by geographical area.

Inspection reports could also be used to measure trends for positive human rights outcomes in the day to day lives of people who use care and support services. Effective practice examples to support this approach are emerging from the use of Getting It Right for Every Child policy within our joint children's services inspections. Based on the SHANARRI wellbeing indicators, strategy and action are assessed on rights based outcome focused measures.

Dignity in care will improve through explicit human rights based national care standards which promote continuity of care, specifically for people using care at home services who must be enabled to know their carer and to choose and change their provider.

Secondly, the development and publication of guidance for a Human Rights Based Approach to impact assessing policy changes would address the concerns raised in question 1.

We welcome the integration of a Human Rights Based Approach more in the development and implementation of policy and practice for public authorities. This will build on the success of the work of Care about Rights which uses practical examples of HRBA through interactive materials relating to the care and support of older people. Independent evaluation of Care about Rights demonstrates that the project has empowered older people to understand their human rights.

The Care Inspectorate views the employment of a Human Rights Based Approach as a way of empowering people to know and claim their human rights. It increases the ability and accountability of individuals and institutions who are responsible for respecting, protecting and fulfilling human rights. As citizens people who use care, social work and child protection services have a responsibility to take part in decisions which impact on their quality of life.

Rigorous human rights and equality impact assessments will lead to better and more cost effective decisions and outcomes. The prompt identification and management of risks will protect vulnerable people and lead to increased confidence in the scrutiny of services.

Cuts to public services, climate justice, fuel and food poverty, inequality and discrimination are of growing concern in Scotland and urgent action is required to make sure the people we serve have their rights protected and promoted.

The Care Inspectorate commend the report and the SHRC work towards a National Action Plan for Human Rights leading to significant and sustainable improvements in the way that Scotland assures the realisation of all human rights by everyone.

Name: ORG-0033a-name redacted-010

Based on the evidence presented in the report Getting it right? Human rights in Scotland, or your own experience, what do you consider to be the most urgent human rights issues which should be addressed in Scotland's National Action Plan for Human Rights?

Issues that are important to us include those that affect asylum seekers, refugees, LGBT people, Gypsy/Traveller people. Also:

- right to freedom from torture, inhuman or degrading treatment or punishment
- right to respect for private and family life
- forced marriage
- same-sex marriage
- policing using Tasers
- offences aggravated by prejudice
- asylum
- detention of asylum-seeking children
- abuse prevention, protection and remedy, and duties of the state in this regard
- people trafficking
- accountability of the state and of the police
- monitoring of email, telephone and other communications
- retention of DNA and other forensic data
- prosecution of perpetrators of FGM.

What specific and achievable actions do you consider would best address the concerns you identify in your response to question 1?

Make more proactive use of existing law.

Encourage medical professionals to report suspicions regarding cases of FGM. The law against it exists but has never been used in this country.

Learn from good practice abroad.

Restrict use of Tasers to fully trained firearms officers.

Encourage the philosophy that human rights apply to everyone without exception in this country to be taught in schools.

Name: ORG-0035a-Humanist Society Scotland-000

The Humanist Society Scotland (HSS) aims to promote a secular Scotland and is the Scottish charity working on behalf of non-religious people who seek to live ethical and fulfilling lives on the basis of reason and humanity. We aim to reflect the views of the millions of Scots who value secularism in public life – and who go on to agree with our Vision of a fair, progressive and open Scotland. We seek to influence public policy - not just in Scotland, but in the UK and internationally. We know that we are just one voice among many. We recognise that we have a right to be heard, but not a right to win the debate; and we ask that those who do not share our values recognise the same.

Scotland's National Action Plan

The Commission would like people to give their views by answering the following questions: Based on the evidence presented in the report *Getting it right? Human rights in Scotland*, or your own experience, what do you consider to be the most urgent human rights issues which should be addressed in Scotland's National Action Plan for Human Rights?

The Humanist Society Scotland notes the aspirations of the SHRC regarding the consultation on the National Action Plan to “empower people to know and claim their rights and to increase the ability and accountability of public and private bodies to deliver on human rights in Scotland”. It is vital to recognise that people will never be able to claim their rights if information that will help them to do so is not available. Most institutions and public bodies continue to produce **inaccessible information** despite statutory obligations under disability/equality legislation. Unfortunately, SHRC is no different, feeling itself unable to produce an Easy Read version of this consultation and not adequately captioning the video that supports it. The Scottish Parliament still does not have subtitling arrangements for its meetings and the Scottish Government has not yet provided the leadership necessary to implement inclusive communications across itself and other public bodies. More recently as part of the programme of welfare reform, the UK Government has set in place processes that are inaccessible, will prevent people from claiming support to which they are entitled and penalise those who are unable to use the system.

Members of the Humanist Society Scotland have expressed a number of concerns regarding protecting and asserting human rights in Scotland. Among them are the current moves by the UK Government to downplay the role of the **ECHR**, and impose a UK Human Rights Act. The SHRC should not collude in this.

HSS suggests that the ambitions of those Scots who seek a **secular Scotland** should be included in the plan and draws attention to the continued assumption of religion in ceremonies (remembrance, Kirling of the Parliament), indoctrination of children in schools, religious representatives on local authority education committees, faith based chaplaincy and parallel legal systems.

Separation of church and state, in all respects, is consistent with globally (well almost) accepted human rights.

HSS has long held views on the place of **religion in education**. We base our Education policy on the four words engraved on the mace within the Scottish Parliament. They are Wisdom, Justice, Compassion and Integrity. These words state the values of the Scottish state and are the foundation of the Curriculum for Excellence. We do not think the present system lives up to these agreed ideals and whilst religious and moral education in schools is an important part of the current curriculum and should continue it should, however, be part of children and young people's experience to **learn** about

other beliefs and make up their own minds. There should be no acts of **religious observance** as part of the school's timetabled curriculum as to allow acts of religious observance as part of the timetabled curriculum tells children and young people that the school and state believe that one religion is true.

We do not think the state should endorse any religion. That creates two classes of Scots, those whose beliefs are merely studied out of interest and those whose beliefs are endorsed as part of the curriculum.

We do not think there should be two kinds of school in Scotland. All schools in Scotland should be open to all children, with no reference to the religious beliefs of their parents. There should be no separate curriculum or different school buildings for children of different beliefs.

Unelected **church representatives** sit on all education committees in Scotland and vote on how our children and young people are educated. We believe the principle of non-elected representation is unfair and unjust.

Recent initiatives by both Scottish and UK Governments to legislate for **same sex marriage** have brought education on human sexuality into the spotlight. We hope all pupils will learn that (1) people in Scotland are able to marry, irrespective of the sex mix of the couple. This is consistent with (2) learning about the diversity of human sexualities. (2) is a biological and cultural fact, and pupils themselves embody it. It underpins (1). This is reality, and we hope all schools and teachers will embrace it. We do not ask that (1) is in any way marked out, emphasised or privileged; we ask only that just as any sexuality is normal and real, so any sex mix in a married couple is normal and real. We realise there may be religious groups for whom same sex marriage, like divorce, is contrary to their beliefs; but we believe same sex marriage, like divorce, should be discussed so that all pupils know the law in Scotland as it may affect their lives.

One HSS member noted how a hierarchy of sexual orientation can lead to bullying: "My 35 years in secondary schools have taught me that at times young people can be unkind to one another. From bullying to thoughtlessness, some young people can inflict unhappiness and misery on others, and this often arises out of perceived inferiority or perceived difference. The unfairness of not according equality of status in law to all couples who wish to marry gives tacit **societal approval** to those who use the excuse of perceived difference and inferiority to cover their **homophobic bullying**, and does nothing to challenge thoughtlessness such as the use of the word "gay" as a pejorative term. This issue is made all the more urgent by the fact that it is usually during the teenage years that an individual comes to terms with his or her sexuality. In a civilised society, such a process must surely be allowed to take place without any young person being made to feel that society regards his or her sexual orientation as any less acceptable than anyone else's."

The same sex marriage proposals also initiated debate as to whether or not civil servants could opt out of their public duties citing religious belief as a reason. It is our view that this should not be permitted. As HSS spokesperson Ross Wright said: "Equal treatment before the law should be the guiding principle. In a modern liberal democracy, there can be no "opt out" for civil servants who say they are unable to do their jobs because they wish to discriminate, just because their desire to discriminate derives from a religious belief. In the same way that it would be unthinkable to allow a gay registrar to refuse to marry a religious couple, it should be unthinkable to allow **religious belief** to dictate the provision of a **public service**."

HSS had a number of concerns regarding disability, **disabled people** and health with one member stating that “the question of human disability demonstrates the greatest affront to human dignity”. The societal barriers that exist for disabled people, both physical and attitudinal were highlighted as well as lack of access to healthcare. The right to palliative care for those with long term or life limiting conditions was also emphasised. With the advent of a proposed Private Bill on End of Life these issues should be among the priority areas for the Commission in the years ahead.

Protection rights for medical research and genetic intervention were also raised as an issue of concern, specifically in the realm of reproductive rights, with one HSS member noting: “screening and testing for impairment as specific research interventions; pre-implantation genetic diagnosis; genetic enhancement. Scottish humanists support the human right of every woman to open access to contraception, to birth control, to abortion, in the face of religious dogma, censorship and controls over the autonomy of procreation rights.”

Finally, **environmental justice** and the protection of the environment in which we all live is also a matter of concern for some HSS members, particularly when the voices of local people and the wider community are over ridden.

Based on the evidence presented in the report Getting it right? Human rights in Scotland, or your own experience, what do you consider to be the most urgent human rights issues which should be addressed in Scotland’s National Action Plan for Human Rights?

HSS members have indicated a number of areas that they would like to see prioritised including a commitment from the SHRC to defending the rights of **disabled people** and women and children. People with mental health issues and those with addictions have been identified as a particularly vulnerable group. Alongside this they would like to see wider promotion and understanding of the **social model** of disability. Some would prefer a consistent acknowledgement of the centrality of medical science as a secular component of this commitment.

Promotion of and a commitment to inclusive/ **accessible communication**, which meets the need of all members of the community should be a priority area. SHRC should use its influence to persuade Scottish, UK Government and the layer of public bodies and institutions that depriving people of basic information that prevents them from accessing services and participating in the political process is unjust.

The development of planning tools such as human rights **impact assessments**, which could be support equality and diversity and health inequality impact assessments is a crucial step in helping organisations gain a greater understanding of institutional discrimination and helping them to eliminate it.

HSS has set out some of its concerns regarding the **Curriculum for Excellence** and segregated education earlier in this response. Needless to say, we welcome continuing debate and hope that the SHRC ensures that all voices are heard, particularly in areas where we feel there is a democratic deficit, such as representation on education committees.

Issues around **work** have also featured in comments from HSS members and an area which SHRC could devote some resources, particularly in the current economic climate where the government is imposing benefits sanctions and eroding employees’ rights. In particular, asylum seekers not being permitted to work, young people being stereotyped and poorly treated by Police and Jobcentres and the increase

the qualifying period for unfair dismissal and the introduction of lodging fees for employment tribunals have been picked out by our members as areas on which need attention.

Finally, with a new proposal regarding **end of life** choices about to be launched the SHRC should take an active part in the coming debate and recognise a person's right to self determination and exercise their free will.

Name: ORG-0036a-FamiliesOutside-000

Based on the evidence presented in the report *Getting it right? Human rights in Scotland*, or your own experience, what do you consider to be the most urgent human rights issues which should be addressed in Scotland's National Action Plan for Human Rights?

As Scotland's only national charity that works solely to support the families of people involved in the criminal justice system, Families Outside would like to highlight the needs of a particularly vulnerable group of young people, namely those affected by the imprisonment of a parent or close relative. Within the *Getting it right?* report (3.5.7.), the estimated number of children affected is given as around 16,500; in fact, it is now thought that around 27,000 children every year experience the imprisonment of a parent (Scottish Prison Service, 2012). These children remain largely unrecognised, and therefore unsupported, despite the fact that they experience a range of emotions associated with bereavement in addition to stigma, shame, and bullying, making it difficult for them to engage meaningfully in their education and positively in society. Children affected by imprisonment are at high risk of harmful behaviour patterns, future unemployment and ultimately of entering the criminal justice system themselves. For these reasons, Families Outside considers recognising and supporting them as an urgent human rights issue.

What specific and achievable actions do you consider would best address the concerns you identify in your response to question 1?

Families Outside welcomes and supports the recommendations listed in *Together's Children's Rights Briefing* regarding the children of prisoners (4.3.). In addition to these, we also recommend that the Scottish Government:

- uses its own most recent estimate of 27,000 children affected in all publications to ensure that the scale and impact of imprisonment on children is clearly communicated;
- considers ways of sensitively identifying, and appropriately supporting, children affected by imprisonment within the school system and equips schools and other organisations to share this information appropriately;
- supports and funds the training of teachers with regard to issues of imprisonment, both in general terms for all student teachers as well as additional in-prison CPD sessions for teachers who specialise in supporting vulnerable children and young people;
- recognises that a parent in prison can still be involved in their child's life and education, even from behind bars, and provides funding for projects that seek to encourage and develop these relationships; and
- listens to the voices of children and families affected so that their needs remain at the heart of every intervention.

ORG-0037a- Friends of the Earth Scotland & the Environmental Law Centre Scotland-000

1. Based on the evidence presented in the report *Getting it right? Human rights in Scotland*, or your own experience, what do you consider to be the most urgent human rights issues which should be addressed in Scotland's National Action Plan for Human Rights?

Friends of the Earth Scotland (FoES) and the Environmental Law Centre Scotland (ELCS) consider access to justice to be one of the most pressing human rights issues in Scotland, and as such should be addressed in the National Action Plan. FoES and ELCS are working together for improved access to environmental justice in Scotland and it is with this in mind that our response is framed. Since 2010 FoES's Access to Environmental Justice campaign has sought to expose the barriers that individuals, communities and NGOs face in attempting to undertake legal action in environmental matters. We very much welcome the opportunity to respond to proposal for a National Action Plan for Human Rights.

Aarhus and environmental rights

The human right to a dignified life is fundamental, and there is a clear link between protecting this right and protecting the environment. Environmental justice is a concept that arose out of the civil rights movement in America, as a result of increasing recognition that poor ethnic minority communities were bearing the brunt of environmental damage and pollution. While the concept has evolved from 'environmental racism', environmental damage—whether caused by climate change, pollution or over development – continues to affect the poor and disadvantaged disproportionately.

This is true in present-day Scotland, as it is across the globe: a 2005 report found that people living in deprived areas in Scotland suffered disproportionately from industrial pollution, poor water and air quality.¹

There are two defining elements of environmental justice; that of distributive and that of procedural justice in relation to the environment. Distributive environmental justice recognizes that the human right to a dignified life is fundamental, and as such, everyone has a right to a healthy and safe environment; i.e warm housing, clean drinking water, unpolluted air and food that is safe to eat.

Procedural environmental justice requires that in order to uphold the former – and because the environment has no voice – citizens need to be informed about and involved in decision-making, and enabled to identify and stop acts that breach environmental laws and cause environmental injustices. The Aarhus Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters (more commonly known as the Aarhus Convention) enables people to be that voice.

The Aarhus Convention recognizes every person's right to a healthy environment and aims to improve the accountability, transparency and responsiveness of decision makers and authorities. But it also actively places a duty on citizens to "protect and improve the environment for the benefit of

the present and future generations”.² Equally, it is the duty of public authorities to be open and consultative and to seek to make the best informed decisions. This illustrates the wider policy issues that drive environmental law and set it apart from other areas of public law. It also explains why the Government is obliged to introduce certain measures in relation to access to justice in environmental matters.³

Compliance with the third Pillar is critical to ensure that the procedures established by the former two are properly adhered to. Going to court to defend the environment where a law has been breached is a form of participation that citizens should be encouraged to undertake, albeit as a last resort. However, in this respect, Scotland falls considerably short of meeting its international obligations.

Barriers to access to justice in environmental matters

As the chapter on Access to Justice and the Right to Effective Remedy notes, a number of important strides have been made in recent case law. Rules of court have just been enacted providing a statutory basis for obtaining a Protective Expense Order (PEO) in certain circumstances.⁴ We note that such rules have been introduced in response to infraction proceedings taken by the European Commission regarding implementation of the Public Participation Directive.⁵ In addition the Scottish Government has recently introduced a Court Reform Bill⁶ that will introduce changes to judicial review procedure.

We are concerned that there are significant difficulties in access justice in environmental cases. While PEOs are a step forward they do not tackle the problem of prohibitive expense in cases that are outwith the scope of the Public Participation Directive. Our view of the rules is that they are inadequate to provide compliance with the access to justice provisions of the Public Participation Directive, and fail to deal with Aarhus cases falling outwith that Directive. Further, we perceive a reluctance by the Scottish Courts to consider the substantial merits of a decision, which we think is required by the Aarhus Convention.

- **Costs**

The third pillar of Aarhus requires that members of the public have access to justice if rights under the former pillars are denied (i.e. rights to participate in decision making and to access information as enshrined within the PPD and Directive 2003/4/E) and if national environmental law has been broken.⁷ Under Article 9 (4) these procedures must provide effective remedy and be “fair, equitable, timely, and not prohibitively expensive”.⁸

In Scotland, as throughout the UK, raising challenges to environmental decisions will generally be by way of judicial review or statutory review. There is no doubt that judicial review is very expensive,

and prohibitively so for the ordinary person. In *Uprichard v Fife Council*⁹, the petitioner faces a total bill of £173,000. In *McGinty v Scottish Ministers*¹⁰, despite being awarded the first ever Protective Expense Order (PEO) in Scotland, the estimation of Mr McGinty's costs was around £80,000 if he was to lose.

In response to legal action from the European Commission, the Government's moves to tackle the excessive cost of environmental litigation are limited to codification of rules of court for PEOs in cases under the Public Participation Directive only.¹¹ However, the new rules in Scotland fall far short of providing for the kind of assurance against prohibitive expense required by the Aarhus Convention, and in the context of difficulties in accessing legal aid and increases in court fees,¹² these rules are unlikely to substantially improve access to justice.

¹ SNIFFER, Investigating environmental justice in Scotland: links between measures of environmental quality and social deprivation, 2005
<http://www.sniffer.org.uk/Webcontrol/Secure/ClientSpecific/ResourceManagement/UploadedFiles/UE4%2803%2901.pdf>

³ Aarhus Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters, preamble

⁴ The EU and the UK are signatories to the Convention, and as justice and the environment are devolved, the Scottish Government is bound to comply with the Convention

⁵ <http://www.legislation.gov.uk/ssi/2013/81/made>

⁶ http://europa.eu/rapid/press-release_IP-11-439_en.htm and

<http://www.scotland.gov.uk/Topics/Justice/legal/Civil/PEOs>

⁷ <http://www.scotland.gov.uk/Publications/2013/02/5302>

⁸ Aarhus Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters, Article 9
<http://www.unece.org/env/pp/documents/cep43e.pdf>.

⁹ Aarhus Convention Article 9 (4)

¹⁰ <http://www.scotcourts.gov.uk/opinions/2011CSIH59.html>

¹¹ <http://www.scotcourts.gov.uk/opinions/2011CSOH163.html>

¹² The Government has indicated that the Taylor Review will see to the broader requirements of Aarhus compliance on costs. However, we met with the Secretary to the Taylor Review in February 2012, and we note that the Taylor Review remit does not specifically extend to examining the obligations of the Scottish Government regarding expenses and funding of environmental litigation under the Aarhus Convention.

Briefly, our key concerns with the new rules include:

Level of cap: the presumptive cap of £5,000 for petitioners is in our opinion much too high. Based on the experience of the Environmental Law Centre Scotland, the sum of £5,000 would be difficult if not impossible for many community groups to find, let alone individuals. Evidence suggests that deprived communities suffer from the brunt of poor environmental decision making, with people living in deprived areas in Scotland suffering disproportionately from industrial pollution, poor water and air quality,¹³ therefore such a limit would disproportionately impact on these communities.

Eligibility: the rules apply only to individuals and 'non-governmental organisations promoting environmental protection'; and specifically preclude 'persons who are acting as a representative of an unincorporated body or in a special capacity such as trustee'.

Judicial discretion: despite the fact that the rules only apply to cases falling under the Public Participation Directive – which requires challenges not to be prohibitively expensive – Petitioners taking a case under the PPD are not automatically considered to be eligible for a PEO. Instead applications must be made by motion therefore potentially incurring not inconsiderable expense in getting to this stage. Furthermore, the rules include a provision whereby the court must be 'satisfied that the proceedings are prohibitively expensive for the applicant', implying judicial discretion as to what prohibitively expensive is. The rules do not address whether prohibitively expensive is a subjective or objective test.¹⁴

Appeals: the rules allow for PEOs to be awarded in appeals, but the cost limits are left to judicial discretion, taking into account decisions on costs in the lower court, meaning there is no certainty as to the cost of taking a case to appeal. There are relatively low numbers of environmental cases, and the tendency has been for such cases to be appealed.

However, notwithstanding the availability of PEOs, there is nothing in the rules that assists with the costs of taking legal action. As we set out further below, there are significant issues with legal aid or finding solicitors/advocates who will act on a speculative basis.

- **Substantive review**

Aarhus also requires that "members of the public concerned...have access to a review procedure...to challenge the substantive and procedural legality of any decision, act or omission...relevant [to] provisions of this Convention" and that these procedures "shall provide adequate and effective remedies".¹⁵

The Scottish Courts rarely stray into the substance of cases and are openly reluctant to do so.¹⁶ While understandably there is some tension between the ability of governments to take decisions and be accountable for them, and the availability of judicial review, it could be argued that there is a contrast between the jurisprudence of public law cases north and south of the border. This may partly be due

to a lack of specialism in the Scottish Courts. We note that Lord Gill's review of the Civil Courts examined this issue and recommended specialisation of judges. The current court reform programme tackles this to a degree, and Tribunal reform offers further scope for considering it.

- **Standing**

We note the changes made in *Axa v Lord Advocate and others*,¹⁷ when the Supreme Court replaced the archaic test of 'title and interest' to sue with the broader 'sufficient interest', meaning individuals can now take public interest cases to court. The Court noted in this case that the development of public law in Scotland had been severely hindered by decades of judge made law.

While this new test should serve to improve access to justice in environmental – and other public interest – cases, it is worth noting that the Scottish courts have not been quick to apply it. In a subsequent ruling, the Supreme Court felt the need to make it clear that legal challenges to important decisions and acts by public authorities are a vital means of upholding the rule of law, following the Inner House's comments regarding standing in *Walton v Scottish Ministers*.¹⁸ The Supreme Court in *Walton* emphasised the importance of individuals and NGOs taking cases on behalf of the environment.¹⁹

¹² See our briefing to the European Commission on the excessive costs of challenging environmental decisions in Scottish Courts

<http://foe-scotland.org.uk/excessivecostsDec2012>

¹³ SNIFFER, Investigating environmental justice in Scotland: links between measures of environmental quality and social deprivation, 2005
<http://www.sniffer.org.uk/Webcontrol/Secure/ClientSpecific/ResourceManagement/UploadedFiles/UE4%2803%2901.pdf>

¹⁴ A ruling from the European Court of Justice is expected on 11 April 2013 in *R Edwards v Environment Agency* which will clarify

whether prohibitively expensive should be applied subjectively or objectively.

¹⁵ Aarhus Convention Article 9 (1)

2. What specific and achievable actions do you consider would best address the concerns you identify in your response to question 1?

Costs

- **One way cost shifting**

'Qualified One Way Cost Shifting' (QuOWCS), is a system where unsuccessful litigants are not ordered to pay the costs of any other party unless they have acted unreasonably in taking the case. This is the cost regime recommended by senior English judges, who point to inherent shortcomings with cost capping orders, such as PEOs.

The Jackson Review (2010) looked at the costs of civil litigation in England and Wales. Lord Jackson found that while Protective Cost Orders (English equivalent of PEOs) can provide early certainty and control the level of a claimant's cost liability, the system currently does not provide for Aarhus as compliance PCOs are granted restrictively, and at the judges' discretion. Therefore Jackson recommended England and Wales should 'expand the [PCO] test and...introduce qualified one way cost shifting (QuOCS) for all judicial review claims, leaving the 'permission' requirement as a sufficient mechanism to weed out weak claims'.²⁰

The Sullivan report (2008) focussed specifically on Access to Environmental Justice in England and Wales. Following the Jackson Review, Sullivan issued an update report in 2010 to take account of those findings.

Sullivan's 2010 update report agreed with Jackson's findings, and recommended one-way cost shifting, instead of tinkering with the PCO system, finding this to be the simplest and most effective way of complying with the Aarhus demands that access to justice must not be prohibitively expensive, and to avoid the 'chilling effect' by ensuring all possible costs are up front from the start.

Sullivan's proposal went further than Jackson in amending the qualification test, so that "an unsuccessful Claimant in a claim for judicial review shall not be ordered to pay the costs of any other party other than where the Claimant has acted unreasonably in bringing or conducting the proceedings".²¹

We consider that the best way to ensure Aarhus (and PPD) compliance in this area is to introduce one way cost shifting for all environmental cases where there is a public law point to be answered.

- **Legal Aid**

The presumptive cap on PEOs is particularly unfair considering that legal aid is effectively denied to those seeking to pursue a public interest environmental case, and given the Government has no proposal to tackle difficulties in obtaining legal aid for environmental cases, presented by Regulation 15 of the Civil Legal Aid (Scotland) Regulations 2002,²² which has a particularly adverse effect in environmental cases.

When deciding whether to grant legal aid, under Regulation 15 of the Civil Legal Aid (Scotland) Regulations 2002, SLAB looks at whether 'other persons' might have a joint interest with the applicant. If this is found to be the case – as it would be in almost any Aarhus case imaginable – SLAB must not grant legal aid if it would be reasonable for those other persons to help fund the case. In addition, the test states that the applicant must be 'seriously prejudiced in his or her own right' without legal aid, in order to qualify.

These criteria strongly imply that a private interest is not only necessary to qualify for legal aid, but that a wider public interest will effectively disqualify the applicant.²³ This has a particularly adverse effect in relation to Aarhus cases; environmental issues by their very nature tend to affect a large number of people. We are only aware of legal aid being awarded in cases restricted to subject matters that affect a small number of households, or where the Scottish Legal Aid Board has decided that Regulation 15 does not apply to the application.

Moreover, community groups cannot apply for legal aid in Scotland. By contrast, England and Wales have a system that allows the joint funding of a case, where the Legal Services Commission grants legal aid to an individual subject to a wider community contribution, based on what the community group can pay. Although Scotland has provision whereby if a third party contributes to the cost of a case it can be paid over to the legal aid fund, these provisions were not designed for environmental cases, and would require reform to allow a system such as that which operates in England.

In addition, we note that the Scottish Legal Aid Board has recently introduced caps on legal aid certificates, which will mean that all the expenses of the case (including Counsel's fees, Edinburgh agents fees, solicitors fees and outlays) will be capped at £7,000. Freedom of Information requests have revealed that in some cases public authorities spend far larger sums defending judicial review cases, and consider the introduction of this cap will led to gross inequality of arms. Although there is provision for applications to be made to the Scottish Legal Aid Board for the cap to be increased, we consider that is likely that fewer solicitors will be willing to take on judicial review cases. The solicitor runs the risk of incurring liability for counsel's fees and outlays which are not covered the level of the cap. We think that £7,000 is an unrealistic figure to run a complex judicial review, and consider most if not all environmental judicial reviews are likely to be complex. The introduction of this cap is likely to lessen the number of solicitors willing to act in this area, and places another barrier on obtaining access to the courts on a legally aided basis.

We consider that removal of Regulation 15, and the introduction of a mechanism to enable community groups to access legal aid is essential for Aarhus – and Public Participation Directive – compliance.

- **Court Fees**

The Scottish Government is in the process of implementing a policy of full cost recovery in court fees.²⁴ Fee proposals for the Court of Session will have a serious impact on parties seeking access to justice under the Aarhus Convention, because the complexity of environmental cases and a lack of specialization in the judiciary means environmental judicial reviews tend to require lengthy hearings, and fees include an hourly rate for time in court.

Fees for the Court of Session are already very expensive – prohibitively so for the ordinary person – particularly in relation to the time spent in court in judicial review cases. For example in *McGinty* the Outer House hearing took 18 hours, which we estimate would incur costs of approximately £1,620 for

the hearing alone; in *Walton* hearings in the Outer House lasted for 22 hours, and in the Inner House for 18 hours amounting in our estimate to £5,580. Under the new regime, McGinty's costs for time spent in court alone would double to £3,240 in 2014; and Walton's more than double to £12,060. Because of the restrictions on legal aid in environmental cases, it follows that such cases are highly unlikely to secure an exemption from court fees on the basis of legal aid²⁵.

We consider that comprehensive research into the impact of increased court fees on access to justice as a whole, with special attention paid to the unique requirements for access to justice in environmental matters, under the rights granted by the Aarhus Convention should be undertaken.

Civil Court Reform

The present Government's response to Lord Gill's 2009 Review of the Scottish Civil Courts in establishing the 'Making Justice Work' programme provides the perfect opportunity to build on progressive Freedom of Information and Strategic Environmental Assessment legislation, by finally implementing the last Pillar of Aarhus, and securing procedural environmental justice in Scotland.

- **Judicial review**

The Scottish Civil Courts Review recommended three key changes to judicial review procedure:

- to widen the law of standing;
- to introduce a time bar within which to bring judicial reviews; and
- to introduce a requirement to obtain leave before being able to bring a judicial review

Under current legislative proposals to implement the Review, the Scottish Government considers that AXA has sufficiently broadened the law on standing, but plans to bring forward changes to introduce both a time limit and a leave stage in bringing judicial reviews.

We support the introduction of a leave stage and consider that it will help filter out unmeritorious cases and ultimately reduce the burden on the courts and the cost of litigation. However we are concerned with the proposal to introduce a three-month time limit that might cause problems in complex cases and particularly where there is uncertainty in funding. We also think that there is a real issue with a finding a solicitor able to act on a pro bono, reduced fee or legally aided basis, and the introduction of a time limit will exacerbate this. **Given the historical culture of lack of awareness of legal rights in Scotland and the comparable importance of Aarhus cases to Human Rights cases, if the Government proceed with introducing time limits, they should consider a time limit of a year for such cases.**

- **Tribunal reform**

Broadly speaking, we welcome the Government's proposals for Tribunal reform to simplify the system and provide a coherent structure into which additional tribunals can be added. We support the underlying recognition in these proposals of the importance of 'administrative' justice, and consider that reform of the Tribunal system and moves towards specialisation in the courts could help to widen access to justice.

Environmental decision-making happens in a complex framework of legislation – not all specifically environment-related – and is initiated and regulated by numerous public authorities and bodies.

A specialist environmental tribunal offers the chance to rationalize and simplify this framework, and could also give the judiciary greater authority and confidence in touching on issues of substance review.

¹⁷ For example Lord Brailsford in *McGinty v Scottish Ministers*

¹⁸ <http://www.scotcourts.gov.uk/opinions/2011CSOH163.html>

¹⁹ <http://www.supremecourt.gov.uk/decided-cases/index.html>

²⁰ <http://www.scotcourts.gov.uk/opinions/2012CSIH19.html>

²¹ www.supremecourt.gov.uk/docs/uksc-2012-0098-judgment.pdf

Jackson, Review of Civil Litigation Costs: Final Report (2010), part 5, chapter 30 para 4.1

²² Sullivan, Ensuring access to environmental justice in England and Wales, Update Report (2010), para 30

²³ <http://www.legislation.gov.uk/ssi/2002/494/regulation/15/made>

²⁴ For a more detailed dissection see Frances McCartney, 'Public interest and legal aid' as above

²⁵ <http://www.scotland.gov.uk/Publications/2012/12/6391>

²⁶ The granting of a legal aid certificate (together with some other exemptions in terms of receipt of certain benefits) give an exemption from the payment of a court fee

About Friends of the Earth Scotland

Friends of the Earth Scotland is an independent Scottish charity with a network of thousands of supporters, and active local groups across Scotland. We are part of Friends of the Earth International, the largest grassroots environmental network in the world, uniting over 2 million supporters, 77 national member groups, and some 5,000 local activist groups - covering every continent. We campaign for environmental justice: no less than a decent environment for all; no more than a fair share of the Earth's resources.

About the Environmental Law Centre Scotland

The Environmental Law Centre Scotland is a charitable law centre using law to protect people, the environment and nature, and increase access to environmental justice. We help protect the environment and support sustainable approaches and solutions by providing advice, advocacy, training, updates and research. We work with both local communities and other non-government organisations to use law to protect the environment. We seek to test the law, and work to ensure that Scotland complies with its European and international obligations.

ORG-0038a-SavetheChildrenUK-000 PDF Submission

1. Based on the evidence presented in the report *Getting it right? Human rights in Scotland*, or your own experience, what do you consider to be the most urgent human rights issues which should be addressed in Scotland's National Action Plan for Human Rights?

1. Incorporation of the UNCRC into Scots Law

There is no doubt that progress has been made towards embedding children's rights in Scotland. The United Nations Convention on the Rights of the Child (UNCRC) has been referred to and taken into consideration in several policy areas including, for example, the Standards in Scotland's Schools Act 2002 and the Early Years Framework. There have also been several landmarks for children's rights in recent years. This includes the establishment of an independent Children's Commissioner and a Scottish Government Action Plan on Children's Rights.

However, the approach taken by successive governments in Scotland to put children's rights into practice has been on an inconsistent and 'piecemeal' basis. This means that there is too often a focus on certain rights, certain settings and certain children to the exclusion of others, resulting in some rights being neglected and the obligation to consider children's views only being recognised in some contexts.ⁱ The absence of a clear structural framework for the implementation of children's rights severely limits the extent to which children's rights are realised throughout Scots law, policy and practice. Whilst there are a number of positive examples of policy and legislation that are informed by and/or refer to children's rights in Scotland this is not a universal process. The gradual reform of legislation in different areas in order to ensure compliance with the UNCRC has led to uneven application and inconsistent outcomes for children.

Currently, too many children in Scotland are not having their rights protected – not least the 1 in 5 children in Scotland currently experiencing poverty.ⁱⁱ This group of children is particularly at risk of negative outcomes and are frequently subject to a number of systemic rights violations (as outlined in section 2 and 3 of this submission).

Save the Children believes that the best way to address these issues and to ensure that all children's rights are realised is for the Scottish Government to directly incorporate the UNCRC into Scots law. Incorporation would provide something far more rigorous and routine than currently happens. Full incorporation would make children's rights 'real' through leading to more extensive realisation of all children's rights across all aspects of our society; creating a viable and effective channel of redress in instances where children's rights have been breached. There are a number of clear, tangible benefits to incorporating children's rights in Scots law:

- **Making children's rights a reality:** A comprehensive children's rights law would form the basis of a systematic and sustainable approach to improving children's rights in Scotland. This would bring about change more quickly by giving children enforceable rights and placing a binding commitment on all Government departments and public bodies to protect, respect and promote them. It would require the systematic consideration of all children's rights in every piece of legislation and policy affecting children.
- **Enforcing children's rights:** Although Scotland, as part of the UK, is a signatory to the UNCRC, there is currently no legal method of ensuring that the rights contained in the UNCRC are being upheld. Making the UNCRC part of Scots law would make it applicable in the Scottish courts and give children and their parents or guardians a clear route to follow where rights are violated. It would require judges to

ensure cases affecting children are consistently interpreted in light of the UNCRC.

- **Creating a culture of respect for children's rights:** An important consequence of putting children's rights into law is the culture it helps to create. It would provide a strong statement from the Scottish Government that the rights and well-being of children must be a paramount consideration for all those in power, including parents. It would also help to raise awareness of children's rights throughout society, particularly among those working with or for children and young people.

Examples and evidence provided from States where the UNCRC has been incorporated into domestic law (out-with the UK) have shown that the process of incorporation itself raises awareness of children's rights in Government and civil society; it can make a longer term contribution to the realisation of children's rights through generating a culture of respect for children's rights and increasing acknowledgment of children as rights holders.ⁱⁱⁱ Scottish Government should give serious consideration to incorporating the UNCRC into Scot's law in order to achieve its ambitions in this area.

The UN Committee on the Rights of the Child is clear that it expects governments to take all appropriate measures to give the UNCRC legal effect within their domestic legal systems and advocates direct and full incorporation as the preferred method of implementation.^{iv} The UN Committee has twice recommended that the principles and provisions of the UNCRC be fully incorporated into law across the UK^v and, at the 2012 UK Universal Periodic Review (UPR) reporting round, Slovakia also recommended incorporation of the UNCRC into UK domestic law as an urgent measure.^{vi} The UN Committee favours direct and full incorporation as a method of implementation, thus giving full legal effect to the binding commitments made by Governments when ratifying the UNCRC. Together – the Scottish Alliance for Children's Rights – has recommended that the Scottish Government aim for full incorporation of the UNCRC by the UK's next reporting round to the UN Committee.^{vii}

In a 2011 report, Save the Children assessed how far Articles 4, 42 and 44.6 – collectively recognised as the General Measures of Implementation (GMI) – had been realised in five European countries, including the United Kingdom. This analysis identified welcome developments in putting the GMI into practice in Scotland, yet highlighted a significant gap in progressing legislative measures to improve outcomes for children. In particular, the research noted that incorporation of the UNCRC into domestic law was a particular 'sticking point.'^{viii}

More recently, the Scottish Government has made welcome commitments to furthering the implementation of the UNCRC in Scotland. Having previously proposed a duty on Scottish Ministers to pay 'due regard' to the UNCRC in all of their functions, the current proposal is a duty on Ministers to 'take appropriate steps to further the rights of children and young people' and to 'report on progress in implementing children's rights'. Whilst the precise nature of these duties is still unclear and these proposals could represent a step in the right direction, they do not go as far as nor replace the need for full incorporation. Therefore, there is still a need for the Scottish Government to outline a roadmap towards the full incorporation of the UNCRC.

2. Ratification of the Optional Protocol on the UNCRC complaints mechanism

The third Optional Protocol (OP) is a communications procedure to allow individual children to submit complaints to the UN Committee on the Rights of the Child regarding specific violations of their rights under the

UNCRC. It was adopted in December 2011 and opened for signature on 28 February 2012. In a context where children's rights are not being consistently implemented and upheld, Save the Children believes it is particularly critical that children living in Scotland are offered internationally recognised channels of redress.

3. Child poverty

Save the Children is increasingly concerned about the rights and wellbeing of children in Scotland who are at risk of, or living in, poverty. The scale, nature and impact of poverty are particular concerns. Over 1 in 5 children are currently experiencing poverty in Scotland^{ix}. Despite progress in reducing the number of children living in poverty up to 2004/05, there has been no significant change in recent years.^x Of greatest concern is that the number of children living in poverty in Scotland will increase significantly in the next few years. It is estimated that a further 50 000 children in Scotland will experience poverty by 2020.^{xi}

Further, children who experience poverty are more likely to experience severe and persistent inequalities across a range of indicators. Child poverty, therefore, violates, and can systematically prevent children from accessing, a number of their fundamental rights under the UNCRC. High numbers of children are being denied their rights to healthy development (Articles 6, 24); an adequate standard of living (Article 27); quality educational experiences and participation in a range of social and cultural activities (Articles 28, 29, 31) often as a direct result of their socio-economic status.^{xii} The scale and impact of child poverty makes tackling poverty particularly urgent. Such large-scale socio-economic changes pose increased risks for children's rights. This will place additional pressure on the strategic approaches already in existence to tackle child poverty and on resources allocated to meet their objectives.

In its Concluding Observations to the UK in 2008, the UN Committee on the Rights of the Child noted that, at a UK level, 'increases in expenditure on children in recent years...are not sufficient to eradicate poverty and tackle inequalities' and recommended that the maximum extent of available resources be allocated for the implementation of children's rights - in line with Article 4 of the UNCRC - with a special focus on eradicating poverty and reducing inequalities across all jurisdictions. It is critical that priority is given to and sufficient investments made in tackling child poverty.

The UK has an established legal framework for tackling child poverty through the Child Poverty Act 2010. This sets out clear reduction targets for eradicating child poverty by 2020, and imposes duties on the UK and Scottish Government to produce specific Child Poverty Strategies setting out how child poverty targets will be met within the scope of its powers and competencies. Save the Children is concerned that the UK Government's *Child Poverty Strategy*, does not go far enough to meet the targets in the Act.

Save the Children is supportive of the Scottish Government's vision and approach to tackling child poverty in Scotland as set out in its *Child Poverty Strategy for Scotland* (published in March 2011). The strategy recognises the key issues that need to be addressed and highlights the main policy areas where action is required in

relation to its key aims. Save the Children believes that the strategy has the potential to act as a catalyst for driving and increasing efforts to eradicate child poverty in Scotland.

Making a positive change for children experiencing poverty will only be achieved if policy is turned into practice and strategy is turned into delivery and implementation. This can be very challenging, especially given the cross cutting nature of tackling child poverty and the fact that many factors influence the levels and experience of child poverty in Scotland. Save the Children is concerned that there has been a lack of progress in implementing the strategy and that there is a lack of a clear delivery plan with tangible actions. There is also a need for robust mechanisms for monitoring and evaluation. In the absence of such frameworks it may continue to be difficult to plan and resource effective policies and action to tackle child poverty at the local and national level. Save the Children would like to see Scottish Government put in place a robust process for driving and monitoring progress at local and national level against key outcomes and measures in the Child Poverty Strategy for Scotland.

Recent research by Save the Children which looked at priorities and progress in tackling child poverty at local level in Scotland found that there is 'buy in' to and awareness of the strategy amongst local authorities and that examples can be found of existing local action to further its aims. However, the research also indicates that there is little evidence of the widespread development of delivery strategies or signs of progress at the pace we would hope to see at local level.^{xiii} As consistent with broader conclusions in the Scottish Human Rights Commission's report, therefore, gaps exist in Scotland between the positive measures introduced at a strategic level to address child poverty and its impact on the experiences and outcomes of children living in socio-economic disadvantage.

Save the Children believes that child poverty constitutes the most significant threat to the rights and wellbeing of children and young people in Scotland and is one the most urgent human rights issue facing Scotland. Taking into account the changing scale of the challenge, Save the Children believes that urgent, joint action is needed to prioritise and intensify action and quicken the pace to deliver the outcomes and aims of the Scottish Government's child poverty strategy.

4. Inequalities in educational and developmental outcomes for children living in poverty

The difference in educational outcomes between children living in poverty and their peers is one of the starkest inequalities in Scottish society. Socio-economic background continues to determine educational outcomes for many children young people. Research commissioned by Save the Children demonstrates that children growing up in poverty are more than twice as likely as their better off counterparts to experience developmental difficulties as they reach school age.^{xiv} The ramifications of the lack of equity in the Scottish education system are very serious – both on an individual and societal level. Far too many children and young people growing up in poverty have their life chances seriously, sometimes irrevocably, damaged by underachievement at school. As a result, they are more likely to remain in poverty into adulthood. It is also a huge waste of talent. In a highly competitive and globalised economy, Scotland simply cannot afford to continue to deprive itself of the potential skills and innovation of these children.

As highlighted in the Commission's report such educational inequalities have marked the Scottish education system for a long time and are yet to be properly addressed.^{xv} Although changes in compiling statistics over the last decade make precise comparisons over that period difficult, there is no evidence that the educational achievement gap has been significantly reduced in the devolution era^{xvi}. This pattern continues despite a plethora of innovative developments and investments in Scottish education policy over recent years. A 2013 report by the Scottish Commission on School Reform has claimed that education reforms over the past fifty years have failed to deliver any significant improvement to the educational achievement of children from disadvantaged backgrounds.^{xvii}

In its Concluding Observations to the UK in 2008, the UN Committee on the Rights of the Child recommended that governments in the UK '*strengthen efforts to reduce the effect of social background of children in their achievement in school*'. Save the Children is concerned about the absence of an explicit approach to reducing educational inequalities experienced by pupils living in poverty. This is despite the longstanding awareness of the educational achievement gap and its implications for children.^{xviii} The Scottish Government's approach is based on action to address inequalities in outcomes for children living in poverty within its broader approach to improve educational experiences for all pupils – namely through curriculum reform and raising teaching standards.^{xix} To date, these educational priorities and investments have failed to ensure that children and young people growing up in poverty enjoy equity of access to quality educational experiences and outcomes.

Save the Children believes that equity within education policy should be the number one priority for Scotland's education policy. If we are to change course and address the significant socio-economic gap in achievement, Scotland needs a coherent national approach to tackling the educational inequalities experienced by children growing up in poverty. Sufficient resources must be attached to policy priorities that have the best chance of improving the achievement - and progressing the rights - of children living in poverty. Save the Children believes that the approach must include action 'in school' as well as 'at home' to support parents to engage in their children's education and the home learning environment and ensuring high quality early learning and care.

Save the Children believes that a national plan to tackle the achievement gap should include a robust framework for monitoring and evaluating progress towards, and effective measures, in improving educational outcomes for young people living in poverty. This would support efficient targeting of resources by Education Authorities and at school level towards initiatives that are proven to support children experiencing poverty to achieve positive educational outcomes. In addition, Save the Children is recommending a stronger focus on actions to tackle educational inequalities within the *Child Poverty Strategy for Scotland* when the strategy is revised in 2014. This would better support coordinated and intensive progress in this area.

2. What specific and achievable actions do you consider would best address the concerns you identify in your response to question 1?

Save the Children's recommendations for specific and achievable actions to address the issues we consider to be most urgent and included within SNAP are outlined below. Scotland's National Action Plan should seek to:

1. Incorporation

- Outline a roadmap towards the full incorporation of the UNCRC into Scots law, including the opportunity

provided through the forthcoming Children and Young People (Scotland) Bill.

2. Optional Protocol

- Outline the Scottish Government's commitment to take forward its support for signing the Optional Protocol, including a roadmap indicating the timescale and process involved with regards to ratification at a UK level.

3. Child Poverty

- Identify measures to be put in place by Scottish Government and Community Planning Partnerships in Scotland to deliver the outcomes of the *Child Poverty Strategy for Scotland*.
- Identify measures to be put in place by Scottish Government to monitor and evaluate progress in delivering the outcomes in the *Child Poverty Strategy for Scotland*.

4. Inequalities in educational outcomes

- Outline the Scottish Government's commitment to tackle the effect of poverty on achievement at school and set out a long term plan for achieving delivery of this commitment.

ⁱ ROCK Coalition (2012) 'Why incorporate? Making rights a reality for every child'

ⁱⁱ Scottish Government (2012) 'Poverty and income inequality in Scotland: 2010/11'

ⁱⁱⁱ UNICEF UK (2012). *The United Nations Convention on the Rights of the Child: a study of legal implementation in 12 countries*.

^{iv} Committee on the Rights of the Child (2008). *Concluding Observations: United Kingdom of Great Britain and Northern Ireland* (CRC/C/GBR/CO/4). No's 11, 12.

^v UN Committee on the Rights of the Child (2008) *Concluding Observations on the United Kingdom of Great Britain and Northern Ireland*.

^{vi} United Nation Human Rights Council (2012). *Report of the Working Group on the Universal Periodic Review United Kingdom of Great Britain and Northern Ireland*.

^{vii} <http://togetherscotland.org.uk/pdfs/TogetherReport2012.pdf>

^{viii} Save the Children (2011) *Governance Fit for Children*.

^{ix} End Child Poverty Coalition (2013) *Child Poverty Map of the UK*.

^x Joseph Rowntree Foundation (2013) *Monitoring Poverty and Social Exclusion in Scotland*.

^{xi} Institute for Fiscal Studies (2011) *Child and Working Age Poverty 2010-2020*. Figure based on Scottish proportion of UK estimate.

^{xii} See for example Save the Children (2012) *It Shouldn't Happen Here*; Save the Children (2012) *Thrive at Five*; Scottish

Government (2009) *Scottish Survey of Attainment*; Joseph Rowntree Foundation (2008) *The costs of child poverty for individuals and society: A literature review*.

^{xiii} Save the Children (2012) *Local Action to Tackle Child Poverty in Scotland*.

^{xiv} Save the Children (2012) *Thrive at Five*.

^{xv} Scottish Human Rights Commission (2012) *Getting it Right? Human Rights in Scotland. Scottish Human Rights Commission*.

^{xvi} See Scottish Government (2012) *Summary Statistics for attainment, leaver destinations and healthy living*.

- ^{xvii} Commission on School Reform (2013) *By Diverse Means: Improving Scottish Education*.
- ^{xviii} See OECD (2007) *Reviews of National Policies for Education - Quality and Equity of Schooling in Scotland*.
- ^{xix} <http://www.scottish.parliament.uk/parliamentarybusiness/28862.aspx?r=7770>

1. Based on the evidence presented in the report *Getting it right? Human rights in Scotland*, or your own experience, what do you consider to be the most urgent human rights issues which should be addressed in Scotland's National Action Plan for Human Rights?

While we welcome the introduction of a Scottish National Action Plan (SNAP) for Human Rights in Scotland, we are concerned that the draft does not sufficiently acknowledge nor offer steps to remedy violation of the **human rights of women and girls** resulting from systemic political, social and economic gender inequality in Scotland. We strongly recommend the SNAP be revised in keeping with recommendations of the 1995 UN Beijing Platform for Action, which states, *"In addressing the inequality between men and women in the sharing of power and decision-making at all levels, Governments and other actors should promote an active and visible policy of mainstreaming a gender perspective in all policies and programmes so that before decisions are taken, an analysis is made of the effects on women and men, respectively."*

There are notable examples within the SNAP that highlight differing impacts of policy and practice on men and women including 3.4.3.1 (page 140) citing CEDAW¹ in relation to parental rights and employment, 3.4.3.2.1 setting out evidence of the gender pay gap, 3.6.2 explaining the harassment and abuse experienced by women asylum seekers and 3.7.4 on issues related to women in detention. We also welcome the inclusion in many sections of reference to the multiple and intersecting forms of human rights violations faced by those within specific groups, (e.g. Black, Asian and Minority Ethnic communities, Lesbian, gay, bisexual and trans* gendered people, those with disabilities, asylum seekers, older people and children and young people. However, the omission of reference to gender within specific sections represents a significant gap. Some examples are listed below.

A. Care-Leavers. Section 3.1.2, page 58, fails to acknowledge specific issues for young women including the risks of involvement in sexual exploitation, of experiencing sexual assault and relationship abuse, need for sexual and reproductive health services and higher than average levels of pregnancy for young women leaving care.

B. Carers. Section 3.1.5, page 70. Although 62% of carers in Scotland (higher than the proportion in England)² this is not noted and there is no reference to specific rights violations that could occur due to the gender and care responsibilities of many women.

C. Health. Section 3.2, Page 75. This section generally offers insufficient reference to issues of health that impact disproportionately on women, particularly young women. These include access to information, services and support on sexual health and reproductive rights, teen pregnancy and female genital mutilation. It also makes no reference to increasing public health concerns related to the impact of hyper-sexualised messages in advertising and popular culture on the well-being of girls and young women.

D. Lifestyle Choices. Section 3.4.1, page 84. This section sets out adolescents' right to "essential health related information regarding issues such as the use of tobacco and alcohol and other substances, safe and respectful social and sexual behaviours, diet and physical activity,"³ However, it does not acknowledge the impact of gender inequality on the social and sexual relationships and behaviours of young people nor the differing impact on young men and young women. The 2008 Scottish Health Survey⁴ showed only 56% of girls 2-15 met national recommendations for physical activity compared with 72% of boys and a study the same year found girls' levels of physical activity decline as they get older, describing their concerns about body image and appearance as one of the barriers to exercise.⁵ The differing impacts of low physical activity on the health and well-being of girls and boys, men and women, is not mentioned.

E. Access to Adequate Housing for All Without Discrimination. Section 3.3.3.3, page 109. The section refers to the need for suitable accommodation for victims/survivors of domestic abuse, both male and female. Women, however, are likely to have an immediate need for safe accommodation in an area unknown to their abuser to reduce the risk of further attacks. They are also more likely to be the primary carers of children, so require accommodation that is suitable for them. The account given in this section by a man who is a survivor of domestic abuse illustrates the differing needs of male victims/survivors. The section would also benefit from one or more accounts of women victims/survivors to demonstrate their specific needs more clearly.

F. Offences Aggravated by Prejudice. Section 3.6.3, page 166. This section rightly highlights the risk of human rights violations for those who experience prejudice including prejudice related to race, disability, sexual orientation and trans*gender identity. While hate crimes related to gender and age are not specifically covered in current statute, we believe that violations of human rights aggravated by gender and age discrimination should be included within this section.

G. Human Trafficking. Section 3.6.5, page 177. Most of this section is written in "gender neutral" terms, although it is recognised that it is primarily women and girls who are trafficked (internationally and internally in the UK) for purposes of commercial sexual exploitation and who are most at risk of rape and sexual assault when trafficked. The section should be extended to acknowledge the expansion of establishments that rely on the sexual exploitation of women and girls (e.g. lap dancing and strip clubs, "saunas"/brothels, etc.) which increase the demand for trafficking and are poorly regulated by public authorities. In addition, these contribute to the normalisation of women's sexual objectification and serve as a barrier to the achievement of gender equality and human rights of women and girls.

H. Access to Legal Aid, Section 3.8.3.1.1, page 208. We believe this section should include specific reference to the cost of seeking legal remedies related to domestic abuse, which disproportionately affects women.

I. Corroboration. Section 3.8.8, page 224. We support the position of Carloway Review and Rape Crisis Scotland on the abolition of corroboration, particularly in cases of rape and sexual violence. Corroboration represents a significant barrier to prosecution which disproportionately impacts on access to justice and furtherance of the human rights of women and girls.

¹ CEDAW = Convention on the Elimination of Discrimination Against Women – Article 11(2) (c)

<http://www.un.org/womenwatch/daw/cedaw/cedaw.htm>

² Cited by the Equality & Human Rights Commission <http://goo.gl/ILyB3>

³ United Nations Convention on the Rights of the Child, 2003. <http://www.unicef.org/crc>

⁴ Five Year Review of *Let's Make Scotland More Active*. <http://goo.gl/S8i0V>

⁵ Physical Activity in Scottish Schoolchildren Report 2008 <http://goo.gl/zULim>

About the ALLIANCE

The ALLIANCE is the national third sector intermediary for a range of health and social care organisations. The ALLIANCE has over 270 members including a large network of national and local third sector organisations, associates in the statutory and private sectors and individuals. Many NHS Boards and Community Health and Care Partnerships are associate members. Many of the ALLIANCE's members proactively promote human rights and adopt human rights based approaches (HRBAs) within their own work/services.

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

The ALLIANCE has three core aims; we seek to:

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

Human rights are the basic rights and freedoms to which everyone is entitled in order to live with dignity. The Human Rights Act makes it unlawful for a public authority to act, or fail to act, in a way that is incompatible with a Convention right. The ALLIANCE supports plans for a National Action Plan for Human Rights for Scotland and the approach that has been taken to date to the introduction of a more systematic approach to ensure the realisation of human rights in practice.

This is particularly critical at a time when many groups who already face greater risks to their human rights are facing further erosion as a result of UK welfare reforms and cuts to support and services. The UK Joint Committee on Human Rights last year warned that the right of disabled people to independent living could be severely undermined, stating that "the government and other interested parties should immediately assess the need for, and feasibility of, legislation to establish independent living as a freestanding right". This illustrates the need for human rights not just to be reflected in broad policy (such as the UN Convention on

the Rights of Persons with Disabilities to which the UK is a signatory), but also to ensure that they are reflected in the reality of people's lives and not undermined by other policy agendas.

Since early 2011 the ALLIANCE has convened a group of organisations with an interest in social care and human rights. This work has produced a shared platform of thinking, articulated in the report *12 Propositions for Social Care* (Dr Jim McCormick for the ALLIANCE and partners, September 2012) – available at <http://www.alliance-scotland.org.uk/what-we-do/policy-and-campaigns/current-work/social-care/>. This group recently produced a set of shared messages in relation to the proposals for health and social care integration. The first of these was that there **should be a set of guiding, human rights based, principles on the face of the legislation, and that the new Health and Social Care Partnerships should be under a duty to have due regard to human rights**. The full statement is available at the link above.

Based on the evidence presented in the report *Getting it right? Human rights in Scotland*, or your own experience, what do you consider to be the most urgent human rights issues which should be addressed in Scotland's National Action Plan for Human Rights?

The ALLIANCE agrees with the *Getting It Right?* report that while Scotland has established a strong structural framework of human rights, it is clear that gaps and inconsistencies exist in its application. A National Human Rights Action Plan has the potential to fill some of these gaps, but it must include:

- A strong voice and role for citizens, including people who face greater barriers to accessing their human rights for example disabled people and people living with long term conditions
- The identification of clear, achievable outcomes
- Aims that are legislative and enforceable
- A proactive approach to the application of human rights
- Effective monitoring, review and evaluation systems.

Proposals for a Scottish National Action Plan for Human Rights come at a very important stage for the future of health and social care policy in Scotland. The main agendas currently being driven by the Scottish Government – public service reform, health and social care integration, self-directed support and the Healthcare Quality Strategy. Human rights based approaches are clearly aligned to the vision set out by the Christie Commission on the future of public services and the Scottish Government's National Person-centred Health and Care Programme (part of the Healthcare Quality Strategy).

Start with rights

Care and support provide one essential tool, among others, which ensure that people who are disabled or have long term conditions have equal access to society

and can live their life in the way they choose, at home, in work and in the community. Without it, many people cannot enjoy the human rights they are entitled to. However, as noted by Chetty et al, it can still be argued “that our current health and social care system lacks explicit guiding principles.” It has also been argued that progress to embed human rights has been reflected to a greater degree within health services than in social care, although many would also argue that the human rights based understanding of independent living is far stronger within social care than the NHS.

There is a need for increased understanding and application of human rights across both health and social care and this should form a shared focus to support integration. In progressing integration it is also absolutely essential that a medical model does not dominate or undermine the social model basis that is well established within social care. The concern that this may happen is reinforced by the drive of the proposals to put greater power (for local strategic planning and decision making) in the hands of clinicians without allowing an equally powerful role for people who use support and services.

As acknowledged in “Getting It Right”, the development of human rights based approaches in health law and policy is to be welcomed. A human rights based approach puts human rights considerations at the centre of all policies and practices. Both the Mental Health (Care and Treatment) (Scotland) Act 2003 and, more recently, the Patient’s Rights (Scotland) Act 2011 are based on a foundation of human rights based approaches.

The ALLIANCE believes that strong human rights based legal and policy frameworks must be embedded within policy and legislation to ensure that it is translated into more consistent positive outcomes to which individuals are entitled. The adoption of human rights based approaches in health and social care settings, for example in the State Hospital in Lanarkshire, has shown that this can reduce risks for people in a care setting and for staff, and that human rights can act as a foundation for other duties.

Employing a rights based approach to social care helps to clarify expectations of fair, consistent and respectful experiences and of redress when standards fall below this. It offers a coherent values based system to reform social care in order to *“empower citizens and unlock them from the failings of past systems, rather than locking them into a new system that lacks a clear vision”*. Rights based approaches like Care About Rights need to become the norm, allowing for a shift in the balance of power from professionals to users.

The consequent principles, values and ultimately legal protections should service as the primary reference point for Health and Social Care integration, self-directed support and future reforms to public services.

Case Study – Charter of Rights for People with Dementia and their Carers in Scotland

The Charter of Rights for People with Dementia and their Carers in Scotland aims to empower people with dementia, those who support them and the community as a whole, to ensure their rights are recognised and respected and to ensure the highest quality of service provision to people with dementia and their carers. Its development reflected the views of over 500 people who took part in the widespread consultation carried out on behalf of the Cross- Party Group by Alzheimer Scotland between May and July 2009. The charter is guided by a human-rights based approach, known as the PANEL approach, endorsed by the United Nations, which emphasizes the rights of everyone to:

- **Participate in decisions which affect their human rights**
- **Accountability of those responsible for the respect, protection and fulfilment of human rights**
- **Non-discrimination and equality**
- **Empowerment to know their rights and how to claim them**
- **Legality in all decisions through an explicit link with human rights legal standards in all processes and outcome measurements**

Health and social care integration

The third sector has set out its belief that a set of human rights based principles should appear on the face of the proposed bill to integrate health and social care and this should also be articulated in supporting materials, such as the nationally agreed outcomes as well as in related workforce development activity. These proposals seek to help drive the shift from institutional and hospital based settings to community based settings. This requires a greater focus on the quality, regulation and accountability of home based services, not only to ensure the protection of potentially vulnerable groups but also to ensure that support is of high quality. This means approaches that do not simply meet basic survival needs, but rather support that meets individual aspirations and outcomes, respects people's right to private and family life and strives to enable people to be included as citizens who enjoy the right to independent living.

We believe that underpinning these proposals with rights based principles would help frame the agenda and mitigate against a focus on systems, structures and processes as ends in themselves. This should also be articulated in supporting materials, such as the nationally agreed outcomes as well as in related workforce development activity. This should be at the foundation of workforce development strategies put in place to manage the cultural change. Reference to human rights in the current outcomes framework for integration is limited to outcome 5 – "Services are safe". This suggests a narrow view of human rights – particularly when set against the right to independent living for disabled people – and a need for far greater understanding of the potential of human rights based approaches among policy makers in Scotland.

Rights and the social care workforce

A rights based approach must extend, as well, to unpaid carers and the social care workforce. Across sectors (and including directly-employed Personal Assistants),

staff often perform roles that are low paid, carry low status and attract too little support.

The rights of staff must be protected as well, to ensure the rights of those they support are secure. This will only be achieved through significantly better commissioning and procurement that does not allow the drive for cost cutting to undermine quality and outcomes for people using services. This is particularly salient at a time when public budgets are increasingly pressured and we are seeing the combined trends of local authorities demanding services are delivered ever more cheaply whilst often retracting to support only those services providing in-house. This is squeezing social care provision from the third sector, which consistently achieves higher quality ratings and is often more firmly based in human rights principles.

“It seems to be a race to the bottom in terms and conditions for staff – to get the most for least. This has serious impacts on the quality of staff.”

Third sector focus group participant, quoted in Commissioning Social Care (March 2011) Audit Scotland

The State Hospital example has shown that human rights based approaches can be critical in achieving culture change in moving towards a more respectful relationship between people using health and social care services and staff delivering those services. This type of cultural shift is at the heart of the drive for person centred health and social care, co-production, self management and asset-based approaches. The experience of the State Hospital suggests significant scope for a human rights based approach to driving this wider public service reform agenda.

“The adoption of a HRBA was successful in supporting a cultural change from an institution where rights were largely “left at the door”, and with a “them and us” culture, towards an organisation with a more positive and constructive atmosphere with mutual respect between staff and patients. This had led to increased staff and patient engagement, increased work-related satisfaction amongst staff and increased satisfaction among patients over their care and treatment.”

Scottish Human Rights Commission (2009) Human Rights in a Health Care Setting: Making it Work

Improved accountability

Articles in the European Convention of Human Rights with direct relevance to social care include: Articles 8 (Protection of private and family life, including autonomy in decision-making and the right to live with dignity) and 14 (Non-discrimination). The Convention on the Rights of Persons with Disabilities includes rights to:

- Participation, dignity and non-discrimination

- Physical integrity and personal mobility
- Participation in decision-making
- To live independently and be included in the community.

The significant reductions in public spending and financial pressures on Government at all levels are resulting in difficult financial decisions for public sector organisations. These pressures are already resulting in tightening eligibility for service provision and increasing charges and further pressure is expected to be placed on local authorities in the next five years. Audit Scotland have identified “seven local authorities in Scotland who now charge for services previously provided without charge or have increased charges already in place, typically for services such as community alarms.”

Such a tightening of eligibility for social care services across Scotland is a particular concern for disabled people, people who have long term conditions and those closest to them. As a result there is an appetite for monitoring policy and budgetary decisions in a meaningful way that provides clear information about the implications of such decisions.

There is also a more fundamental question of whether charging for social care services is fair and equitable. The Independent Living in Scotland Project has produced a series of recommendations in relation to charging, including that “community care should be free at the point of delivery” as this “supports the notion that society values disabled people and their equal rights to maximize their own potential and to freedom and wellbeing; as well as the contribution they make to social, economic and civic life. Community care is the route through which disabled people contribute to society. Why should they pay for this?”. More recently, ILIS hosted an event on personalization at which participants debated the tension around the diversity of needs among different groups of, and individual, disabled people and how all of these can be catered for at a time of cuts, including whether funded support should be ‘life and limb’ or to support independent living. Human rights can provide a lens through which these debates are progressed in Scotland.

Equality impact assessments (EQIAs) should be an integral part to good decision making for the UK and Scottish Governments, local authorities and other public sector organisations. EQIAs enable clear consideration of equality and human rights impacts of decision-making.

The ALLIANCE believes that the action plan should underline the importance of continued assessment of the equality and human rights impacts of decisions to ensure that they do not infringe of individuals’ rights, and to ensure that policy proactively promotes human rights.

Improve understanding of human rights

Many disabled people or people who live with long term conditions are at a greater risk of experiencing an infringement of their human rights for a range of reasons.

Some people may be more isolated; have less access to financial resources, services or transport; experience barriers to having their voice heard (including by requiring greater support to come together collectively); and often rely on statutory service provision.

Chetty et al acknowledged that a human rights based approach “requires a high degree of participation of rights holders in the development of policy and practice, as well as the involvement of affected communities, civil society and others.”

However, references to human rights can often be framed in a legalistic manner, which can be disempowering for people, especially if they have specific communication requirements. As a result, understanding of human rights amongst rights holders, disabled people and people who have long term conditions or unpaid carers in this case, is patchy. One of the biggest concerns is how people can access advice, advocacy and support about human rights and how this is communicated.

It has been highlighted by some that a better “brand” for human rights needs to be established to tackle some of the negativity around the term that has been prevalent, particularly in the media. The ALLIANCE would strongly support proposals to tackle these issues and the mainstreaming of positive messages about human rights and how these can support improvements in health and social care. The ALLIANCE has driven similar work to raise awareness of self management, working closely with people themselves and using positive stories to illustrate the meaning of the term and how it positively impacts on people’s lives. This type of work to build positive public attitudes about human rights is even more important at a time when disabled people and those living with long term conditions are routinely being characterised as ‘scroungers’ and ‘cheats’ within the media and by politicians.

What specific and achievable actions do you consider would best address the concerns you identify in your response to question 1?

- Recommend that the Scottish Government underpins legislation with rights based approaches, including explicit human rights based principles on the face of the Health and Social Care Integration Bill and duties on Health and Social Care Partnerships
- Strengthen Equality Impact Assessment processes
- Seek to improve understanding of human rights through improved public education and profile
- Any written constitution for Scotland includes human rights as a key value
- Find solutions to address how to access advice, advocacy and support about human rights can be strengthened

- Work closely with people themselves, including disabled people and people with long term conditions and with the organisations that support them

www.alliance-scotland.org.uk

All laws regarding same-sex and mixed-sex relationships should be equal

Love Equally - SYP's campaign for marriage equality is based on the simple premise that we think that two people who love each other should be able to get married. Since August 2011, SYP has campaigned for a Scotland where:

- **Same-sex couples are allowed to get married if they want to** – at the moment the law specifically bans this from happening.
- **Mixed-sex couples are allowed to register a civil partnership if they want to** – the law also bans this. There is interest in this from a number of mixed-sex couples who do not want to get married but are interested in legally registering their partnership, which they currently can't do.
- **If religious organisations want to perform same-sex marriages and civil partnerships, they should be allowed to do so** – whilst mixed-sex couples have the option of a civil wedding, or a religious wedding, civil partnerships cannot be registered in a religious venue by the clergy. Not every religious institution wants to do this, and whilst they have their own decision-making processes, the option should be open for those religious institutions that wish to perform ('solemnize') same-sex marriages and civil partnerships.

Young people in their thousands have told us the law should be the same for everyone. Research shows the majority of Scots of all ages support marriage equality. This is a reality in 11 countries, as well as several states and regions worldwide already, with several others moving in that direction – we don't want Scotland to be left behind.

SYP's decision to campaign for marriage equality was entirely shaped by the wishes of young people. In the run-up to the 2011 Scottish Parliament elections, the SYP consulted with thousands of young people to create a Youth Manifesto for Scotland, 'Change the Picture'. There were 42,804 responses from young people across Scotland; making it one of the largest youth consultations of its type in Scotland. Any statement that received support from over 50% of respondents was included in the final manifesto, which will shape the SYP's policy and campaigning work over the next five years. One of these statements was **"all laws regarding homosexual relationships, whether male or female, should be equal to those of heterosexual relationships"** which received strong support, with 74% of young people in agreement. At the SYP Sitting in June 2011, MSYPs voted for Marriage Equality to be the SYP's national campaign from amongst the statements in 'Change the Picture'.

Since the launch of the campaign, the Scottish Government brought forward a consultation on the issue at least six months earlier than originally planned. The document, 'Same sex marriage/civil partnerships – a consultation', received a total of over 77,000 responses – the largest since devolution. Of those, thousands were supportive responses from young people who spoke out for equal marriage. This was followed by the Love Equally march for equal marriage on Valentine's Day 2012 organised by SYP. Over 1,000 people marched down Edinburgh's Royal Mile to ensure that decision-makers were left in no doubt about the strong majority support existing for equal marriage

in Scotland.

In July 2012, the Scottish Government announced their intention to legislate for same-sex marriage in civil ceremonies and religious ceremonies where the organisation and celebrant were both content to do so. A consultation on a draft Marriage and Civil Partnership (Scotland) Bill was launched in December 2012. The draft Bill proposes to legislate for same-sex civil marriage and same-sex marriage in religious ceremonies where both the religious body and celebrant agree to do so. It does not however propose to legalise mixed-sex civil partnership which would not result in equal treatment for same-sex and mixed-sex relationships in law. It potentially leaves the door open to young people being removed from classes where same-sex marriage may be mentioned if they disagree with it, with the young person having no equivalent right if they do not agree with their parents' or carers' view and wish to take part in the lessons. We are also concerned that calls for same-sex marriage to be taught as a 'controversial' subject or not taught at all could lead to increased homophobic bullying in schools. For more information, please visit http://www.syp.org.uk/img/consultations/Marriage%20and%20Civil%20Partnerships%20Bill_SYP%20Response.pdf

People should be paid equally for doing the same job. There should be an equal minimum wage for all regardless of age. To tackle in-work poverty, this should be set at the level of the Scottish Living Wage, based on how much it costs to live and reviewed on an annual basis.

The Scottish Youth Parliament's 'One Fair Wage' campaign is based on our vision of a Scotland where everyone, no matter how old they are, earns a Scottish Living Wage that's based on how much it costs to live, not how much employers are prepared to pay. To put it very simply – we believe everyone deserves to be paid enough money to live on. Through our campaign we want to influence as many MSPs, businesses, Councils and organisations to pledge their support to our campaign to ensure all employees are paid fairly and equally.

Young people in Scotland want every organisation to pledge to pay their employees at least the Scottish Living Wage (£7.45 per hour as at March 2013). There are two key principles which drive our campaign: no one in work deserves to be in poverty - a Scottish Living Wage is enough for people to earn enough for a decent standard of living and that everyone, regardless of how old they are, deserves to be paid the same wage for the same work.

There are six key reasons for supporting One Fair Wage

- 1.) A Fairer Scotland:** SYP believe everyone deserves a fair wage which is enough to live on and no one in work should live in poverty
- 2.) Fighting Poverty:** SYP believe working families in modern Scotland should not have children living in poverty and that a Scottish Living Wage is one of the most effective ways to fight poverty
- 3.) Helping the vulnerable:** Women, young people and minorities are most likely to be low-paid – SYP believe these workers deserve better; and need others to speak out for them.
- 4.) Benefiting the Economy:** Pay freezes and high inflation mean more low-paid are living in effective poverty – SYP believe a Living Wage will make a real difference. SYP also believe a Living Wage means workers will spend more money, and more money locally helping the local economy.
- 5.) Creating Better Workers:** SYP believe a Living Wage would encourage greater productivity, loyalty and industry from workers

6.) Young People deserve One Fair Wage: SYP believe that age doesn't matter – you deserve the same wage for the same work, that age-based low pay means young people risk losing their jobs when they are old enough for higher pay and that young people will only be viewed the same in the workplace when they are paid the same.

Since the launch of One Fair Wage, our MSYPs have secured pledges of support from over 50 Councillors; 25 MSPs and MPs including all Scottish Green Party elected officials; Save the Children and UNISON; and local businesses such as Govan Law Centre and Money Matters Advice Centre. With several other meetings planned in the near future we are confident our list of supporters will continue to grow, and businesses will be persuaded to become Living Wage employers. In addition, since the launch of the campaign several local authorities have committed to becoming Living Wage employers, and following COSLA's recent proposal to increase the basic rate of pay for local government staff (<http://www.cosla.gov.uk/news/2012/11/scottish-councils-end-pay-freeze>), it is looking increasingly likely that by the start of the 2013-14 financial year, all public sector employees in Scotland will be paid at least a fair, equal Living Wage. However there is still no obligation for public sector bodies to pay sub-contracted workers a Living Wage, or for private and voluntary sector employers to pay their staff One Fair Wage. For more information visit http://www.syp.org.uk/img/consultations/Living%20Wage%20Bill_SYP%20Response.pdf

The voting age for all elections and referendums should be lowered to 16

The SYP has a firm belief that one of the best ways of getting involved in making decisions is through the ballot box. Through our work we've seen many capable, confident and well-informed 16 and 17 year olds who have a real interest in politics, but are unable to play their full part as citizens by exercising their democratic rights on election day. The Scottish Government has proposed that the voting age could be lowered for the independence referendum. At the SYP's March 2012 Sitting, MSYPs overwhelmingly voted to make Votes at 16 an SYP priority national campaign to tie in with the UK and Scottish Government's consultation on the referendum process.

Most importantly, our belief is based on the views of young people. As part of the largest youth consultation of its type, the verdict of 42,804 responses from young people was clear – almost two-thirds backed the statement that "the minimum age for voting in all elections should be lowered to 16". This follows on from SYP's long term support and ongoing campaigning for change.

The Scottish Youth Parliament feels that the right to vote at 16 is an issue of fairness and equality. In Scotland, in line with the rest of the UK, 16 and 17 year olds can sign up for the armed forces while not having the right to have their say at the ballot box on defence policy. They can leave school, get a job and be taxed without being represented at Westminster or Holyrood. The SYP firmly believes it is a real injustice that under 18s are considered mature and responsible enough to get married or drive a car, but not mature and responsible enough to choose who they want to represent their communities.

Contrary to the expectations of many, who viewed it as a mere 'bargaining chip' in negotiations between the Scottish and UK Governments, the Edinburgh Agreement made provision for the Scottish Parliament to lower the voting age to 16 for the independence referendum if it wished. This is an extremely positive step towards recognition for 16 and 17 year olds as equal citizens in

Scotland. However, we believe this should be backed up by the voting age for all other elections held in Scotland to be lowered to 16.

For more information, visit

http://www.syp.org.uk/img/consultations/YourScotlandYourReferendum_SYP%20Response.pdf and
http://www.syp.org.uk/img/consultations/SYP%20response_Scottish%20Independence%20Referendum%20Franchise%20Bill_FINAL.pdf

The following statements from Change the Picture have relevance to human rights in Scotland. The percentage of respondents who agreed with each statement is included.

The full Youth Manifesto can be viewed at <http://www.syp.org.uk/our-manifesto-W21page-82->

Policy	% Agree
Disabled young people should have the opportunity to have a say about the services which affect them. Employers need to support disabled people in the workplace.	88.95%
All laws regarding homosexual relationships, whether male or female, should be equal to those of heterosexual relationships.	73.50%
Government should ensure that all efforts are made to help teenage mothers stay in education.	87.54%
Young people with additional needs should be provided with sufficient access to resources to cater for the needs of the individual throughout their education. We further believe that young people with any disability should be given the opportunity to attend specialist schools if they wish to do so.	87.54%
Disabled children and young people should have the same rights and opportunities as other young people. More support should be available so disabled young people can do more independently.	88.92%
There should be increased LGBT education and information in all schools to reduce stigma and homophobic bullying.	70.55%
Local authorities and councils should do all they can to keep migrant children with their parents regardless of their immigration status.	79.17%
From primary level, schools should provide up-to-date and effective personal, social and sexual education, tailored to pupils' specific needs and lifestyles.	82.94%
The success of Scotland's students must not be compromised by financial worries. Immediate action needs to be taken to ensure students don't face poverty and hardship in pursuit of their education.	84.1%
Tuition should remain free in further and higher education. Top-up fees are not an option for a society which puts ability to learn above ability to pay.	85.44%
No child or young person in Scotland should have to live without a home. More support must be given to those who are homeless	87.51%
Young offenders should receive compulsory tailored education and training opportunities which will help in their re-integration into society. Young Offenders' Institutions should be twinned with Further Education Colleges to encourage learning and reduce re-offending.	64.99%

Young carers in Scotland should be shown that they are appreciated members of society and should be offered more support inside and outside of education. The Scottish Government should produce a Young Carers Strategy to help improve the lives of young people who are young carers for the benefit every single young person who cares in Scotland.	88.02%
The solutions to solving the problem of knife crime lie in working with young people to tackle the root causes, not by imposing mandatory jail sentences on those caught carrying a blade.	57.3%
No child or young person should be made to report regularly at reporting centres or police stations due to their immigration status.	76.32%
There should be fairer prices on public transport and more travel discounts for young people.	91.81%
The Press Complaints Commission should recognise ageism as a form of discrimination.	77.10%
Greater investment in public transport is needed to ensure that young people can get where they want to go without a car. This is particularly important in rural areas.	85.12%
The minimum age for voting in all elections and referendums should be lowered to 16.	65.13%
The 'Mosquito', a device that makes an unpleasant high-pitched noise that only those under 25 can hear, should be banned.	66.76%
Young people are entitled to as much protection of their human rights as the law can give them. This means the United Nations Convention on the Rights of the Child (UNCRC) should be given more force in Scots law.	85.13%
Compulsory and good quality political, citizenship and democracy education should be provided in all schools in Scotland. Schools should help pupils register to vote	71.97%

All young people should be involved in the services which affect them and should have the opportunity to get involved in local decision making opportunities.	80.29%
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What specific and achievable actions do you consider would best address the concerns you identify in your response to question 1?

In relation to the four key campaigns we have outlined above, the Scottish Youth Parliament recommends the following specific actions:

All laws regarding same-sex and mixed-sex relationships should be equal – specific actions

- Legislation should be passed by the Scottish Parliament giving same-sex couples the right to get married, mixed-sex couples the right to register a civil partnership and religious bodies and celebrants the right to conduct same-sex marriages and civil partnerships if they agree to do so.
- In line with the above, if the proposed Marriage and Civil Partnership Bill passes without the inclusion of mixed-sex civil partnership, legislation should be brought forward to end this inequality without delay.
- Same-sex marriage or other issues related to LGBT relationships should not be banned or restricted from being discussed in schools.
- If parents and carers are to have the right to withdraw children and young people from lessons on sexual health or religion where they are concerned that what is being taught may conflict with their religious or cultural views; young people should be able to take part in lessons if they disagree with their parents' view that they should be withdrawn. This is particularly important for young people in the senior phase of high school.
- There should be increased LGBT education and information in all schools to reduce stigma and homophobic bullying. Bullying in schools is completely unacceptable, regardless of any perceived 'reason' for it. Tackling bullying in schools should be a priority for action. The Scottish Government, local authorities and schools to work together to tackle bullying in schools, and work to create an inclusive and welcoming environment for every young person in Scotland's schools.

People should be paid equally for doing the same job. There should be an equal minimum wage for all regardless of age. To tackle in-work poverty, this should be set at the level of the Scottish Living Wage, based on how much it costs to live and reviewed on an annual basis – specific actions.

- The National Minimum Wage should not include different levels based on age
- Workers under the age of 16 should be entitled to the National Minimum Wage
- The National Minimum Wage should be calculated on the same basis as the

Living Wage is by the Centre for Research in Social Policy.

- All employers in Scotland should pay all their employees at least the Scottish Living Wage
- The Scottish Government should establish an accredited Scottish Living Wage Employer recognition scheme
- The Scottish Government should have a duty to promote the Scottish Living Wage
- All possible avenues should be explored to ensure contractors pay employees working on public sector contracts a Living Wage without contravening European law

The voting age for all elections and referendums should be lowered to 16 – specific actions

- Legislation should be passed by the UK Parliament to lower the voting age for all elections to 16.
- The lowering of the voting age for the Scottish independence referendum should be complemented by a comprehensive awareness-raising programme to ensure that young people are informed about their right to vote and encouraged to exercise it.

The ‘Mosquito’, a device that makes an unpleasant high-pitched noise that only those under 25 can hear, should be banned – specific actions.

- The ‘Mosquito’ device should be banned.
-

The ‘Mosquito’, a device that makes an unpleasant high-pitched noise that only those under 25 can hear, should be banned.

The ‘Mosquito’ device is a device which emits a loud, unpleasant, high-pitched noise and is designed to be heard only by those under the age of 25. It is used across Britain as a weapon to stop young people gathering particularly outside shops and prevent anti-social behaviour. The Scottish Youth Parliament believes that the mosquito device is blatantly discriminatory of young people and breaches their basic human rights. We have petitioned the Scottish Parliament to call on the Scottish Government to ban the use of the ‘Mosquito’ and other such devices which emit the same sort of loud and disruptive noise.

The petition, by Andrew Deans MSYP on behalf of the Scottish Youth Parliament was lodged with the Scottish Parliament Public Petitions Committee in October 2010 and is still ongoing as of March 2013, having received the support of the Committee over two Parliamentary sessions. The Scottish Government, despite admitting that the device is “not compatible” with their approach to tackling anti-social behaviour has consistently refused to consider banning the device. For more information about the petition, and the written and oral evidence taken on it, visit <http://www.scottish.parliament.uk/GettingInvolved/Petitions/PE01367>

The stance that SYP has taken on the mosquito device has also been supported by many others including the Council of Europe and the Equality and Human Rights

Commission who both agree that the device is a breach of young people's human rights:

Council of Europe

Recommendation 1930 (2010)

Young people went to the Parliamentary Assembly of the Council of Europe about the 'Mosquito' device. The Assembly agreed the following:

"The Assembly considers that the use of "Mosquito"-type devices constitutes a disproportionate interference with Article 8 of the European Convention on Human Rights (ETS No. 5), which protects the right to respect for one's private life, including the right to respect for physical integrity. Even though such interference does not result directly from public authorities' action, states parties are bound to guarantee this right effectively and adopt, when required, adequate protective measures. The use of these devices may, depending on circumstances, also interfere with Article 11 of the Convention which guarantees the right to freedom of peaceful assembly." (9)

"For the Assembly, acoustic dispersal devices aimed at adolescents, such as the "Mosquito", are also inconsistent with the general prohibition of discrimination in the enjoyment of any right set forth by law, as provided for by Article 1 of Protocol No. 12 to the Convention (ETS No. 177), and they are in breach of Article 14 of the Convention, which states that the enjoyment of rights and freedoms protected by the Convention shall be secured without discrimination on any ground such as "birth or other status". (10)

"Moreover, the Assembly notes that the "Mosquito" devices contravene the United Nations Convention on the Rights of the Child, in particular regarding health and safety." (12)

The Equality and Human Rights Commission wrote to the UK Government Children's Minister urging him support the banning of this device in 2011. On their website they state:

"One of the Commission's duties as a National Human Rights Institution is to advise government when we consider that the law does not provide sufficient protection for someone's human rights. In the case of Mosquito devices, children and young people are affected by a very high-pitched noise which causes severe discomfort. The rest of us can't hear it. We have written to the government to advise that, in our view, the indiscriminate use of these teenager-dispersal devices is not lawful, and they affect all children and young people equally, not only those who may be intent on causing trouble."(<http://www.equalityhumanrights.com/human-rights/our-human-rights-work/articles-and-speeches/use-of-mosquitos/>)

Statements from the 'Change the Picture' Youth Manifesto

In 2011, the Scottish Youth Parliament conducted the largest youth consultation of its type in Scotland to shape our Youth Manifesto 'Change the Picture', which saw a total of 42,804 responses from young people. Young people were asked whether agreed, disagreed or were unsure about a series of policy statements. Only those

which receive more than 50% in favour were included in the final document. As well as being a comprehensive and powerful statement of the priorities of Scotland's young people in the run up to the 2011 Scottish Parliament elections, 'Change the Picture' is the basis of SYP's policy and campaigning work for 2011-16.

Section 11 Notifications and referrals

Section 11 of the Homelessness etc (Scotland) Act 2003 makes it a statutory requirement for all landlords and mortgage lenders to notify the local authority of all eviction or repossession proceedings

We feel it is a priority for the Scottish Government to amend the Homelessness etc. (Scotland) Act 2003 that would make it statutory requirement for local authorities to provide access to independent legal services and money advice to people facing eviction or repossession in terms of Section 11 notifications in order to provide a proactive early intervention to prevent homelessness.

This would be achieved through the local authority working in partnership with third sector organisations in which Section 11 notifications clients are referred directly to the dedicated coordinator within the organisation whose job it is to co-ordinate services provision for vulnerable people and households and those at risk of homelessness.

These services would include; legal advice and representation, welfare benefits and money advice and assistance to access other support services including mental health services.

This would provide a multi-disciplinary service providing a tailored and 'wrap around' service for the client; the service having dedicated co-ordination of services for the client and a single point of contact for other services including the landlord or lender. The third sector organisation(s) providing an assertive outreach approach to engage with vulnerable and hard to reach clients

The cost to local authorities and the public purse, in terms of rehousing homeless households, is around £24,000 per household. (Source: *Scottish Council for Single Homeless*).

Local Authorities should provide assistance in terms of money and legal advice at some level; sign posting to free, independent and confidential assistance in their area, statutory services or third sector services

Rights Based Awareness Campaign

People are not aware of their rights in terms of Section 11. A television, radio and other media campaign should be used which informs everyone of Section 11 of the 2003 Act. This would inform them of how to get help and which could provide people in Scotland with a national contact number which directs them to local support. Local support in larger LA's like Glasgow have the GAIN network

(Glasgow Advice and Information Network) which can signpost and refer people directly to the relevant services.

Section 11 notifications in terms of Glasgow City Council needs to be made more effective by employing our model of prevention. The GCC already provide excellent information, designed by Govan Law Centre, to people receiving s11, but more than information is needed as people require direct access to independent advice and legal services. This could be achieved through utilising organisations similar to GAIN.

Better treatment of those facing homelessness by support services

From the moment a person presents as homeless, they should be treated with respect. People who present as homeless are generally vulnerable. They require to be treated sensitively. Nobody should ever be turned away if they have nowhere to go. They require housing that is of an adequate standard which meets their needs. They require adequate support upon being placed in accommodation. Intentionality should be addressed as an issue, for example, the underlying issues as to why a person did not pay their rent/mortgage should be considered. It is very rarely a case of a clear case of a person just deciding not to pay their rent/mortgage.

Govan Law Centre had a French client the other week who was being refused accommodation by the casework team on the grounds that he had no recourse to public funds. He had his two children, aged two and six year with him. The Council Casework service kept refusing to accommodate him and his children on this ground only and did no proper investigations into the matter before reaching this decision. We went to check on the family at the casework team where they were repeatedly advised to attend the casework service at 9am each morning. They were made to wait all day at the casework team and no other help. The family would then be accommodated at 5pm at night. The family were not allowed access to toilets. We witnessed the youngest of the two having to get her nappy changed on the floor in front of other people waiting to be seen and the other child having to do the toilet on the street. These people were not treated with the respect that they deserved and they should have been given somewhere to stay until the matter had been properly investigated and they had been given the opportunity to meet with a money advisor to determine if they were in fact not entitled to public funds. This is not an isolated example and has happened to other clients.

Another example is that of SP. SP is a female in her late teens who became pregnant while staying with her father. Her father disapproved of the pregnancy and asked her to leave his property which resulted in the client living with her aunt, who has a child of her own.

SP has to sleep on the couch as there is no other room in her aunt's house. SP suffers from anaemia and routinely has to go to the hospital to have her blood checked. Her condition has impacted on her pregnancy and because of this she is considered a *high risk* pregnancy.

SP presented over two weeks ago and was advised that due to her ill health she would not require to come to the Council Casework Service every day. She has still not been accommodated by Glasgow City Council even although they are fully aware of her health concerns and her living conditions.

Eventually when SP was accommodated she was placed in a temporary furnished flat which had bed bugs. When this was raised with the casework team she was left to deal with this matter. The casework team advised there was no place to move her to. She decided to quit the temporary furnished flat and seek her own private accommodation, where she has to top up her rent with other benefits.

Improved security of tenure and more protection for private sector tenants

We could look to our European neighbours in respect of this matter. There may be a need to completely restructure the system of assured tenancies under legislation. As the police forces are to become one organisation from 1 April 2013, there should be nationwide training for all police in order to improve the treatment of clients when their landlords attempt to illegally evict them.

Based on the evidence presented in the report Getting it right? Human rights in Scotland, or your own experience, what do you consider to be the most urgent human rights issues which should be addressed in Scotland's National Action Plan for Human Rights?

Sense Scotland is a leader in the field of complex communication support needs and promotes the use of innovative services for people who are often marginalised when traditional models of support are used. We offer a range of services for children, young people and adults whose communication support needs result from a range of impairments including deafblindness; sensory impairment; physical or learning disabilities. Our services are designed to provide continuity across age groups and we work closely with families and with colleagues from health, education, social work and housing.

Sense Scotland agrees that the contents of this response and our name and address can be made available to the public.

We have restricted our comments to the direct experience of the people we support and their families.

Our views on the priority issues for the National Action Plan to address are related directly to the implementation of policies at a local level – an issue you note as problematic in the report.

We can cite numerous examples of disabled people and their families (usually key to the provision of support of people with complex communication support needs) being excluded from any (meaningful) discussion or consultation about how they should be supported to live their lives. This issue cuts across many elements of the themes you have listed, namely:

- Dignity and Care
- Health
- Where we live
- Education and work
- Private and family life
- Safety and security
- Access to justice.

You will note that the only theme we have not mentioned here is that relating to detention, although, when used in its widest sense, even that theme would be included when you consider how few people we support, through either direct or advisory services, choose where they live, or can insist on change.

The practice of commissioning is key to many of these issues for the people we support, yet the experiences in many areas of the people we support have been of reduced inclusion in key decisions about their lives over the last 2 years or so. We fully understand the pressures on local government in the current financial climate, but would urge them to take greater steps to address the inequalities experienced by people with complex communication support needs, seeking out and sharing good practice, and recognising the knowledge of others which could help them to achieve improvements. Procurement is often used as the method by which people's support arrangements are made, yet it should only ever be adopted as one of the possible outcomes resulting from a comprehensive commissioning strategy - and should certainly never take place without full consultation with the people who will be 'placed' with the winning bidder. The very vocabulary surrounding procurement (lots, geographical areas, placements, sub-contracting etc.) ensures that the people most affected may be perceived as passive recipients of actions by others, and however much local authorities wish to promote inclusion, they will not be able to achieve this if the language of co-production and outcomes within specifications are not met by the reality of implementation.

The 'Where we live' theme is clearly illustrated by the difficulties local authorities are having in implementing commissioning decisions based on inclusion and involvement. We have experience in a number of areas of people being placed with others in permanent accommodation without any possibility of refusing. They are faced with Hobson's choice of 'this or nothing'. We believe that this practice would not be considered acceptable for non-disabled people, although we recognise there is some shifting towards this for young single people as a result of Welfare Reform measures. A comparison would be turning up to a holiday house, to find someone else you don't know will also be staying there, because the owner 'thinks you'll get on well together'. Only the consequences are far worse – disabled people will potentially be placed with people they don't know, and have had no chance to get to know, for 24 hours a day - possibly for the rest of their lives. Scotland can take the opportunity of this action plan, the SDS and Procurement Reform Bills to show the way to agencies which are making decisions such as this.

Still on the subject of legislation and opportunities to lead the way, we are disappointed that Scottish Government chose not to progress with a Children's Rights Bill but instead to focus all efforts into a Children & Young People Bill. A Children's Rights Bill could have incorporated UNCRC into domestic law. Lack of consistency in interpreting the various articles has already resulted in confusion in those areas of legislation within which UNCRC has been incorporated. For example, Article 12 on children's views is interpreted in different ways by the Children (Scotland) Act 1995, Education (Additional Support for Learning) (Scotland) Act 2009, as amended, and the Standards in Scotland's Schools etc. Act 2000. There has been particularly problematic interpretation of this Article for disabled children and young people. We had hoped for clarity from full incorporation to allow future legislation to be consistent and integrated in promoting children's rights.

We are not convinced that the Children and Young People Bill will provide:

- Redress in cases where there are violation of children's rights;
- Greater consistency across all areas of public policies and services relating to children;
- Increased awareness and understanding of UNCRC and children's rights.

In relation to health, we would note the contents of the report of the Confidential Inquiry into premature deaths of people with learning disabilities (March 2013) which refers to the often inadequate access to healthcare for learning disabled people in the South West of England. Whilst we believe that the people we support are generally getting better access to healthcare than was the case some years back, there is still progress to be made.

Family life, safety and security are all threatened by the issues noted above. In order to continue to support a disabled relative, (if that is what all concerned want), then local authorities need to be supported to be able to follow best practice in supporting family life – formulaic approaches in relation to assessing need and eligibility can all contribute to poor outcomes in this area, placing increasing pressures on families, to the extent that they may find themselves pushed beyond the ability to offer any support at all. Again, the language may sound positive – ‘personalisation’, ‘outcomes’, ‘self assessment’, ‘innovative practice’ – but this is meaningless if the people affected don't feel they have been listened to, or their specific needs have been taken into account.

Access to justice is certainly an issue for disabled people, although not always in the context of criminal justice. Too often decisions such as those described earlier are taken with no clarity about how to appeal against them - with the response to any dissatisfaction on the part of the person or their family often focussed on the **process** that was followed, rather than considering the reality of the family's circumstances.

In addition to the concerns expressed above we also link concerns below to specific articles under the UN Convention on Rights of Disabled Persons. In particular:

- Article 9: Accessibility

Throughout public sector agencies there is uneven distribution and availability of information that is inclusive of people with communication support needs. In a short space of time from 1996 when the first Disability Discrimination Act came into force and the following decade, measures were taken that, progressively and incrementally, could be seen to improve availability and accessibility of information across services and provision in both central and local government. Since 2006/7 and increasingly from 2010 there has been a rolling back of progress. Where once documents could be obtained in a range of accessible formats they became available only by signposting to contacts from whom they could be obtained (who often did not know they were the contact). Next they became available as web

only versions, apparently unaware that 1 in 3 people who have no access to the Internet or web are disabled, the very ones who are likely to require accessible formats. Now there is rare signposting, and even then they often cannot be sourced.

A specific example of how this can impact directly on someone is that Sense Scotland requested, on behalf of some people we support, specific accessible versions of Care Standards from the Care Inspectorate. Many weeks on the people we support continue to wait, having initially been told they may as well wait for a consultation on the new standards to appear. The people approached were helpful, but this response from key agencies (including publications within the Scottish Government) reflects a lack of understanding about the critical nature of accessible information, and means that the people concerned are not able to see the standards against which their current service should be measured.

Scotland leads the world in some of its innovative practice in accessible formats and yet the implementation is at best fragmented. In our view, the public sector reform agenda **must** incorporate statutory and contractual expectations that drive up the delivery of information in accessible formats. This should be reported on within the Public Sector Duties both general and specific.

- Article 24: Inclusive Education.

Since 2008/9 there has been a marked reduction in the support disabled children and young people receive through the additional support needs (ASN) framework. Despite having a Support for Learning Code of Practice that emphasises that identification, assessment and provision should be in respect of **each** child (one of only two words emphasised in the Code), the norm has become formula driven allocations. Resources are allocated according to an ever decreasing pie, plans are re-written according to what will be provided rather than on assessed need. These changes contradict Article 24 “Persons with disabilities receive the support required, within the general education system, to facilitate their effective education”.

Scotland’s distinctive Curriculum for Excellence has the potential to deliver significant change to children and young people that will deliver on the four capacities (successful learners, confident individuals, responsible citizens and effective contributors). However, national initiatives are not always being developed in association with the principles of universal design for learning, leaving disabled pupils with more to do simply to engage with the task in the first place. Disabilities Strategies legislation has been in place since 2001/2 and a noticeable reduction in performance against that annual improvement agenda has been seen. We would like to see a renewed focus on and delivery of accessibility strategies taken up and delivered by education authorities.

Article 24 notes that to realise this right measures are needed to ensure teacher employment strategies reflect disability awareness, use of appropriate

augmentative and alternative communication modes, means and formats of communication, educational techniques and materials to support persons with disabilities. Despite this imperative the 2011 Donaldson report on Teacher Education noted that the three areas in which newly qualified teachers felt least prepared were in additional support needs, child protection and safeguarding and Information and Communications Technology (ICT). (The combination of ASN and ICT presents particular challenges.)

With UNESCO and the EU Agency on Special Educational Needs, together with Microsoft and G3ICT, about to work together to present a model policy in support of inclusive education it is important that Scotland is seen as a contributor to this visionary approach rather than struggling to play catch-up.

Post 16 education raises particular issues, with poor transition planning (which applies across all aspects of life in addition to education) and a failure to support young people into suitable further education. The disproportionate cut to college places for learning disabled people when compared with non-disabled people is a clear indication of prejudicial treatment.

What specific and achievable actions do you consider would best address the concerns you identify in your response to question 1?

In relation to commissioning and all of the associated themes which link to it – putting the JIT guidance on commissioning on a statutory footing, together with an obligation on commissioning / procurement bodies to evidence for **each person** affected that they have been consulted in a meaningful way on the support they require, and that all their human rights have been addressed. Anyone assessed as needing support will have a named person in the commissioning authority who can be supported to carry out this evaluation measure. The impact of policy implementation on individuals can easily be lost within generalised reporting of outcomes. Sense Scotland has received funding from the Equalities Unit for its 'Partners in Communication' programme, and we would happily be involved with commissioning bodies in relation to how they can improve the involvement of people with complex communication support needs in decisions about their lives. To date this work has influenced our own strategic behaviours, involves a root and branch analysis of all areas of our organisation, and will in part be measured in terms of the increased involvement of the people we support in all aspects of control and support. An aim of the programme is to share this learning with external agencies. The programme wishes to engage actively with other bodies, and can be reached via Paul Hart at phart@sensescotland.org.uk

The Scottish Government, local authorities and health boards need to consider the impact their annual budget decisions have on human rights and equalities and be transparent and pro-active in publicising this aspect of their decision making. Public awareness and attitudes will not change without an honest debate. Linked to this is the issues that charging people for services which they have no choice about

receiving is unfair and discriminatory and government at a local and national level has a responsibility to consider how to address this issue.

Education for people with complex communication support could be improved by supporting a wider range of activity to be funded through education budgets. An example of this is reflected in the work Sense Scotland carries out to support people to gain ASDANs – this may be continuing work started in school, or be the first opportunity a young person has had to access recognised achievement awards.

The Scottish Government could helpfully include a duty within the Children and Young Persons Bill to promote knowledge and understanding of UNCRC, paying particular attention to promoting knowledge and understanding of the rights of disabled children and young people as regards Article 12.

There are many other practical measures that could be taken, but these proposals would go a long way towards achieving equality of opportunity, participation and inclusion.

We would be happy to be involved in further discussion on any of these aspects of human rights.

Name: ORG-0044a-Scottish Women's Aid-000

Based on the evidence presented in the report Getting it right? Human rights in Scotland, or your own experience, what do you consider to be the most urgent human rights issues which should be addressed in Scotland's National Action Plan for Human Rights?

The 57th meeting of the Commission on the Status of Women recently affirmed that

"...violence against women and girls is rooted in historical and structural inequality in power relations between women and men, and persists in every country in the world as a pervasive violation of the enjoyment of human rights. Gender-based violence is a form of discrimination that seriously violates and impairs or nullifies the enjoyment by women and girls of all human rights and fundamental freedoms. Violence against women and girls is characterized by the use and abuse of power and control in public and private spheres, and is intrinsically linked with gender stereotypes that underlie and perpetuate such violence, as well as other factors that can increase women's and girls' vulnerability to such violence." (CSW Agreed Conclusions, 15th March 2013)

In doing so, the Commission echoed the words of Kofi Annan, then Secretary General of the UN, when he launched the "In Depth Study on all forms of Violence Against Women" in 2006:

"Violence against women is perhaps the most shameful human right violation, and it is perhaps the most pervasive. It knows no boundaries of geography, culture or wealth. As long as it continues, we cannot claim to be making real progress towards equality, development and peace".

These statements hold true in Scotland as much as anywhere else in the world and the approach taken to addressing violence against women by the current Scottish Government and previous Holyrood administrations reflects this. It purposely draws on UN definitions of violence against women as gender based violence and addresses it as both a cause and a consequence of women's inequality. Addressing violence against women in Scotland is fundamentally about recognising that women still do not have equal status with men.

The SHRC report asserts that "human rights do not exist or operate within a vacuum" and goes on to cite the social, political, economic and cultural context that must be considered in order to ensure the realisation of rights (p7, Executive Summary). We agree, and are disappointed therefore that the report primarily focuses narrowly on domestic abuse and little connection is made with the wider context of violence against women as an equalities issue.

Anyone who experiences violence or abuse should have the right to services, support and legal redress. This does not preclude having a specific approach in

relation to violence against women that recognises the context within which that violence takes place. The Scottish Government locates strategic responsibility for addressing violence against women within the equalities unit because it has framed violence against women as an equalities issue. This is about recognising that an issue which disproportionately impacts on half of the population requires a specific response that addresses the underlying structural reasons for the scale of the problem.

This does not mean that the health service, justice systems, and social work systems are relieved of their responsibility to respond appropriately to ALL victims and survivors of violence or abuse, regardless of the gender of the survivor or the perpetrator.

It is important to be able to view access to human rights through a range of different lenses. In general, we did not find the intersection of gender and human rights well reflected in the report; the same might be said of other equalities characteristics. The section on 'The Minority Experience' is slightly confusing as it groups men who experience domestic abuse (identified in the report them with people who are members of minorities by virtue of society's response to them (e.g. trans women). As already stated, anyone who experiences abuse should have a right to services and redress, but the response should be specific to the needs of the individuals concerned.

What specific and achievable actions do you consider would best address the concerns you identify in your response to question 1?

We would like to see gender more effectively mainstreamed throughout the proposed action plan. We think there is still work to be done to explore the intersection of gender and human rights and would welcome the opportunity to discuss this further with the Commission and with other gender equality organisations.

Access to legal aid to seek civil protective orders is problematic for many women. SWA is exploring the extent to which means tested contributions disproportionately impact on women seeking protection from abusive partners. A gender disaggregated analysis of the number of legal aid applications which relate to pursuit of interdicts/Non harassment orders/exclusion orders in relation to ex partners would be useful.

Name: ORG-0045a-Scottish Community Development Network-000

Based on the evidence presented in the report *Getting it right? Human rights in Scotland*, or your own experience, what do you consider to be the most urgent human rights issues which should be addressed in Scotland's National Action Plan for Human Rights?

The *Getting it Right* report identifies that while good progress is being made in the area of integrating human rights law within Scotland's legislative framework, for human rights to have a greater impact on individuals and communities human rights need to become more meaningful and relevant in the lives of all residents of Scotland especially those most marginalized.

Indeed, in general terms, it is noted that the influence of human rights is felt most strongly on our laws and institutions and its influence decreases the closer to real life we look. The result is unacceptable outcomes for some individuals, particularly the most marginalised.

The Scottish Community Development Network is an autonomous practitioner led group which believes that:

"the key purpose of community development work is collectively to bring about social change and justice, by working with communities to: identify their needs, opportunities, rights and responsibilities, plan, organise and take action, evaluate the effectiveness and impact of the action all in ways which challenge oppression and tackle inequalities"

Despite the many common objectives of human rights supporters & defenders and those in the field of community development looking to promote social justice and equality, there are currently few explicit links between community learning and development policy and the human rights agenda. While the Scottish Government has indicated support for a community development approach in a number of strategic documents, the reality on the ground is that community development approaches are increasingly being undermined and the skills base in the field diminished.

A key area of community development work is to empower communities to 'speak truth to power' therefore it is perhaps not surprising that effective community development work does often not sit easily within a local authority or health board setting. The same could perhaps be said of those seeking to promote a human rights approach to tackling exclusion and prejudice. These attitudes of resistance to change or even the challenging of the status quo, are one of the greatest barriers to achieving the goal of allowing human rights approaches to have an impact on 'real life'.

We currently lack a workforce whose role it is to work to the agenda of communities. Local and even National and European elected representatives claims to represent communities is becoming increasingly tenuous. Voting levels in elections are alarmingly low and even lower in poorer communities. In the last

local election in Glasgow 2012 only 31.6% of the electorate voted with levels in areas such as Drumchapel and Possil being under 20%. In the report by the Jimmy Reid Foundation 'The Silent Crisis', Scotland is identified as one of the most undemocratic countries in the developed world. This flawed system of representative democracy along with no coherent or adequately resourced strategy to address and develop political literacy across and within communities threatens the relevance and integrity of our democracy. As democratic government is recognized as a key element in the development and observation of human rights for the SNAP not to address this significant issue would be a crucial oversight and a missed opportunity. The report recognized that:

'Awareness and capacity building can also be an important vehicle to put human rights into practice,'

How is this awareness and capacity building going to be achieved without people with the skills, determination and commitment to work shoulder to shoulder with communities, especially those most marginalized, to achieve it. Much of this work is currently done by third sector organisations this are under threat and the current UK Government 'austerity measures' represent a 'clear and present danger' to the ideas and ideals of human rights and community development. As one of the richest countries in the world the UK should be encouraged to resource community development work and achieve far greater recognition of human rights both civil & political and economic, social and cultural. We must get out of reverse and accelerate forward in our drive to achieve a just and equitable society. Community development approaches mean that marginalized communities whether they be thematic or geographic can be given the opportunity to savour real and permanent change for the better. The Scotland's National Action Plan for human rights must recognise that human rights can not be achieved without a representative government and an active and empowered civic society.

The pressures of global economic and environmental crisis make this a crucial time in deciding what our national priorities must be and what our international responsibilities are, and how we will fulfill them. The values and vision of community development and human rights are central to any approach that seeks to challenge the current levels of injustice, violence and inequality which threaten the world. The current version of globalization means that the financial markets have greater influence over government policy than the electorate, this situation must be recognized and remedied as a matter of urgency or the current level of poverty and injustice is likely to continue and most likely get worse.

What specific and achievable actions do you consider would best address the concerns you identify in your response to question 1?

Greater recognition and investment in the support and development of community development approaches to tackling inequality, social justice and human rights. Specific actions would be to review current higher & further education provision

across Scotland with a view to increasing provision and protecting and promoting areas of good practice.

Review of community development approaches and provision across all Scotland's local authorities and Health Services, with a specific view to identifying approaches and development that could benefit the integration of a Human Rights Based approach in working with communities.

Work be undertaken between the Scottish Human Rights Commission, the Community Learning and Development Standards Council for Scotland, Scottish Community Development Network, the Community Development Alliance Scotland representatives of the academic sector and the Scottish Government to identify ways in which the implementation of the Christie Commission's recommendations can be supported to promote human rights and address social inequality.

Any future government legislation relating to community development or human rights should explicitly identify and encourage the link between these areas of practice.

That serious and urgent attention be paid to the threat to our democratic system of government by the increasing lack of engagement of voters in the electoral process. That Scotland's current approach to representative and participatory democracy be scrutinized in light of the importance of a strong democratic system being identified as the best environment in which to achieve a positive human rights culture.

"Based on these findings, SHRC considers that Scotland needs to better promote the influence of human rights laws in areas that matter most to people e.g. where we actually lead our lives - in our homes, neighbourhoods, workplaces, schools and other areas of day to day life. Scotland's National Action Plan for Human Rights will provide a practical roadmap to move from assumption to assurance that human rights laws and institutions, strategies and policies are informed by and consistently influence practice. Adopting such a systematic approach will demonstrate a clear commitment to making human rights real for everyone in Scotland."

The SCDN believe that this exciting vision can best be delivered by utilizing and developing the skills of a new generation of community development practitioners and by recognition of the fundamental need to shift our national priorities from economic growth and competition to economic sustainability and cooperation.

1.

- One of the most urgent human rights issues which should be addressed in SNAP is the huge challenge/barrier to the enjoyment of rights in Scotland and across Europe which has resulted from the current financial and economic crisis which has exposed vulnerable groups including the disabled, persons with disabilities, children and elderly persons and their carers, the services which are essential/available to them exposed to greater risk. Services available to such groups have been affected adversely and diminished as a result of the cuts in public services. Organisations like the Council are endeavouring to mitigate the impact of financial cuts but can do so only to a limited extent.
- Contributions that can be made by organisations like public sector bodies (including local authorities) and commercial businesses to assist in the creation of employment and ensure that they apply good business and employment practices. Scotland's National Action Plan would provide an opportunity to set strategic objectives and discretion for organisations to take account of local circumstances and resources. It is recognised that such discretion must be exercised in accordance with EU and national legislation. In particular Scotland's National Action Plan might promote a review of public procurement rules and commissioning of public services which is particularly appropriate in the social services sector.
- Any organisations both public and private already ensure that arrangements are in place to support individuals who are disadvantaged in areas like dealing with enquiries, complaints etc. Scotland's National Action Plan should encourage and commit to the development and growth of arrangements to accommodate vulnerable people.
- Scotland's National Action Plan should give direction on remedies for victims of human rights abuses or breaches.
-

2.

Whilst statements of commitment (on some or all of the above) might not result in positive tangible outcomes in the short term particularly where there are financial considerations e.g. public sector budget cuts and commercial businesses operating in a difficult financial climate, if included in Scotland's National Action Plan they would give direction to organisations and individuals which influence business and employment policy and practice and bring results albeit perhaps in the long term.

Based on the evidence presented in the report *Getting it right?* Human rights in Scotland, or your own experience, what do you consider to be the most urgent human rights issues which should be addressed in Scotland's National Action Plan for Human Rights?

For 20+ years Engender has focused on three critical areas where women's human rights have historically not been realised: women's experience of poverty, women missing from public life, and men's violence against women. These three domains provide the filter through which we have reviewed *Getting it right?*

It is women's experience of institutionalised, systemic, and systematic discrimination that results in the critical infringement and abrogation of their human rights (in Scotland as elsewhere). Yet, in our analysis, the evidence presented in *Getting it right?* fails to reflect the gendered nature of life in Scotland and how this affects women's enjoyment of their human rights, or the substantial academic and research evidence available that explores women's experiences in Scotland. The apparent failure to use CEDAW or the Beijing Platform for Action—the two most important international instruments for the advancement of women's human rights—in the literature reviews and collection of evidence may go some way towards explaining the poor gender analysis throughout the document.

Women's poverty

Despite a number of references to specific aspects of women's economic disadvantage in Scotland (e.g. the rather cursory pay gap section), the discussion of poverty might have benefited from an analytic approach that recognised that women and men experience poverty differently and that women are disproportionately affected. Two examples below illustrate the problem when no gender lens is applied, with our comment following the excerpt:

1. *"In practice, action to address poverty has made progress in respect of certain population groups such as adults of pensionable age and children but not for others such as workless households (McKendrick et al., 2011b). Current policies focus on working your way out of poverty, however, entry into work accounts for less than half of UK exists from poverty. (p. 44)"* We disagree that any serious progress has been made on lifting children out of poverty—in fact we along with others predict that additional thousands of Scottish children will sink below the poverty line as a result of the recession and ungendered investment to create recovery. As Engender and a number of children's charities have repeatedly pointed out, the government's doomed child poverty strategy fails to reflect that children's poverty is very often the consequence of women's poverty—97% of "single parent" households on benefit are single-mother households. We welcome the reference to the flaws in a poverty strategy that focuses on paid work as the sole route out of poverty, but the phrase "workless household" is offensive, given

the experiences of women and children in those families. Gender-blind analysis fails to identify or account for the role of women's economic disempowerment, their unpaid and low-paid work, and other barriers, such as expensive and inadequate child care, to women realising their economic rights (referenced in ICESCR and CEDAW).

2. *"The Scottish Government has adopted the Living Wage scheme, which encourages employers to adopt a sustainable wage for employees. The living wage is defined as a wage that gives individuals and families enough income to meaningfully participate in society and that meets socially acceptable standards (Scottish Government, 2010i). The literature commends the work being undertaken to encourage a living wage (McKendrick and Sinclair, 2009), however, the operation of such a scheme is not without its difficulties as income inequality traverses both the public and private sector. (p. 144)"* Engender welcomes adoption of a living wage in the public sector as a first step. The flaws of living wage schemes as pillars of an anti-poverty strategy, however, are evident when gendered analysis is used: any scheme that focuses exclusively on the formal labour market misses the critical problem of women's engagement in informal and caring labour—most of which is unpaid or low-pay.

Violence against Women

The failure to gender the analysis of violence and women's experiences of rape and sexual assault, domestic abuse, forced marriage, female genital mutilation, prostitution, etc. is perhaps the most disappointing and worrying aspect of the document, given the wealth of expertise and academic evidence in this area in Scotland. In view of the enormous attention given to this most widespread violation of human rights by the United Nations and other international human rights bodies, and the fact that Scotland's gendered approach has led the way in the UK and much of Europe, this failure is hard to fathom. The positioning of violence against women in the chapter on private and family life, the conflation of the spectrum of violence against women with domestic abuse, the commentary on terminology that ignores the international discourse on gender and violence (and indeed Scotland's own hard won definition) and the characterisation of male victims as a "minority group" are just a few examples of where the understanding and analysis underpinning *Getting it right?* appears to be getting it seriously wrong.

Participation in Public Life

We could find no substantive discussion in the document of barriers to realisation of women's human right to participate in public life, nor reference to the Equality and Human Rights publications on Sex and Power (<http://www.equalityhumanrights.com/key-projects/sexandpower>).

What specific and achievable actions do you consider would best address the concerns you identify in your response to question 1?

We suggest that a systematic gendering of priority areas is required, supported by substantive engagement with the women's sector, particularly the national violence against women organisations in Scotland. We would be happy to facilitate that engagement.

Based on the evidence presented in the report *Getting it right? Human rights in Scotland*, or your own experience, what do you consider to be the most urgent human rights issues which should be addressed in Scotland's National Action Plan for Human Rights?

Human rights abuses taking place in public services, specifically those against elderly people and people with learning disabilities and Autistic Spectrum Disorders. The human rights abuses taking place against people on the autistic spectrum are the worst human rights abuses taking place in Scotland today, because some are life-limiting, some can undoubtedly be categorised as cruel, inhuman and degrading treatment, and they occur throughout the lifespan and in a range of settings. The worst human rights abuses taking place against people with Autistic Spectrum Disorders are those taking place within the mental health system.

Autism Rights' recent presentation to the Scottish Parliament's Cross Party Group on Human Rights, entitled 'Should people with Learning Disabilities and Autism be included within the provisions of the Mental Health Act?' has been edited and referenced and forms the largest and most central part of our submission to the SHRC's consultation on Scotland's National Action Plan for Human Rights. The rest of our submission is contained in this form and the document 'Scotland's National Action Plan for Human Rights – Autism Rights' supplementary submission', all of which are attached to our covering email. Other Autism Rights' documentation is referenced where appropriate. These documents make the case, not just for inclusion in an 'action plan', but for action.

What specific and achievable actions do you consider would best address the concerns you identify in your response to question 1?

The very fact that not a single official body or organisation has investigated the known human rights abuses taking place against people on the autistic spectrum means that it is left to Autism Rights, as a self-supporting, campaigning group, to act as human rights defenders. We have outlined a number of inconsistencies and omissions in official reports, data gathering and statistics, which make it much harder to find out just how bad the overall situation is. In a supposedly 'mature democracy', there ought to be taxpayer-funded investigation of these abuses, followed by policy change and legislative review, repeal and amendment.

We are campaigning for people with Autistic Spectrum Disorders (ASD) to be taken out of the the provisions of the Mental Health Act, for equality of healthcare for people with autism and for an inquiry into the treatment of all people with ASD within the mental health system. We make the case for these changes within our submission to Scotland's National Action Plan on Human Rights.

Further measures that would address abuses against people with ASD are covered in Autism Rights' 'Proposals for Autism Services', which can be accessed on our

website - <http://www.autismrights.org.uk/drupal/node/8> . We outline below some of the main points in these proposals:-

- 1) Service Standards that are specific to the needs of these groups of people – generic standards are of no use in enforcing rights or ensuring accountability of those making decisions or of those providing services.
- 2) Self-assessment of public services is based on sometimes irrelevant criteria too often used to rebuff legitimate criticism of these services and results in continual bureaucratic expansionism at the expense of adequate levels of service provision. For that reason, there must be robust and independent complaints procedures, which do not exist at present, as complaints are handled by the very bodies against whom complaints are being made.
- 3) There is a complete absence of legal redress for people on the autistic spectrum, because of the absence of autism-specific standards in public services, the absence of class action lawsuits in Scots Law, the absence of equal reverence and equality of arms of much recent legislation, the administration and paucity of legal aid and a culture of official bigotry and maladministration. All of this needs to be tackled with vigour. Government and its agencies – and this includes Scotland's human rights organisations - need to acquire the determination to put a stop to an official culture where lessons are continually re-learned but never applied.
- 4) There is a particular problem of representation of people on the autistic spectrum, given the nature of this disability and the fact that the vast majority of those on the spectrum are incapable of defending themselves or of fully representing their interests. Representation is dominated by multi-million pound businesses that have charitable status, regardless of their funding, which is 89.1% - 99% provided by the state. These businesses are also written into government policy on datasharing, in spite of the absence of accountability or responsibility on their part (such as the exclusion of charities from FOI legislation). Direct representation of people on the autistic spectrum should be the norm, by their parents and other carers and by those people on the spectrum who are able to represent themselves. It is not acceptable that those who have a several direct conflicts of interest in speaking truth to power should dominate representation of a vulnerable group of people. Representation should include dissenting and critical voices.
- 5) Parents and carers should have open access to enable collaboration with service providers on the nature and quality of services, and to provide a protection against abuse. Institutional abuse is not a thing of the past, and prevention of access to premises – as was shown in the BBC documentary on Winterbourne View – has made it much easier to cover up abuse. Inspection regimes and `self assessment` will continue to fail those who are abused and those who have the courage and decency to blow the whistle on abuse, at the risk of their own health and livelihoods.

Name: ORG-0048b-AutismRights-000

Three documents form the basis for Autism Rights' submission to SHRC's consultation on Scotland's National Action Plan for Human Rights. These are our completed 'Participation Form', Autism Rights' edited and referenced **presentation** to the Scottish Parliament's Cross Party Group on Human Rights, entitled '***Should people with Learning Disabilities and Autism be included within the provisions of the Mental Health Act?***', which forms the largest and most central part of the submission, and this document.

I would like to use the headings within the SHRC report 'Getting it Right?' to identify where Scotland's government and institutions are 'getting it wrong' for people on the autistic spectrum. To start to 'get it right', those institutions, the SHRC included, are going to have to acknowledge official failure and refusal to compile the statistics and qualitative evidence that would support what Autism Rights is saying, and that 'absence of evidence' does not equate to 'evidence of absence'.

*** 1. Dignity and care**

There are serious human rights issues for people on the autistic spectrum in 'care' environments, as has been demonstrated more than once by the BBC in its undercover documentaries - most recently the documentary on Winterbourne View hospital. Our **presentation** refers to issues of care both within and beyond the mental health system. Please refer also to our completed 'Participation Form' for a brief outline of problems and potential solutions.

Autism Rights believes that one of the reasons for the continued abuse lies in the common practice of keeping parents of people with ASD from knowing and seeing the care provision being made. Unfortunately, whilst parents like ourselves have fought for years to gain physical access to our children's schools and other service provision, and have striven over those years to find out what is actually happening to our children in these environments, there are other parents who leave everything to the 'professionals' and are then surprised when things inevitably go pear-shaped. It should also be noted that, irrespective of government policy on the rights of carers or legal status as a guardian, parents are very often excluded from decisions taken on their adult sons and daughters and their motives are frequently questioned by public servants who claim to be serving the interests of the person with ASD, but all too often are unwilling to accept the specific needs of people with ASD.

Because of the nature of autism, it is essential to co-ordinate educational and care plans between home and school or care establishment. Consistency is essential in the lifelong learning that people with developmental disabilities, such as ASD, need. There is much needed security in having open access arrangements for parents of people on the autistic spectrum, so that abuses can be picked up early on, and nipped in the bud. Even if those abuses are not directed at your own son or daughter, it is in everyone's interests to identify and stop abuse. It is too easy to claim that a person with ASD has assaulted a care worker and to place that person under a compulsory treatment order under the Mental Health Act, when it may

very well be the `care` worker or their service provider employer who is either incompetent in dealing with the behaviours that people with ASD display, or that the worker is the one doing the assault.

*** 2. Health**

I refer to our **presentation** in its entirety (which mainly addresses the human rights abuses inherent in current mental health policy, practice and law), to the following weblinks and text from the Autism Treatment Trust, which address the special health problems associated with ASD and to the latest WHO / UNEP report on children's health. The most serious human rights abuses taking place against people with ASD in Scotland are happening within the Health and social care sectors, and there is no evidence of political action to deal with these abuses. On World Autism Awareness Day, Autism Rights is calling for this to change.

But first:-

<http://www.dailymail.co.uk/health/article-2292270/Doctors-said-son-constipated-fact-CANCER-Mothers-anger-doctors-missed-basketball-sized-tumour-11-TIMES.html>

- Doctors said my son was constipated - in fact, he had CANCER: Mother's fury after doctors missed basketball-sized tumour 11 TIMES as survival odds slashed to 40%

By LUCY LAING

PUBLISHED: 19:21, 12 March 2013 | UPDATED: 22:36, 12 March 2013

Although this story is from England, there are cases in Scotland that have received no media coverage that are as bad as this.

Autism Treatment Trust / Treating Autism review and conference
Conference

<http://www.autismtreatmenttrust.org/?p=2301>

<http://www.autismtreatmenttrust.org/wp-content/uploads/2013/03/FLYER-Conference-June-12-13th.pdf>

Review

Medical Comorbidities in ASD

A Primer for Health Care Professionals and Policy Makers

Dear Parents and Autism Professionals

As you are undoubtedly aware, the cost of autism—both human and financial—is enormous. The rate of ASD has continued to rise for more than two decades, now affecting one child in 50 in the USA and 1 in 64 in the UK. The increased rates can no longer be attributed to better recognition, and current scientific evidence demonstrates that ASD is medical in nature and treatable. Tragically, as headlines and the lived experience of thousands of families will attest, the medical needs of this population are often overlooked, misunderstood, or actively ignored. A paradigm shift is currently taking place in the scientific and medical community, offering greater potentials for intervention.

On this upcoming Autism Awareness Day, this message needs to be shared with families of children with ASD, teachers, health workers, government officials and all tax payers in the UK: that the new paradigm of autism as a treatable condition offers tens of thousands of people a better chance for an improved quality of life.

Please read and share our scientific review, 'Medical Comorbidities in Autistic Spectrum Disorders', which can also be viewed here
<http://www.autismtreatmenttrust.org/wp-content/uploads/2013/03/Medical-Comorbidities-in-Autism-Spectrum-Disorders-20131.pdf>

Sincerely,
Treating Autism Trustees and Autism Treatment Trust Trustees

Press Release

Please help us by sharing this press release with your media contacts.

2 April 2013

London, UK –'Medical Comorbidities in Autistic Spectrum Disorders' a review prepared by British charities Treating Autism and Autism Treatment Trust, and officially launched on Autism Awareness Day, has been welcomed by medical and research professionals in UK, EU and USA. It details current research into health problems commonly experienced by people with autism, which are, however, routinely overlooked by the medical profession. It has far-reaching implications for the treatment of medical conditions existing simultaneously with autism (comorbidities).

In summary, the review shows that:

* Recent large-scale studies confirm that certain medical conditions are significantly more prevalent in people with autism compared to typical populations. A detailed assessment conducted by the CDC shows that children with autism had much higher than expected rates of all of the medical conditions studied, including: eczema, allergies, asthma, ear and respiratory infections, gastrointestinal problems, severe headaches, migraines, and seizures.

Read More http://www.autismtreatmenttrust.org/?page_id=2341

Although one would not realise it, from a study of UK media coverage, the public relations of autism `charities` or government documentation, there is absolutely no evidence whatsoever that increasing numbers of children presenting with ASD are a result of `better diagnosis` or that autism is genetic in origin - although the epigenetics of autism are no longer in doubt. There is a growing body of evidence that autism is a whole body disease and that it is, as Professor Martha Herbert has described it, more a case of **autisms**, than a single disorder, with environmental aetiology. The scientific evidence is overwhelming that people with autisms have immunological and metabolic disorders. There are many chemicals in our environment today that affect both the immune and endocrine systems - the latter

regulates the body's metabolism. For that reason, I've included links to the recently published WHO/ UNEP report on the science of endocrine disruption.

Rather than adopting a position of denial as regards the environmental causation of disease and disability, we would like to see action to investigate and treat these environmental diseases, which would also enable the prevention of further environmental morbidity for the population as a whole. There could be no better respect for the human right to good health.

On 19 February 2013, the United Nations Environment Programme (UNEP) and the World Health Organization (WHO) released *The State of the Science of Endocrine Disrupting Chemicals – 2012

<http://ehp.niehs.nih.gov/1306695/>

See also, "The Impact of Endocrine Disruption: A Consensus Statement on the State of the Science." <http://ehp.niehs.nih.gov/1205448/>

PDF Version<<http://ehp.niehs.nih.gov/wp-content/uploads/121/4/ehp.1205448.pdf>>

Summary for Decision Makers

https://docs.google.com/file/d/0B9XQ-aL6_WCgc1FPaIJaSjBUT1E/edit?usp=drive_web&pli=1

*** 3. Where we live**

All of the other services will dictate where people with ASD live. 'Inclusion', as currently promoted, is too often used to impose services that are unacceptable and inappropriate and effectively curtail the life chances of people with ASD, through failing to provide the education and healthcare that they need. It is clear that, whilst a small minority of people with ASD will manage to look after themselves with little in the way of support, others will need full time care, which society has demonstrated it is not prepared to provide. As parents, we would like the political classes to ditch the dogma and listen to those who love people with ASD, rather than those who are making careers out of them. As I have outlined in our **presentation**, the mental health system is too often used as the 'default setting' for social care of autistic adults.

*** 4. Education and work**

Education

All of the testimony and evidence that we have collated down the years from both parents and professionals shows that those running the education system demand conformity at all costs, irrespective of the individual needs of children with disabilities. Children with Autistic Spectrum Disorders are particularly disadvantaged, as they are generally shoehorned into one or other type of provision that is not geared to their particular needs. The system conflates education with schooling, and does not acknowledge the holistic educational needs of children with ASD.

The recent investigation by the Scottish Parliament's Justice Committee, which discovered that illegal 'informal exclusions' are used by schools to deal with children with ASD is one indication that the education system is simply covering up its incompetence and inhumanity. See '*Vexed questions over school exclusions*' below. Another indication would be the proportion of children with ASD who are being prescribed psychoactive drugs, such as Ritalin and Risperidone, ostensibly to control their inevitable failure to cope with their schooling. However, such statistics do not exist. As described in Autism Rights' presentation, the extent of such drugging could be around US estimates of 56%, as overall prescription of these drugs to schoolchildren is very high - 1 in 5 children in some areas of Scotland. There are no studies on the long term effects of these drugs on the developing brains of children, but research has demonstrated that they atrophy the brain and that beneficial effects of these drugs are of a temporary nature, whilst the negative effects are life-limiting. Further references are available within the **presentation**, but these 2 weblinks gives a good idea of some of the negative implications of current policy and practice on the psychotropic drugging of children:-
<http://www.madinamerica.com/2013/03/medicating-adhd-diagnosis-and-the-long-term-effects-of-the-medications/>
http://www.thestar.com/news/canada/2012/09/26/adhd_drugs_suspected_of_hurting_canadian_kids.html

Autism Rights raised the issue of 'informal exclusions' 6 years ago in our Briefing Paper and in our submissions to government consultations on education. It has taken this long for parliamentary politicians and just one Scottish publication to catch up.

<http://www.tes.co.uk/article.aspx?storycode=2093069>

- The secret exclusions

Article | Published in TES Newspaper on 22 April, 2005 | By: Jon Slater
 article about illegal exclusions in English schools

<http://www.tes.co.uk/article.aspx?storycode=2344981>

- 'Secret' exclusions of ASD children

Published in TESS on 16 February, 2007

My letter to the editor

<http://www.tes.co.uk/article.aspx?storycode=6318854>

- Vexed questions over school exclusions

News | Published in TESS on 8 February, 2013 | By: Emma Seith

'Children with disabilities such as ADHD (attention deficit hyperactivity disorder) and autism were especially likely to be on the receiving end of informal exclusions, they reported.

For the families involved, it happened repeatedly and was "just a way of life".

These families were also the "least empowered to deal with or challenge" what was happening, the witnesses said.'

See also this article on the Lamb Report, which sums up the nature of the problems besetting the families of children with SEN. Although reporting on the English school system, its conclusions apply equally to Scotland;-

<http://www.tes.co.uk/article.aspx?storycode=6029890>

Work

Whilst most people on the autistic spectrum may not be able to get a job, there is no reason why they cannot undertake useful and rewarding work. Various estimates suggest that between 6 and 13% of people on the autistic spectrum can hold down a job, with a greater or lesser degree of support. Of course, that is based on current educational and healthcare provision, which fails so many people with autism. If these services were to improve, along the lines suggested by Autism Rights, the percentage of those who could work or hold down a job would undoubtedly be considerably higher. Under current 'inclusion' dogma, specialist workplaces have closed and are not being replaced by alternatives. When official government policy, such as the Autism Strategy, is discussing 'investing to save' in relation to only 6 – 13% of the autistic population, without even any apparent realisation of the historical associations implied by such language, we are getting a true picture of the unsavoury nature of official attitudes towards people with mental disabilities such as autism.

*** 5. Private and family life**

Autism Rights' Briefing Paper of 2007, entitled 'Incompetent, Abusive, or both? - Scottish Executive policy and legislation on Autistic Spectrum Disorder (ASD)' warned of the negative and potentially oppressive consequences of legislation enacted in the early years of the Scottish Parliament:-
<http://www.autismrights.org.uk/drupal/node/6>

We were particularly concerned with regulation and policy on datasharing and with the Adult Support and Protection Act, which gives a poacher / gamekeeper role to local authorities. All of the feedback that we have had since that time has merely confirmed that we were right. Other organisations have finally woken up to the threat posed by every child being given a 'Named Person' to check on their progress throughout their childhood – the Scottish Parent Teacher Council, quite rightly, see this as an abrogation of the role of parents, see:-

<http://www.tes.co.uk/article.aspx?storycode=6297723>

- What's in a named person?

Letters | Published in TESS on 26 October, 2012 | By: Eileen Prior

However, whilst effective opposition to the datasharing of England's 'ContactPoint' scheme has resulted in a good amount of press coverage and recommendations to avoid the negative effects of datasharing -

<http://www.nuffieldfoundation.org/sharing-childrens-personal-data>

there has been no realisation, let alone scrutiny, of the almost identical arrangements in place in Scotland.

Indeed, it is actually inaccurate to use the term 'datasharing', as the government's policy and regulation makes explicit that *opinion*, professional or otherwise, will be shared between public servants. Several of our members have found that inaccurate and even defamatory accounts of themselves and their families have been recorded by public servants. The supposed safeguards do not exist – the UK Information Commission is ineffectual in, if not averse to, the enforcement of Data Protection laws and cannot or will not force a local authority or a health

board to change misinformation and erase defamatory materials. Even a Sheriff's judgement cannot overturn the injustice of false accusation.

These records, precisely because they are shared, multiply injustice and deny services to those in need. As stated in Autism Rights' Briefing Paper, there are particular dangers for people with ASD and their families, because of the lack of knowledge of the nature of their disability amongst professionals in public services. In order to try to access public services, families are forced to open up every area of their private lives to intrusive questioning, but are denied a reciprocal right to information about their rights and to the quality and nature of available services. It is often the case that the information supplied in good faith by families is then used to deny them the very services they need.

*** 6. Safety and security**

The rest of this document, our **presentation** and our completed `Participation Form` outline the key threats to the safety and security of people with ASD. However, we have since learnt of another major gap in statistical data that shows the lack of evidence for claims made in support of improvements to services for people on the autistic spectrum.

An MSP has asked a series of parliamentary questions, based on our **presentation**. This has confirmed some of the information in the **presentation**, but has also thrown up another disturbing feature of the mental health system. It is not just the case that Fatal Accident Inquiries are not mandatory within the mental health system, when they are within the prison system – it is that there is ***no data on the numbers of people who die whilst receiving compulsory treatment***. Given the very serious health and life-shortening effects of the drugs used in the mental health system, this is a quite staggering omission.

SCOTTISH PARLIAMENT

WRITTEN ANSWER

4 March 2013

Index Heading: Health and Social Care

Alison McInnes (North East Scotland) (Scottish Liberal Democrats): To ask the Scottish Government how many deaths of patients compulsorily detained under provisions in the Mental Health (Care and Treatment) (Scotland) Act 2003 have been attributed to patient safety incidents in each of the last five years.

(S4W-13177)

Mr Michael Matheson MSP:

The Scottish Government do not hold figures which specify the number of deaths of patients whilst receiving compulsory treatment under the Mental Health (Care & Treatment) (Scotland) Act 2003.

SCOTTISH GOVERNMENT

*** 7. Living in detention**

Please see our **presentation** for information on the treatment of people with ASD within the mental health system.

*** 8. Access to justice and the right to an effective remedy**

<http://www.scottishhumanrights.com/abouthumanrights/helpwithhumanrights>

- the question of what the EHRC actually does in Scotland remains a mystery. The last legal case on disability that was sponsored by the EHRC was some years ago and was set in train by the individual (Susan Archibald) who was eventually supported in a House of Lords case. Such absence of support is why legal cases remain no threat to the established order of things, as this section of the SHRC's website makes clear:-

`Legal aid

Obtaining legal advice can be costly and take time. The Scottish Legal Aid Board may be able to offer assistance in limited circumstances.`

Advice and information is not going to stop human rights abuses - only legal or political action will do so, and people in Scotland have less access to legal redress because of the lack of choice of legal representation, the absence of class action lawsuits, the very narrow focus of Judicial Review and the reduced availability of legal aid or assistance - see **presentation** for details as regards the mental health system and people with ASD, where these problems are especially acute.

In spite of the high hopes for the Tribunal system, some are calling for a return to the courts because of the bias towards those facing Mental Health Tribunals and the failures to uphold the right to a fair hearing in the operation of some Tribunals. In one case, a family and their legal representative were excluded from discussions between their health board and Tribunal members - that would not happen in a court of law. Please see our **presentation** for further information on current deficiencies in the policy and practice of regulation and law within the mental health system as regards the rights of people with ASD.

In conclusion, Autism Rights has outlined some of the ongoing human rights abuses taking place against people with Autistic Spectrum Disorders in its submission to the SHRC. The three documents submitted make the case, not just for inclusion in an `action plan`, but for action.

Autism Rights is calling for these actions to be taken:-

- The removal of people with Learning Disabilities and Autistic Spectrum Disorders (ASD) from the provisions of the Mental Health Act.
- Equality of healthcare for people with autism.
- An inquiry into the treatment of all people with ASD within the mental health system.

Given the statistical and regulatory black hole into which people on the autistic spectrum fall, it is impossible to ascertain the full extent of the abuses and discrimination being perpetrated against them, hence the need for an inquiry.

Name: ORG-0048c-AutismRights-000

Just over 11 years ago, 'Scotland on Sunday' ran an article, entitled 'Autistic adults locked up after false diagnosis', about the sectioning and enforced drugging of autistic people within mental institutions. No action whatsoever has been taken to rectify that situation, in spite of calls for a government inquiry from people as respected as Paul Shattock, who is the President of the World Autism Organisation. Eleven years have passed during which time the Scottish Executive established the ASD Reference Group to advise and action government policy on autism, and many other initiatives, directly or indirectly concerning services for people with autism, have been launched and re-launched. However, the situation of some of those who were incarcerated at that time has become much worse and others have become ensnared in the mental health system since then. At that time, eight people were known about directly, but the true numbers were not known then (although it was believed that up to 20 people were affected) and they are not known now. Paul Shattock and others believed that some of those people may have been in mental institutions for 30 years – a report by the Mental Welfare Commission did confirm that there are some people in that category within the mental health system, but did not give their diagnoses. In any case, the psychiatrists who have given or confirmed these diagnoses are unwilling to look again at them, even if they had the expertise to diagnose Autistic Spectrum Disorder (ASD), rather than schizophrenia, which is the usual diagnosis they give to people on the spectrum. We know of at least 2 suicides amongst those eight people, and others whose health, both mental and physical, is irreparably damaged by years of enforced medication with the very toxic drugs that are routinely used in psychiatric practice in most of the western world and, it seems, inescapably in Scotland. It must be emphasised that none of these people had committed a crime.

We're not being listened to

For almost 2 years, a very small but active group of people within Autism Rights have been trying to bring this issue to the attention of the government and to MSPs, with absolutely no success at all. We don't see this as our own failure, as we are all parents of people with Autistic Spectrum Disorders, and do not have the resources to undertake the kind of lobbying that comes with paid employees and millions of pounds of state funding obtained through service contracts and grants. Only two organisations (the Scottish Disability and Equality Forum and PASDA) have given their backing to our call to take people with Learning Disability and ASD out of the provisions of the Mental Health Act, even though we have asked all of the major disability charities within Scotland, including 2 who, in responding to the 2 previous reviews of mental health legislation and policy, stated their belief that the Mental Health Act should be reviewed to that effect. It is therefore not surprising that neither the current Mental Health Strategy nor the proposals for review of the Mental Health Act contain even a mention of this issue.

Indeed, civil servants have decided that the responses to the consultation on the Mental Health Strategy should not be placed on the Scottish Government's website

and should only be accessible by visiting the Scottish Government Library in Edinburgh. The civil servants have given two contradictory reasons for this decision – the initial reason being that the decision not to publish these consultation responses online was taken prior to the launch of the consultation and the other reason given was, owing to the large number of responses, they did not have the resources to attempt online publication. It should be noted that the more recent consultation on the update to the government's policy on Learning Disability services, 'The Same As You?', garnered roughly the same number of responses to those from the consultation on the Mental Health Strategy – over 300 – and yet, in spite of the much greater number of people affected by mental health policy, the civil servants have chosen to put 'The Same As You?' responses on the Scottish Government's website. So, as access to the consultation responses in the Scottish Government Library is limited by time, opportunity and money and copies of only 'a few select responses' are available, charged on a cost recovery basis, it is impossible to gain an insight into the overall mix of opinion and testimony from the consultation exercise.

This restriction of access has closed debate and discussion on an area of public policy that has a direct bearing on the human rights, not just of people with Learning Disability and ASD, but for all those who come into contact with the mental health system at some point in their lives, and for their families. It has also, very conveniently, enabled those who currently dominate professional bodies and the health and social care sectors to claim unanimity with their opinions and beliefs. Whilst we would all welcome the commitment to increase the provision of psychological and other therapies contained in the Mental Health Strategy, this is not going to happen without the provision of resources specifically for this purpose, and those resources will only materialise if the government is willing to rein back the empire builders within the system. Otherwise, the whole system will continue to throw money at 'treatment' that does not work and is, particularly for people on the autistic spectrum, catastrophic. This clamping down on public debate and discussion is in marked contrast to the current international debate surrounding the new diagnostic guidelines for psychiatry, the DSM V. There is now a healthy debate about this update on the DSM IV, specifically about the pathologising of normal behaviour. That this debate is being led on both sides by psychiatrists is an indication of the growing controversy around the subjectivity of psychiatric diagnoses and the almost total reliance on psychotropic drugs for 'treatment' within the mental health system. The question is, why is the Scottish Government ignoring not only this international debate, but also the home-based activism which is challenging the noted inadequacies and inhumanity within the Scottish mental health system?

Why the Mental Health Act and system is discriminatory

We do not see the removal of people with ASD from the provisions of the Mental Health Act as a panacea, but a first step in eradicating a historical anomaly in which people with ASD were deposited in mental hospitals – indeed the chairman of the school board of my son's former school was keen to remind parents of this. The

mental health system should not be the `default setting` for the `care` of people who have an Autistic Spectrum Disorder – and the Royal College of Psychiatrists recognises that this is happening.

People with Learning Disabilities, including those with Autistic Spectrum Disorders, are currently included within the provisions of the Mental Health Act under the definition of `mental disorder`, irrespective of whether or not they have a mental health problem, whereas people who are addicted to drugs or alcohol are specifically **not** included within the provisions of the Act. This is entirely discriminatory towards people with mental disabilities, as it is overwhelmingly the case that `substance abusers` pose the biggest threat of serious violence towards the public. As both the Millan Committee and the McManus Review backed a review of this situation, the consultation on the Mental Health Strategy for Scotland: 2011-15 should have included consideration of this, but did not. The finalised 2012-15 Strategy and the government's proposals for review of the Mental Health Act likewise fail to address this issue.

Whilst significant problems are created for people with Learning Disabilities by being automatically included in the provisions of the Act under the term `mental disorder`, the dangers of inclusion for people with ASD seem to be much worse, given the current behavioural diagnosis for ASD. Indeed, the Mental Welfare Commission has acknowledged that mental health practitioners are divided between those who categorise ASD as a disability and those who believe it to be a mental illness. The fact also that the diagnostic criteria (DSM and ICD) list and define psychiatric disorders and include ASD amongst these would seem to confirm its status as a mental illness, but for the fact that Learning Disabilities and other disabilities and medical conditions are also included. That mental health practitioners should be confused over the true nature of autism after significant sums of public money have been thrown at autism services reveals the extent of the ignorance of ASD within the mental health system and its resistance to enlightenment and good practice. It is only when you undertake some background reading, that you realise that that it is accepted practice to medicate for `challenging behaviour`, `aggression` or `self-injurious behaviour` and that no perceptible distinction is made in practice between those who are mentally ill and those who have a mental / intellectual disability.

Mental Health institutions, as currently constituted and run in Scotland, are wholly unsuitable places for the `treatment` of any autistic person who may be deemed to be mentally ill. People whose disability is mostly defined in terms of their impairments in communication and social interaction, are thrown in with drug addicts and alcoholics, and with people whose mental illness arises from traumatic events in their past, including abuse. There is no-one who has any real idea of how they are feeling, or why they might be behaving the way they do. They will be given drugs, usually against their will, intended to pacify and control them. When these drugs have the opposite effect, the doses are increased, and other drugs will be added into the mix at some point. Although care plans must specify the

psychoactive drugs that are prescribed, drugs that are used to control epilepsy, for example, do not have to be noted. For people on the autistic spectrum, who have known immunological and metabolic disorders, and who are therefore unable to metabolise these drugs, resulting in intoxication and the creation or increase of apparently psychotic behaviours, it is the beginning of a pharmaceutical treadmill leading to brain damage, tardive dyskinesia (drug-induced Parkinson's) and massive weight gain, leading in turn to diabetes and heart disease. It is estimated that the extent to which being in the mental health system shortens lifespan is anywhere between 10 and 25 years. Given the fact that people with Learning Disability (there is no separate collation of statistics for people with autism within the mental health system) make up 11% of those in mental institutions when they represent just 2 – 3% of the population and stay, on average more than twice as long as those without a Learning Disability within these institutions, they are at far greater risk of dying prematurely. In any case, their quality of life can be irreparably damaged.

Although people with ASD and those with Learning Disabilities can be forced to take psychotropic (psychiatric) drugs in a community setting – at home, or in a care setting – most Compulsory Treatment Orders (CTOs) are for incarceration within mental hospitals.

There are some pretty tortuous arguments put forward for the use of drugs to 'treat' autism or its supposedly 'co-morbid' conditions. There is no understanding, let alone investigation, of the 'antecedents to the presentation of challenging behaviours' observed in autism. How can you have 'functional analysis' of behaviour, as advised in the NICE guidelines for adults with autism, when those who are employed to care for people with autism are entirely ignorant of ASD and its associated behaviours, never mind its associated health issues? And how can you put in these same guidelines that physical disorders should be ruled out first when carrying out a diagnosis, when the ASD training recommended some years ago by the Royal College of Psychiatrists is not happening or is being repudiated by individual psychiatrists who are supported in their beliefs by Mental Health Tribunals and indeed the Mental Welfare Commission itself?

There are 5 things that lie behind the misconception that people with ASD are more prone to mental illness:-

- 1) Adult Services do not exist for people with ASD. Current access to services is either through Adult Learning Disability or Mental Health services. Many adults with ASD are directed to Mental Health services, which are geared towards the use of psychotropic drugs.
- 2) Psychiatrists do not recognise key autistic behaviours, at least partly because of a lack of training. The diagnosis for ASD is currently a behavioural one and there is little or no training of psychiatrists of the behavioural, let alone the medical, characteristics of ASD.
- 3) People with ASD suffer from the almost total absence of services that are designed to meet their special needs, even to the extent of being subject to

abusive practices, and they will exhibit, quite naturally, signs of distress that are then diagnosed as mental illness.

4) There are medical illnesses that can present as mental illness, the most well-known of which is porphyria (as per 'The Madness of King George'). People with ASD are known to possess immunological and metabolic disorders, some of which can result in behaviours that are misdiagnosed as mental illness.

5) It is known that, within the population as a whole, about 10% are unable to metabolise psychotropic drugs. Given the immunological and metabolic disorders experienced by people with ASD, it is clear that there is a much greater danger to people with ASD from psychotropic drugs. The associations between violence and self-harm and some anti-depressants are recognised, albeit not widely publicised. So, even the prescribing of these group of drugs to people with ASD is potentially dangerous, as it can be the beginning of a treadmill of psychotropic intervention.

Some examples

We do know that there is a wider inequality of healthcare for people with autism, and that also needs urgent investigation. In spite of the existence of NHS Scotland's Quality Indicators for Learning Disabilities, children with ASD in large parts of Scotland are being denied treatment for bowel disorders. As a consequence of this, they then require surgery because of faecal impaction and mega colon, the latter of which is usually a condition found in elderly people who are seriously ill. Imagine the distress that you would feel if you had such a disorder - and then imagine not being able to communicate this distress, and how a psychiatrist might interpret this.

Even 'normal' health problems are neglected - whether an impacted wisdom tooth, or a brain tumour.

Medical professionals should know that epilepsy and autism are closely associated – a proportion of the autistic population has epilepsy – but these problems go further than that: over 80% of people with ASD have some sort of seizure activity going on, which is often sub-clinical, and this can cause hallucinations. These are then improperly medicated by medical professionals who are ignorant of the problems faced by people with ASD.

One family was told that their son was not expected to live at one point, purely because of the effects of these drugs - the psychiatrists still didn't cut the dosages.

Basic monitoring of health within mental hospitals is haphazard and inadequate – with 25% of long stay patients being found to have no record of health checks. The MWC and the government think that annual and 15 month health checks are adequate for people who are being forced to take some of the most toxic drugs on the market. Absolutely no account is being taken of individual tolerance of these drugs, in spite of guidance recommending psychiatrists seek specialist medical advice where this is needed.

No debate, no discussion and no data

There have been at least 2 suicides of people with ASD in the past decade, although neither their disability nor the distress inflicted on them prior to their deaths were mentioned in press reports. However, in a 2011 report, Dr Alex Mitchell of Leicester University said that deaths from drug side effects in the mental health system as a whole were 4 times greater than suicides. Given the aforementioned drug intolerance suffered by people with ASD, their death rate will be substantially higher.

There are no statistics for the proportion of people with ASD being prescribed psychotropic drugs, but the fact that, in one health board area, there are more than 1 in 5 schoolchildren being given Methylphenidate (Ritalin), is a very good indication that children with ASD in some Scottish health board areas may be being drugged at levels seen in the US, where it is estimated that over half (56%) of the children with ASD are prescribed at least one psychotropic drug. Indeed, at the Scottish Executive organised Aviemore conference on autism, one of the psychiatrists pointed out that the estimates of the percentage of people on the autistic spectrum who are prescribed psychoactive drugs is between 20-70%

As with the revelations of abuse contained in BBC Panorama's exposé of Winterbourne View hospital, the vulnerability of people with ASD, combined with the absence of parental access to these facilities, can mean that it is people with ASD who are accused of violence (which is then controlled by drugs), when they are actually the victims of assaults and other abuse.

The safeguards and the safeguarders

The Mental Welfare Commission (MWC) will not monitor or investigate the collective situation of people with ASD who are currently being 'treated' under the Mental Health Act, because autism is not classed as a 'client group', even though no such stricture exists within the Act.

No objective criteria is yet used by the MWC to assess which individual cases they will investigate. They give the impression that every case is investigated – it is not.

The MWC bases its decisions on whether or not to investigate upon its visits to mental hospitals and other service provision. They do not record contact by the families of people who are compulsorily detained, so cannot keep track of what is happening to particular groups, such as those with ASD.

The MWC rely on mental health practitioners themselves to inform them of mistakes, abuse and the non-implementation of Recorded Matters.

The McManus review (2009) of the Mental Health Act recognised that there is a low take-up of Advance Statements, where people can set out how they wish to be treated if they become mentally ill. No such right exists for people with ASD, because they are not deemed to have capacity.

Independent Advocacy for people within the mental health system is a good idea in principle, but in practice can mean that someone who has no emotional investment in, nor knowledge of the individual, can interfere with the role of a parent. Local authorities are part of the mental health system, particularly in providing Mental Health Officers, who are usually social workers, and they also fund Advocacy services. Whilst it is evident that there are some good advocates in Scotland, it is also clear that conflicts of interest affect the conduct of others.

The Mental Health Act and its system

There are no statistics on the numbers of people with Autistic Spectrum Disorders within the mental health system, so no assessment can be made of the length of time they are in the system, nor the impact that this has on their lifespan or health.

Diagnosis of 'mental disorder' is made upon leaving compulsory treatment, not at arrival, so there is further scope for misdiagnosis of people with ASD.

Some young people with ASD are being 'led' into mental health services, upon transition to adult services, in spite of the inclusion of people with ASD within 'The Same As You?', the government's guidelines for Learning Disability Services.

Legal representation at Mental Health Tribunals is wholly inadequate: there is a paucity of appropriately qualified or experienced lawyers working in mental health law – around 20 lawyers specialise in this area of law. Just 3 legal firms in Scotland carry out three-quarters of all legal aid work for such tribunals. For people with ASD, there is the added complication of their disability, which is not well understood by members of the legal profession, any more than the other professions. It has been claimed that some lawyers fail to prepare adequately prior to tribunal.

The only right of appeal to a tribunal decision is to go to Judicial Review, which involves a lengthy wait of many months and substantial amounts of legal aid.

The Mental Health Tribunal for Scotland (MHTS) itself deals with complaints made against it.

The Mental Welfare Commission is not the complaints handling organisation for the mental health system in Scotland. This is the job of the SPSO, which does not possess the necessary specialist knowledge of the system, which insists on complaints being lodged within a year of problems arising and which will not take complaints that may result in legal proceedings (Mental Health Tribunals are, by definition, legal proceedings).

Although prisoners who die in custody will be accorded a Fatal Accident Inquiry (FAI), no such right exists for Mental Health Patients.

As parent activists, we do not find that there is a willingness amongst those charged with the formation and implementation of autism policy to listen to 'missing perspectives'. The exclusion of our sons and daughters is mirrored in our own experiences of being treated like the 'awkward squad' who will simply not go away nor shut up. This exclusion is as inhumane as the exclusion of parents from decisions taken on the care and treatment of their sons and daughters while they are receiving compulsory 'treatment' in the mental health system, in spite of all official guidance or legal rights as guardians. To quote one parent:-
'It was heartbreaking seeing him suffer there for 12 years, locked up for hours on end in a padded cell, thrown to the ground and sat on by so-called trained staff and treated worse than a criminal'

Autism Rights is calling for these actions to be taken:-

1. The removal of people with Learning Disabilities and Autistic Spectrum Disorders (ASD) from the provisions of the Mental Health Act.
2. Equality of healthcare for people with autism.
3. An inquiry into the treatment of all people with ASD within the mental health system.

Given the statistical and regulatory black hole into which people on the autistic spectrum fall, it is impossible to ascertain the full extent of the abuses and discrimination being perpetrated against them, hence the need for an inquiry. Perhaps then we will get the chance to put forward our own suggestions for both the prevention and treatment of mental distress in people with ASD.

SOME INFORMATION ABOUT AUTISM RIGHTS

Autism Rights is established to research, lobby and campaign for the human rights of people with Autistic Spectrum Disorders (ASDs) in Scotland, in particular to campaign for the provision of appropriate health treatment, education, social welfare and justice.

The founding members of Autism Rights are all parents and carers of people with an ASD and were long-standing members of the now defunct Cross-Party Group on Autistic Spectrum Disorders of the Scottish Parliament.

We are the only national service user-led group in Scotland campaigning for the rights of people with an Autistic Spectrum Disorder and their families. Full membership of Autism Rights is open to people with an ASD resident in Scotland and parents and non-professional carers of people with an ASD who support our aims and objectives. We do not provide services for people with ASD, so we can speak up without fear of the loss of funding for services.

One parent summed up our feelings about `the system` - "It just seems to me that, over the years, we have spent more and more money employing more and more people to stop our children getting the things they need."

'EQUAL RIGHTS - NOT ENDLESS FIGHTS'

www.autismrights.org.uk

Around this time, BBC Scotland's 'Frontline Scotland' investigative series produced a programme which featured some of the families involved. This programme was never broadcast, as Fife Health Board served an interdict preventing broadcast on the basis that one of the people featured was an inpatient in one of their hospitals and, they claimed, did not have capacity. I have been informed by the BBC that they no longer possess a copy of this programme – hence my use of clips from 'Elle S'appelle Sabine' to give those attending the meeting of the Scottish Parliament's Human Rights Cross Party Group an idea of the damage inflicted on people with Autistic Spectrum Disorders (ASD) by psychotropic (psychiatric) drugs. See this YouTube clip for a graphic illustration of the effects of psychotropic drugs on someone with an Autistic Spectrum Disorder (ASD) before and after 5 years of incarceration in a mental institution:-

http://www.youtube.com/watch?v=qyp97e_MWKI

It should also be noted that the affected families met with the then Depute Minister for Health, Frank McAveety, to discuss the treatment of their sons within the mental health system. No action resulted from this meeting, and the transcript of the meeting is no longer in existence, although it was originally uploaded to the Scottish Executive's website.

See also:-

http://www.bbc.co.uk/radio4/youandyours/yy_20041028.shtml

- transcript of the "You and Yours" programme on Autism Misdiagnosis, broadcast by BBC Radio 4 on 28 October 2004.

1 <http://news.bbc.co.uk/1/hi/health/7170167.stm>

- Last Updated: Friday, 4 January 2008, 03:02 GMT

Learning disability drug warning

Doctors are being warned not to routinely give people with learning disabilities anti-psychotic drugs to curb aggressive behaviour. An Imperial College London study of 86 patients found the drugs were no more effective than being given none at all.

1 <http://www.reuters.com/article/2012/05/10/us-psychiatry-dsm-idUSBRE8490WQ20120510>

- Psychiatrists say diagnosis manual needs overhaul

By Kate Kelland LONDON | Thu May 10, 2012 2:22pm EDT

LONDON (Reuters) - Many psychiatrists believe a new edition of a manual designed to help diagnose mental illness should be shelved for at least a year for further revisions, despite some modifications which eliminated two controversial diagnoses.

<http://dsm5-reform.com/supporting-evidence/>

<http://dsm5-reform.com/the-open-letter-to-dsm-5-task-force/>

1 <http://www.heraldscotland.com/mobile/news/home-news/uk-supreme-court-overrules-scottish-judges-on-two-human-rights-cases.1354106825>

- UK Supreme Court overrules Scottish judges on two human rights cases

Published on 28 November 2012 David Leask

'One of the new cases involved the first time the Supreme Court had been asked to consider the Mental Health (Care & Treatment) (Scotland) Act 2003, and the right of a patient in non-state or psychiatric hospital to appeal the level of security imposed on them.

The Supreme Court has now ruled that the Scottish Government has been acting illegally since May 2006. This is as a result of the failure of the various administrations over the past six years to pass enabling legislation.

The decision is a constitutional "first" in Scotland, as it has never before been held in this country that Ministers were bound to bring statutory provisions into force.

The principal solicitor in the case for the appellant was Frank Irvine of Frank Irvine Solicitors, Glasgow, acting for a patient at Leverndale psychiatric hospital in the city.

He has been compulsorily detained in Leverndale, which is not a state hospital, since 1995. He believes he is detained in conditions of excessive security and that his quality of life, his liberty and his prospects for release would be improved were he to be transferred to an open ward.

Mr Irvine said: "Clearly this ruling is to be welcomed not just for our client but for the many individuals who have been denied a right of appeal enshrined in law and passed by the Scottish Parliament.

"It is clearly the case that the absence of this particular right of appeal has had a detrimental impact on many individuals progress from hospital into the community.

"It is to be hoped that the Scottish Government respond immediately to this ruling passing the relevant Statutory Instrument to allow all individuals detained within locked psychiatric facilities the right of appealing their current level of security."

http://www.mhtscotland.gov.uk/mhts/files/members_area_files/Newsletter_December_2012.pdf

- December 2012 Newsletter- Mental Health Tribunal for Scotland, see page 26

1 <http://www.rcpsych.ac.uk/publications/collegereports/cr/cr136.aspx>

- CR136. Psychiatric services for adolescents and adults with Asperger syndrome and other autistic-spectrum disorders

1 <http://www.legislation.gov.uk/asp/2003/13/contents>

- Mental Health (Care and Treatment) (Scotland) Act 2003 asp 1

<http://www.legislation.gov.uk/asp/2000/4/notes/contents>

- Explanatory Notes to Adults with Incapacity (Scotland) Act 2000

16. Mental disorder is defined at section 87 and the definition is the same as in the Mental Health (Scotland) Act 1984, section 1: mental illness or mental handicap however caused or manifested.

Following the Mental Health (Public Safety and Appeals) (Scotland) Act 1999, personality disorder is included in the definition of mental illness. In line with the 1984 Act, a person should not be regarded as mentally disordered by reason solely of immoral conduct, sexual deviancy or dependency on alcohol or drugs nor does the definition cover people who simply act imprudently. People who are temporarily under the influence of alcohol or drugs are not to be regarded as mentally disordered, although those whose mental faculties are impaired due to past alcohol or drug abuse do fall within the definition.

87 Interpretation - EXCERPT

"mental disorder" means mental illness (including personality disorder) or mental handicap however caused or manifested; but an adult shall not be treated as suffering from mental disorder by reason only of promiscuity or other immoral conduct, sexual deviancy, dependence on alcohol or drugs, or acting as no prudent person would act;

HOWEVER -

<http://www.legislation.gov.uk/asp/2003/13/section/328>

- Mental Health (Care and Treatment) (Scotland) Act 2003

Part 23, Section 328 would appear to contradict the above, except that autism is frequently but erroneously described as a learning disability, where it should properly be described as a developmental disability:-

328 Meaning of "mental disorder" (1) Subject to subsection (2) below, in this Act "mental disorder" means any-

- (a) mental illness;
- (b) personality disorder; or
- (c) learning disability,

however caused or manifested; and cognate expressions shall be construed accordingly.

1 <http://www.guardian.co.uk/society/2010/sep/06/substance-abuse-mental-illness-crimes?INTCMP=SRCH>

- Substance abuse, not mental illness, causes violent crime

Study finds people with drink or drug addictions have similar rates of violent crimes whether or not they have a mental illness

Randeep Ramesh, social affairs editor guardian.co.uk, Monday 6 September 2010

<http://www.independent.co.uk/life-style/health-and-families/health-news/mentally-ill-not-more-violent-says-study-2072187.html>

- Mentally ill not more violent, says study

By Jeremy Laurance, Health Editor Tuesday, 7 September 2010

People with mental illness are no more likely to commit violent crimes than ordinary members of the public – unless they have abused drink or drugs, researchers say.

Substance abuse is the chief cause of violent crime and increases the risk equally in people with and without mental illness, researchers at the University of Oxford found.

<http://www.independent.co.uk/life-style/health-and-families/health-news/mentally-ill-people-nearly-five-times-more-likely-to-be-victims-of-murder-than-general-population-8521493.html>

- Mentally ill people nearly five times more likely to be victims of murder than general population

Jeremy Laurance Wednesday, 6 March 2013

<http://news.independent.co.uk/uk/legal/article2338389.ece>

- Mental Health Bill will do nothing for public safety, research shows

By Jeremy Laurance, Health Editor Published: 08 March 2007

The biggest reform of mental health legislation in 50 years will be thrown into disarray today by research showing a key aspect of the proposals is unlikely to work. Government measures to force patients discharged from

psychiatric hospitals to continue taking their drugs, do not improve the safety of patients or the public, according to an international review of research.

<http://www.network54.com/Forum/281849/message/1173353922/Mental+Health+Bill+will+do+nothing+for+public+safety,+research+shows>

<http://www.psychminded.co.uk/news/news2006/dec06/ctos.htm>

- CTOs do not work...and that's according to the evidence base

December 12, 2006

Community treatment orders will help protect the public from mentally people who kill, says the government. But what of the evidence for such a claim, asks Adam James?

1 <http://www.scotland.gov.uk/Publications/2009/08/07143830/0>

- Limited Review of the Mental Health (Care and Treatment) (Scotland) Act
2003: Report (McManus Review)

<http://www.scotland.gov.uk/Publications/2009/08/07143830/7>

- CHAPTER SEVEN OTHER ISSUES

`In the course of our consultation, we received extensive submissions from several bodies, especially the Mental Welfare Commission, the Royal Colleges, carers and users groups and the Tribunal service. Many of the points raised are covered in the substantive text above. However, some of the points did not fall neatly within our headings and we propose, in this chapter, to address the outstanding points with which the Review Group is in agreement.`

`Learning disability and the law

Persons with learning disability complained to the Review Group about the inclusion of learning disability in the Act. We understand the Millan Committee recommended that this should be reviewed and that the then Government accepted this in its policy paper "Reviewing Mental Health Law". Now, eight years on from Millan, the Review Group feels that it is time this was done.`

1

http://reports.mwscot.org.uk/Visiting_monitoring/LearningDisabilityCensusReport2010/LearningDisabilityCensusReport2010.aspx

- Learning Disability census report 2010

1 <http://www.sign.ac.uk/guidelines/fulltext/98/section6.html>

<http://www.bmj.com/content/346/bmj.f857>

- Head to Head: Maudsley Debate

Does the emphasis on risk in psychiatry serve the interests of patients or the public? No

BMJ 2013; 346 doi: <http://dx.doi.org/10.1136/bmj.f857> (Published 12 February 2013)

Cite this as: BMJ 2013;346:f857

1. Matthew Large, medical superintendent

‘Mental health professionals, the courts, and governments have placed too much faith in risk assessment. It does not work. It has distracted clinicians from a broader consideration of our patients, their illnesses, and their best

interests. We should downgrade risk assessment and return to our real and enduring duties as doctors and consider what people can do, what they want to do, and how we can help them recover.’

1 <http://www.rcpsych.ac.uk/workinpsychiatry/faculties/intellectualdisability/training.aspx>

- Training – Faculty of Psychiatry of Intellectual Disability

Research and reading: Reading List

http://reports.mwscot.org.uk/Visiting_monitoring/LearningDisabilityCensusReport2010/LearningDisabilityCensusReport2010.aspx

- Learning Disability census report 2010, see section on Diagnosis, Table 7, which makes clear that 38% of men on compulsory orders had just a diagnosis of Learning Disability, without any diagnosis of mental illness or personality disorder. For women, the proportion is nearly half that of men – 20%.

http://www.nes.scot.nhs.uk/media/846015/interactive_mh_act_resource_apr_11.pdf

- Mental Health Care and Treatment Act 2003

Theme: Mental health and learning disabilities

Career stage: General

Overview: A resource for Mental Health Nurses working with people with mental health problems, in recognition of the fact that they have specific statutory responsibilities as well as practice responsibilities under the Act.

Publication date: 30-04-2011

1 <http://www.bbc.co.uk/news/10384033>

- 23 June 2010

Concerns raised over psychiatric unit admissions

Some people are being "inappropriately" admitted to Scotland's secure psychiatric units, a study has found.

‘The report said in some cases violent criminals and sex offenders had been mixed with vulnerable adults, such as under-18s and people with learning difficulties.’

1 <http://www.breggin.com/>

http://breggin.com/index.php?option=com_content&task=view&id=187&Itemid=93

- 1 www.mwscot.org.uk/media/51774/Consent%20to%20Treatment.pdf
- Consent to Treatment: A Guide for Mental Health Practitioners, MWC 2010
- 1 http://issuu.com/treatingautism/docs/medical_comorbidities_in_autism_spectrum_disorders
- 1 <http://www.psychminded.co.uk/news/news2010/july10/Anti-psychotics-likely-to-cause-brain-damage001.html>
- Anti-psychotics likely to cause brain damage, new study claims
EXCLUSIVE July 7, 2010 by Angela Hussain
- http://www.psychminded.co.uk/news/news2008/April08/Antipsychotic_medication002.htm
- The anti-psychotic myth exposed?
April 2, 2008
Anti-psychotics are not effective long-term, shrink the brain and almost triple the risk of dying early, a London NHS psychiatrist and academic has written in a new book. Isn't it about time for a deep examination of the validity of such drugs asks Adam James?
- <http://www.expert-reviews.com/doi/abs/10.1586/ern.11.87>
- Summary
Expert Review of Neurotherapeutics
July 2011, Vol. 11, No. 7, Pages 943-946 , DOI 10.1586/ern.11.87
(doi:10.1586/ern.11.87)
Theme: Schizophrenia - Key Paper Evaluation
Brain tissue changes and antipsychotic medication
Basant K Puri
- <http://www.neuroleptic-awareness.co.uk/>
http://www.neuroleptic-awareness.co.uk/?Neuroleptic_Induced_Iatrogenic_Conditions
- <http://psychrights.org/States/Alaska/CaseXX/3AN-08-493PS/JacksonOnNLtoxicity.pdf>

The pharmaceutical companies dominate drug research, which is why the effects of their drugs on the brain are ignored:-
<http://www.madinamerica.com/2012/04/playing-hide-and-seek-with-psychiatric-drug-studies/>
- <http://www.ahrp.org/cms/content/view/273/146/>
- the drivers behind drugging of children
<http://www.ahrp.org/cms/content/view/886/9/>
- the corruption behind the `Teen Screen` programme
- <http://www.bmj.com/content/324/7334/383.2>
- Authors of guidelines have strong links with drugs industry
BMJ 2002; 324 doi: <http://dx.doi.org/10.1136/bmj.324.7334.383/a>
(Published 16 February 2002)
Cite this as: BMJ 2002;324:383.2
Most guidelines on clinical practice are written by experts with undisclosed links to the pharmaceutical industry, researchers from Toronto, Canada, say in an article in the journal of the American Medical Association (JAMA 2002;287:612-7).
In a survey of nearly 200 authors of 44 clinical guidelines, 87% of respondents admitted to financial links with one or more pharmaceutical companies. Over half of the authors had been paid to conduct research, over a third had been an employee or consultant, and two thirds had received fees for speaking.
On average each respondent had links with 10 companies, including companies whose products they recommended in guidelines. Only one of the 44 guidelines carried a declaration of the authors' competing interests.

Fine for fraudulent claims made by manufacturer of Risperdal

<http://www.bloomberg.com/news/2012-04-11/jnj-told-to-pay-1-1-billion-penalty-in-arkansas-risperdal-trial.html>

- J&J Ordered to Pay \$1.1 Billion Penalty Over Risperdal

By Eric Francis, Jef Feeley and David Voreacos - Apr 12, 2012 8:04 PM

<http://www.ahrp.org/cms/content/view/863/9/>

- Big Pharma's Criminal / Civil Settlements

Tuesday, 28 August 2012

1

http://reports.mwcscot.org.uk/Visiting_monitoring/LearningDisabilityCensusReport2010/LearningDisabilityCensusReport2010.aspx

- Learning Disability census report 2010

1 <http://www.ageofautism.com/2009/12/autisms-harsh-reality-the-death-of-harry-horneroberts.HTML##tp>

1 <http://guidance.nice.org.uk/CG142/Guidance/Appendices/pdf/English>

<http://guidance.nice.org.uk/CG142/Guidance/pdf/English>

Quite how Scottish psychiatrists are going to abide by these guidelines, we don't know – they state that psychotropic drugs should be tried for 3-4 weeks, and 'if there is no indication of a clinically important response', that they should be discontinued after 6 weeks. The people with ASD who are currently under CTOs who are known to us have been forced to take these drugs for many years.

1 <http://www.mwcscot.org.uk/publications/investigation-reports/>

- Mr Q Enquiry, 1st January 2009, page 17

PARLIAMENTARY QUESTIONS ON AUTISM TRAINING

Question S2W-26126: Rosemary Byrne, South of Scotland, Scottish Socialist Party, Date Lodged: 22/05/2006
To ask the Scottish Executive what the costs were of providing training in the treatment of autism in each year from 1999 to 2005, broken down by NHS board.

Answered by Lewis Macdonald (01/06/2006): There are a range of therapies and interventions for managing autism spectrum disorders and the SIGN guideline currently being developed will contain recommendations for effective interventions based on current evidence.

Information about the costs of training in this range of interventions is not held centrally.

Current Status: Answered by Lewis Macdonald on 01/06/2006

Question S2W-26127: Rosemary Byrne, South of Scotland, Scottish Socialist Party, Date Lodged: 22/05/2006
To ask the Scottish Executive what the costs were of providing training in the diagnosis of autism in each year from 1999 to 2005, broken down by NHS board.

Answered by Lewis Macdonald (01/06/2006): Information about the costs of training in the diagnosis of autism is not held centrally.

The Scottish Executive is supporting four training pilot projects in the use of diagnostic tools to develop expertise in diagnosis across a wider range of professionals.

Current Status: Answered by Lewis Macdonald on 01/06/2006

<http://psychoticdisorders.wordpress.com/bmj-best-practice-assessment-of-psychosis/>

<http://psychoticdisorders.wordpress.com/>

<http://www.jopm.org/perspective/narratives/2011/03/28/psychosis-possibly-linked-to-an-occupational-disease-an-e-patient>'s-participatory-approach-to-consideration-of-etilogic-factors/
- Styrene and toluene can cause apparent 'mental illness'

1 <http://www.bbc.co.uk/news/uk-england-bristol-19162516>

- 7 August 2012 Last updated at 15:28
Winterbourne View abuse report calls for changes to care

<http://www.independent.co.uk/news/uk/home-news/private-hospital-patients-were-routinely-abused-8015612.html>

- Private hospital patients were 'routinely abused'
Nina Lakhani

<http://www.bbc.co.uk/programmes/b01nq1cg>

- Second-Class Patients?
Wednesday 08 August 2012

<http://www.heraldscotland.com/news/health/backlash-over-care-costs-as-many-at-risk-give-up-services.18006359>

[The Scottish Parliament's Justice Committee looks into the matter of 'informal exclusions' of children with ASD and the effect that this has on their future prospects.](http://www.tes.co.uk/article.aspx?storycode=6318854)

<http://www.tes.co.uk/article.aspx?storycode=6318854>
- Vexed questions over school exclusions
News | Published in TESS on 8 February, 2013 | By: Emma Seith

<http://www.tes.co.uk/article.aspx?storycode=6322203>

- Aberdeenshire's ASN figures alarm
News | Published in TESS on 1 March, 2013 | By: Elizabeth Buie
Completely inconsistent support for pupils with additional support needs in Scottish schools
<http://www.scotland.gov.uk/Publications/2013/02/7808/5>

The Scottish Executive's former head of special education finally agrees with those of us who warned that the ASL Act would simply be used to deny our children their right to an education appropriate to their needs.

<http://www.tes.co.uk/article.aspx?storycode=6134008>

- Just where are we with co-ordinated support plans?
News | Published in TESS on 11 November, 2011 | By: Mike Gibson

<http://www.tes.co.uk/article.aspx?storycode=6006538>

- Costs play role in failure to create CSPs
News | Published in TESS on 19 December, 2008 | By: Emma Seith

<http://www.heraldscotland.com/news/education/special-needs-shake-up-call.19410137>

- Special needs shake-up call
Andrew Denholm Education Correspondent
Wednesday 14 November 2012

Government's policy group get their facts wrong on autism education

<http://www.tes.co.uk/article.aspx?storycode=6048622>

- Government guidance on autism to be rewritten as mum finds flaws
News | Published in TESS on 25 June, 2010 | By: Emma Seith

1 <http://www.ncbi.nlm.nih.gov/pubmed/9501741>

- 1Am J Psychiatry. 1998 Mar;155(3):325-36.

Schizophrenia-like psychosis and epilepsy: the status of the association.

Sachdev P.

Neuropsychiatric Institute, Prince Henry Hospital and School of Psychiatry, University of New South Wales, Sydney, Australia.

- 1 <http://www.ageofautism.com/2009/12/autisms-harsh-reality-the-death-of-harry-horneroberts.HTML##tp>
<http://www.telegraph.co.uk/news/uknews/1533926/Look-what-they-did-to-my-Janis.html>

- 1 <http://www.mwscot.org.uk/publications/visit-monitoring-reports/>

- Left Behind 1st January 2012

The quotes below, from this MWC report, give a clear indication of the incompetent and wholly inadequate monitoring of physical health within the Scottish mental health system:-

`A record of physical health checks, as required in „Delivering for Mental Health“, was absent in around 25% of case files examined.`

`We expect Individuals who are in hospital for lengthy periods should have physical health checks on at least an annual basis.`

`The Scottish Government`s „Delivering for Mental Health“ (2006) requires, where possible and appropriate, that every individual with severe and enduring mental ill-ness has a physical health assessment at least once every 15 months.`

- 1 <http://www.rcpsych.ac.uk/files/pdfversion/OP67.pdf>

- Physical Health in Mental Health Final Report of a Scoping Group (2009),
Royal College of Psychiatrists, London. Occasional Paper 67.

`Acting on abnormal physical findings

Psychiatrists are medically trained doctors. Some remain highly involved in physical healthcare throughout their careers and other specialise in areas where physical assessments are performed less frequently. All prescribers must remain competent to detect and minimise physical consequences of prescribed drugs. However, not all psychiatrists will feel competent to interpret abnormal tests (such as abnormal glucose measurement) and to manage them. Liaison with colleagues from primary and secondary care is essential when results of physical assessments fall beyond an individual`s level of competence.`

One of the founding members of Autism Rights has been forced to seek refuge in Spain, after her son indicated that he could not continue to live under the restrictions imposed upon him by his CTO and the attitudes of mental health practitioners towards him. His parents have paid for many thousands of pounds of medical tests over a number of years which have shown that he has some apparently rare medical conditions which mean he presents as mentally ill. Although these tests have been performed by reputable medical laboratories under the direction of internationally renowned doctors, his health board refuse to conduct their own tests to check these results. The original press article appeared in the 30th September edition of `The Sunday Post`.

<http://www.paisleydailyexpress.co.uk/renfrewshire-news/2012/10/04/mum-forced-to-flee-with-autistic-son-calls-for-inquiry-into-his-treatment-87085-31961612/>

- Mum forced to flee with autistic son calls for inquiry into his treatment
Oct 4 2012 by Chris Clements, Paisley Daily Express

<http://www.dailyrecord.co.uk/news/scottish-news/dad-defends-wife-who-fled-1352528>

- * By Heather Greenaway * 1 Oct 2012

<http://www.heraldscotland.com/news/home-news/autistic-son-and-mother-flee-uk.19018803>

- MONDAY 1 OCTOBER 2012
Autistic son and mother flee UK

<http://www.thesun.co.uk/sol/homepage/news/scottishnews/4564986/Gran-fled-to-save-sons-life.html>

- Gran fled to save son`s life

By BEN ARCHIBALD
Published: 01st October 2012

1 <http://www2.le.ac.uk/offices/press/press-releases/2011/august/psychiatrists-failing-to-adequately-monitor-patients-for-metabolic-side-effects-of-prescribed-drugs>

- Psychiatrists failing to adequately monitor patients for metabolic side-effects of prescribed drugs

People treated in psychiatric settings are receiving inadequate medical monitoring following high risk antipsychotic medication

Issued by University of Leicester Press Office on 10 August 2011

1 Methylphenidate can, as with SSRIs, *create* psychosis – which is then `treated` with antipsychotic drugs.

1 <http://www.bloomberg.com/news/2012-05-24/more-than-half-autistic-kids-prescribed-mood-medicines.html>

A National Needs Assessment Report on Child Mental Health in Scotland pointed out that there was a steep rise in the numbers of children with ADHD and ASD suffering from mental health problems. This is undoubtedly caused by poor service provision, but also by the use of psychotropic drugs. There is also a basic problem with identifying mental illness in the absence of knowledge of autistic spectrum disorders and their attendant behaviours.

http://breggin.com/index.php?option=com_content&task=view&id=38

- drug effects on children

1 <http://www.mwscot.org.uk/good-practice/notifying-the-commission/>
- Notifying the Commission

www.rcpsych.ac.uk/docs/Recorded%20Matters%20FINAL%20REPORT.doc

- Recorded Matters Working Group (September 2009)

Recorded Matters were regarded as being a means to bring some reciprocity to bear within the Mental Health Act, enabling the patient to specify some part of their treatment. As this report shows, this section of the Act is just not working, because it relies completely on the honesty of the Responsible Medical Officer (RMO).

Whistleblowers

There is still no effective support for whistleblowers – whether they be professionals, families or service users. That is not going to change in a target-driven culture that dismisses the concerns of such whistleblowers. As the UK government's adviser on inclusion, Rob Greig, pointed out in the aftermath of BBC Panorama's expose on the abusive practices at Winterbourne View private hospital, there is absolutely no point whatsoever in having what is largely a self-assessment system based on targets, if you repudiate the evidence of malpractice,

mismanagement or incompetence provided by service users, their families and whistleblowers.

<http://www.heraldscotland.com/politics/political-news/sturgeon-urged-to-extend-failings-inquiry.1330571038>

<http://www.heraldscotland.com/politics/political-news/whistleblower-wins-battle-over-nhs-incident-reports.1329966241>

<http://www.heraldscotland.com/comment/letters/a-helpline-for-nhs-whistleblowers-is-long-overdue.19572591>

- NHS whistleblowers helpline to be set up

Perhaps this title suggests one safeguard that should be created, in a range of measures to support whistleblowers and defend the rights of users of public services:-

<http://www.bbc.co.uk/news/health-21341766>

- 6 February 2013 By Nick Trigg, Health correspondent, BBC News
Stafford Hospital: Hiding mistakes 'should be criminal offence'

- 1 There is an inconsistent and lax approach to capacity within the mental health system, as this MWC report on long stay patients illustrates:-

<http://www.mwcscot.org.uk/publications/visit-monitoring-reports/>

- Left Behind 1st January 2012

'However, 34% of individuals, for whom it would have been appropriate, did not have an assessment of their capacity recorded. In some wards staff said it was not an issue, the staff member did not know or there was no system in place to record this.'

- 1 <http://www.heraldscotland.com/news/health/cuts-spur-fears-for-mental-health-tribunals-1.1085548>

- Cuts spur fears for mental health tribunals

Wednesday 16 February 2011

- 1 <http://www.mhtscotland.gov.uk/mhts/News/News>

- Law Society for Scotland - Code of Conduct for mental health tribunal work (28 September 2012)

The Law Society of Scotland by way of its Mental Health and Disability Sub-Committee, supported by its Professional Practice Committee, has published a new code of conduct for those solicitors conducting mental health tribunal work. The Code of Conduct was developed following a number of concerns from stakeholders in this field (including the Mental Welfare Commission, the Scottish Independent Advocacy Alliance and the Scottish Legal Aid Board) and to provide support and guidance to the profession.

- 1 http://www.mhtscotland.gov.uk/mhts/About_Tribunal/Complaints

www.siaa.org.uk/documents/ExperiencesofMentalHealthTribunals.pdf

[Mental Health Tribunal for Scotland: Experiences of Independent Advocates and Service Users](#)

- see 'Issues that have arisen', pages 4-6 and Appendix 1 'Frank's Story', page 9. Also evidence from PAS,

[D&G - account of experience of Jack, page 7. In particular, this extract from 'Frank's Story':-](#)

['At the Tribunal, everyone was surprised to discover that the main concern of the Tribunal was not the contents of the report, but whether or not a diagnosis of Autism was a significant enough change of diagnosis from Learning Disability, to merit the case coming in front of them at all. Their findings were that it was not and therefore the](#)

[Tribunal would not hear the case and responsibility for his continued detention would be passed back to the RMO & MHO.'](#)

[- So, a supposedly 'expert' MHTS panel did not think that a change in diagnosis from Learning Disability to ASD warranted use of their time](#)

- 1 <http://www.spso.org.uk/how-complain/organisations-we-take-complaints-about>

<http://www.spsso.org.uk/how-complain/matters-we-can-and-cannot-consider>

1 STATISTICS

All of the statistical measures avoid measurement of those with ASD, in spite of the recommendation in the 2001 PHIS National Needs Assessment report for Autistic Spectrum Disorders that these were necessary, in order to draw up budgets for service provision. (PHIS = Public Health Institute for Scotland, which has since been merged with another organisation to form NHS Health Scotland)

The new Mental Health Strategy blithely states that 1% of the Scottish population is on the autistic spectrum, in spite of the fact that none of the statistics back this up – apart from those for children. The School Pupil Census gives 7,801 pupils with ASD (out of a school population of 670,511).

<http://www.scotland.gov.uk/Topics/Statistics/Browse/School-Education/supppupils2011>

The ESAY guesstimates for the numbers of adults give a figure of just under 3,000.

<http://www.sclد.org.uk/sclد-projects/esay/publications-and-resources/statistics-releases>

and, as their figures are drawn from local authorities, ESAY have themselves suggested a reason for why these are not reliable figures:-

<http://www.heraldscotland.com/news/home-news/council-cuts-hit-hundreds-with-learning-disabilities.18620082>

So where are the other 40,000 people with ASD?

If there is not a substantial number of people with ASD in the mental health system, then that raises several very important issues:-

1) Are they in there, but have principal diagnoses of mental illness or Learning Disability (in which case, they are receiving care that is inappropriate to their needs)?

2) Given the average 10 - 25 year drop in life expectancy, they have been killed off by drugs - especially by the use of polypharmacy.

3) There has been a ten-fold increase in the numbers of children with ASD. The best international statistics reckon that there has been a 7 fold increase, taking into account widening of diagnostic criteria and improvements in diagnosis. When a 7% or 70% increase should be cause for serious concern and thorough investigation, why is a 700% increase failing to precipitate urgent investigation?

4) The proportion of very highly functioning adults with ASD is very much higher than amongst children with ASD.

Of course, apart from the last one (which is somewhat tongue in cheek), these are not mutually exclusive

- 1 <http://www.guardian.co.uk/society/2012/dec/13/mental-health-patients-new-rights>
- Mental health patients to be given new rights
Patients to be allowed to choose consultants, a move that will give them parity with those with physical health problems
Denis Campbell The Guardian, Thursday 13 December 2012
This an English initiative that should be replicated in Scotland.

<http://www.kcl.ac.uk/iop/depts/hspr/research/ciemh/mhn/projects/litreview/LitRevAgg.pdf>

- Inpatient Violence and Aggression: a literature review. See Conclusion, and specifically:-
`Many of the causes of aggression and the skills used in preventing and managing aggression were centred on communication and interaction.`

So, people whose disability is defined by their impairments in communication and social interaction are doubly disadvantaged, as they cannot pick up on social cues and the mental health practitioners who work with them need to be knowledgeable and skilled in interacting with people with ASD.

<http://psychoticdisorders.wordpress.com/bmj-best-practice-assessment-of-psychosis/>

General mental health approaches

Soteria House (United States)

<http://www.moshersoteria.com/>

Open Dialogue (Finland)

<http://www.madinamerica.com/2012/06/open-dialogue/>

<http://www.madinamerica.com/2011/11/%EF%BB%BFsolutions/>

<http://www.madinamerica.com/2012/09/finland-the-pre-seminar/>

<http://www.madinamerica.com/2012/09/more-from-finland/>

Autism-specific approaches

http://www.autism.com/index.php/symptoms_self-injury

http://www.autism.com/index.php/symptoms_seizures

http://www.autism.com/index.php/symptoms_sensory_overview

<http://www.autism.com/index.php/related%20disorders>

http://www.autism.com/index.php/treat_edu_plans

<http://www>

Name: ORG-0049a-Aberdeen City Council-000

ABERDEENSHIRE COUNCIL'S RESPONSE TO CONSULTATION ON DEVELOPMENT OF NATIONAL ACTION PLAN FOR HUMAN RIGHTS

Thank you for your letter dated 14 March 2013, inviting submissions from local authorities as part of the participation process in the development of a National Action Plan for Human Rights in Scotland.

Aberdeenshire Council's vision, or mission statement, is to provide the best services for all. Integral to this pursuit of excellence is our commitment to upholding the fundamental rights of everyone in our community. As human rights are such an important part of our work as a local authority, we are glad to have been invited to participate in this project.

In response to the specific questions raised in your letter:-

1. What do you consider to be the most urgent human rights issues which should be addressed in Scotland's National Action Plan for Human Rights?

The Council has recently completed community involvement and consultation activities in the fulfilment of its specific obligations under the public sector equality duty to report on mainstreaming of the general duty and to develop equality outcomes. As part of our evidence gathering exercise, we identified certain concerns within our area which we feel should be addressed as part of the National Action Plan. We have grouped what we consider to be the most pressing issues under several of the Convention rights.

Article 8 – Right to respect for private and family life

One of the key issues identified through community engagement was the lack of suitable, affordable housing and concerns around a lack of choice of location of housing. The high cost of housing was cited as a significant barrier to accessibility, along with discriminatory attitudes (particularly in relation to race, age and disability) in the private housing market.

The SHRC's *Getting it Right?* report highlights human rights issues in the delivery of care services. The Council is aware of strong calls for greater investment in care services within its community. Our engagement exercise revealed particular concerns among older people, with the focus on availability and accessibility of services for the elderly.

Linked to concerns around social care services are the apparently poor health outcomes for vulnerable/disadvantaged groups, often clustered in particular geographic or deprived areas. As Aberdeenshire is a rural area, there are significant difficulties for disabled and elderly people having to travel long distances for treatment.

Article 14 – Prohibition of discrimination

In the Council's experience, one of the most common barriers to accessibility of services is a lack of understanding on the part of organisations about the problems faced by marginal sections of the community. The SHRC report comments on the gap between perception and reality in the context of ensuring fairness in Scotland. Our equality evidence gathering project revealed low levels of awareness of issues like disability, transgender and race. There was reported to be a degree of suspicion between certain sections of the community, particularly between people who shared a certain protected characteristic and those who did not.

In addition to a lack of understanding, it is apparent that there still exist discriminatory attitudes in Scottish society. Our findings indicate that migrant workers, disabled people, transgender people and gypsy travellers experience a high level of prejudice in Aberdeenshire. Particular problems were: the difficulties faced by transsexuals in securing employment; reluctance on the part of the transgender community to access local services or facilities because of the fear of discrimination; concerns of transgender individuals about their physical safety; limited employment opportunities or unfair treatment in employment on the grounds of race; continuing pay gaps between male and female workers; and instances of religious and racial intolerance.

One significant area of concern for Aberdeenshire Council is in relation to gypsy travellers. The Council is aware that social housing does not meet the needs of gypsy travellers and that there is insufficient provision of gypsy traveller sites. This has an impact on health and education outcomes for the traveller community.

Protocol 1, Article 2 – Right to education

Aberdeenshire Council acknowledges the gaps identified under the theme of education in the SHRC report. Specific concerns raised as part of our community engagement exercise included: the barriers to education faced by children of gypsy travellers; poor access to extra-curricular activities for all children; and bullying/harassment on the grounds of disability, sexual orientation, race and transgender status in schools and higher education establishments.

2. What specific and achievable actions do you consider would best address the concerns you identify in your response to question 1?

Local authorities play a key role in ensuring that human rights legislation influences people in their communities in their daily lives, particularly in the context of housing, education and social care. Aberdeenshire Council agrees with the recommendation in the *Getting it Right?* Report that all Single Outcome Agreements should be linked to human rights.

In our view, the biggest area for improvement in the human rights landscape in Scotland is enhanced awareness and realisation of the rights of the most marginalised and vulnerable people in our community. With that in mind, we would welcome the following measures to address the concerns outlined above:

- greater scope for local authorities working in partnership with the SHRC to ensure that people understand their rights and know how to use them;
- organising events in communities to raise awareness and promote understanding of different groups in society and to allow them to explain the barriers they face in daily life;
- publicising service access to ensure service users have a choice in the way they can access services;
- meaningful community engagement, to provide the most vulnerable members of society with the opportunity to shape policies that affect them;
- incorporating human rights considerations into existing impact assessment mechanisms, e.g. joint equality and human rights impact assessments for all projects with the potential to interfere with individuals' rights; (We note that the SHRC and EHRC are currently developing a good practice model for human rights impact assessments.)
- making all impact assessments relating to human rights publicly available, to enhance transparency and public scrutiny; and
- delivering more services on an integrated basis to improve accessibility, e.g. increased integration of health and social care.

It is clear that a more consistent approach across all public authorities in Scotland is key to ensuring that human rights are systematically ensured. Aberdeenshire Council will be very interested to see the first draft of the action plan later this year.

Name: ORG-0049b-Aberdeen City Council Equalities Department-000

Thank you for the opportunity to comment on the first National Action Plan for Human Rights in Scotland.

Q1 What do you consider to be the most urgent human rights issues which should be addressed in Scotland's National Action Plan for Human Rights ?

This is a timely opportunity to respond since we are at the stage of presenting our draft equality outcomes for council committee approval, prior to publishing by 30 April 2013. The council's outcomes were developed following extensive community engagement and research gathering and analysis. Since the outcomes are rooted in a firm evidence base, it seems sensible that these are highlighted in this response as being the issues of most concern to citizens. Our Equality Outcomes 2013-17 include the following:

People with protected characteristics have their social care needs met.

Awareness training for carers of isolated lone disabled people. Helping everyone to remain in their own home for longer.

This fits with the SHRC Theme 1: Dignity and Care and the issues raised of the extent of “free” personal care and the integration of a human rights based approach into the procurement of care services.

Accommodation that meets the needs, culture and lifestyle of Gypsy/Travellers normally resident in, and visiting, the city of Aberdeen.

There is a nationwide and local shortage of official halting sites.

This fits with the SHRC Theme 3: Where we live and the right to adequate housing. Of these, the need to provide accommodation for Gypsy/ Travellers would probably be the most pressing as it is a clear human rights issue (Article 8 – Right to respect for private and family life, home and correspondence) and because of the need to reduce tensions between the Gypsy/ Traveller and the settled community. The public authorities have a duty to foster good relations between the different groups and therefore to address the negative media coverage and the incidents of discrimination, which occur too frequently.

The SHRC can help in this respect as follows in response to Q2.

Q2. What specific and achievable actions do you consider would best address the concerns you identify in your response to question1?

Run high profile awareness raising campaign to challenge attitudes around Gypsy/ Traveller issues and to promote awareness of the need for adequate provision of accommodation and the human rights of Gypsy/ Travellers re access to education and health services.

Engage with representatives from media organisations in same.

Bring together elected representatives at central and local level of government to agree solutions.

Work with community councils and representatives of the Gypsy/ Traveller community, and invite Planning Aid to participate to help identify potential sites.

Name: ORG-0050a-Enable-000

Based on the evidence presented in the report Getting it right? Human rights in Scotland, or your own experience, what do you consider to be the most urgent human rights issues which should be addressed in Scotland's National Action Plan for Human Rights?

1. A general lack of awareness of and respect for children's rights in Scotland. Good policy intentions of Government with respect to children's rights are not backed up by implementation on the ground. Many children (and adults) have not heard of the UNCRC and do not know what their basic rights are, or how to claim them.
2. Participation and advocacy – the voice of children and young people is often not heard, or heard but ignored. This is true even more so for children and young people with learning disabilities, whom adults often assume are not capable of articulating their ideas or opinions. When a young person has communication support needs this makes the task more difficult, but by no means impossible.
3. The right to education – education staff in Scotland do not currently undergo mandatory training in additional support needs and disability during either initial teacher education (ITE) or continuing professional development (CPD). As a consequence, school exclusion rates are much higher among learners with ASN and/or disabilities, attainment rates are much lower and positive destinations are less likely to be achieved. Scottish Govt stats confirm all of the above. Therefore Scottish children with ASN or disability are not able to gain the full benefit from their education which is essentially discriminatory. ASL legislation is excellent but both anecdotal and recorded evidence shows that implementation is patchy and many children are being failed by the system.
4. No clear strategy for children and young people with disabilities, to enable them to claim their rights and enjoy full and equal access to the same opportunities and services as every other child. Many children with disabilities are unable to participate in school trips, access out of school care, holiday clubs or mainstream school or community-based clubs and activities. This is usually due to issues around the lack of appropriate support for the child, or lack of training for the staff involved, or lack of necessary resources to allow the child to access the service.

What specific and achievable actions do you consider would best address the concerns you identify in your response to question 1?

1. Full incorporation of the UNCRC into Scots Law – this would raise awareness of children's rights issues across Government and civil society and promote respect for children's rights generally, making it more likely that children are able to not just understand, but claim their rights.
2. The Scottish Government and public bodies should ensure that all participation and consultation work with young people is designed to enable the meaningful participation of children and young people with learning disabilities in decisions concerning policy-making and services. This can be achieved by producing consultation documents in Easy Read format, age/stage appropriate materials, and by allowing extra time for the consultation process. There should also be a

mechanism for feeding back to the young people, so that they understand what impact their input has had, and are given recognition for this.

3. The Scottish Government should introduce mandatory training for student and existing teachers via ITE and CPD on positive behaviour support, autism and learning disability awareness and communication strategies, all of which should be underpinned by a broad knowledge of equalities, inclusion and relevant legislation. Ideally this training should be extended to support for learning staff and other education staff who come into contact with pupils with ASN and/or disabilities. The ASL Code of Practice should be revised and refreshed and the Scottish Government should monitor implementation of the ASL Act, with the aim of reducing the gap between policy and practice.

The Scottish Government should develop a national strategy for the inclusion of children with disabilities, to ensure they receive appropriate, flexible and timely specialist services, equal access to universal services, and that they are able to access mainstream opportunities in their local communities, thereby enjoying a full and happy life.

Name:ORG-0051a- Crown Office and Procurator Fiscal Service -000

The Crown Office and Procurator Fiscal Service welcomes the Scottish Human Rights Commission's considered report on "Getting it Right? Human Rights in Scotland" which you introduced to prompt discussion and development of a National Action Plan for Human Rights in Scotland.

COPFS supports work which aims to deliver further significant and sustainable improvements in the way that Scotland ensures the realisation of Human Rights by everyone.

As the sole prosecution authority in Scotland, COPFS has been at the forefront of developing Human Rights within prosecution practices and procedures. Even prior to the incorporation of the European Convention on Human Rights into Scots Law, through the Scotland Act and Human Rights Act, COPFS was conscious of the inalienable duty on the prosecutor to uphold the values contained in the Articles within the Convention.

As you know, following incorporation of the Convention, COPFS has engaged with devolution issue challenges. Many of these have related not only to our own practices and procedures, but made use of the of the requirement on the Lord Advocate not to act incompatibly with the Convention rights so forming the prism through which many areas of criminal law and procedure outwith the direct control of the prosecutor have been challenged.

Despite numerous such challenges since 1 May 1999, Scots Law and practice and procedures of COPFS have stood up robustly. However we are not complacent. The ramifications of the Supreme Court decision in *Cadder v HMA*, which applied the decision of the European Court of Justice in the case of *Salduz v Turkey* to Scots law, brought the continuing requirement for discussion and development across criminal justice matters in Scotland into sharp focus. Following the *Cadder* decision and the emergency legislation which followed, the Carloway report was commissioned. This report took a human rights based approach to the criminal law and procedure and COPFS has been working with other criminal justice partners to ensure the effective implementation of many of the recommendations.

COPFS very much welcomes the approach taken in compiling the report by the SCHR, particularly in paying attention to the voices of those who tend to be marginalised in mainstream debates surrounding human rights. As a prosecuting authority we are part of the criminal justice system which not only requires to uphold the right of an accused to a fair trial but also have duties to the victims, witnesses and bereaved relatives who are an integral part of the system.

In order to assist in the debate in this area, I consider that it would be helpful to outline the COPFS policy and practice in relation to those areas highlighted in the Report which touch upon the work of COPFS, and have enclosed our response to the report at Annex A.

This opportunity to participate in the debate on human rights in Scotland and to work further with the commission in the formation of the proposed action plan is very much welcomed by COPFS.

Yours sincerely

A handwritten signature in black ink that reads "Catherine Dye". The script is cursive and fluid, with the first name and last name clearly distinguishable.

Crown Agent and Chief Executive

Older People – Paragraph 3.1.2.2

Treatment of elderly residents of care homes is an area of concern to SHRC, and COPFS shares that concern. COPFS treats any criminal reports received from the police on this subject seriously. However, COPFS is in the process of developing a robust policy specifically focussing on the prosecution of offences committed against older people, both within and out with a caring setting. This policy recognises the types of offences that are likely to be experienced by older people and identifies COPFS' commitments towards older people. The policy will also reflect the special consideration which must be given to the elderly victims of such crime.

"Older people" would fall within the protected characteristic of "age" within the meaning of the Equality Act 2010, as defined in section 5 of that Act. COPFS is committed to respecting protected characteristics and we deal with all such customers in a sensitive, dignified and responsive manner. If it is felt that a witness or victim is particularly vulnerable due to their age, they would be referred to our Victims Information and Advice team ("VIA") for additional support and assistance. Furthermore, if they meet the criteria set out in the Vulnerable Witnesses (Scotland) Act 2004, COPFS would apply for an appropriate special measure to facilitate them in providing the best evidence they can, whilst aiming to minimise the inconvenience or distress they may experience. It is worth highlighting that these applications are made by COPFS but are granted at the court's discretion.

At present, COPFS investigate all deaths which are reported to us where there is evidence that the death has been caused, or been contributed to, by treatment in a care home, by lack of treatment in a care home, or by an accident or incident in the home. When appropriate, we will liaise with colleagues in Social Care and Social Work Improvement Scotland (SCSWIS)/the Care Inspectorate. Following these investigations, when it is appropriate to do so, we will prosecute and/or instruct a Fatal Accident Inquiry (FAI). An FAI may consider the circumstances of a death so that the circumstances may be publically examined and a court may make a determination involving recommendations for systemic improvements. Whilst any involvement COPFS has in the death of an older person would be retrospective, by the nature and purpose of our organisation, our involvement in such matters can only be so; but nonetheless, COPFS is actively committed to protecting and improving the quality of care older people in Scotland receive.

Children and Young People- Paragraph 3.1.2.3

COPFS recognise children's vulnerability and make every effort not to cite a child as a witness to court unless they are essential to proving the case, and will only cite the case to court when prosecution of that case is in the public interest. If a child is cited to court, we facilitate the provision of special measures with a view to making the process of giving evidence less anxious and distressing.

At present, any witness under the age of 16 is automatically entitled to the use of certain special measures when giving evidence. The new Victims and Witnesses Bill proposes that this is extended to anyone under the age of 18. COPFS is supportive of this proposal.

Service Delivery – Paragraph 3.1.3.3

“Disability”, within the meaning of the Equality Act 2010, as defined in section 6 of that Act, is a protected characteristic. The particular needs of a victim or witness who is physically or mentally impaired in terms of this section are taken into consideration by COPFS. Such persons would be contacted by our dedicated VIA team, who will describe the court process and explain the special measures which are available if required or desired by the person. Then if requested, COPFS will endeavour to make special measures available to them (at the court’s discretion) to facilitate them in providing the best evidence they can, whilst aiming to minimise the inconvenience or distress they may experience. Access requirements and any other requirements would also be discussed with the person and taken into account.

Legal Capacity – Paragraph 3.1.4.1

In all circumstances where there are reported concerns about the mental health of an accused person in custody, prosecutors in COPFS will refer such a person to a Community Psychiatric Nurse. This safeguards the interests of the accused by allowing an independent assessment to be carried out into their capacity.

COPFS does from time to time receive reports regarding persons committing an alleged breach of the peace by attempting to commit suicide. COPFS has a policy in place that it will not take action and prosecute persons for such behaviour unless there is other criminal conduct involved (such as, for instance, the accused has threatened or caused injury to another).

Victims and Witnesses with mental health or learning difficulties will be contacted by VIA so that they can receive additional support throughout the life of the case. Additionally, any witness with a mental disorder is automatically entitled to the use of certain special measures when giving evidence in court.

COPFS notes the SHRC concerns regarding the lack of clarity surrounding the prosecution policy in respect of assisted suicide in Scotland. The Report acknowledges that in 2009, the former Lord Advocate stated that “any change in the current law related to homicide is properly a matter for the Scottish Parliament”. To date, this remains the position. The present situation remains that in Scotland, there is no such crime as “assisted suicide”; criminality in any and all such circumstances can only be determined based on the specific and individual facts and circumstances of each case, and may only be prosecuted if they apply to or constitute a crime in existence within Scotland, such as homicide.

Healthcare Quality – Paragraph 3.3

All sudden, suspicious, accidental, unexpected and unexplained deaths in Scotland are reported to COPFS. Deaths are reported by medics, police and other agencies. Upon receipt of a report, the Procurator Fiscal will determine whether any further investigation is required in order to establish the cause of death and the circumstances which gave rise to them. Whether further investigation is required, and if so the nature and extent of that investigation, will depend on the facts of the reported case. The procurator fiscal has to consider, in the light of investigations, whether a Fatal Accident Inquiry (FAI) is required in the public interest. All such decisions are made with the involvement and assistance of Crown Counsel.

One category of deaths actively investigated by COPFS is deaths under medical care.

When appropriate, FAIs are instructed to publically examine any defects in the healthcare system which may have caused or contributed to a death. Any measure COPFS may take regarding healthcare is, by necessity, retrospective; COPFS cannot investigate an allegation of systemic failings prior to a death having occurred, and responsibility for such an investigation would properly lie with other organisations. However, in this way COPFS is actively engaged in and committed to protecting and improving the quality of healthcare in Scotland.

Domestic Abuse – Paragraph 3.5.2

Tackling domestic abuse has been identified as a strategic priority for COPFS. It is necessary to ensure that our criminal justice system is human rights compliant not only for suspects and accused, but also for victims and witnesses who also have rights and freedoms which must be protected under the European Convention on Human Rights.

COPFS appreciates the difficulties encountered in the SHRC report regarding the definition of domestic abuse. The definition adopted by COPFS and ACPOS recognises that domestic abuse is not limited to physical abuse and specifically includes sexual, mental and emotional abuse which might amount to criminal conduct and which takes place in the context of a relationship. Extensive guidance is available to prosecutors dealing with domestic abuse cases which make clear that a wide range of crimes can amount to domestic abuse, including contraventions of sections 38 and 39 of the Criminal Justice and Licensing (Scotland) Act 2010 (threatening and abusive behaviour and stalking), breach of the peace, vandalism, breaches of bail and civil orders, and seeking non-harassment orders following conviction when appropriate. Any allegation of domestic abuse, including those which do not involve violence, is approached in accordance with the robust policy set out in the joint ACPOS COPFS protocol, "In Partnership, Challenging Domestic Abuse".

The specialist Domestic Abuse court model in Glasgow has been successfully followed in other jurisdictions, including Dunfermline, Edinburgh, Livingston and Ayr. Specialist prosecutors in these courts work closely with partner agencies to deliver a swift and effective response to domestic abuse.

However, COPFS has an extensive programme of training which includes a particular focus on the dynamics of domestic abuse. This training is for all prosecutors dealing with domestic abuse cases, whether or not they deal with those cases within a specialist court. Our training includes inputs from groups which specialise in working with male, LGBT, BME, and female victims of domestic abuse. Such an approach assists prosecutors gain a wider perspective of domestic abuse and specifically addresses the difficulties which minority victims of domestic abuse, in particular, may face in reporting domestic abuse and engaging in the prosecution process.

Our robust approach to domestic abuse cases recognises the peculiar pressures to which victims of domestic abuse may be subject, and recognises that these pressures can result in an apparent reluctance on the part of the victim. Our policies make clear that the decision to initiate or discontinue proceedings in domestic abuse cases is taken by the prosecutor alone, in the public interest. Such an approach removes pressure from victims of domestic abuse, and recognises that fear or pressure from the perpetrator or from others can explain an apparent reluctance.

COPFS is mindful throughout the prosecution process of the pressures that victims may be subject to and will seek to reduce these where possible. For example, when considering whether a release on bail is appropriate in a case involving domestic abuse, prosecutors will consider whether additional special conditions of bail, for example, prohibiting the accused from contacting or approaching the victim, are necessary. All victims of domestic abuse are referred to our specialist VIA service, which provide information to victims and some witnesses about the criminal justice system in general, the progress of the case against them, and discuss the special measures which may be made available to them at the court's discretion. VIA also signpost victims of domestic abuse to other agencies which can provide specialist support or counselling.

Forced Marriage – Paragraph 3.5.3

To date, no allegations relating to a breach of a Forced Marriage Protection Order have been reported to COPFS. However, guidance is available for staff which would be adopted were any such case to be reported. COPFS regularly engages with colleagues in ACPOS and Scottish Government on forced marriage and honour-based violence issues through the ACPOS HBV working group.

Same Sex Marriage – Paragraph 3.5.4

COPFS is dedicated to ensuring that the freedom of expression, as guaranteed in article 10 of the ECHR is respected, and that the criminal law will only be used where proportionate and necessary in relation to the expression of opinion on this topic.

The Lord Advocate has undertaken to publish a Note of Prosecution Guidance in relation to offences which occur involving opponents to same-sex marriage. The content of that guidance will reflect that COPFS recognise the sensitivity of the issues and the strength of opinion surrounding same-sex marriage, and also that it recognises that a balance has to be struck between freedom of thought, conscience, religion and expression.

The Rights of Parents and Children – Paragraph 3.5.6

COPFS fully supports parents' and children's rights to private and family life as they are enshrined in article 8 of ECHR and set out in the Children (Scotland) Act 1995. COPFS is fully aware of the responsibilities associated with any restriction of that right and is mindful that any interference with the article 8 right must be in accordance with national law, for public safety, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.

COPFS is aware that by requesting special conditions of bail, we may in some instances be requesting the courts to restrict this right. A delicate balancing exercise is required when giving consideration to requesting such a restriction, and COPFS are dedicated to conducting that balancing exercise carefully, making such a request only when absolutely necessary for the protection of a victim of abuse, or when restriction of both (i) the right of the accused, and (ii) the right of the child, is otherwise justified in the public interest. COPFS do not have sole responsibility in respect of this matter and we actively engage with colleagues in Social Work and other support organisations when appropriate, prior to making such a request of the court. Ultimately, the decision whether or not to impose the restriction of the right is a matter for the court.

Offences Aggravated by Prejudice – Paragraph 3.6.3

COPFS recognise that criminal behaviour fuelled by prejudice should have no place in Scotland due to the harm it inflicts on victims and the corrosive effect it has on communities. As such, since 2011, the Law Officers have made tackling offences aggravated by prejudice one of COPFS' key strategic priorities. The Lord Advocate's Guidelines on Offences Aggravated by Prejudice are available to the public on our website and as per the attached [link](#). By adopting a strong prosecution policy and by working with communities, including focusing on young people, COPFS endeavour to maintain a strong role within Scottish society in tackling hate crime. COPFS prosecutors ensure that all forms of hate crime are highlighted throughout the criminal justice system and that instances of such crimes are met with an appropriate response at all stages.

COPFS notes the SHRC's concerns regarding the Offensive Behaviour at Football and Threatening Communications (Scotland) Act 2012, however also notes that to date there have been no successful Human Rights challenges to the Act.

The Lord Advocate is supportive of the Act and is committed to ensuring that all offences committed under this Act are dealt with seriously. However, the Lord Advocate is also committed to ensuring that proportionality underpins COPFS' policy in relation to all such reported offences and as such Lord Advocate's Guidelines on the Act were published in February 2012, per the attached [link](#). Further, specialist Football Liaison Prosecutors have been appointed to ensure that COPFS delivers a consistent and robust response to football related cases. In the period between March and December 2012, a total of 238 charges were reported to COPFS; nationally the prosecution rate of such offences is 78% and conviction rate 80%. Upon conviction, Football Banning Orders are sought when appropriate, which can prohibit an individual from attending all matches in Scotland, the rest of the UK and abroad for up to 10 years.

COPFS shares SHRC's view that the right to freedom of expression as enshrined in ECHR articles 9 and 10 is fundamental. However, the right to freedom of speech has long been recognised as a right which can be restricted. COPFS will prosecute if doing so is in the public interest. COPFS will not initiate a prosecution if it believes doing so would be in breach of the convention. However, if a prosecution is in breach of the convention, the courts will not convict or will not uphold a conviction.

COPFS has a very robust policy in place in relation to all recognised hate crime offences, with a strong presumption in favour of prosecution where there is sufficient evidence of racial aggravation or prejudice based on grounds of religion, disability, sexual orientation or transgender identity. It should be noted that in order to libel an aggravation, there must be evidence that the perpetrator's motivation was a hatred of the victim's characteristic.

To ensure that the implementation of this policy was being properly monitored and assessed, COPFS published an analysis of prosecutions of these offences and aggravations in "Hate Crime in Scotland, 2011-12." This publication provided details of hate crime reported to COPFS in 2011-12 and earlier years. It brought together figures on race crime as well as crimes reported with an aggravation related to religion, disability, sexual orientation or transgender identity.

In summary, the statistics showed:

- A rise in charges reported to COPFS in all categories of hate crime; and
 - In the vast majority of such cases reported to COPFS, court action was taken.
- In total, 89% of charges reported in 2011/12 led to court proceedings.

A further Hate Crime Statistical report will be published by COPFS in June 2013.

In relation to religion-specific hate crime, the Scottish Government recently published a report on Religiously Aggravated Offending in Scotland for the year 2011-12. This report represented a further breakdown of the charges reported to COPFS in 2011-12, those involving only the religious aggravation.

There are three findings from this report that are worth highlighting:-

- The overall figure for crimes with a religious aggravation showed a rise of 26% on the previous year;
- Although the number of football-related charges rose by 16%, there was a decrease in the proportion of these charges as a percentage of all of the religious offences. The number of charges occurring in football stadiums also decreased from 90 to 67. This reduction in charges may in part be explained by the increased focus on football-policing and supporter conduct through the work of the Joint Action Group on Football, established in 2011; and
- The proportional spread of the religions that were targeted was similar to the previous year: 58.1% involving Roman Catholicism (57.7% in 2010-11), and 40.3% involving Protestantism (36.5% in 2010-11).

In summary, both sets of statistics reveal an increase in reporting. COPFS is of the view that this is, in part, attributable to increased confidence of victims and witnesses to report hate crimes and to co-operate with the criminal justice system as a whole.

Our VIA service produce information for the victims of, and witnesses to, hate crime. This information is available in hard copy for victims and witnesses, and is also available on the COPFS website for the general public. It includes reference to the COPFS prosecution policy, indicating that the Procurator Fiscal will prosecute in all cases where there is sufficient evidence to do so, and if it is in the public interest to do so. This is a unified message, supported by the police posters which outline that no hate crime is too minor to report to the police.

COPFS have a number of initiatives which assist in raising public awareness of the issues surrounding hate crime, aiming especially to raise awareness with the young. These include:

- Every 2 years a Hate Crime Conference is hosted jointly by the COPFS and APCOS. The theme of the conference in 2012 was the "Challenge of Tackling Prejudice".
- COPFS sponsored a Glasgow Schools speaking competition. The topic of the debate was "Hate crime, its causes, and how we can tackle it". The competition was designed to engage young people from across Glasgow, in particular from schools which did not have a tradition of competing in public speaking or debating tournaments. In the future, we have plans to extend this across the country.
- North Lanarkshire Anti-Sectarian Project was a novel project, where pupils at Bellshill Academy and Cardinal Newman High School worked in partnership to make an educational DVD entitled 'Them and Us' in relation to hate crime. This project is mentioned within

the SHRC's report. COPFS were actively engaged in this project and encouraged the children to work in partnership. The launch of the DVD attracted positive press coverage and support from a wide cross section of the community. COPFS aim to have the programme and product used as a national teaching tool.

- There have been a number of presentations by COPFS together with Grampian Regional Equality Council to Secondary School pupils in Aberdeen designed to increase awareness and understanding of all aspects of hate crime. This initiative is set to continue.
- COPFS and Lothian and Borders Police are working on a restorative approach to hate crime project. The aim of this project is to deliver a model of policing which deals with victims and perpetrators of hate crime in an innovative manner, responding to victims' needs and educating offenders in a way which is proved to reduce re-offending.
- COPFS supports and participates in the Edinburgh and Glasgow "Mini-Trials" events for 5th and 6th year school pupils.
- COPFS support and participate in the Mini-Trial Outreach Programme, which is a project run in conjunction with Scottish Prison Service and the Police, where a mini-trial event is run over the course of a day in deprived areas.
- COPFS organises and sponsors diversity-themed public speaking competitions for secondary 2 and 3 school pupils. 2013 marked the second annual competitions in both Glasgow and Edinburgh, and COPFS hope to establish the project in Dundee in the near future. The aim of the competitions is two-fold: to improve pupils' public speaking ability and confidence; and to eliminate discrimination, harassment and victimisation by improving understanding of hate crime.

Abuse Prevention, Protection and Remedy – Paragraph 3.6.4

COPFS, as the sole prosecuting authority in Scotland, ensures effective investigations into criminal behaviour in all matters reported to us. Where there is sufficient evidence and it is in the public interest, COPFS will take action in relation to all criminal matters.

In 2005, a comprehensive review of the investigation and prosecution of rape and all other sexual offences was carried out. The Review identified a real need to increase specialist knowledge and skill in the area of sexual crime and to introduce comprehensive training on dealing with sexual crimes and in particular the victims of sexual crimes. An extensive training programme was designed, with input from external agencies. The training extends beyond legal and investigative guidance and advocacy skills, to understanding the emotional and psychological impact of sexual crime on its victims. Following from this, in June 2009, the National Sexual Crimes Unit was established. This unit consists of a team of dedicated Crown Counsel who direct criminal investigations in all serious sexual offences from the

earliest stage and personally prosecute all those that proceed in the High Court. Victims can have confidence that their cases are being handled by skilled prosecutors able to deal with the profound challenges, complexities and pitfalls inherent in the prosecution of sexual crimes. The success attributable to the commitment, skill and innovation of this formidable group of specialists in the past three and a half years amply demonstrates that our determination to develop trained and skilled specialists is yielding results.

There are three criminal offences associated Banning Orders under the Adult Support and Protection (Scotland) Act 2007. COPFS has guidance available to all prosecutors in respect of these offences.

Human Trafficking – Paragraph 3.6.5

COPFS takes human trafficking extremely seriously and we have been proactively developing greater specialism in this area. In addition to maintaining a human trafficking portfolio within COPFS Policy Division to ensure effective liaison between COPFS, the Scottish Government and other agencies, COPFS has also appointed a national lead for the prosecution of all human trafficking offences, a senior Advocate Depute. As national lead, all reports of human trafficking offending are routed through this individual. This assists COPFS in applying a consistent approach to such offences and in identifying credible victims of human trafficking offences. In addition, COPFS has appointed human trafficking leads in each Federation to provide expert guidance to prosecutors at a local level.

Furthermore, COPFS provided detailed guidance for prosecutors in October 2010 which is regularly updated, most recently in January 2013. The guidance provides information on indicators that assist with the identification of potential victims of human trafficking and clarifies the prosecution policy and approach to dealing with credible victims of human trafficking who commit offences as a direct result of their trafficked situation.

COPFS has a robust Human Trafficking policy in place which encompasses a strong presumption against prosecution of a credible trafficked victim for crimes that arise as a consequence of the accused being a credible trafficked victim. This presumption is rebuttable, but as indicated above, all such offences must be reported to the COPFS National Human Trafficking Lead and the presumption will not be rebutted without specific consideration and approval.

COPFS note that SHRC mention in their Report that the first convictions under section 22 of the Criminal Justice (Scotland) Act 2003 were secured in September 2011; however, since then, there has been another prosecution of three people in respect of a case prosecuted in 2012. Each person was convicted and each sentenced to 3 years imprisonment.

Looking ahead, the Lord Advocate is supportive of the Scottish Government's proposals to create a Human Trafficking aggravation. In addition, the Lord

Advocate has undertaken to organise and host a national Human Trafficking Conference in September 2013. The aim of the conference is to build upon existing relationships with our criminal justice partners and external stakeholders involved in this area, and to further the knowledge and understanding of human trafficking in Scotland.

Policing – Paragraph 3.6.6

COPFS is engaging in the development of the new single police service for Scotland. COPFS will continue to investigate all complaints against the police which are reported to us in a robust, effective and independent manner.

The SHRC's concerns regarding the 'stop and search' procedures and practices are noted. COPFS shares the Commission's views that individuals' rights to private and family life must be protected, but also acknowledges that a restriction of the right may be justified, according to necessity and proportionality, in furtherance of the protection of the general public's article 2, 3 and 5 rights.

Suicides and Deaths in Custody – Paragraph 3.7.1.4

COPFS thoroughly and proactively investigates every death which happens in custody, including suicides, and conducts a Fatal Accident Inquiry in relation to every death in custody. An FAI may retrospectively consider the aspects noted as concerns within the Commission's Report, if the Inquiry forms the view that these have caused or contributed towards the death. If appropriate, an FAI determination can include recommendations to improve matters for the future. However, it is clear that this is a necessarily retrospective action for COPFS, and that responsibility for the issues of concern to the Commission lie primarily with other authorities and organisations.

Legal Advice – Paragraph 3.8.2

The Commission comments that attendance of a lawyer should be available where a suspect might be considered vulnerable. COPFS shares this view. In September 2012, the Lord Advocate issued an instruction to Chief Constables, stating that in any case where the suspect requires the support of an Appropriate Adult, they must also be provided with access to a solicitor prior to interview; they should not be able to waive this right. This was due to concerns that suspects may not have fully understood the caution or the interview process, and COPFS is of the view that it is integral to the justice system that such persons' rights are safeguarded. This instruction was valid from 1st October 2012.

COPFS notes that in terms of periods of detention, figures provided by ACPOS suggest that since the introduction of the extended detention provisions of the Criminal Procedure (Legal Assistance, Detention and Appeals) (Scotland) Act 2010 Act, 83.5% of detentions concluded within six hours. The average period of detention was 3 hours 55 minutes. In a further 15.7% of cases, the period of

detention exceeded six hours but ended within 12 hours. Based on these figures, less than 1% of detentions exceeded 12 hours.

Equality of Arms – Paragraph 3.8.4

Disclosure of evidence to the defence is a crucial and integral part of the criminal justice system in Scotland and as such COPFS has and continues to take a robust approach to Disclosure policy and practice. COPFS originally and traditionally facilitated disclosure in paper format. However, this was costly and time consuming – not only for COPFS but also for solicitors who needed to attend their local Procurator Fiscal office to collect the documentation. Since March 2011, COPFS' primary method of facilitating disclosure in terms of the Criminal Justice & Licensing Act (Scotland) 2010 is via a Secure Disclosure Website, which creates a more robust and more secure method of disclosure with a full audit trail, is cost and resource effective, and is more accessible and flexible for users.

The COPFS Steering Group on Disclosure sits bi-monthly and includes COPFS representatives from all across Scotland as well as the ACPOS National Disclosure Coordinator. This group considers any new policies or changes to COPFS disclosure policy (and associated business practices) deemed necessary. The group will also identify any training requirements and will share experience and best practice for dissemination to prosecutors around the country.

The Disclosure Steering Group feeds into the COPFS Disclosure Reference Group, which also sits bi-monthly. This group consists of COPFS senior managers and includes a Law Officer. The group provides strategic direction to and oversight of the Steering Group and approves departmental disclosure policy prior to publication. This group also considers the implications on policy of any decisions in the first instance or appeals court, including the UK Supreme Court, the ECtHR and any issues arising from new legislation.

The publicly available COPFS Disclosure Manual has already reached version 9 and version 10 is imminent. Prior to releasing a new version of this important guidance all amendments are carefully and diligently considered by senior lawyers who sit on the Disclosure Manual Editorial Sub-Group and frequently final sign-off will be required from the Law Officers themselves.

In addition to the Manual, when appropriate, COPFS will produce disclosure policy guidance on particular issues. Recent examples include the internal guidance issued in January 2013 to prosecutors who may have to deal with issues as they arise in Court in relation to defence statements, such as the late lodging or refusal by the defence to lodge a defence statement, or the lodging of a defence statement which is lacking in specification, and also the COPFS Policy on Obtaining and Disclosing Personal Records in the Investigation and Prosecution of Sexual Crime Cases.

It is for the police or other reporting agency to assess relevancy and reveal to the Crown all potentially relevant information. Relevant information is that which appears to have some bearing on the offence under investigation or on the surrounding circumstances unless it is incapable of having any impact on the case.

Having received all the relevant information, it is then for the Crown to assess that information and disclose to the defence that relevant information which meets the materiality test, i.e. that information which would materially weaken or undermine the evidence likely to be led by the prosecutor, materially strengthen the accused's case, or be likely to form part of the evidence to be led by the prosecutor.

The example given above, namely the COPFS Policy on Obtaining and Disclosing Personal Records in the Investigation and Prosecution of Sexual Crime Cases, addresses the issue raised in the SHRC report in terms of the definition of "relevant" and how that fits with disclosure of medical or mental health records on sexual offence cases and demonstrates the very careful consideration which is given to achieving the correct balance between the accused's article 6 right to a fair trial and the victim's article 8 right to privacy.

The Criminal Justice and Licensing (Scotland) Act 2010 for the first time imposed a disclosure duty on the defence by way of the introduction of defence statements. Following the introduction of defence statements, a challenge was taken in the Appeal Court (*Barclay and Bain v HMA [2012] HCJAC 47*) regarding whether or not the provision which introduced defence statements was within the legislative competence of the Scottish Parliament. Specifically the defence were arguing that the requirement to submit a defence statement outlining the nature of the accused's defence was a breach of the accused's right against self-incrimination and therefore a breach of the art 6 right to a fair trial. The Appeal Court held that the provision was not ultra vires and that no breach arose (see References Barclay, Bain and McLean 2012 HCJAC 47)

The defence must, in cases which proceed before a jury, submit a defence statement 14 days before the first diet or preliminary hearing. A defence statement must set out, amongst other things, the nature of the accused's defence and any special defences on which they intend to rely as well as the nature of any information which the accused requires the Crown to disclose and why they consider such information to be disclosable, i.e material. Defence statements ultimately impose further obligations on prosecutors in terms of our disclosure duty to ascertain if the position has changed as a result of the information received from the defence. If the position has changed then the prosecutor must disclose to the defence the information previously withheld. The defence statement process therefore enhances the disclosure process to ensure that issues which relate to disclosure can be addressed before trial, thus minimising the risk of last minute disclosure issues arising which would result in adjournments of trials.

It is not a requirement that a Defence Statement include a list of witnesses. The Crown is often therefore in a disadvantaged position and are at times unaware of

even the existence of defence witnesses until the trial is imminently about to commence. The extended implication of the Crown being at a disadvantage is that the victim, the witnesses and the general public are also put at a disadvantage.

The accused may also be placed at a disadvantage – if the Crown is unaware of the evidence of a potentially relevant defence witness, neither the police nor COPFS can review our disclosure information or documentation in order to determine what may have become relevant and material in light of the defence position.

Access to Justice for Particular Groups – Paragraph 3.8.5

COPFS are dedicated to treating all individuals, including those with protected characteristics, with sensitivity, dignity and respect. This includes the disabled and extends beyond that group to also include groups defined by age, gender reassignment, pregnancy and maternity, race, religion and belief, sex, and sexual orientation.

COPFS provide extensive mandatory training to all staff at all levels in their “Valuing and Managing Difference” course, complemented by several other training courses which further raise awareness, with issues of equality, diversity and protected characteristics being re-raised and reinforced. COPFS is dedicated to breaking down barriers whenever possible, and all staff members are trained and aware that when arranging a meeting with a person with a protected characteristic, any particular requirements must be discussed in advance, and reasonable adjustments must be put in place, if required. COPFS is also currently involved in a project whereby a suite of leaflets will be produced, one for each protected characteristic; production of these leaflets is intended to assure and assist such witnesses of the level of service COPFS is committed to providing to them.

The Victim Information and Advice (VIA) service has been an integral part of COPFS since 2004. It is staffed by dedicated, specially trained advisers who support those identified as the most vulnerable victims and witnesses by advising them generally about the procedures within the criminal justice system, keeping them updated regarding developments in the particular case and advising of organisations which can provide specific assistance. We aim to be sensitive and responsive to the needs of all victims, witnesses and bereaved relatives and aim to provide all such persons with information in order to improve their experience of the criminal justice process. In doing so, COPFS is committed to aiding the effective prosecution of crime in the public interest. VIA is an opt-out service and if individuals do not wish to engage, they are under no obligation to do so.

The individuals VIA will provide service to are:-

- Bereaved nearest relatives in cases involving deaths—
- which are reported for consideration of criminal proceedings;
- where a Fatal Accident Inquiry is to be held;

- where there will be, or there are likely to be, significant further enquiries;
- or
- where in all the circumstances it is agreed that referral is appropriate.
- All identifiable victims in solemn proceedings
- Victims in cases of domestic abuse
- Victims in cases where a crime has been committed because the offender thinks that the victim is of a particular race, religion, sexual orientation, transgender identity or is disabled, whether that is true or not (Hate Crime)
- All victims of sexual crime
- Child victims or child witnesses in any case
- Other cases in which victims or witnesses may be vulnerable in terms of the Vulnerable Witnesses (Scotland) Act 2004 and may require help giving evidence or may have additional needs due to their circumstances or personal characteristics. These can include, but are not restricted to:
 - asylum seekers;
 - dependents abusing parents/carers, or parents/carers abusing adult dependents;
 - English not as a first language;
 - learning difficulties;
 - mental health issues;
 - physical disabilities;
 - sexual orientation/gender identity;
 - terrified of accused and / or of reprisals.

In relation to victims of Domestic Abuse, under the new Victims and Witnesses Bill, victims of domestic abuse will automatically be deemed to be vulnerable witnesses and will therefore be entitled the use of special measures when giving evidence in court. This represents a change to the present practices. COPFS is supportive of this change.

COPFS notes the comments regarding the Mental Welfare Commission views in relation to their argument that more could be done through proper training and support so that witnesses who have learning difficulties could competently act as witnesses. The test for competency has been abolished by the Criminal Justice and Licensing Act (Scotland) 2010. COPFS are to a considerable extent dependent upon being advised by reporting bodies that a witness has learning difficulties or some other form of vulnerability. However, COPFS' dedicated VIA service engage with vulnerable witnesses, including witnesses with learning difficulties, and ensure that support and special measures are considered so that witnesses can give evidence whenever possible.

Appeals – Paragraph 3.8.6

COPFS is strongly of the view that in order to increase the efficiency of appellate proceedings, and consequently public confidence in such proceedings, it is vitally important that time limits in appeal case should be enforced.

The effect on victims, witnesses and bereaved nearest relatives in appeals proceedings after the relevant time scales have passed cannot be underestimated. Therefore, in those cases in which appeals are permitted out-with the statutory timescales, COPFS agrees with the views expressed in the Carloway review, that reasons for that decision must be given and be capable of communication to the relevant victims or relatives.

COPFS is supportive of the recommendations in the Carloway report that the gate keeping role of for the Appeal Court provided for in the emergency legislation is repealed, but the Appeal court should consider whether it is in the interests of justice that an appeal be allowed when considering a reference from the SCCRC.

Corroboration – Paragraph 3.8.8

COPFS and the Law Officers support the abolition of the requirement for corroboration. COPFS are strongly of the view that Lord Carloway presented a compelling argument in favour of the abolition of the requirement for corroboration and support this recommendation. The present test is based on an archaic set of legal requirements which developed in response to peculiar difficulties which are no longer present in our legal system. The requirement is artificially restrictive, inconsistent with the approach taken in contemporary European and common law systems and predates an age in which scientific evidence such as forensic or CCTV evidence is commonplace. As the common law has developed, the concept of the underlying requirement for corroboration has remained, despite the vastly changed legal and societal landscape.

The present technical requirement for corroboration means that a number of serious cases which are extremely damaging to the fabric of society cannot be prosecuted, despite a full and thorough investigation by the police and prosecution service. The abolition of the requirement for corroboration will result in the Crown being able to proceed properly with cases which arise from particular areas of law which disadvantage certain groups of victims purely due to the nature of the offences committed against them. This should be of particular significance to victims of crimes such as domestic abuse and sexual offences who are often selected by abusers precisely for their vulnerability. As the Law Officers have noted publically, such crimes are predominantly perpetrated against women and children.

It is necessary to ensure that our criminal justice system is human rights compliant, not only for victims and witnesses, but also for suspects and accused.

The importance of effective criminal sanctions in safeguarding the rights of victims has been recognised by the European Court of Human Rights in a number of cases (*X and Y v The Netherlands* (1986) 8 EHRR 235, *Oyston v United Kingdom*, application no 42011/98, 22 January 2002). COPFS are of the view that abolition of the requirement for corroboration is essential in achieving a criminal justice system which, in the words of Lord Rodger in his opinion in *Cadder*, is both 'balanced' and 'workable'.

Juvenile Justice – Paragraph 3.8.9

The number of cases of offences alleged to have been committed by children reported to COPFS has reduced in recent years. It is the responsibility of the police to report to COPFS all offenders under 16 years old who have committed an offence that would normally be prosecuted on indictment. All reports are considered carefully and the offender will be prosecuted if it is in the public interest to do so. COPFS actively works with others in the criminal justice system to ensure that children facing allegations in minor matters are diverted from prosecution. The reporting of children by the police is covered by the Lord Advocate's Guidelines on offences alleged to have been committed by children.

Although in Scotland the offending of persons aged 16 and 17 years must be reported to the Procurator Fiscal, any 16 and 17 year old who is subject to a supervision requirement will be jointly reported to both the Children's Reporter and COPFS. These cases are then discussed at regular liaison meetings between the Children's Reporter and the local prosecutor. We have a strong working relationship with the Children's Reporter, and liaise with them in all instances of child offending. We refer offenders to them when appropriate, as set out in the joint agreement between the Scottish Children's Reporters Administration and COPFS.

COPFS has also recently approved the use of Early and Effective Intervention (EEI) for 16 and 17 year olds for certain categories of offences. EEI provides a mechanism for the police to share information about a young person's offending behaviour with relevant partners. Where the needs, risks and offending behaviour of a young person reaches a point where a single agency response (i.e. police action) is not deemed sufficient or appropriate, then the use of EEI can offer a range of positive and more targeted responses and interventions – for example counselling, drug and alcohol support, education etc.

In 2009, the Offender Management Programme (now known as the Reducing Reoffending Programme (RRP)) was established by the Scottish Government. As a member of this Programme, COPFS confirmed its support of any measures that divert young offenders out of the criminal justice system where appropriate. As such, COPFS endorsed the following Scottish Government's 'Diversion from Prosecution' and 'Young People in Court' toolkits.

COPFS notes the Commission's concerns about the age of criminal responsibility in Scotland. The Lord Advocate's guidelines in respect of the prosecution of children under the age of 16 years is that any such child must be reported to the Procurator Fiscal if the offence is one which requires by law to be prosecuted on indictment, or which is so serious as normally to give rise to solemn proceedings on the instructions of the Lord Advocate in the public interest. In 2010, a Joint Agreement was established between COPFS and the Scottish Children's Reporter Administration (SCRA), which states that in relation to a child under 16, the presumption is that they should be dealt with by the Children's Reporter unless it is in the public interest that the child is prosecuted. A relevant factor in considering this public interest test includes where the offence is of such gravity that it should be prosecuted on indictment. In terms of the Criminal Procedure (Scotland) Act 1995, no proceedings may be taken against a child aged 13, 14 or 15 years without the instructions of the Lord Advocate or Crown Counsel, except where the child is 15 years old and the offence relates to road traffic offences where disqualification is likely. Therefore, any case retained by the Procurator Fiscal for prosecution on indictment must first be reported to Crown Office for approval. COPFS can advise that since 2005, there has been a general downward trend in the number of under-16s prosecuted on indictment, with 85 indicted in 2005/06, and 38 indicted in 2011/12.

Victims'/Survivors' Rights - Paragraph 3.8.10.1

The Crown Office and Procurator Fiscal Service (COPFS) is acutely aware of the impact crime has on victims, witnesses and their families. The evidence of victims and witnesses is essential to any prosecution and, consequently, to an effective criminal justice system. However, for many victims and witnesses, giving evidence at court is a daunting prospect; this is particularly so where the victim or witness is vulnerable or where the nature of the crime means that their evidence will be difficult, sensitive and personal, such as in cases involving sexual offences and domestic abuse.

COPFS is of the view that treating victims and witnesses with dignity and respect is key to ensuring they have the confidence to report crimes and, where necessary, are willing and able to provide evidence in court.

COPFS recognises that adjournment of cases frustrates and inconveniences victims and witness, and is sensitive to the potential for this to prolong the distress of victims, preventing them from, as far as possible, moving on and putting the experience behind them. COPFS is committed to dealing with cases as quickly as possible and makes all reasonable efforts to avoid delays. However, given the very serious matters involved, it is important, and in the public interest, that both the prosecution and the defence are properly prepared. It is important that all relevant matters which come to light in the course of an investigation are properly considered before being presented to a court. Furthermore, whilst COPFS can take a robust approach to attempt to ensure cases proceed as promptly as possible, adjournments are ultimately at the discretion of the courts.

COPFS recognises that the provision of prompt, relevant information about the progress and outcome of court cases can be of real importance to victims and witnesses and has a positive influence on their experience of the justice system. All victims involved with VIA will be provided with information regarding the status of the case in which they are involved. However, COPFS has welcomed the proposal of the Scottish Government to commission a feasibility study on developing an online information hub for justice. It is intended that will provide automatic access to case-specific data in Scotland for all victims and witnesses. COPFS is supportive of this proposal and is actively engaging in the study.

Remedies for Historic Child Abuse – Paragraph 3.8.11.2

As mentioned above under the heading “Abuse Prevention, Protection and Remedy”, COPFS recognises the importance of the thorough investigation and robust prosecution of sexual offences. We have established teams of specialist prosecutors who direct criminal investigations in all serious sexual offences from the earliest stage. All cases are reported to the COPFS National Sexual Crimes Unit (NSCU) where they are considered by specialist Crown Counsel. These teams also deal with cases involving allegations of historic sexual offences (including offences against a child) and are acutely aware of and sensitive to the difficulties which victims of historic sexual abuse may experience. VIA would also actively engage with all such victims in order to identify their needs and wishes, and provide them with appropriate support.

COPFS have also established a Cold Case Review Unit to review cases where criminal proceedings could not previously proceed, or were unsuccessful but where it may now be possible to raise criminal proceedings either due to advances in technology (such as DNA etc) or due to the recent provisions of the Double Jeopardy (Scotland) Act 2011.

STUC Response to the consultation on the development of Scotland's National Action Plan on Human Rights

The STUC is Scotland's trade union centre. Its purpose is to co-ordinate, develop and articulate the views and policies of the trade union movement in Scotland; reflecting the aspirations of trade unionists as workers and citizens.

The STUC represents over 632,000 working people and their families throughout Scotland. It speaks for trade union members in and out of work, in the community and in the workplace. Our affiliated organisations have interests in all sectors of the economy and our representative structures are constructed to take account of the specific views of women members, young members, Black/minority ethnic members, LGBT members, and members with a disability, as well as, retired and unemployed workers.

The STUC welcomes the opportunity to contribute to the development of Scotland's National Action Plan on Human Rights.

Introduction

The STUC is committed to the promotion of Human Rights in Scotland and believes that many of its key campaigning issues and the issues that trade unions across Scotland focus on have a clear link to the promotion of a human rights culture in Scotland.

The STUC therefore has many issues and examples that it believes would usefully form part of a Human Rights Action Plan. This consultation response therefore cannot highlight every area STUC is interested in, nor can it give an exhaustive account of each issue raised. It is hoped, however, that this gives a useful starting point, outlining many of the issues that trade unions are concerned about and STUC would be happy to have further discussion, or provide a more detailed account of the issues raised below, as the development of the National Action Plan continues.

Translating Law into Practice

The STUC tends to agree with the findings of the research conducted by the Scottish Human Rights Commission that the legal context with regard to human rights in Scotland is well developed. The UK in general has comparably high standards when it comes to both equality and human rights law. This does not, however, mean that no improvements could be made with regard to the legal context and the STUC believes that it would be beneficial if the International Convention of Economic, Social and Cultural Rights that the UK is a signatory to internationally, be given a judicial standing domestically. This treaty would enshrine many valuable economic and social rights, such as the right to housing,

and the right to join a trade union, which STUC believes are currently under threat in a number of ways across the UK.

A key element when considering rights based policy remains, however, the translation of rights written by Government at a national level into action on the ground in the everyday lives of Scotland's people. Too often there is a disconnect between what is intended and the lived experience of people.

Much of the delivery of human rights outcomes will focus around the suitability and provision of Scotland's public services. The STUC continues to campaign for good quality, well funded public services that are responsive to local need.

While public service staff also have a responsibility for delivering their organisation's human rights obligations, members tell us that there is limited awareness of human rights and that they don't generally operate in a human rights culture. Human Rights are too often viewed as an add on and not integrated into the organisations decision making process. There is also not enough training or capacity building for staff around human rights, and a number of our affiliated unions have tried to fill this gap with specific training or support for their members in areas of concern, for example, UNISON recently produced a Scottish Gypsy Travellers guidance booklet for their members working in the public sector.

It must be recognised, however, that a significant constraint on the realisation of human rights is the spending cuts. These are pushing the boundaries of proportionate responses under human rights law - particularly in areas like care, procurement, personalisation, mental health, housing, fuel poverty and of course welfare reform. With 51,700 fewer public service workers in Scotland since the crash, staff are simply too stretched to give adequate consideration to human rights approaches. Cuts are widening inequality and social exclusion and with an approach that focuses on achieving more for less, targeted and specialised services are often the first to go, to the detriment of the most vulnerable in our society.

It is within this context that Scotland sets out its aim to develop a National Action Plan on human rights. While STUC supports this and supports requirements to embed human rights throughout the public sector, there needs to be a recognition that this approach must include buy in from the highest levels and appropriate support needs to be given to staff to effectively apply it. For this reason we recommend that any proposals in this area should be developed in consultation with public sector unions.

Work

Work plays a key role in our society and is often held up as a way out of poverty. It is recognised as having positive effects on people's self-esteem and mental health and people's jobs are often a key part of their identities. The STUC sees the value of work, and is committed to improving the quality of work and the opportunities

that are available for Scotland's people. It is concerned, however, that there are aspects of how the current labour market functions that can be detrimental to the general wellbeing of Scotland's population and which call into question whether our economy is designed for the benefit of everyone.

Work, Pay and Insecure employment

It is the view of the STUC is that work and pay should be inextricably linked. A well functioning economy should mean that a fair days pay is provided for a fair days work and pay should be sufficient to provide a decent living for workers and their dependants. Currently the STUC believes that we are seeing an erosion of the relationship between work and pay, with the rise of unpaid internships, the increased use of zero hours contracts – even within parts of the public sector – and the introduction of unpaid work schemes for the unemployed. These practices in our view are extremely worrying and question the link between work and pay. They also often make it more difficult for those without a financial cushion in the first instance to gain a foothold in employment.

For those in work, insecurity of employment is also a rising feature of our economy. The UK currently uses more agency workers than other countries – 4.3% of the workforce on any day will work through an agency in the UK, compared to 2.1% in the USA and the Netherlands, 1.3% in Ireland and 0.9% in Germany. Outsourcing also means that supply chains have grown, resulting in a reduction in the numbers of workers in any given workplace who are directly employed and an increase in the opportunities for using agency workers.

The TUC have estimated that there are currently around 2 million vulnerable workers in the UK the majority of whom are in this position due to the way our employment market is designed to function. Temporary agency workers can legally be paid less than directly employed workers doing the same job and seldom have the rights to workplace sick pay, paid holidays or pension contributions. Casual and seasonal staff often find themselves living with daily insecurity, in addition to fewer rights and many more workers are falsely defined as 'self-employed' but do not work with the genuine autonomy of self-employed workers and are denied the most basic protections that other workers enjoy.

These were trends that were already in place before the financial crisis and have only increased since then. Since the coalition Government has come to power at Westminster we have seen a further erosion of employment protection. As part of these reforms the Government has extended the qualifying period for workers seeking unfair dismissal from one year to two, added unfair dismissal cases to the list of those to be heard alone by employment judges and has halved the minimum period for which firms must consult with staff over large-scale collective redundancies, where 100 or more people are at risk of redundancy, from 90 days to 45 days. In addition, employers no longer need to include people working under fixed-term contracts in collective redundancy exercises.

This has increased the insecurity that exists for workers in the labour market and the STUC believes that better regulation is the key to improving performance and supporting workers to make work pay. The levels of insecurity that we are seeing in the workplace are simply unacceptable and with many workers turning to foodbanks or short-term high interest loans to support themselves and their family, it is clear to the STUC that serious questions need to be asked about how the labour market functions.

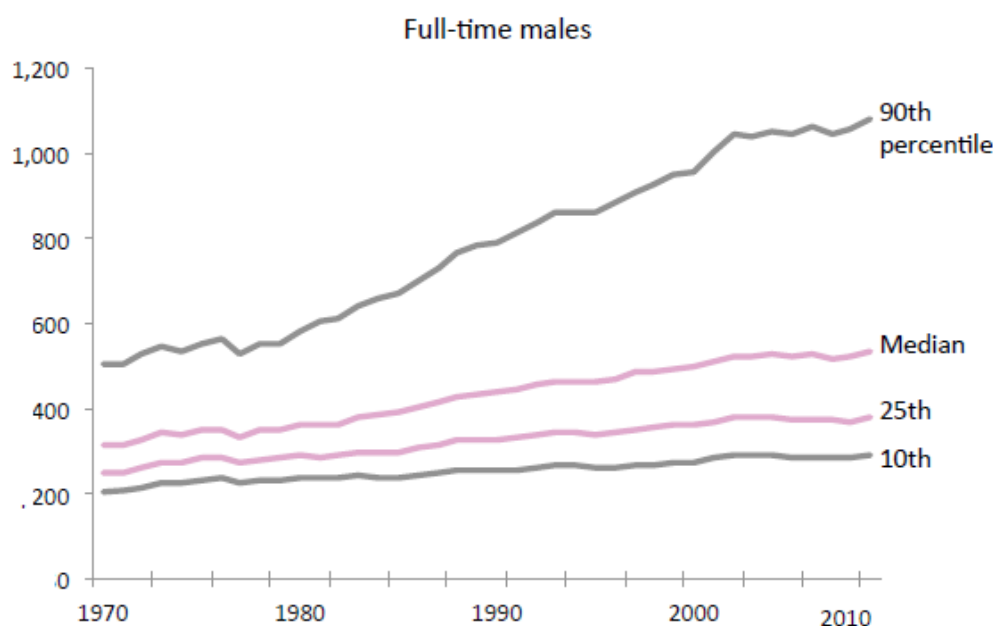
Low Pay and the Living Wage

Over the last 30 years we have seen an increasing polarisation of the jobs market, which is often referred to as the 'hollowing out of the middle'. In this period there has been an increase in the number of professional and managerial jobs which are well paid and an increase in low-skilled, low paid jobs but a decline in middle-skilled jobs paying moderate salaries. In addition two distinct wage economies have developed, where those in the highest paying jobs, roughly the top 0.1% of earners have enjoyed massive wage rises while those lower down the income distribution have seen their wages fall behind. So while median earnings have risen by 40% over the last decade, remuneration packages for chief executives of FTSE100 companies have risen 343%.

Figure 1, below, shows how wage growth varies for workers at different points in the income distribution scale. While wages have grown for all workers across income distributions it is clear that those in the 90th percentile have seen an increasingly higher rate of growth than those lower down the income scale. As the gap between the 90th percentile and the median grows, the fortunes of high and middle income workers in our labour market become increasingly divergent.

Figure 1

GB weekly earnings, full-time employees, constant 2009 prices, controlled for RPI inflation, £ per week



Source Resolution Foundation analysis, ONS, ASHE, indexed using RPI
http://www.resolutionfoundation.org/media/media/downloads/Growth_without_gain_-_Web.pdf

Low pay remains a very real problem across the UK and for hundreds of thousands of workers in Scotland. In response to the problem, a number of living wage campaigns have developed across the UK. Rather than demanding further legislative change, these campaigns have brought demands for a 'living wage' directly to employers both in the public and private sector.

The Scottish Living Wage Campaign (SLWC) is led by the Poverty Alliance and the STUC and supported by the Church of Scotland, Unison, Unite, GMB, PCS, Oxfam and the Child Poverty Action Group. The campaign has played a key role in establishing the principle of a Living Wage in Scotland and has welcomed the introduction of the Living Wage in parts of the public sector. The Scottish Living Wage is £7.45 and calculated using a methodology developed by the Living Wage Foundation and the Centre for Research in Social Policy at Loughborough University who produce the Minimum Income Standard (MIS).

The SLWC believes that the Living Wage benefits employers, employees, communities and the economy more generally. This is particularly the case when household budgets are under pressure with rising energy and food bills and a downward pressure on wages generally. Whilst the rhetoric continues to be about 'making work pay' the reality is that low pay, reductions in the adequacy of terms and conditions, a lack of affordable childcare and the likelihood of increased conditionality and sanctions around benefits are likely to make work unaffordable for many. It should be recognised that a Living Wage is not a panacea. Nevertheless in the context set out above it does at least tip the scales somewhat in favour of hard pressed individuals and families and has a vital role in protecting those on very low incomes.

The Scottish Government introduced the Living Wage for directly employed staff, staff in its agencies and the NHS. In local government more than 20 local authorities have adopted the Living Wage. We expect almost all to have implemented it by the end of 2012-13.

A key issue for the STUC is how to spread the benefits of the living wage to workers in the private sector. One of the key ways to achieve this is through procurement. The STUC and the Scottish Living Wage Campaign have some actions for the Scottish Government around procurement.

- The Scottish Government should use the Procurement Reform Bill to amend the Public Contracts (Scotland) Regulations 2006 to require that the living wage is a part of any contracting authorities bid for a public sector contract.
- The Scottish Government should seek to influence the European Commission to remove any perceived barriers in EU Directives that prevent the inclusion of the living wage in procurement.
- The Scottish Government should establish a Living Wage Unit to advise on, promote and oversee the living wage in the public sector and in procurement.
- The Scottish Government should, in partnership with stakeholders, develop and produce a Code of Practice on promoting the living wage in procurement.

Women and Work

Extensive barriers continue to prevent women's full participation in the labour market and these have often appeared resistant to policy interventions. The gender pay gap persists despite decades of equal pay legislation. Too many industrial sectors exclude half the workforce from skilled jobs whilst bemoaning skill shortages and apprenticeships continue to embed occupational segregation. Women represent 48% of the workforce in Scotland and those women workers are more likely to work in the public sector – 41% of women, compared with 22% of men. Furthermore women remain concentrated in particular occupations - clustered in the five Cs: catering, cleaning, caring, clerical and cashiering. Local government represents 53% of Scotland's total public sector workforce and women make up 67% of that workforce.

Employment levels for women in Scotland are currently 66% - the lowest since 2002. The level of women's unemployment pre recession was 4% - it is now double that figure – 8.3%. During the recession, (Dec 2007- Feb 2008 to Dec 2009 – Feb 2010), men accounted for 70% of the increase in unemployment. However in the recovery phase male unemployment has begun to fall whilst female unemployment has continued to rise so that over the whole period December 2007

to February 2012 men have accounted for 43% of the total increase in unemployment and women 57%.

Women in the Scottish labour market consistently balance family, community and workplace responsibilities by working various shift patterns, including, and perhaps most significantly, part-time working. The most recent statistics indicate a trend of increased part-time working amongst men. For the period Mar 2011 – Mar 2012 the overall number of part time jobs in Scotland increased by 12,554 and 82% of those jobs have been filled by men. If this indicates a shift in gender divisions of labour within the household then this is perhaps a welcoming trend. However for the same period the overall full time jobs in Scotland has fallen by 22,871 – 98% of which have been full time women workers. Thus the more worrying trend may be a displacement effect.

With respect to accessing and sustaining employment we are aware that women face multiple barriers due to direct discrimination. The additional barriers faced by many women with disabilities and women from BME backgrounds, are well documented. We expect further reductions in public sector spending to impact negatively both on jobs in which many women are employed, but also on the infrastructure on which so many people depend to remain in employment themselves.

A key barrier to women accessing the labour market continues to be childcare provision. The Scottish Government has announced further support for childcare and increased the hours available for free but this provision is far shy of what is needed to support women's participation in the labour market. The Westminster Government have also announced more support for parents with purchasing childcare through a voucher scheme. The STUC, however, believes that this is more likely to push up the price of childcare. In order to see real progress on this issue focus needs to be given to the supply of childcare and the development of childcare infrastructure that is good quality, flexible and affordable and meets the needs of parents.

Exploitation of Vulnerable Workers

The research for the Scottish National Action Plan on human rights highlights the fact that there are some workers in our economy that are particularly vulnerable to exploitation. The STUC recognises that migrant workers are often employed on terms and conditions that are below the statutory minimum and workers are also being trafficked into or around Scotland or held in bonded labour. These sorts of practices are clearly severe human rights abuses that need to be eradicated from our society.

It should be recognised however, that the exploitation of workers is most likely to occur in the areas of the economy where indigenous workers are also most at risk. More needs to be done to regulate certain sectors, particularly those that employ a high number of temporary workers. The Temporary and Agency Workers Act,

therefore is an important piece of legislation in this area, however, we remain concerned that these regulations do not apply for the first twelve weeks of employment which creates opportunities for exploitation and places all workers at risk. Equally enforcement of workers' rights across the board, and particularly minimum wage requirements, is extremely weak. In the context of poor regulation abuse will occur.

The Joseph Rowntree Foundation report into forced labour in the UK food industry last year gives a good insight into the position of low paid insecure workers, and highlights the difficulty in drawing a clear distinction between forced labour and the exploitation of vulnerable workers more generally:

“Work is tough, low-paid and insecure; many interviewees barely earned enough to survive. Fear and powerlessness were almost ubiquitous, with ample evidence of workers made to feel expendable and replaceable. Although none were actually coerced into work, this insecurity, allied with material deprivation, made it difficult to distinguish between free and unfree employment relationships.”

The Gangmasters Licensing Authority (GLA) has an important role to play in this area. However STUC is concerned that this body is severely underfunded and therefore struggles to effectively regulate the sectors where it operates. However, it would be beneficial to extend the reach of the GLA (with adequate funding), or create a similar body, to regulate the care, cleaning, hospitality, security and construction sectors which are often identified as employing high numbers of vulnerable workers and where trafficking or other abuses could be occurring.

The STUC also supports the creation of enforceable employment rights that are not dependent on the immigration status of the worker. Enforceable core statutory employment rights for all workers, regardless of their immigration status, will reduce the demand for trafficked workers and provide other migrant workers with the confidence to complain of ill-treatment at work.

The knowledge that all workers are able to enforce rights to the minimum wage or working time limits, for example, would help to discourage unscrupulous employers seeking economic advantage by exploiting undocumented migrants. It would also allow migrant workers to be sure of their situation and access employment rights.

The STUC is also very concerned that current immigration laws do not meet the UK's obligation towards victims of trafficking, as they can be subject to deportation after their 45 day 'reflection period' has ended. (this can be extended to 1 year if they are taking part in a criminal investigation). We see this as a barrier to effectively tackling trafficking, as it discourages victims from seeking help and, therefore, disguises the size and extent of the problem. We are also concerned that this policy can create a cycle of trafficking where victims are deported to their country of origin only to be trafficked back into the UK.

Health and Safety

The STUC sees the right to work in a safe workplace as a basic human right. Too often do we see health and safety being derided or being painted as unnecessary legislation, particularly by the current Government in Westminster, and too many people in Scotland still face serious injury or lose their lives in preventable accidents at work.

The research into the Scottish National Action Plan on human rights highlighted concern about Fatal Accident Inquiries (FAIs) and their relationship with international human rights laws. The STUC shares some concerns around how the FAIs function, and in particular the time it takes for FAIs to provide families with a decision.

Currently bereaved families have to wait until the conclusion of any investigation into the death, until a decision is made to prosecute or not and the outcome of the legal case, before they find out the circumstance leading to and the cause of death. This may come out in Court proceedings where a not guilty plea is tendered and full disclosure of the failures of the defendant and the circumstances are subject to legal debate in the hearing.

However, investigation and prosecution of work related fatalities is time consuming and often result in employers entering guilty pleas followed by a plea in mitigation. As a result, the employer automatically gets a 10% reduction in sentence and the full facts of the case are not disclosed in the Court.

The families then have a further wait to hear if an FAI will take place and for the hearing to take place and it is not unusual for it to take 3 to 4 years from the date of death to the stage where a Sheriff issues a determination.

The STUC believes that FAIs should have a far broader remit than at present. In relation to work related deaths this should include thorough examination of the health and safety culture of an organisation, including management practices in addition to the failures that led directly to the death.

In addition examination of a number of FAI determinations shows an inconsistency in the way Sheriffs approach FAIs including the amount of evidence that the Sheriff deems admissible. In order to achieve consistency STUC has suggested that FAIs should be heard in the Court of Session and be held by a smaller number of Scotland's most experienced Judges.

The STUC is also seeking legal expenses for families, a legal duty to force all employers to act on recommendations in determinations and a number of additional proposals that we believe would lead to a more effective FAI process.

Blacklisting and the Right to Join a Trade Union

A number of companies who collaborated with and financed the blacklisting of workers have walked away without retribution. The STUC would like to see firms

involved in blacklisting apologising to the workers affected and compensating in full those workers and their families, who have suffered as a result of this practice. Currently 520 workers in Scotland who were on the blacklist and denied a living, have yet to be compensated.

Many of the construction firms involved in blacklisting are heavily reliant on public sector contracts and, therefore, the STUC believes that the Scottish Government, its agencies and local government should not offer any new contracts to the offending companies, until compensation is paid and transparency and openness in recruitment is proven.

STUC remains concerned that the existing anti-blacklisting regulations offer no protection and are not fit for purpose, and therefore STUC believes that blacklisting should be made a criminal offence. Furthermore legislation should give workers a basic right not to be blacklisted and a right to be compensated for the fact of being blacklisted.

The STUC believes that the case of blacklisting shows a very worrying attack on the right of workers to join a trade union and to self-organise. STUC remains clear that the right to join a trade union is a fundamental human right and should be protected as such in law.

Welfare Reform

The STUC is concerned about recent welfare reform changes made by the Westminster Government. These reforms are reducing the income of the poorest families in our society and are undoing the work that has gone into reducing child poverty across the UK.

Universal Credit

The UK government has recently introduced major changes to the UK welfare system, legislating for an integrated universal welfare payment. It has also announced or already implemented £16billion a year in benefit cuts. The Universal Credit will replace benefits such as Income Support, Jobseeker's Allowance (contributory and means-tested), Income-related Employment and Support Allowance, Housing Benefit, Council Tax Benefit, Child Tax Credit, Working Tax Credit. The new Universal Credit will operate on a single taper of 65% of net earnings, along with the retention of earnings disregards.

Some of the impacts of these cuts are highlighted by the Scottish Campaign on Welfare Reform (SCoWR) of which STUC is a member. Whilst not opposing in principle the introduction of a universal welfare payment, SCoWR has been highly critical of the actions of this, and previous UK governments.

SCoWR calls for a welfare system that is:

- **Dignified** – treating citizens with respect and compassion, valuing unpaid work and caring roles and recognising the responsibilities of employers and government as well as the public benefits of welfare
- **Supportive** – lifting people well out of poverty, so that everyone is financially protected, whatever their circumstances
- **Well resourced** – providing adequate financial and human resources to ensure the smooth introduction of any reforms
- **Suitable** – taking full account of Scotland’s differing institutional framework from the outset, so that any proposals enable a joined up approach to tackling poverty across the whole of the UK.

Housing

The STUC is particularly concerned about the effect of the ‘bedroom tax’ on families in Scotland. Under these proposals around 105,000 households across Scotland will lose around £14 a week. Many of these households will be at risk of falling into arrears and could potentially become homeless due to this policy.

The STUC believes that these changes call into question the right to housing and are ultimately to the detriment of Scottish society as it will potentially increase the numbers of families that are homeless or at risk of homelessness across Scotland.

Ideally the STUC would like to see the repeal of the ‘bedroom tax’ but as it is now in force in Scotland we are looking to the Scottish Government and individual local authorities to take steps to prevent people from being made homeless as a result of this ‘tax’.

In the longer term the STUC hopes to see the improvement of housing stock across Scotland, with more social housing being built and measures taken to ensure that suitable private rented housing is available and affordable.

Safety and Security

The research into the Scottish National Action Plan raised a number of issues in this area that the STUC feel are important, particularly around the functioning of our asylum and immigration systems and the policing of protests.

Asylum

The STUC is concerned about how the asylum system in the UK functions. In general this system is difficult to navigate and there are a number of examples asylum seekers being mistreated, or their cases being badly handled. Asylum seeking families, including those waiting for an initial decision on their application, often cannot meet their basic subsistence needs on the support provided, which routinely causes poverty and hunger for families across the UK.

The STUC has particular concerns about the treatment of LGBT asylum seekers who can face difficulties establishing their LGBT status to the satisfaction of the UKBA and even when they do manage this they may still be deported as British authorities do not necessarily recognise the well documented persecution of LGBT people in certain countries as grounds for an asylum claim.

The STUC is also concerned about the restriction of humanitarian leave to remain which means that some asylum seekers are being left in the dubious position where their asylum claim has been rejected but the Government is unable to deport them as their country of origin is too dangerous and their human rights would be at risk. These asylum seekers are therefore left in Britain but without the right to work and with 'no recourse to public funds.' There are currently around 100 people in Glasgow in this position who face being made destitute on the streets of Scotland as a result.

The STUC believes that this system is a clear breach of the human rights of the asylum seekers involved and supports the call of the 'Still Human Still Here' campaign to allow these individuals the right to work.

Immigration

The STUC is concerned about the UK Government's cap on migration that aims to reduce net migration from 100,000s to 10,000s. The STUC believes that this policy fails to see the value that migrant workers bring to the economy and the community. We are also concerned that this policy does not consider the needs of the UK economy but rather is driven by a general desire to be seen to control migration, and exploits the legitimate fears and insecurities that many people feel within their own working lives.

The STUC is also concerned about the rule change which introduces a minimum income threshold for sponsoring the settlement in the UK of a partner from outside the European Economic Area (EEA). A threshold of £18,600 rising to £22,400 for one child with an extra £2,400 for each additional child, places a substantial income bar on the right to family life.

These rule changes mean that around 47% of the working population of the UK are now barred from bringing their partner to the UK meaning that half the working population effectively no longer has the freedom to choose their own partner and enjoy the right family life.

The STUC was also concerned when the UK government changed the rules regarding domestic workers (tier 5 workers). From 6 April 2012, new domestic workers in private households can only stay in the UK for a maximum of six months and cannot change employer. Given that the right to permanent settlement and the right to change employer was introduced to tackle trafficking and the severe levels of abuse that domestic workers are often subjected to, this change is likely to have serious effects on the lives of workers. We are concerned that not enough

is being done to monitor the effect of this change by either the UK or Scottish Governments.

Policing and the Right to Protest

The STUC has been concerned about practical restrictions to the right to protest and the increasing difficulty that exists in accessing public spaces for this purpose. Increasingly, public authorities have a tendency to cite practical objections to the use of certain muster points and march routes which rely less on specific considerations such as health and safety and more on perceived inconvenience to members of the general public as well as 'commercial disruption'. STUC and its member organisations accept the need to organise safe, peaceful and effectively managed events but care must be taken to ensure that the public right to protest is not inhibited by bureaucratic means.

In some areas of Scotland there is a particular concern that precautions deemed necessary to regulate events organised by member organisations with specific traditional aims, such as the Orange Order, are conflated with and used to regulate events, such as those organised by trade unions which are of a different public nature and with different risks attached with respect to the causing of offence or other disruption.

Access to Justice

The STUC is concerned about the UK Government's attacks on the rights of workers to use employment tribunals and believes that Government policy has and will result in a shift in power in the workplace away from workers and to employers by:

- increasing the qualifying periods to be able to take claims to an employment tribunal from one year to two years;
- introducing fees for most employment tribunals cases, including unfair dismissal and discrimination claims, with £250 to lodge a claim and £950 to go to a hearing, which will deter and price out workers from being able to make claims; and which will impose significant additional costs on unions, not only in seeking to support individual tribunal claims, but also collective tribunal actions involving large numbers of members;
- reducing the maximum compensatory award to median pay or one year's pay, whichever is lower, which will not only disproportionately affect lower earners, but deny fuller compensation, such as the inclusion of lost pension payments; and by
- weakening the fairness and quality of tribunals through judges sitting alone and removing lay members from employment appeal tribunals.

The STUC also believes that there has been a growth in 'advice deserts' as the closure of the EHRC's legal grants programme and cuts to legal aid are felt. Since

2009, the EHRC has provided £14m in grant funding to 285 frontline organisations including Citizen's Advice Bureaux, Law Centres, Race Equality Councils, and the Disability Law Service. This funding has supported specialist discrimination advice and casework as well as education and information on equality and human rights. Most of it has now ceased and the remainder will end in April 2013.

In Scotland legal aid is devolved to the Scottish Parliament. Despite this there was little analysis or discussion of how the specific legal aid regime in Scotland would cope with the change in approach at UK level. The STUC has a general concern that an already pressurised legal aid budget will be unable to absorb the extra responsibility of supporting discrimination cases.

It must also be recognised that access to private lawyers that can take equality cases is not always available. There is a particular issue in some rural areas of Scotland around access to solicitors, as equality is a specialist area and law society rules dictate that only specialist solicitors can take on these cases. Therefore in many rural areas of Scotland there are simply no private solicitors who are able to take on discrimination cases. The legal advice and advocacy that the EHRC provided through its funding allowed some of these issues to be tackled as it could direct services to areas where there was a shortage of supply in the private sector.

If an individual does make it to the point of complaining to a tribunal, from summer 2013 they will have to pay. The STUC's response to the UK Government's consultation on Charging Fees in Employment Tribunals and Employment Appeals Tribunals raised concerns around the effects that the proposals to introduce fees would have on lower paid and part time workers, women, young people, Disabled and BME workers, particularly when taking costly and complex discrimination claims.

The STUC is concerned about the effect that all these changes will ultimately have on the access to justice of workers facing discrimination or harassment at work.

The STUC is currently considering options for supporting the devolving of administration functions of employment tribunals and considering whether this would provide opportunities to ensure fees and other detrimental legislation permitting to employment tribunals, are not introduced in Scotland.

STUC

April 2013

Name: ORG-0053a-Scottish Association for Mental Health-000

Based on the evidence presented in the report *Getting it right? Human rights in Scotland*, or your own experience, what do you consider to be the most urgent human rights issues which should be addressed in Scotland's National Action Plan for Human Rights?

The report presents a wide range of human rights issues arising within eight thematic areas, each of which are highly relevant to mental health and wellbeing. The key issues raised under each theme are also consistent with those which SAMH has identified as currently impacting on the realisation of human rights across Scotland. We are pleased that a number of our concerns and calls for action have been cited within the report and hope that these will help to inform discussions on the development of Scotland's National Action Plan (SNAP). In this response, we do not wish to reiterate specific concerns but rather outline the overarching issues which SAMH believes SNAP could help address and the ways in which we believe this change could be best achieved.

Inequalities in mental health arise not only through broad social factors such as poverty and discrimination, but also through the delivery of mental health services which may incorporate the discrimination of wider society and create inequalities of access to care. Across the public sector in Scotland, there is an absence of evidence that human rights have been used as an ethos, both corporately and by individual staff, and as a framework to improve the delivery of public services. However, where human rights are integrated into the delivery of public services the benefits are clear.

Within the health care context, SAMH believes that meaningful action to improve mental health services and promote mental wellbeing would bring about major improvements for individuals and their families. For example, through a rights based approach individuals would be actively supported in their recovery and enabled to continue or find employment, move out of poverty and provide their children with the right social and emotional environment to flourish, whilst also participating in community life and contributing to the economy. There is already some positive work happening in this regard but SAMH believes more remains to be done as work in this area is rarely seen or prioritised as a fundamental human rights issue.

Outside the health care context, the stigma and misconceptions associated with mental health problems mean that many people experiencing them are often marginalised and ostracised from society. There is evidence that people who have experience of mental health problems can be excluded from community life and discriminated against in the fields of employment, education, welfare and justice. As a consequence, many people with experience of mental health problems are living in poverty which in turn affects their ability to gain access to appropriate care, integrate into society and move towards their recovery. SAMH believes strongly that mental ill-health should not be a passport to poorer life prospects but all too often this is what happens. We therefore believe that much more remains

to be done to ensure that people experiencing mental health problems are fully able to exercise their human rights and enjoy equality of opportunity.

SNAP could also help to foster the wide range of positive socioeconomic conditions necessary for people to lead healthy lives; this includes the underlying determinants of individual mental health. For example, by prioritising action to reduce social, environmental and economic inequalities and secure sustained investment in people and communities. We must not only seek to prevent future inequalities but also to reduce existing inequalities and prevent them getting wider.

SAMH believes that human rights are indivisible, interrelated and interdependent. The improvement of one right facilitates advancement of the others. Likewise, the deprivation of one right adversely affects the others. As such, it is extremely difficult to identify a particular human rights issue or a thematic area as a stand alone priority. In developing Scotland's National Action Plan for Human Rights, we should seek to avoid any approach which might create a hierarchy of rights or favor the realisation of one group's rights over another's. Each thematic area is of critical importance and SAMH would like to see equalities considerations – equality in itself being a fundamental human rights principle – mainstreamed throughout SNAP.

What specific and achievable actions do you consider would best address the concerns you identify in your response to question 1?

Advancing human rights in Scotland requires an approach which engages people throughout Scottish society. The people of Scotland need to accept and understand that they have human rights which require to be protected and respected by the State. Furthermore, government and public services need to mainstream human rights into service design and delivery and focus on establishing a human rights culture with all our public institutions and agencies. For this to happen, the culture must change and many people, both as individuals and as employees in the public and private sectors will have to develop an awareness of human rights. SAMH believes that people must be clear that SNAP is about rights and not privileges, and that we are all equally entitled to respect for, and delivery of, our human rights.

SAMH believes there are a number of achievable actions which could help to bring about this change, including enshrining all the UN Conventions to which the UK is party to into Scottish law. This would help ensure the full and equal enjoyment of everyone's human rights in Scotland. The ICESCR explicitly acknowledges the right to the highest attainable standard of physical and mental health and imposes a continuing obligation on states to work towards the progressive realisation of this right.

Mental health problems are also covered by the UN definition of disability and the UN Convention on the Rights of Persons with Disabilities sets out a wide range of rights including, among others, civil and political rights, the right to live in the

community, participation and inclusion, education, health, employment and social protection. However, to date neither the ICESCR nor CRPD have been incorporated into domestic law and do not appear to have played a central role in the development of policy and practice.

However, SAMH is also aware that legislation alone will not be enough to protect the human rights of individuals. As the 'Getting it Right' report identifies, whilst human rights may be referenced within Scottish laws this has not come to be reflected in the enactment of policies and procedures or peoples' day-to-day lives. We must ensure that the human rights of people in Scotland are promoted and protected when they are accessing all levels of public services. Achieving this will require that local authorities and the public sector adopt a human rights framework for policies and services as outlined above. By doing this, we can begin to drive up standards and encourage best practice.

SAMH was extremely pleased that the Mental Health Strategy for Scotland 2012-2015 included a commitment that the Government will work with the SHRC and the Mental Welfare Commission to develop and increase the focus on rights as a key component of mental health care in Scotland. We would like to see similar commitments made within other policies and strategies, such as the work ongoing regarding the Integration of Health and Social Care. Placing human rights at the heart of public service reform would help to ensure that the primary focus is truly on the individual patient or service user. This also links to the effectiveness of mechanisms used to ensure that human rights feature in the work of the Scottish Parliament; such as statements of compatibility and a mainstreaming approach across its committees. SAMH believes there would also be value in the creation of a specialist parliamentary committee with a specific remit to discuss human rights issues and ensure compliance.

In Scotland, human rights have been largely missing from standard setting and performance monitoring mechanisms at both a national and local level. This makes the process of monitoring and accountability extremely difficult. In particular, Single Outcome Agreements are intended to be part of a drive towards the delivery of better outcomes and a vehicle for transformational change but do not currently include specific human rights outcomes. SAMH believes that explicitly incorporating human rights into such agreements would help ensure a strategic approach to the advancement of human rights across Scotland, as well as encouraging partners to work together to identify key areas for improvement.

Another major barrier to the realisation of human rights in Scotland is the low level of awareness of human rights amongst the general population. Furthermore, negative myths and damaging misconceptions about human rights are perpetuated by Scottish and UK media. This is not helped by the fact that the language of human rights is often legalistic and debates around human rights have focused on highly divisive and politicised issues. All of these factors mitigate against people developing an understanding of human rights or indeed accessing their human rights. Because of these factors SAMH believes that there is an urgent need for a

hearts and minds approach to explaining human rights and the fact that they belong to us all and should be part of the weft and weave of our everyday lives. Partners across all sectors as well as people living and working in our communities should be involved and united in efforts to educate and change public attitudes towards human rights. SAMH believes this is an area which will require significant attention and investment and should be a priority within SNAP.

As a final point, SAMH would like to state that empowering people and communities will be a key component in securing and advancing people's human rights and believes that more could be done to involve people in decision-making processes and directly involve them in the design and implementation of human rights based policies, plans, laws and services.

Question 1: Based on the evidence presented in the report *Getting it right? Human rights in Scotland*, or your own experience, what do you consider to be the most urgent human rights issues which should be addressed in Scotland's National Action Plan for Human Rights?

Response

It is considered that the issues outlined in the report relevant to the Scottish Borders Council are being addressed by the Council's Equality Mainstream Report, which is to be published later in April 2013. This builds on the Council's approved Equalities Scheme and Outcomes.

Scottish Borders Council's approach to equalities addresses all the protected characteristics under the Equality Act 2010 and also goes further to encompass, human rights, poverty and social exclusion.

This is in line with our corporate vision and current legislation. The 'equality strands or protected characteristics' (as set out in the Equality Act 2010) are:

- Age,
- Disability,
- Gender,
- Marriage and Civil Partnership,
- Pregnancy and Maternity,
- Race,
- Religion or Belief, and
- Sexual Orientation.

The reasons we have taken this approach are:

- A recognition that inequalities are rarely experienced in isolation, but are often interdependent.
- A requirement to focus on the 'whole picture' when planning and delivering services.
- A determination to treat all service users, clients and staff with dignity and respect.
- A commitment to making the most of resources and investment.
- A recognition that the principles of human rights apply to equality is an important factor in the production of this scheme and is vital to achieving our aims and objectives which are outlined in our outcome plan.

Addressing things in this way can only make for a better service for everyone, with service users' and employees' experiences reflecting the core human rights principles of:

- Fairness
- Respect
- Equality
- Dignity &
- Autonomy.

Scottish Borders Council has adopted the following set of equality outcomes and these are also being used in the development of the Scottish Borders Single Outcome Agreement by the Scottish Borders Community Planning Partnership.

	<u>Outcome</u>
	We are seen as an inclusive and equal opportunities employer where all members of staff feel valued and respected and our workforce reflects our community.
	Our services meet the needs of and are accessible to all members of our community and our staff treat all service users, clients and colleagues with dignity and respect.
	Everyone has the opportunity to participate in public life and the democratic process.
	We work in partnership with other agencies and stakeholders to ensure that our communities are cohesive and there are fewer people living in poverty.
	Our citizens have the freedom to make their own choices and are able to lead independent, healthy lives as responsible citizens.
	The difference in rates of employment between the general

	population and those from under represented groups is improved.
	The difference in educational attainment between those who are from an equality group and those who are not is improved.
	We have appropriate accommodation which meets the requirements of our diverse community.

Question 2: What specific and achievable actions do you consider would best address the concerns you identify in your response to question 1?

Response

It is important that Scottish Borders Council and other public bodies are given as much support as possible to implement their Equality Mainstreaming reports and Equality Schemes.

It is important that Community Planning Partnerships across Scotland are working to a set of equality outcomes that includes human rights. A critical part of this work is ensuring that all policies, programmes, projects etc affecting people are properly impact assessed from an equalities and human rights perspective.

SHAPING SCOTLAND'S FIRST NATIONAL ACTION PLAN FOR HUMAN RIGHTS (SNAP)

Submission for Participation Process

Based on the evidence presented in the report *Getting it right? Human rights in Scotland*, or your own experience, what do you consider to be the most urgent human rights issues which should be addressed in Scotland's National Action Plan for Human Rights?

Having considered the evidence in the *Getting it right? Human rights in Scotland* report, we consider the most urgent human rights issues which should be addressed in Scotland's National Action Plan for Human Rights to be:

- Issues associated with deprivation and poverty levels
- Healthcare including matters relating to dignity and care, the quality of health and care services, and Carer's rights

What specific and achievable actions do you consider would best address the concerns you identify in your response to question 1?

- Engagement and purposeful dialogue with those who can address Human Rights issues and those whose rights could be affected
- Full political discussion at national level, where required, on specific Human Rights matters
- Sharing of best practice in dealing with Human Rights issues
- As mentioned in the *Getting it right? Human rights in Scotland* report, public service reform presents clear synergies and opportunities for the integration of a human rights based approach. This is reinforced by the current work being undertaken by Scotland's public authorities regarding the General Duty and Specific Duties required under The Equality Act 2010.
- The current process of equality impact assessment (as outlined in the Equality Act 2010) could be extended to include Human Rights impact assessment on all new or revised policies, changes to practice and budget savings proposals across Scotland's public bodies.
- Advice and guidance from the Scottish Human Rights Commission for those with responsibilities for improving outcomes for people and communities.

Name: ORG-0056a-Children1st-000

Based on the evidence presented in the report *Getting it right? Human rights in Scotland*, or your own experience, what do you consider to be the most urgent human rights issues which should be addressed in Scotland's National Action Plan for Human Rights?

At CHILDREN 1ST, we listen, we support and we take action to secure a brighter future for Scotland's vulnerable children. Our work is built on over 125 years experience as the RSSPCC. By working together with, and listening to children, young people, their families and communities, and by influencing public policy and opinion; we help to change the lives of vulnerable children and young people for the better. We work to safeguard children and young people, to support them within their families and to help them to recover from abuse, neglect and violence. CHILDREN 1ST has 46 local services and four national services across Scotland, and we work closely with many local authorities as well as working in partnership with other organisations. All our services are child centred. The children, young people and families we support are key partners in all aspects of our work.

Unsurprisingly, CHILDREN 1ST is most concerned with human rights issues related to children and young people, and we concur entirely with the response made by Together.

We would prioritise the following issues:

- Full incorporation of the UNCRC in Scottish domestic law
- The UK signing up to and ratifying the third Optional Protocol (OP) of the UNCRC
- Child rights training for all professionals and practitioners working in universal and specialist roles with children, young people and families
- Scottish Government honouring its commitment to conduct a Child Rights Impact Assessment (CRIA) of all appropriate legislative and policy developments

CHILDREN 1ST, as a long standing, leading member of Children Are Unbeatable! (Scotland), believes it is now a matter of urgency and highest priority that the Scottish Government provides equal protection from assault under law for children. The Scottish Government's ambition is for '*Scotland to be the best place in the world for children to grow up*'. That ambition is unrealistic as long as the law justifies the assault of children and they are treated differently in law and in practice from adults. Simple legal reform will send a clear message that hitting children is as unacceptable and unlawful as hitting anyone else.

Adults have the right to hit children in Scotland if the assault is delivered as a physical punishment and the adult is a parent, carer or has control of the child. A child is defined as a person under the age of 16 years. This is a human rights issue and the State must change the law.

The adult is protected from prosecution for assault if s/he explains that it is “justifiable assault” as permitted under S51 of the Criminal Justice (Scotland) Act 2003. The existence of this legal defence is a consistent violation of children’s rights in Scotland and the defence should be removed. The effect would be to give children the same protection from assault as adults currently enjoy and send out a clear message to adults that hitting is never a solution to a problem. A zero tolerance approach to violence is consistent with Scotland’s drive to reduce violence across our society including in the home, in the street and in communities in urban and rural Scotland.

In the European Union, 17 of the 26 states have achieved full prohibition and a further seven are moving towards full prohibition. Just four states have yet to commit to law reform: the UK, Belgium, France and Malta. Nineteen countries in Europe now give children equal protection: Austria (1989), Bulgaria (2000), Croatia (1999), Cyprus (1994), Denmark (1997), Finland (1983), Germany (2000), Greece (2006), Hungary (2004), Iceland (2003), Italy (1996 by supreme court ruling), Latvia (1998), Netherlands (2007), Norway (1987), Portugal (2007), Romania (2004), Spain (2007), Sweden (1979) and Ukraine (2004).

The UN has repeatedly recommended that the UK and Scotland change its laws:

- In October 2008, the United Nations Committee on the Rights of the Child stated in its concluding observations on the UK: “The Committee is concerned at the failure of State party to explicitly prohibit all corporal punishment in the home and emphasises its view that the existence of any defence in cases of corporal punishment of children does not comply with the principles and provisions of the Convention, since it would suggest that some forms of corporal punishment are acceptable.” In June 2006, the United Nations Committee on the Rights of the Child said that giving children equal protection from assault is “an immediate and unqualified obligation” under the Convention on the Rights of the Child (UNCRC).
- In May 2009, when assessing UK compliance with the UN Convention on Economic, Social and Cultural Rights “The Committee reiterated its
- recommendation that physical punishment of children in the home be prohibited by law”.
- In May 2012 the UK’s human rights record was examined by the UN Human Rights Council and Sweden, Finland, Norway and Hungary recommended that the UK must ensure the freedom of children from corporal punishment, in accordance with the UNCRC.

Removing the defence of ‘justifiable assault’ is an urgent human rights issue that should be addressed in Scotland’s National Action Plan for Human Rights. The issue exposes the contradiction between public policy in favour of children’s rights and on zero tolerance on violence in the home with a law permitting adults assaulting children if the ‘assault’ is a physical punishment – noting that the use of

implements, delivering blows to the head and shaking would not usually be permitted. CHILDREN 1ST believes this issue must be specifically addressed in a national human rights action plan and it must be clearly stated that action to fix this problem can be undertaken by the Scottish Government and the Scottish Parliament in the forthcoming Children and Young People Bill and/or in the Criminal Justice Bill which are expected to be published in 2013.

CHILDREN 1ST, as an individual organisation and as members of various coalitions including

Justice for Children and Together, is keen to work with the Scottish Human Rights Commission on the implementation of SNAP and identifying how we can take collective action in furthering children's rights.

What specific and achievable actions do you consider would best address the concerns you identify in your response to question 1?

- SNAP should outline a roadmap towards the full incorporation of the UNCRC into Scots law.
- SNAP should outline the Scottish Government's commitment to take forward its support for signing the Optional Protocol. The Scottish and UK Government should provide a roadmap indicating the timescale and process involved with regards to ratification.
- SNAP should outline a comprehensive strategy through which the Scottish Government can take forward its commitment to promote and raise awareness of the UNCRC among professionals. This should include ensuring that all organisations working with and for children provide child rights training in line with the Common Core's skills, knowledge, values and understanding.
- SNAP should outline a process whereby the use of CRIAs can be developed and implemented alongside Human Rights Impact Assessments.
- SNAP should outline a strategy through which all levels of Government will listen to the views of children and young people in policy-making and services. Specifically relating to access to advocacy, the Scottish Government should take forward and implement actions resulting from the consultation on *'Improving Advocacy Support for Children and Young People: principles and minimum standards'* in order to ensure that children and young people have access to high quality advocacy when they need it.
- SNAP should outline a timescale in which the Scottish Government gives children equal protection from assault in law and to commit to providing information and support to parents and organisations providing support to families.
- Actions relating to looked after children and young people in SNAP should:
 - Be underpinned by a children's rights framework and show how they will produce tangible outcomes;

- Encourage collective responsibility for looked after children;
- Closely monitor and evaluate the effectiveness of corporate parenting strategies.

For more information about CHILDREN 1ST or Justice for Children, or any of our national or local services, contact the policy team at policy@children1st.org.uk or on 0131 446 2310.

Name: ORG-0058a-SCLD-000

SCLD is a Centre for Excellence funded by the Scottish Government and is made up of 12 partner organisations. Our mission is to work in partnership with people with learning disabilities, people on the autism spectrum and family carers to challenge discrimination and to develop and share good practice. SCLD's goal is an inclusive Scotland where everyone is valued and respected for who they are and what they contribute as equal citizens.

SCLD's partner organisations include 12 third sector organisations and universities: Association for Real Change (ARC), British Institute for Learning Disabilities (BILD), Badaguish Outdoor Centre, Capability Scotland, Central Advocacy Partners, Down's Syndrome Scotland, ENABLE Scotland, Key, PAMIS and the Universities of Dundee, Glasgow and St Andrews.

Based on the evidence presented in the 'Getting it Right? Human Rights in Scotland', or your own experiences, what do you consider to be the most urgent human rights issues which should be addressed in Scotland's National Action Plan for Human Rights?

SCLD welcomes the Scottish Human Rights Commission's 'Getting it Right?' report, which is a comprehensive account of the human rights issues which are facing people with learning disabilities in Scotland today.

SCLD also strongly endorses the approach of formulating a National Action Plan for human rights in Scotland, which is able to engage multiple stakeholders and effect meaningful change.

SCLD notes that the human rights issues facing people with learning disabilities in Scotland span across the whole spectrum of civil, political and economic, social and cultural rights, these latter representing many of the ambitions which people with learning disabilities have for their lives, for example, the right to work, the right to live independently and participate in society. Furthermore, SCLD recognises the indivisibility and interdependence of these rights.

Two groups of people with learning disabilities were consulted when thinking about which human rights issues to draw attention to for the purposes of the SNAP. One was the KEY Politics Group and the other was SCLD's Human Rights Reference Group. Both groups spoke about a number of issues but both were extremely concerned by discrimination and prejudice towards people with learning disabilities and disabled people in general. In particular, the groups highlighted the issue of disability hate crime and harassment, which people with learning disabilities can often experience as a matter of course in their day to day lives. The Equality and Human Rights Commission has recently undertaken research into this issue and made recommendations for public authorities. There has also been recent case law at the European Court of Human Rights indicating that a failure to

respond appropriately to disability related hate crime can constitute a breach of ECHR/HRA Articles 3 and 8 rights.

As an organisation, SCLD would also highlight the following human rights issues for consideration by the Commission:

- **Independent living** underpins the Scottish Government's policy and strategy towards disabled people. However, both research and the recent JCHR inquiry into the right to independent living has consistently found that disabled people do not have the same opportunities to live, work, travel, socialise and participate in their communities as their peers. For example, the eSAY statistics about people with learning disabilities in Scotland show that only 9% of people with learning disabilities are in employment, compared with 71% of the general population.
- **Changes to the welfare system** and reductions in local authority budgets threaten the right to independent living in the community as they jeopardise the supports which people with learning disabilities need for the fulfilment of this right.
- **Self-directed support** provides opportunities for people with learning disabilities and their families to have greater choice and control in their lives. However, we note that implementation of self-directed support has been patchy across Scotland and that many people with learning disabilities and their families feel that they have not had sufficient information and support to make meaningful choices about self-directed support. Furthermore, SCLD notes that, contrary to the aim and purpose of the SDS legislation, there is anecdotal evidence that some families are seeking guardianship orders in response to the introduction of SDS. SCLD recognizes the commitment of family members towards the people they care for and support and acknowledges that an application for guardianship is almost always well-motivated. However, we note that guardianship is a severe restriction upon the autonomy and freedom of a person and that it should be sought only when appropriate, and according to the principles of the Adults with Incapacity Act, as the least restrictive option.
- **Guardianship orders** - SCLD is concerned that during the processes of seeking guardianship there are few opportunities for the person with learning disabilities to be supported to understand the process and to be supported to speak out, for example via an advocate. Furthermore, even where guardianship may represent a proportionate option for supporting a person with learning disabilities to live their life, the powers sought under guardianship orders or the length of time for

which orders are valid can represent a disproportionate interference with an individual's freedom. Some investigation into alternative forms of support, such as supported decision making, may be a good option for the future.

- **Right to private, home and family life.** People with learning disabilities often identify building friendships and relationships as one of their top priorities. However, it can be difficult for people with learning disabilities to develop and sustain meaningful friendships, and there are many barriers to people forming safe and loving romantic and sexual relationships.
- People with learning disabilities who are parents are often subject to assumptions about their skills, knowledge and capacities and work by SCLD and our partners in the Parenting Network suggests that over half of parents with learning disabilities will be separated from their children. This is in spite of the fact that the European Court of Human Rights has held that the failure of public authorities to support parents with learning disabilities appropriately is in breach of ECHR/HRA Article 8.
- It should be noted that research has consistently found that people with learning disabilities, particularly women with learning disabilities, are vulnerable to gender-based violence and sexual abuse. People with learning disabilities should be assumed to have the same sexual and reproductive rights as other people in Scotland.
- **Right to liberty and security.** The Scottish Law Commission recently consulted on the issue of whether people with learning disabilities who lack capacity and live in residential care are experiencing a breach of their ECHR/HRA Article 5 Rights.
- **Right to be free from cruel, inhuman and degrading treatment** The BBC undertook an undercover documentary at Winterbourne View, a private hospital for people with learning disabilities, which showed members of staff physically and verbally assaulting the individuals who lived there. The programme raised questions about the appropriateness of commissioning institutional care far from home and segregated from the community for people with learning disabilities.
- **What specific and achievable actions do you consider would best address the concerns you identify in your responses?**
- To effect meaningful change, people with learning disabilities must be acknowledged as experts in their own lives and must be

included in decisions which affect them, whether at individual level or on a larger scale. Co-production, which is a process for sharing power and making decisions together as equal partners, can often help to make good decisions which respect the rights of people with learning disabilities. However, co-production has its own challenges. It rarely happens to the timescale which organisations are working to and it is often a more costly process than organisations anticipate. It is important for people with learning disabilities to have time, support, accessible information and the chance to talk through their ideas.

- Scottish Government commitment to take a human-rights based approach to policy for and about people with learning disabilities, incorporating in particular the UN Convention on the Rights of Person with Disabilities and using this a foundation for good outcomes for people with learning disabilities.
- Scottish Government to build its own capacity and the capacity of other public sector organisations including the NHS, local authorities and relevant inspection bodies to take a human rights based approach and to work inclusively and co-productively with people with learning disabilities, with a commitment to sharing power and decision making.

Name: ORG-0057a-ROCK-000

The Rights of the Child UK (ROCK) coalition is a group of voluntary organisations and individuals from across the UK pushing for the full incorporation of the United Nations Convention on the Rights of the Child (UNCRC) into domestic law.

This submission may not reflect the views of every member of ROCK.

The organisational members of the ROCK coalition are as follows (a list of individual members is available on request).

- Article 12 in Scotland
- British Humanist Association
- Centre for Studies on Inclusive Education
- Children are Unbeatable
- Children in Wales
- Children's Rights Alliance for England
- The Children's Society
- Coram Children's Legal Centre
- CRIN (Child Rights Information Network)
- ECPAT UK
- Fatherhood Institute
- Garden Court Chambers
- Howard League for Penal Reform
- National Children's Bureau (NCB)
- National Youth Agency (NYA)
- NSPCC
- NYAS
- Just Fair
- Royal College of Paediatrics and Child Health
- Save the Children
- Save the Children Scotland
- Scope
- Sefton CVS
- Shelter
- TACT
- Together – Scottish Alliance for Children's Rights
- UNICEF UK
- Voice
- Who Cares? Scotland
- Young Minds

Based on the evidence presented in the report Getting it right? Human rights in Scotland, or your own experience, what do you consider to be the most urgent human rights issues which should be addressed in Scotland's National Action Plan for Human Rights?

1. *Incorporate the UNCRC into Scots Law*

The UN Convention on the Rights of the Child (UNCRC) already imposes binding obligations on the Scottish Government. Although it is not yet part of domestic law, international law requires that Ministers should comply with the UNCRC when making any decision that affects children and young people under the age of 18, just as they are bound by the Convention on the Rights of Persons with a Disability, the International Covenants on Civil and Political Rights and on Economic and Social Rights and all other international treaties ratified by the UK.

In addition, the UN Committee on the Rights of the Child is clear that it expects governments to take all appropriate measures to give the UNCRC legal effect within domestic law and has twice recommended that the principles and provisions of the UNCRC be fully incorporated into law across the UK. The UN Committee favours direct and full incorporation as a method of implementation, thus giving full legal effect to the binding commitments made by Governments when ratifying the UNCRC. At the 2012 UK Universal Periodic Review (UPR) reporting round, Slovakia recommended that the UK incorporate fully, as a matter of urgency, the UNCRC into domestic law.

In 2011, ROCK laid out the arguments for UNCRC incorporation in the UK. *‘The model of incorporation the UK chooses must allow the Convention to become a more powerful instrument for positive change for all children, and particularly for the most vulnerable. Direct incorporation offers children the strongest possible protection of their rights, requiring all public authorities and others to recognise the civil, political, economic, social and cultural rights set out in the Convention, and ensuring every decision they make will be based on the best interests of the child.’* This remains our objective for the UK.

For incorporation to be effective, it needs to be accompanied by a series of non-legal measures of implementation, including the systematic consideration of the UNCRC (ie Child Rights Impact Assessment) by the Scottish Government when making any decisions affecting children and young people. It must also provide a means for children to obtain redress through the courts where obligations are not being met, and where progress cannot be made through other means. The Scottish Government’s recent consultation on the Children and Young People (Scotland) Bill put forward a number of positive policy proposals that would further the implementation of the UNCRC in Scotland, including a duty on Ministers to take *‘appropriate steps to further the rights of children and young people.’* This ministerial duty is, however, a watered-down version of an earlier proposal from the Scottish Government to place a duty on Scottish Ministers to pay ‘due regard’ to the UNCRC in all of their functions – an option that the Scottish Human Rights Commission (SHRC) said was *‘not an alternative to incorporation’* in its *Getting it Right? Human Rights in Scotland* report. If ‘due regard’ is no alternative to incorporation, then a duty to ‘take appropriate steps’ is even weaker and of questionable value.

A UNICEF UK report launched in January 2013 looks at the implementation of the UNCRC in 12 countries beyond the UK. It concludes that the process of incorporation raises awareness of children’s rights in Government and civil society;

increases the likelihood that children are perceived as rights holders, and over time generates a culture of respect for children's rights. The main value of UNCRC incorporation was seen to be *'the strong message it conveyed about the status of children and children's rights, and the knock-on effects for implementation of children's rights principles into domestic law and policy.'*

1.2. Ratify the Optional Protocol on the UNCRC complaints mechanism

The third Optional Protocol (OP) of the UNCRC is a communications procedure to allow individual children to submit complaints to the UN Committee regarding specific violations of their rights. It opened for signature on 28th February 2012 and thus far, 35 states have signed and a further three have ratified the OP. At the 2012 UPR reporting round, Slovakia urged the UK to ratify the third OP, a recommendation that was also made in Together's 2012 *State of Children's Rights report*.

What specific and achievable actions do you consider would best address the concerns you identify in your response to question 1?

The following specific and achievable actions would best address the issues raised in questions 1:

1. Outline a roadmap towards the full incorporation of the UNCRC into Scots law, with the starting point the children's rights provisions in the Children and Young People Act.
2. Outline the Scottish Government's commitment to take forward its support for signing the Optional Protocol, including a roadmap indicating the timescale and process involved with regards to ratification at a UK level.
3. Ensure the UNCRC is enshrined in any future Scottish constitution.

1. Based on the evidence presented in the report Getting it right? Human rights in Scotland, or your own experience, what do you consider to be the most urgent human rights issues which should be addressed in Scotland's National Action Plan for Human Rights?

PRESERVATION OF THE RIGHT TO FREEDOM OF PEACEFUL
PUBLIC ASSEMBLY

2. What specific and achievable actions do you consider would best address the concerns you identify in your response to question 1?

SCOTTISH MINISTERS AND LOCAL AUTHORITIES TO BE
INFORMED OF THE VIEWS OF THE UN
RAPORTEUR ON THE FREEDOM OF PEACEFUL PUBLIC
ASSEMBLY

Name: ORG-0062a-ScientologySco-000

Based on the evidence presented in the report Getting it right? Human rights in Scotland, or your own experience, what do you consider to be the most urgent human rights issues which should be addressed in Scotland's National Action Plan for Human Rights?

The education of all people who wish human rights to work in an Independent Scotland

What specific and achievable actions do you consider would best address the concerns you identify in your response to question 1?

To offer free Human Rights education in the Schools and also in community education groups and have it certificated so as to have a use in furthering the peoples abilities in life and create a harmonious work and home environment where people can feel safe.

ORG-0006a-name redacted submission confidential-101
ORG-0009a-name redacted submission confidential-100
ORG-0012a-LGBT Youth Scotland submission confidential-100
ORG-0013a-name redacted submission confidential-100
ORG-0017a-name redacted submission confidential-101
ORG-0034a-name redacted submission confidential-100
ORG-0059a-name redacted submission confidential-100
ORG-0061a-KEY submission confidential-100

Name: INV-001a-KTainsh-000

Education and Work

- In the absence of heavy industry nationally and in the foreseeable future, I believe that there is an urgent need to facilitate the concept of Self Employment for:

Those in Secondary and Further Education.

Undergraduate and Postgraduate Students.

All citizens, for employment in small and large businesses.

- This Self Employment concept needs ensure that even those who are at the very bottom of the academic scale and food chain (who may only be able to become cleaners or gardeners etc), can learn to be Self Employed, self administering, have the ability to fill in Self Employment Tax Forms etc.
- The Government must make the documentation simpler and user friendly, and wherever possible cut red tape.
- Incorporate some form of attractive National Pension scheme.
- This would help to: make people 'Responsible' for their own actions and family life, and reduce dependency on the National Social Services budget.
- All Civil Service/Public (especially teachers) & even Police Appointments: To be on rolling 3 to 5 year contracts. Similar to Armed Forces personnel contracts, with performance related annual appraisal and comment on suitability for advancement to appointments two levels higher than present grade. Wherever possible, these contracts be of a Self Employment nature.

INV-001b-KTainsh-000

There is increasing comment in the media ref the growing gap between the Working Class, Middle Class and the richest members of society in the Rich Class, and the impact this has upon the education, and selection process of students for places in the top universities at both undergraduate and postgraduate level.

There are also indications that the selection process for a place at our top universities favours those from Rich Class families, who can provide financial support and access for private education, gap years, internships, all of which enhance personal statements (in one article it outlined that a child made a financial donation each week to a deprived child in Africa).

Having helped to finance my 4 sons through their undergraduate and postgraduate university studies, I am aware of just how difficult it is going to be for many families and tomorrow's students to be able to go to university.

Whilst £50,000 might have been a realistic figure in the past for an undergraduate student to obtain a degree, a recent TV program indicated that in the near future, the same degree may well cost up to £100,000. Any figure between £50,000 and £100,000 is beyond the financial limits of many hard working families, and must have a catastrophic adverse impact on anyone who is also disabled.

This issue needs to be addressed at both Primary and Secondary School, and if Scotland is to prosper in the future (we need Engineers), at a national level, and

that additional provision needs to be made to facilitate Scottish students access to the best universities overseas.

Quite possible there is a need for some radical and entrepreneurial 'out of the box thinking' to be applied to this issue. For example all Scottish Public sector and the larger Private sector organisations:

- Could have paid positions for; training & job experience, apprenticeships, internships and graduate placements – that lead to university.
 - Their training could all be accredited, so that various modules can be achieved, which would reduce the time required/spent at university and the costs involved.
 - Provision be made for all training and experience, in all forms of employment, including self employed, to be accredited.
 - All employment training & job experience be accredited, so that with sufficient modules gained, a university degree is awarded.
- Something definitely needs to be done to level the playing field between the rich and poor to access university education..

Name: INV-001c-KTainsh-000

I understand that everyone is in agreement that the gap between low income and high income families is growing, and that it will become ever more difficult for children from low income families, to escape from low income and poverty, and to gain access to a better standard of living. This situation is unacceptable and urgently needs to be addressed, before it is too late for our children to be able to contribute to Scotland's economic future.

I recently read The Times article (published Monday December 10 2012) titled: Don't let Uncle Sam grab the best students by Peter Lampl from the Sutton Trust, who outlined:

- That more than 4,000 British undergraduates now study in the US every year, almost exclusively from independent schools.
- At the Sutton Trust we are extending that opportunity to bright state-educated students too, with the Fulbright Commission as our partners.
- Americans take talent wherever they can find it.
- They also send out scouts in the US to persuade young people from low or middle income families to apply, and use endowment funds to finance studies.
- In US top universities offer the same deal to international as domestic students – if you are bright enough to get in and if your family income is below US \$65,000 (£40,000), you qualify for free tuition and board, with support on a sliding scale for incomes up to US \$200,000 plus.
- 17 of the world's top universities are in US – they win most Nobel prizes.
- A further 250 US universities offer substantial support.
- In the UK only Oxford and Cambridge have large endowments but they are dwarfed by Harvard's US\$32 billion (£20, billion).
- This means us Universities can widen pool of talent, while keeping graduate debts much lower than in UK.

- A third of all US students graduate with no debt and for two thirds who do, average debts are US \$26,000 (£16,000), compared with the £40,000 plus for students in the UK (recently calculated by some to be between £50K % £100K)
 - Except for a handful of scholarships, no top UK university funds bright foreign undergraduates who cannot afford it.
 - The Americans are attracting the best talent, we cannot afford to leave them to it (especially as our universities will also have to compete with China, India, Brazil etc in the future).
- Whilst the Times article did not mention Human Rights, I believe that ‘university education especially for low income families and Human Rights’ are closely linked. I suggest that:

- Low income families with more than one ‘bright and gifted’ child, will find it increasingly difficult to help finance undergraduate studies.
- It is Scotland’s interest that we do everything possible to help young people from low or middle class income families, to go to university in the UK (with added provision for some poor students from overseas to attend Scottish Universities).
- All of our major industries (for example: energy companies), banks and companies should be encouraged to support this principle.
- Priority needs to be given to seeking financial assistance to support students undertaking engineering undergraduate and postgraduate studies [I understand Scotland and its oil, gas and energy industries, are predicted to have massive shortfall of engineers in the very near future, so it is in Scotland’s economic and social developments interests, to encourage school students (male & female) to study those science based Higher’s which are pre-requisites for engineer undergraduates, as there will be a well paid job in engineering waiting for them].
- That in each community where they have a retail outlet, major companies like Tesco should support at least ‘1 male, 1 female + 2 disabled students’ from that outlets local community, be it that the company concerned may have to be provided with some form of tax exemption.
- Companies like Starbucks, Amazon and Google should certainly be asked to contribute to university endowment funds.
- That the EU contribute to endowment funds.
- That a major initiative is launched to get Scottish and other high earners (China, India & Asia have an increasing number of billionaire’s and millionaire’s) to contribute to endowment funds.
- We encourage people from all walks of life and the world wide Scottish diasporas, to make bequests in their wills, to Scottish university endowment funds.
- The National Lottery be requested to assist our low income students, at least until this economic recession is over.

Name: INV-002a-IPaterson-000

Priorities for the new action plan for the Scottish Government should be to ensure that we are all treated as equal citizens especially for those like me who are disabled and at present are made to feel that they are a heavy financial burden on all the welfare services, that we are 'scroungers' that we take and never give anything back to society in any form, that we are devalued and treated as second class citizens -

Name: INV-003a-AMuir-000

1. Based on the evidence presented in the report Getting it right? Human rights in Scotland, or your own experience, what do you consider to be the most urgent human rights issues which should be addressed in Scotland's National Action Plan for Human Rights?

(a) The 2003 Mental Health Act leads to many people being denied basic human rights and it causes more harm than good. Its current form is not suitable for a civilised nation and it might be simplest to repeal it entirely.

(b) The current Scottish justice system is not fair or affordable for an individual person who is challenging the State.

2. What specific and achievable actions do you consider would best address the concerns you identify in your response to question 1?

(a) The above Act needs to be amended to comply with ECHR legislation e.g. a person must not be detained or treated unless a public hearing has taken place.

(b) In the above Act, a person's next-of-kin should have an absolute right to end a Compulsory Treatment Order.

(c) The legal advice as to whether the above Act meets ECHR legislation must be released.

(d) The head of the Mental Welfare Commission must be someone with a human rights background, not a psychiatrist.

(e) All Mental Health Tribunal panels should contain someone with a human rights background and should not contain a psychiatrist.

(f) Mental Health Tribunals should be held in public with proceedings carried out under oath.

(g) There are not enough human rights lawyers in Scotland. More must be created. When my wife took legal proceedings against the state in 2009, not a single human rights lawyer would represent her.

(h) The current time limit to complain about a lawyer of only one year is far too short.

(i) Sheriffs do not uphold the Human Rights Act in judgments. They should be given guidance.

(j) There should be a limit in the amount of fees an individual has to pay if taking legal action against the state

(k) The SHRC should convene a conference where human rights are debated.

(l) The Scottish Public Sector Ombudsman needs to have people with a human rights background in it.

(m) Scottish case precedents e.g. Hunter v Hanley 1955 lead to the Scottish legal system being very unfair to a member of the public.

(n) *Mental health detention:*

"Persons deprived of their liberty on mental health grounds must be detained in an appropriate therapeutic environment. The scoping indicates that the Mental Health (Care and Treatment) (Scotland) Act 2003 has been widely welcomed as having created a new framework for the use of compulsory measures, and placing emphasis on treatment and care in the community, on safeguarding patients' rights and on enabling the participation of patients and carers in treatment and on-going

care. Research cited suggests that since it came into effect there has been a decrease in use of compulsory powers, although this may vary across the country. Mental Welfare Commission reports identify a range of areas for improvement in mental health care and treatment in practice. Concern has also been raised regarding young people who are detained in adult wards as well as geographic variation in the standard and quality of provision of care and treatment. An independent evaluation of the human rights based approach at The State Hospital indicated significant benefits to staff, patients and carers”.

The above paragraph is totally misleading and false.

The Mental Health (Care and Treatment) (Scotland) Act 2003 is a very badly thought out piece of legislation which was rushed through parliament without proper debate. It has led to thousands of people being abused. A study was carried out in 2009 of people who had been treated under the 2003 Act and only 52% believed in retrospect that compulsion had been the right thing. That is a 48% failure rate. What other industry has such a low success rate as this? Also 42% consistently resented the loss of civil liberty.

The above Act is very similar to the Scottish Witchcraft Act 1563.

The Mental Welfare Commission is an incompetent and dishonest organisation run by psychiatrists for the promotion of drugs testing on humans and its views should be mainly ignored. There are several ex-patients who have complained to the Commission about their treatment and the Commission has made false statements about them in order to cover-up abuse. They made 60 false statements in an assessment on my wife.

Name: INV-004a-TSanderson-000

Based on the evidence presented in the report Getting it right? Human rights in Scotland, or your own experience, what do you consider to be the most urgent human rights issues which should be addressed in Scotland's National Action Plan for Human Rights?

Widening options for high quality care and personalized services, having a rewarding family and social life, access to education, wider opportunities for participation in culture, sport, leisure

What specific and achievable actions do you consider would best address the concerns you identify in your response to question 1?

Identifying key good practice organisations to work together to develop action plan

Please see below my responses to the survey questions released with your Getting It Right report. By way of context, I am Chair of Trans Media Watch, I'm a member of the Equality Network and Scottish Transgender Alliance, and I have worked with Inclusion Scotland, Capability Scotland and the Glasgow Disability Alliance. I also do independent consultation work on intersex issues, working alongside Intersex UK and the Organisation Intersex Internationale; I've done academic work on trans people and the Scottish Police Service, with the support of ACPOS; and I am a member of a Wellcome Trust working group currently researching the way issues around sex, sexuality and gender are represented in the media.

1. Based on the evidence presented in the report Getting it right?

Human rights in Scotland, or your own experience, what do you consider to be the most urgent human rights issues which should be addressed in Scotland's National Action Plan for Human Rights?

Intersex people's rights (the focus of notably little discussion).

Transgender people's rights.

Disabled people's rights (with a particular focus on mental health).

2. What specific and achievable actions do you consider would best address the concerns you identify in your response to question 1?

Please find attached a paper on intersex rights which I recently prepared for the use of Members of Parliament and civil servants working at Westminster. Most of the issues covered therein are relevant for Scotland and I would be happy to prepare a paper on the specific Scottish context on request. Most urgent is that NHS Scotland issue a moratorium on all genital surgery on children (below the age of medical consent) for purely cosmetic purposes.

It is urgent that support be provided for new drop-in centres like Edinburgh's excellent LGBT centre in other parts of Scotland, as a resource for LGBT people (especially the young) escaping hostile domestic environments. Supported places in emergency accommodation where there is adequate supervision to prevent violence or bullying inspired by prejudice must be made available to people finding themselves homeless in this context. Homophobic, transphobic and intersexphobic domestic abuse need to be recognised as specific issues which can be as damaging as other forms of domestic abuse.

More effort needs to be made to recognise intersectionality and ensure that resources provided in relation to other minority issue are accessible to disabled people.

Major work needs to be done around access to public transport for disabled people, with bus drivers, in particular, notorious for flouting existing rules. Wheelchair accessible routes through Scotland's major cities need to be developed in order to improve access to work and public facilities.

Intersex Policy Proposals

Abstract

People with intersex¹ variations constitute a significant minority group within the UK² but have very little recognition, and consequently very little protection, in law. Nevertheless, they have specific needs which it is imperative to address. Probably best known among these is the cosmetic surgery which many intersex people are subjected to in infancy in an attempt to normalise them, which can cause permanent urinary incontinence and absence of sexual sensation in adulthood. Intersex people also face social discrimination, especially if their outward appearance is ambiguous in terms of gender, and this can make it difficult for them to access services. They face unique barriers if they wish to change their legal gender and as a consequence may be unable to access gender-specific services that they need.

Better provision for intersex people through the medium of government has been compromised by several factors. A culture of secrecy surrounding the management of intersex variations in children has only recently begun to give way, so that limited data on long term outcomes is available. There has been a shortage of quality research into intersex people and service provision, stemming from a lack of available funding. Related to these two factors, there has been a failure to acknowledge the existence of intersex people as a specific group with unique needs. In some contexts (such as work funded by the Scottish government) intersex has been included under the transgender umbrella, but this can potentially lead to confusion and an assumption that, in catering for transsexual people, government is somehow addressing the needs of intersex people too. Whilst intersex people face some of the same kinds of problems as transsexual people and disabled people, it is important that government recognise the differences and their different needs.

The current coalition government does recognise intersex people as a specific category and has pledged to undertake research with a view to informing policy in this area.

¹ Although the term DSD (disorders of sexual development) is widely used within some sections of the medical community, it is considered inappropriately pathologising by some intersex people themselves, with major representative groups like the Organisation Intersex Internationale strongly advocating against it; though others, like Intersexuk.org, AIC and DSD Families, take a pragmatic approach and use all current terms. The present government's position is to prefer the term 'intersex' for communications and research but it is important that 'DSD' be included in legislation because of its relationship to clinical diagnosis.

² The frequency of intersex is disputed due to lack of scientific consensus as to what should be included under the term. Classic intersex conditions are believed to affect approximately 1 in 2000 people (Blackless, Melanie, Anthony Charuvastra,

Amanda Derryck, Anne Fausto -Sterling, Karl Lau zanne, and Ellen Lee, *How Sexually Dimorphic Are We?*, American Journal of Human Biology, 12: 151 -166) but it is estimated that as many as 3% of people could have some degree of intersex variation (Sharon Preves, *Intersex and Identity: The Contested Self*, Rutgers University Press, 2003) The statistics most commonly used by clinicians are 1 in 2000 live births with 1 in 200 less notably affected.

Understanding Intersex

Intersex people can be described, in simple terms, as those whose bodies do not fit the normative definitions of either male or female. Intersex variations are sometimes identified prenatally or at birth but in some cases do not become apparent until puberty, and in a few cases they are diagnosed later in life in the course of medical treatment for other issues. These variations have different causes and affect people to differing degrees, but the majority of those diagnosed with classic intersex conditions³ will need ongoing medical support throughout life. Intersex variations are a natural occurrence and not a disease but many are associated with health problems such as electrolyte and endocrine imbalances and an elevated risk of some cancers and autoimmune disorders. Intersex people are also at greater risk of certain psychiatric disorders.⁴ Effective support can often prevent serious health problems from developing.

Most intersex people identify themselves as male or female but some have distinct intersex identities or describe their gender in more complex ways. For those who have been assigned a legal sex that is at odds with their identity, it is important to get this corrected on the understanding that the assignment was made on the basis of ambiguous criteria or without awareness of physiological factors that would become apparent later in life. This differs from the situation of transgender people, who are unlikely to have any physiological indicators to suggest mis-assigned gender.⁵ Intersex people troubled by their situation need different types of psychiatric and therapeutic support from transgender people and may require different types of (consensual) surgical intervention.

Priorities for Intersex People

It is imperative that the rights of intersex people be recognised and respected in the same manner as those of other UK citizens. These include the right to live free of discrimination, the right to marry or form a civil partnership, and the right to family life (including the option of adopting children). Intersex people have the right to bodily integrity and to proper medical support with clearly defined NHS care pathways. They have a right to education within a safe school environment appropriately adjusted to meet their needs.

Where intersex people have complex medical needs it is vital that they are able to access special list care. As the current centres of excellence are based in England it is important that cooperative strategies be developed to enable them to treat patients from Scotland and Wales.

³ Congenital adrenal hyperplasia; androgen insensitivity syndrome and partial androgen insensitivity syndrome; Klinefelter's syndrome; 5-alpha reductase deficiency; MRKH; Swyer Syndrome; Turner syndrome; and several less common conditions. Hypospadias is often considered a form of intersex but this can depend on how it manifests in individual cases.

Depression, anxiety and related problems which may develop as a consequence of living with social stigma.

The only physiological indicators so far found in transgender people are in the brain and these do not seem to apply in all cases.

Policy Recommendations

There are four key legislative changes that can be brought forward to improve the lives of intersex people with immediate effect:-

- ☐ The introduction of a moratorium on the surgical modification of genitalia in infants for cosmetic purposes⁶ even where such surgery is requested by their parents.
- ☐ An amendment to the Equality Act (2010) to ensure that intersex/DSD people are explicitly covered by the same protections that apply to other recognised minority groups.
- ☐ The introduction of a Sex Recognition Act to enable intersex people to have erroneously assigned birth sex corrected without having to use the Gender Recognition Act (2004).
- ☐ The implementation of legislation to make attacks on intersex people, where they are motivated by prejudice, a hate crime.

Surgery on Infants

At present, transsexual children are not considered for genital surgery until the age of sixteen (though they may be eligible for puberty blocking drugs to prevent the development of unwanted secondary sexual characteristics in the meantime). It is widely agreed that this ensures permanent changes are not made before those children are old enough to give full, informed consent. It would therefore be rational for the same approach to be adopted with regard to intersex children. A parent should not be able to consent to cosmetic surgery with such significant implications on a child's behalf, as established in the Yogyakarta principles.⁷ This is already the case when it comes to clitoridectomy, which adults may legitimately request but which it is illegal to carry out on children in the UK.⁸

It should be noted that both the NHS in England and NHS Scotland have already adopted policies that advise against the alteration of infants' genital for cosmetic purposes, but that such surgeries are still promoted by private clinics and there are ongoing problems in NHS Wales.

⁶ It should be noted that surgical modification of the urogenital system in

infants is sometimes necessary for clear medical reasons such as enabling urination to take place, and it is imperative that legislation in this area should not compromise the ability of doctors to carry out such procedures.

⁷ *The Yogyakarta Principles: the application of human rights law in relation to sexual orientation and gender identity*, 2007.

⁸ Female Genital Mutilation Act (2003).

The Equality Act (2010)

Intersex people currently have no explicit protection under the Equality Act (2010) and therefore no protection against discrimination in the provision of goods and services. It has been argued that they could be eligible for such protection under the disability category but there is no judicial precedent to support this and few intersex people consider their intersex variations to constitute disabilities; neither do specialist clinicians. Due to the nature of the prejudice most often targeted at them, it is more likely that they would seek protection in the transgender category, but this refers explicitly to transsexual people and those mistaken for transsexual people. The consequence of this is that if an individual is known to be intersex by the person or organisation discriminating against them, they are ineligible for protection on this basis. This not only means that intersex people are unlikely to apply for protection under the Act as it stands (and may be unlikely to receive it if they did); it means that they are motivated to conceal their intersex status, compounding the problems related thereto (psychological damage to the individual; invisibility leading to the absence of community support; and invisibility leading to difficulties in accessing intersex people for research purposes).

Sex Recognition

Intersex people with formally diagnosed DSD conditions are currently unable to change their legal sex under the provisions of the Gender Recognition Act (2004). The Gender Recognition Act is orientated toward transsexual people and its evidential requirements are largely inappropriate for intersex people. Furthermore, it makes no provision for those intersex people who, having bodies that do not correspond to normative definitions of male or female, wish to be recognised as such and to register their sex as intersex. Separate legislation to enable intersex people to change their legal status would acknowledge that intersex people seeking such change are not altering their bodies to fit their identities but are seeking recognition of the complex nature of their existing bodies, altered or not.

Not only would new legislation better fit the needs of intersex people, but some intersex people unable to change their legal sex are left in a vulnerable situation in which their bodies, presentation and legal documents are at odds. This leads to difficulties in areas like travel (airport security searches having become even more problematic since the introduction of terahertz scanners), hospital use (where people may be placed in inappropriate wards) and emergency accommodation

(with one particularly worrying case involving a clearly female-looking person being placed in an all male hostel, at considerable risk to her personal safety). They may also be denied legal rights that depend on gender, such as those enshrined in Article 8 of the Human Rights Act.

Hate Crimes

Intersex people currently have no protection under hate crime laws in England and Wales, despite the extension of these laws to cover other vulnerable minority groups and despite the fact that those whose outward appearances are sexually ambiguous are at elevated risk of harassment or worse. By contrast, the Offences Aggravated by Prejudice (Scotland) Act (2010) gives explicit protection to intersex people. Extending hate crime legislation in England and Wales to cover intersex people would send a clear signal that the State condemns violence of this kind and would encourage intersex people to feel more confident about reporting hate incidents.

Conclusion

Properly providing for the needs of intersex people can be done fairly simply and need not require significant parliamentary time. The recommendations detailed above could, if followed, lead to substantial improvements in the quality of life of people who currently lack many of the protections others take for granted as aspects of their citizenship. It is time intersex people were able to feel and live as fully integrated citizens with equal rights, and have faith that their elected politicians are representing them appropriately.

By including the needs of intersex people as a standard consideration in the development of policies with a gendered element, political parties can future proof legislation in a rapidly changing world, allowing for ongoing developments in the scientific and medical understanding and the social acceptance of intersex people, reducing the time and effort likely to be required for amendments in years ahead.

Name: INV-007a-LMcDade-000

Thank you for the opportunity of participating in the SHRC National Action Plan. I answer the questions as follows:

1. Based on the evidence presented in the report "Getting it Right"? Human Rights in Scotland, or your own experience, what do you consider to be the most urgent human rights issues which should be addressed in Scotland's National Action Plan for Human Rights? And
2. What specific and achievable actions do you consider would best address the concerns you identify in your response to question 1.

I would like to see an academic approach to miscarriages of justice in civil court actions. I would like to see a widening definition of Article 6 of the Human Rights Act – the right to a fair trial. I would like to see this also encapsulate not just a civil right via article 6 but also a criminal right on the premise that if a judge deliberately abuses human rights he will be prosecuted for a (a) perversion of the course of justice and/or (b) misconduct in public office or (c) some other offence. I am of the view that when you issue a writ, summons or originating application or whatsoever the original document is called that article 6 automatically applies. Where a judge inadvertently causes a miscarriage of justice (say, through lack of evidence) then an appeal on the premise of article 6 should concretely arise. However, where a judge deliberately gets a judgment wrong (by not dealing concretely with case precedent, legal arguments or contractual obligations) then he must be deemed to be wilfully acting contrary to article 6 and in a criminal manner. It is not the case that a civil appeal on article 6 should arise.

I provide as evidence, the judgment in an English case on appeal to the Employment Appeal Tribunal. I supply you with public domain documents of (a) the Appeal; (b) the skeleton argument; and (c) the judgment. I would urge you to liaise with your colleagues of the EHRC and LSE as indicated in your Consultation on these documents as employment law is the same in England and Scotland and Masons are operating in the Scottish market – I also now reside in Scotland. From the Appeal document and Skeleton Argument you will note that there were 5 case precedent referred to in the documents. None of these case precedent are referred to in the judgment of the court which states:

"She put together a bundle of authorities. We do not consider it necessary to refer to them in the course of this judgment, but she will appreciate that her lengthy skeleton argument, running to seven typescript pages, together with her lengthy oral arguments, which she properly presented to us, has been fully considered before the judgment given on this hearing".

The absence of reference to the case precedents for their *ratio decidendi*, legal arguments and available evidence is a deliberate act by His Honour ZZZ to pervert the course of justice and is misconduct in public office. It is not the case that I should appeal under human rights law legislation and article 6 (and this may not have been available to me in 1998) as his activity is not inadvertent. What is certain is that an appeal which can only occur on a point of law, had 5 points of law

to be considered and that the judgment contains none of them. There is therefore a miscarriage of justice in a civil context (and activity may be Masonic in this case – an act of concealment).

What I would like to see enshrined in the SHRC is that there is a distinction between an appeal under article 6 of the HRA and a criminal act of perverting the course of justice and misconduct in public office by a judge acting deliberately so as to conceal. It should be enshrined in the SHRC that on appeal (which can only occur on a point of law) where case precedent or statutory reference (or common law as in England) the judgment must accurately reflect the case before the court by specific reference to all points of law.

Why there was a miscarriage of justice: XXX left a confidential memo in the public network directory and should have been disciplined or sacked. XXX and myself went for a promotion in the department but failed to get it, it going to YYY who did not apply for the post. Three allegations were brought against myself and MMM, and MMM was terminated, and one allegation was upheld against me, and I was asked to transfer to which I refused to transfer to the float team but did not refuse to transfer per se, and I was then sacked. YYY was causation but the outcome was MMM and myself were sacked damaging my LLB degree in the process. It appears that a “management decision” can override lawful contractual obligations”. All of this material has been concealed by the Judge of the ET overruling 9 pages of pleading at first instance. The case precedents were originally cited by Respondents (other side, ie Masons) all of which were wrongly applied hence the appeal using case precedent as points of law. The judgment does not reflect the case nor the damage done to my career.

The documents supplied are public domain now, and may be published with this response. If you require access to further documentation, please do not hesitate to ask as the case was ongoing during the Woolf Reforms in England & Wales and went as far as the House of Lords but was not heard at that level. The Woolf Reforms are about “Access to Justice” but the methodology in my case establishes “Access FROM Justice” was occurring including an article 177 preliminary reference to the ECJ which was blocked by case precedent at the judges’ behest. I did not take the case to the ECHR.

Name: INV-007b-LMcDade-000

Thank you for giving me the opportunity to participate in your human rights consultation for Scotland. My second response is about human rights failings in Scotland and mental health law as written about on my blog.

"Another very serious human rights abuse is in mental health law. All that is needed to place someone into a mental health hospital is a justice of the peace signing a document called a warrant under the Mental Health Act as requested by a psychiatrist and mental health officer (social worker). A person loses all of their rights and must APPEAL the justice of the peace's warrant after 28 days where they can be treated with god knows what medication against their will in the interim period. The current system prima facie removes a persons human rights altogether for at least 28 days when it should be necessary for the person to be present and put arguments if they wish when the warrant is issued to send someone to a mental health hospital for treatment. No one should be treated without first having their fundamental human rights asserted in law and a right to a fair hearing should start at day 1 minute 1, not 28 days later. At 28 days an APPEAL is possible, however, there are abuses of the system whereby an appeal is not done when requested at 28 days (s.44) but a "Compulsory Treatment Order" is sought for a further 6 months and an APPEAL of the CTO is done, thereby abusing a persons human rights to a fair hearing under article 6. That is to say an appeal does not occur of the 28 day detention but the 6 month detention - it should be necessary that article 6 hearings cover both periods of detention - but the system is currently lax at 28 day appeals. Mental Health law is not currently compliant with Human Rights legislation and is open to abuse".

I would recommend that in the situation that a justice of the peace issues a warrant for detention, that the person be escorted by the police back before the justice of the peace to plead their case (especially as there may be causative issues which require the investigation of law per se or the intervention of Citizen Advice Bureau) prior to issuing a detention order. It may be the case that the causative issues need to be dealt with only or it may be the case that the causative issues need to be dealt with and a period of detention be dealt with, or it may be the case that the detention is not necessary having heard the facts.

At the moment detention does not affect the causative issues and a person can be sectioned for 28 days or a further 6 months and still have to face their causative issues when detention is up, or may lose their assets due to detention, because they are not working etc. For those people who are experiencing some form of legal conflict or criminal conflict, at the moment the police refuse to engage where a detention has ensued and may also be the cause of the detention when something is reported to the police who fail to act thus ensuring a complete failure of human rights.

Based on the evidence presented in the report Getting it right? Human rights in Scotland, or your own experience, what do you consider to be the most urgent human rights issues which should be addressed in Scotland's National Action Plan for Human Rights?

Theme 1 Dignity and care (especially with relation to older people who will soon make up a significant section of the population) and Theme 2 Health

What specific and achievable actions do you consider would best address the concerns you identify in your response to question 1?

It is necessary to ensure sufficient funding, competent management of resources and satisfactory training of staff to ensure that citizens of Scotland enjoy the same high standards of care whenever they need it, regardless of which part of the country they live in.

The automatic right of every Scottish citizen to access justice and redress for infringement of their human rights by any public service or official government or parliamentary organisation.

There should be non-means tested access to independent legal advocacy for all Scottish Citizens. If case to answer - state should fund any litigation/ compensation cases, where it is alleged that the state or its agencies have infringed HR laws. (Aware of limited free legal advice via CAB - oversubscribed and inadequate)

A great deal of public money is being spent on multiple appeals for failed asylum seekers. This system must be 'tightened up' to prevent abuses. The £millions this is costing is actually preventing genuine human rights cases involving both Scottish Citizens AND asylum seekers from accessing avenues to justice.

Only the wealthy, the very poor or the insured can afford the huge Court and legal fees necessary to fight their cases. Publicly funded government agencies and public services are often prepared to spend huge amounts of public money to defend HR cases brought against them by ordinary citizens . This is very wrong and is itself an abuse of human rights.

A new system of compensation for victims of human rights abuses is long overdue. This could be joint funded insurance/government scheme. We pay hundreds of pounds annually for holiday insurances, which includes unexpected medical and legal bills on holiday. I would have been prepared to pay an insurance premium before a planned hospital operation in case it went wrong or I caught an infection. At the moment it is IMPOSSIBLE to sue the NHS because they have unlimited access to legal funding whilst ordinary citizens have limited resources. I have personal experience!! A ring fenced tax on sales could also provide funding. Perhaps Alex Salmond's planned hike in alcohol duty could be diverted to a fund dedicated to recompense for human rights abuses.

Action plan at Scottish Human Rights Commission

Although the report Getting It Right. Human Rights in Scotland encompasses all of the main areas of rights in Scotland, it is significantly short on recommendations or action plans in terms of human rights for other peoples in the rest of the world particularly in the areas of trade.. It is self evident that you either respect human rights for everyone or you do not. You can not say we respect human rights but! It is both a useless exercise and divisive if government foreign policy is selective in its human rights policy because of issues of self interest Rights are not exclusive depending on how they impact at home. Despite treaties and conventions; states constantly disregard the rights of people fighting for their own dignity. This of course is one of the main areas of contention and the cause of many disputes, tension and wars.

Historically, for many years we ignored the rights of black people during South Africa's apartheid system while many companies including British ones extracted huge amounts of wealth from that country, while in effect paying subsistence wages or less. A similar state of affairs operated in Myanmar and in fact still is with rumours of slave labour being used in the search for profits. The tragedy of Bhopal is still being ignored with governments keeping quiet because they might offend their allies or indeed our own GDP.

A number of years ago the European Community negotiated the fishing rights off Western Sahara with Morocco. I believe Peter Mandelson was trade commissioner at the time. These negotiations and later actions i.e. the actual fishing, ignored the fact that there is a wall around Western Sahara, that fish are a subsistence food in that country and that a number of UN resolutions , have stated explicitly that the people of Western Sahara should be given the right to vote on self determination. All of these things were ignored so that fishing companies and EU countries could continue to make profits and the people of Europe could get their fish. I do not recall any debate before this policy was implemented. Debate came after the fact and mainly from African countries. This policy has now been changed I believe but if you adhere to human rights, it should never have been implemented.

The above examples are only the tip of the iceberg. Some are more blatant. Tony Blair actually stated while Prime Minister that if we do not sell arms (He was talking about sales to despotic regimes) then someone else will. David Cameron was accompanied by British arms dealers on his first visit to Egypt or was it Libya following the revolts. In effect he signposted the fact that we are more interested in bolstering our arms industry than the possibility of embryonic democracies emerging.

There are other instances. Take for example the plight of the people of the Chagos Islands. It is a fact that despite numerous rulings from both EU and British courts successive British government have ignored them all and so those people are still homeless. Never mind the fact that they were removed in secret by the British government in the late sixties and early seventies and then Diego Garcia was leased to the USA.

How can a country say it respects human rights when ignoring the rights of people around the world because of self interest? The answer is it cannot. It becomes pure lip service. We need to ensure our foreign policy is rooted in the language of rights for all

humans and in order to ensure that happens, we need regulations both to monitor the way our companies operate around the world and mechanisms for government that ensure all foreign policy debates, are carried out with human rights at the forefront. In other words if a foreign policy, or domestic for that matter will/could infringe on the rights of people half way around the world, then it should be dropped or changed to encompass human rights. Only then will we as a country be able to say we respect people everywhere. Imagine if you will what a wonderful message that would give to the rest of the world if and when Scotland becomes an independent country, or not, which of course is another question, or is it?

Name: INV-012a-CGLewin-000

1. Health at nights and at weekends. Doctors should be on call to attend emergencies such as sudden illnesses, particularly in rural areas where transport is not available, hospitals are far distant and surgeries are closed. NHS24 does not provide a sufficiently good service when personal attendance by a doctor is needed.

2. Rural bus services need to be improved, so as to reduce the danger of people living isolated lives, enabling them to go shopping and attend cinemas and shows in nearby towns.

3. Internet speeds in rural areas need to be improved - they don't need to be superfast but they should be sufficient to give isolated people an effective window on the world.

These issues need to be studied and funds made available as necessary, consulting Community Councils about the particular issues in each locality.

Name: INV-014a-JKissane-000

As I am not living in Scotland, I am not able in this contribution to identify urgent issues for inclusion in the Action Plan. However, as someone who has been involved in a lot of human rights planning, I do have some more generalised thoughts on how a plan might be shaped. I apologise now if they seem presumptuous or misplaced. I would really like to see the Scottish Plan succeed. In February 2012, the *European Human Rights Law Review* carried an article by me entitled *Does the UK Need a National Human Rights Action Plan?* In it, I said that one of the dangers with any national human rights plan is that it can become too wide-ranging, too detailed, too elaborate: too big and unwieldy. Every National Plan I have seen so far has fallen into that trap. I sincerely hope that the Scottish plan will avoid it.

The problem seems to be that, once planners have embarked upon a consultation exercise, it is easy to be overwhelmed by the sheer extent of all the issues to which human rights can be applied, and which require some form of official attention. This can lead the planners to be distracted from the original task, which was to devise a plan to improve the promotion, protection and delivery of human rights, and to be sucked in to devising a plan to tackle all the social evils present in their society.

Two models emerge. The first has the qualities of a doctoral thesis. It amasses all the available evidence on the subject, considers all the pros and cons, draws conclusions, and finally makes recommendations. By then the plan is too big for anyone to read, and so an executive summary is devised, along with a list of recommendations as an appendix. These are the only parts of the document that any influential and busy person will ever bother to look at. And no normal person will look at it at all.

The second is more bureaucratic, and even less user-friendly. Again it gathers scores of activities together into one huge series. All appear to be going forward, but in truth none will move faster or further by virtue of being included in the plan than they would have anyway. In fact the 'plan' is really an *inventory* of activities, which will be used later (perhaps at a half-way stage of the overall timetable, and then at the end of the timetable) as a *checklist* to measure 'progress'. This type of plan gives an illusion of organisation and purpose, but is really a huge slow-motion machine. It moves not by the intelligent application of energy, but under its own accumulated weight and inertia.

I hope that none of this applies to the Scottish process, and forgive me if I seem to presume that it might.

My point is that a plan is emphatically *not* a thesis or an inventory. It is an operational tool, *literally (not figuratively)* like a blueprint or a map – something that allows you to concentrate effort and make work go faster.

So from the outset, I would expect the planners to have a clear idea what their plan will *look like*. Will it be long or short? (Preferably short.) How many pages will it

have? (Preferably no more than can comfortably be read at one sitting – say 15 minutes). They should keep that original shape and size always in mind.

But they should also have a very precise idea of what the plan is *about*. They need to decide if it will indeed be a vehicle for tackling every social evil; or if it should be more narrowly focused on human rights themselves – improving their promotion (as an educative project), their protection (as a legal and governmental project), and their delivery (as an operational approach to the provision of public services). Or perhaps something quite different that suits local needs and culture.

The plan needs to be realistic. It will certainly have a timetable. But that implies a need to be very pragmatic about what the people who actually make things happen can really achieve within that period. Even so, pragmatism should not mean lack of ambition. An unambitious plan would be as pointless as an unrealistic one. But getting the balance right is bound to be tricky.

Finally, the plan should be *clear*. The aim should be that every reader, from the head of state to a child in a classroom or a prisoner in a cell, should know straightaway and at one reading what's in it for them; what is being proposed; what is supposed to happen by when; who is responsible for delivering each element of the plan and who for the whole plan; what their resources are; and what happens next. But that means also that the plan has to be *readable*.

For all I know, the Scottish planning team already has all these things in mind. However, at present, what I miss on your website is a clear sense of what the thing is that you are aiming to create. Is it big or small? Is it purely a Human Rights plan (i.e. a plan purely to do with the promotion, protection and delivery of human rights – as legal implements)? Or is it a plan for broad social progress with a human rights focus? My impression from the website is that the plan will be about improving outcomes, presumably in the delivery of public services – and that would mean a wide scope. But that's just a guess on my part.

I have no axe to grind on what kind of a plan Scotland has – wide or narrow, modest or grand. I'm not a Scot. But I would like to see the Scottish plan break the mould of previous plans (worthy though they are) and be a model that the rest of the world can learn from – not least in the UK hinterland.

Name: INV-015a-RHart-000

1. Based on the evidence presented in the report Getting it right? Human rights in Scotland, or your own experience, what do you consider to be the most urgent human rights issues which should be addressed in Scotland's National Action Plan for Human Rights?

English, Welsh and Northern Ireland students should pay the same fees as everyone else, i.e. Scottish and other EU resident students, be this that everyone pays fees or no-one. I feel it is incumbent on everyone and absolutely vitally important to challenge all discrimination, especially where this is state backed, and if such challenges had been made during the second world war then just maybe the holocaust might have been averted. The present situation is illegal, to which I would refer you to the article in the Guardian:
<http://www.guardian.co.uk/education/2011/aug/21/scotland-university-fees-discriminate-lawyer>, where you will see that that a leading Human Rights Lawyer considers that the Scottish fees system contravenes article 14 of the European Convention on Human Rights.

2. What specific and achievable actions do you consider would best address the concerns you identify in your response to question 1?

Using your powers, make a Recommendation to change Scottish law, policy and practice, so that all students pay the same fees. This recommendation could be made now and with extremely little effort on your part, and therefore could be addressed immediately without being added to an action plan as such.

However, I would be obliged if you would in particular look at my answer to question 2. As I stated, I really do not think that addressing the issue of unfair Student Fees in Scotland needs to be added to an action plan as such but could be addressed by a recommendation from yourselves to change Scottish law now. I must say that I am surprised such a recommendation has not already been made by yourselves to the Scottish Government, given your role and the fact that the existing policy is considered to be illegal by leading Human Rights Lawyers.

If the Scottish Human Rights Commission is unwilling to make such a recommendation, that is within your remit, please could you detail the reasons why?

Name: INV-016a-JVicbrnn-000

I would like to see something about blacklisting as someone who has been blacklisted. People can be put on a black list for whatever reason and till some one finds out about it they just do not know. This is a complete breach of human rights.

Name: INV-017a-name redacted-010

1. Based on the evidence presented in the report Getting it right? Human rights in Scotland, or your own experience, what do you consider to be the most urgent human rights issues which should be addressed in Scotland's National Action Plan for Human Rights?

- In the global context post 9/11 there has been new legislations related to national security from Westminster, which has raised some questions for human rights. This legislation is having a negative impact in Scotland and particular in minority ethnic groups because it contradicts commitments acquired in International treaties which respect, protect and fulfil human rights.
 - In the Getting it right? Human rights in Scotland Executive Summary, in the Social Context section there is no reference to Scotland being a Multicultural country, like many countries in the EU. People from different cultures, live in Scotland, some for many generations and some new arrivals as asylum seekers and from the EU, whose rights are not recognized. While there is specific mention of age, sexuality and poverty.
 - The lack of real engagement between institutions and communities means it is difficult for the Rights Approach to work in practice
 - Many social and economic rights are linked to public services and many Communities are not aware of their rights or of the institutions that protect human rights such as the Scottish Public service ombudsman (Act 2002). These institutions are often not accessible
- What specific and achievable actions do you consider would best address the concerns you identify in your response to question 1?
- It would be good to implement human rights education – professional development for teachers and then through the teachers a programme for students : human rights ambassadors in schools/community centres: working towards a culture of peace, understanding and tolerance
 - Human rights awareness should be part in the ESOL English course
 - Build on the experiences of the CRER Political Shadowing Scheme
 - Booklets in human rights education and opportunities for local democratic participation in civil society (Parent council, tenant associations, community councils, integration networks, community centres)

Name: INV-018a-name redacted-010

Based on the evidence presented in the report Getting it right? Human rights in Scotland, or your own experience, what do you consider to be the most urgent human rights issues which should be addressed in Scotland's National Action Plan for Human Rights?

Plans to significantly increase the number of children who are sent to compulsory boarding school. (Reference Shetland Islands Council Blueprint for Education, which does not even mention the enforced boarding as a welfare issue.)

Plans to centralise education to such an extreme that children spend hours travelling and cannot participate in after-school events, impacting detrimentally on health, friendship, community, inclusivity and family life.

What specific and achievable actions do you consider would best address the concerns you identify in your response to question 1?

Sensible and realistic options for affordable remote and rural education – a complete re-think is needed and therefore current plans to consult on the closure of almost all of Shetland's rural secondary schools should be put on hold until more appropriate alternatives have been fully explored and considered.

Children should have every opportunity to receive an education AND be part of their own family and community. Children should not be forced away from home at the age of 11 – 17 without any alternative other than for their family to move away from their community.

Name: INV-019a-Jlrvine-001

Based on the evidence presented in the report Getting it right? Human rights in Scotland, or your own experience, what do you consider to be the most urgent human rights issues which should be addressed in Scotland's National Action Plan for Human Rights?

YOUTH

Given the current global economic situation, youth unemployment has never been higher. In some countries they are already talking about a lost generation. I graduated in 2009 and only last month have I managed to get a properly paid job (for no more than a 4 month contract of course) in the area in which I studied to actually work in. I speak five languages, have an undergraduate five year MA at Glasgow University, two masters in development and migration areas and plenty of experience working with NGOs and governments and have taken plenty of complementary courses. Ten years ago, I would have been fully employed by the time I hit 22 of 23. I am now 27 and consider myself to be one of the lucky ones yet my skills are not being taken advantage of by the country that trained me. I found my job prospects outside of Scotland. Scotland needs to invest in its youth, especially in the more deprived areas. Youth really are the key to the future working force of Scotland. Their rights to work, to paid work, to a job, to education and to grow and fulfill their academic and professional potential are essential for Scotland's future. ALL internships and traineeships should be paid a minimum – at the very least and when not possible the state should provide aid, especially for families that cannot afford to support their children while doing such necessary things to be able to ensure their future careers. Student loans should not exist. The existing bursary system has been reasonable but still can be improved. Education should be high quality, free and based on the needs of the country and the labour market needs. This is especially the case since globalization means that international competition for innovative technologies; renewable energies and more are every country's key to sustainable human development.

MIGRANTS' RIGHTS

In my opinion, the rights of migrants are not in evidence at all in the report and I do not believe they can be compiled within the very general mentions of protecting minorities. Migrants are particularly vulnerable for many reasons. They can be marginalized, exploited for lower paid labour, be victims of trafficking, xenophobia, racism, lack access to education, health, and experience psychological trauma from having been kept in inhumane conditions in detention in their countries of transit or because they have escaped from violent situations in their countries of origin and faced danger and deceit as they have tried to reach Europe to make a better life for themselves, as they have a right to under article 13 of the Universal Declaration of Human Rights. Moreover, under the International Conventions on Civil and Political Rights, Economic, Social and Cultural rights as well as the many other conventions signed by the UK, the UK is under obligation to protect every person and ALL their rights within their borders regardless of race, religion, sex, nationality etc. and this does not stop her just because a migrant is a refugee or an irregular migrant. Yet the UK does not allow asylum seekers or refugees – who cannot return to their country of origin to even work and often have to live off

insufficient grants. The UK implements a strict economic migrant system whereby migrants who come in irregularly are not able to become regularized and even in the event of issuing a deportation order, often the UK and many other EU countries do not then enforce the order and migrants are 'stranded' in a situation where they cannot earn a living nor leave the country. Even regular migrants are still highly affected by lower paid wages, precarious working situations, racism and xenophobia and this is the same all over the EU where not one EU country has ratified the International Convention for the Protection of Migrant's Workers' Rights. While it is a sovereign right for any state to decide who can cross its borders, each and every state is also bound by international human rights law and international humanitarian law which means that each state is responsible for and has an obligation to every person within its jurisdiction, migrant or not, regular or not, to protect their rights to ensure equality of rights for all.

Yet it is widely known that migrants greatly contribute to their host country as well as their countries of origin. UK worry over public spending on migrants and refugees need not be taken negatively if the media and government were responsible enough to show how migrants actually contribute to keeping the economy afloat by taking up lower paid jobs that nationals don't want, by providing aid to newly arrived migrants helping them to also integrate into society, by paying taxes, by opening up small businesses and creating employment and providing public service to name but a few.

Yet a lack of protection of migrants' rights is impeding this process. If a working age migrant is not able to have a work permit then he or she cannot provide for himself, he will have limited access to health, no access to education, will not be able to develop and grow as we all aim to and as we all have the right to. These are all human rights violations that should be prevented by the state. In this sense, migrants' rights are an essential first step to ensuring migrants' contribution to the development of their host country. Migrants' cannot reach their full potential without having the right to vote, participate in public life, be fully integrated into society on the whole. Indeed, a stable and supportive host environment where rights are ensured is likely to benefit the ability of migrants to contribute to development processes both in their communities of residence and of origin. Protecting migrants' right both pre-departure and on arrival is indeed an essential element to making sure that migrants are regular, have access to health and education and can therefore greatly contribute to the societies that host them.

Furthermore, in the midst of an economic crisis, and particularly the Eurozone crisis, with increasing irregular migration and increasingly negative views of migration on the whole, governments are overwhelmed with pulling themselves out of economic turmoil and combating unemployment and easing social tensions rather than ensuring migrants' rights or integration in host countries, which, paradoxically can lead to improved social cohesion and economic development.

To add to this, the International Organisation for Migration has highlighted that given the current global market, labour and demographic trends, migration has

become essential for economic growth, development and competitiveness. With decreasing populations and an ageing population in the North, including Scotland, the UN has predicted that if the EU wanted to maintain a constant 'support ratio' (the number of working people for each person older than 65) to uphold the economy as it is, the EU would have to achieve net annual immigration of 13 million. In 2008, according to the EU's Eurostat information, net immigration to the EU was 3.8 million and had decreased from 4 million in 2007. In the developed world in 2050 then, we will essentially be in need of migrants to come fill major labour gaps and ensure that we can compete with entrepreneurship and innovation in all fields at the international level.

All of this will not be possible if improvements in the international migration law system are not carried out and if migrants' rights are not fully ensured to enable them to reach their full potential as development actors for both home and host countries.

GENDER EQUALITY

I also feel that any Human Rights plans should ensure a transversal gender perspective throughout the whole Human Rights Plan. There is not one country in the world where gender equality is even, and while Scotland and the UK has come very far in this, violence against women is still happening, women can still be paid lower wages than men, and women can be penalised in their careers for being female, for maternity leave reasons and more. Indeed, the UK has a gender inequality index rating of 0.205 but does not even enter into the top ten countries of best rankings (the lower the value the smaller the gender equality gap) with Sweden at the top with 0.049 in 2011. Scotland therefore still has a lot of work to do in this area. Women's development and empowerment has also been recognized as an extremely crucial aspect to the development of any given country. Women do make up around 50% of the population, so ensuring their equality to men is the only way a country can move forward. Many people believe that human rights apply to all and so more 'special' protection for women is pointless. Yet women can be more vulnerable in many ways – statistically they are more prone to rape, sexual violence, abuse, physical violence, domestic abuse, lower wages and less career prospects...the UK has ratified the conventions that protect women against discrimination and violence but these have to be used to provide a stronger and more convincing international and legal backbone to the defence of women's rights.

What specific and achievable actions do you consider would best address the concerns you identify in your response to question 1?

YOUTH

Invest in improved and less expensive education, aiming for it to be completely free and stay that way. Loans should NOT have interest rates, I haven't even started paying mine yet as I have never earned over 12,000 pounds in a year to be eligible to and my half grant and half loan is already, with interest, at an alarming amount, almost double than what I ever borrowed. I was never properly informed of the way student loans worked, had I known this I would have tried to do things

much differently. Now, many people in my position finds themselves too overqualified to work in a restaurant or bar and don't have enough experience or there is no hiring going on as businesses are failing and so can't find a job to even begin to start paying off their loans. Lobbying to forgive loans for Scots and re-structure the loans system will help youth in Scotland to make a better start for themselves. Having young professionals riddled with debt with not help to promote growth and prosperity.

Incentivise and provide financial support to businesses to train and PAY trainees and interns in internships etc.

Lobby for laws that ensure a minimum wage for interns and trainees. We are not slaves. We are learning while we work but our energy and enthusiasm makes up for any lack of knowledge we may have. Work should never be unpaid. Volunteering within even well-meaning NGO's is an excellent way to get experience, but there should be support provided here also.

Ensure that work experience in this regard can be COUNTED as work experience. This can only be done if employers actually hire trainees to train them and invest in them. Yet many trainees end up making coffee and photocopying. Perhaps within an incentive programme, evaluations from both employers and employees can be an essential tool and obligatory before receiving grants and funding. Normal staff might not be familiar with how to train trainees. This programme can also include training trainers and ensuring that they understand the real objectives behind a traineeship. Those businesses and organizations that get involved in such a programme can be incentivized in many ways through funding, technical support, marketing etc. Universities should only be able to support obligatory traineeships under a course that are part of such programmes.

Get Scots learning languages. This opens up many doors. Many universities' funding are being cut in such areas. Languages are not only used to be a teacher in that language. Languages can be used to create transnational and international business for example and in an ever more globalised world, this is essential. Especially as we Brits are not exactly well known for our language skills but yes for our business skills and innovation. A combination of both would go a long way. Promoting language learning with business at university, finance more Erasmus and other exchanges etc. Link up traineeships with stays abroad where students can learn languages and professional skills. I believe that Scotland is much more convinced by the European Union and would vote no in a referendum for the UK to leave the EU. Scottish EU relations in this regard should be enhanced since the EU provides many many youth learning, exchange, language and business opportunities within the EU which can be taken advantage of.

Learn from the EU youth initiative where it asked for EU youth to give their opinion on how to improve youth employment etc within the EU and get young Scots to tell Scotland what they want and how they think we can achieve this. Youth are the ones who know what they want and need, not others deciding for us.

Universities, colleges and vocational schools' participation in all of these processes are essential – as well as with procurement agencies and the relevant departments of the government so that Scotland's workforce needs are being catered for in an integral and coordinated manner and where courses can receive extra funding to incentivize students to take them if there is a particular need for specific profiles. Also, providing too many places on, for example, a psychology degree when demand in the labour market is low is not useful. (Especially since, to work abroad with such a degree would take further study, a long wait to validate or may not ever be valid depending on the country.) Where the labour market is high but where Scots are less interested, this is where Scotland can also tap into its migration resources, perhaps setting up agreements with certain countries to allow refugees, labour migrants or even circular migrants (those coming for a short time that then return – even seasonally) to be trained and to work, allowing them to integrate into society, contribute to society and helping to balance the labour demand as well as demystifying the idea that migrants steal nationals' jobs as well as other anti-immigrant perceptions.

Generally with youth, human rights training should start here. To ensure a just Scotland for all those living in Scotland, ensuring that future generations are aware of the human rights systems, their rights, how to demand them and how ensuring human rights are essential for the development of any human being should be obligatory in all primary and secondary schools.

MIGRANTS' RIGHTS

Lobby for the ratification of the International Convention for the Protection of Migrants' Rights - make UK or an Independent Scotland the first northern country and an example to all other countries.

Lobby to change refugee and asylum law to allow asylum seekers to work and provide for themselves and contribute to Scotland's development.

An awareness campaign on the rights of migration, revealing the truth about migrants and their contribution and fighting negative perspectives of migration can assure public and perhaps even political support for the aforementioned two points. This should involve the migrants themselves.

NGO's and diasporas and migrants' associations can be trained to fight for their rights, and supported financially also to ensure they have the resources and the know-how to do so. Also support the same NGOs and associations to get involved in awareness as well as in their efforts to ensure migration for development in both home and host countries. This is an up and coming area of development that the UN and the EU are beginning to fund seriously and evidence points to its real development effectiveness. This will also ensure a fair, just and socially cohesive Scotland.

Scotland is not yet officially a country, this can be taken advantage of to put mechanisms in place to ensure migrants' rights – before (if) Scotland ever attained independence and although I would hope that the government would support this,

ensuring that enough independent pressure and well-functioning organisms and NGOs with public support are in place would facilitate this and ensure the sustainability of these programmes and public support for any policies then taken up within the Scottish government.

In all of these processes, migrants themselves need to be involved as much as possible, they need to be empowered and informed and supported so they can demand their rights from the government and also aid in the process of ensuring their own rights and helping themselves improve their lives and prospects. With rights also comes responsibilities of course, and this aspect should not be forgotten.

GENDER EQUALITY

A rights based approach to all gender related campaigns, projects and initiatives will ensure that women are empowered to demand their rights. By making sure that a national human rights plan includes this aspect throughout the plan would ensure that women's particular vulnerabilities and needs would be covered in all areas.

Introduce and enforce more effectively quotas and incentives for women in higher up positions in all public and private sectors.

Provide better child care options for women also aiming to pursue a career and especially for single mothers.

Ensure legal aid is facilitated and consequences duly enforced when women are discriminated against in the workplace.

Support businesses and other organizations to design and implement their own gender equality initiatives catering their specific needs through incentives.

When supporting freelance business, ensure women have extra support and financial aid.

When business plans are being approved, give points to aspects that take into account gender aspects.

Women know their rights and can be assisted to fight for them yet men tend to be in the positions where decisions are made. It is therefore essential to ensure the participation of men in these processes through awareness raising campaigns in order to gain their support and understanding.

1. Based on the evidence presented in the report getting it right? Human rights in Scotland, or your own experience, what do you consider to be the most urgent human rights issues which should be addressed in Scotland's National Action Plan for Human Rights?

The objectives of the Executive Summary are wonderful with their coverage of social objectives to enrich the quality of life in Scotland. They provided a frame work for our decision makers

Regrettably, as a result of his findings here in January, the United Nations Special Rapporteur identified current short falls in the application of Articles in the 1998 Human Right Act and found it necessary to made recommendations these would, therefore, seem to require a priority of action.

Particularly the Justice Ministers Guide Lines to Local Authorities on marches and parades where they have caused Glasgow Council to breach the workings of the Human Rights Act.

His recommendation for Local Authorities and the all Scotland Police Service to adopt a systematic Human Rights approach. There is evidence that Local Authorities in adopting parade/ marches guidelines considered Scottish Law but excluded the overriding Human Rights Act and Strathclyde Police have made recommendations to Local Authorities and Strathclyde Police Authority that were contemptuous of the Articles of the Human Right Act eg the Chief Constables reports to Strathclyde Police Authority on marches and parades

These issues are important as some organizations have lost confidence in policing because of aggressive elements in the police within Scotlands main conurbation

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2. What specific and achievable actions do you consider would best address the concerns you identify in your response to question 1?

That the SHRC lobbies the Justice Minister on these issues and draws up and issues guide lines to assist organizations and bodies of their right of public assembly.

Name: INV-022a-CMuirhead-000

Based on the evidence presented in the report Getting it right? Human rights in Scotland, or your own experience, what do you consider to be the most urgent human rights issues which should be addressed in Scotland's National Action Plan for Human Rights?

As a survivor, of mental ill health and the psychiatric system, I believe that the human rights of psychiatric inpatients and people receiving compulsory psychiatric treatment are a major concern. More recently I have been a carer of family members in the psychiatric system, in particular my youngest son who received dehumanising treatment as a patient of Stratheden Hospital's IPCU in February 2012, where he was locked in a seclusion room without a toilet or water to drink, for hours on end, with a broken hand, and had to defecate on the floor. Patients were not allowed pens to write with and had to ask for water to drink. Basic human rights denied, freedom of expression and degrading treatment. As a visitor I had to go in the back door, segregated. I raised a number of complaints about this to NHS Fife and there is to be a new IPCU built but this does not, in my opinion, deal with the inhumane treatment meted out by psychiatric nurses, under the auspices of psychiatric 'care'. What is to prevent this happening again to a family member of mine or to anyone else?

I am concerned at the use of forced treatment on psychiatric patients. It happened to me in 1978 and 1984, when experiencing puerperal psychosis and then being separated from my babies, in Hartwoodhill Hospital, Lanarkshire. Then in 2002 I experienced a menopausal psychosis and went voluntarily into Stratheden Hospital only to be detained for 72hrs and told I had to take the psychiatric drugs, no other option. Because I had been forcibly injected in the two previous inpatient episodes I took the drugs under duress, fearing I would be forced to.

I am a community development worker by experience and training over 30yrs, non-conformist and a natural leader. Am I going to be any different when a mental patient? Why should non-conformity in psychiatry be seen as non-compliance? Why should a patriarchal psychiatric system take away my decision-making abilities by detaining me and forcing me to take brain altering chemicals that depress and subdue me? Do human rights disappear because someone is in mental distress and requires psychiatric treatment? Is anything possible and justifiable because a psychiatrist says so in the notes? Does a mental patient give up all their human rights when declared 'without capacity'? In whose opinion?

I was given a schizoaffective disorder label in 2002 and told I had a lifelong mental illness. I didn't believe it and eventually, in the fog of psychiatric drugs – risperidone then venlafaxine and lithium – I took charge of my own mental health and recovered by 2004. Resisting the labels, prognoses and disabling drug treatment. I have been in good mental health ever since, got back on with a career in 2006, achieved another postgraduate qualification (TQFE care subjects) in 2008 but was drawn into mental health activism because of the peer support human rights movement, and helping family members out of the system.

I believe that human rights abuses in psychiatric care affect the whole of society not just the minority who find themselves incarcerated. It affects the GP prescribing of anti-depressants and benzos to depressed and anxious patients who wish at all costs to avoid being hospitalized or labelled with a disabling diagnosis beginning with schizo-. The stigma of a psychiatric label leads to other human rights abuses, hate crime and a blaming of mentally disordered people as criminals. Mentally distressed people and those in crisis should have their human rights protected when at their most vulnerable. There is no excuse or reason for using force or treating mental patients without respect.

What specific and achievable actions do you consider would best address the concerns you identify in your response to question 1?

I want to see a human rights action plan specifically for psychiatric inpatients and people under compulsory treatment. A document that would set out the basic human rights that should be adhered to in psychiatric institutions and by psychiatric/mental health workers who treat patients under compulsion in the community. A document that was freely available to patients and staff alike, written in plain language, setting out the rights of patients receiving psychiatric treatment, whether in hospital or in the community, whether voluntary or detained.

At present the Mental Welfare Commission for Scotland oversees the welfare of patients/people in psychiatric 'care' and receiving psychiatric treatment. However I have personally not found the MWC to be a watchdog with teeth and is more wise after the event through the writing of reports and suchlike. The psychiatric system is an institution that is legally entitled to give 'medical' treatment involuntarily. Therefore by its very nature this will be open to abuse, using force to compel when persuasion doesn't work. It stands to reason. A psychiatric human rights action plan would have to be recognised by both service provider and service user/carer, otherwise it will lack power and authority.

To bring about a psychiatric human rights plan/document will involve professionals and customers in the discussions, plans and outcomes, from its inception. The new [mental health strategy for Scotland](#) talks about 'shared decision-making' and 'mutually beneficial partnerships between patients, their families and those delivering healthcare services'. The strategy's first key theme is 'working more effectively with families and carers'. People with mental health problems and in serious mental distress deserve to be treated with respect and to have their human rights preserved. The challenge will be to bring about balance in a psychiatric system that has historically had a paternalistic and patriarchal culture. Deciding what is right for a person shouldn't mean forcing it on them and denying their basic human rights.

For me, the recovery from traumatic psychiatric treatment was harder than the recovery from mental ill health. I want to see an end to degrading psychiatric

treatment behind closed doors and believe that the human rights action plan is a useful means of bringing this about.

Name: INV-024a-name redacted-010

1. Based on the evidence presented in the report Getting it right? Human rights in Scotland, or your own experience, what do you consider to be the most urgent human rights issues which should be addressed in Scotland's National Action Plan for Human Rights?

Justice, harassment, integration

1. Based on the evidence presented in the report Getting it right? Human rights in Scotland, or your own experience, what do you consider to be the most urgent human rights issues which should be addressed in Scotland's National Action Plan for Human Rights?

Health and well-being are critical to a just and fair society. The other areas in which Human Rights operate are also important, but from my perspective, there is potential to develop a strong human rights foundation by integrating human rights with health and well-being. One disappointment that I have found is the hesitancy for successive administrations to be explicit in framing health strategies in the context of human rights. One clear example is in the sphere of sexual health and particularly HIV, which links closely to other areas of social justice. Other countries such as Australia have taken this approach with good results.

2. What specific and achievable actions do you consider would best address the concerns you identify in your response to question 1?

I would like to see Scotland's NHS constitutionally and legally framed in the context of human rights. The Patients Rights and Charter show the way to a more fundamentally human rights approach required by legislation.

Answer 1.

The whole range of state abuses of the individual's human rights require to be urgently addressed. Those abuses embitter and alienate the individual directly affected. They also present a threat to the security of the rest of us. Ultimately, they undermine the cohesion of our society and diminish the quality of our lives. Examples of such state abuses are:

- i) Local authority dishonesty and unfairness towards residents entitled to their services,
- ii) Health service dishonesty and negligence towards patients entitled to their services,
- iii) Police dishonesty and unfairness towards members of the public entitled to their services,
- iv) Civil service dishonesty and unfairness towards members of the public entitled to their service,
- v) Watchdog bodies dishonesty and unfairness towards complainants entitled to their services,
- vi) Justice authority dishonesty and unfairness towards members of the public entitled to their services,
- vii) Political representative dishonesty and unfairness towards members of the public entitled to their services.

All those issues are long-standing and require to be resolved before we can begin to build the kind of society and country we all wish to live in. Clearly the old approaches towards addressing the state's abuse of human rights have failed to bring about a satisfactory situation. A fresh approach is required.

Answer 2. The setting up and financing of a body drawn from the "ordinary" people of Scotland (whose loyalties can be shown to lie with their fellow Scots rather than the Scottish state or any part of it) with the remit and powers to take all necessary measures to ensure that the human rights of every member of our society are protected from violation by the servants of our state.

No consideration of a Scottish action plan for human rights can avoid for long the question of the desirability of a Scottish bill of human rights.

Personally, I am of the view that the lack of an unambiguous and wide-ranging bill of human rights goes a long way to explain why in twenty-first century Scotland it is still considered necessary to formulate an action plan for the promotion of human rights.

Until our people can stand up and confidently state their rights – rather than wait for a court to tell them what their rights are – I fear our nation will live a second-rate existence.

Name: INV-027a-name redacted-011

Based on the evidence presented in the report Getting it right? Human rights in Scotland, or your own experience, what do you consider to be the most urgent human rights issues which should be addressed in Scotland's National Action Plan for Human Rights?

Better provision of services for homeless people and beggars.

What specific and achievable actions do you consider would best address the concerns you identify in your response to question 1?

Don't try to remove the outward symptoms by relocating people out of central areas but providing better shelters and alternative dwellings places with more rehabilitation services. Also more flexible services so people are not denied access to the system if they do not conform with all the strict rules.

Name: INV-028a-DGray-000

Based on the evidence presented in the report "Getting it right? Human rights in Scotland", or your own experience, what do you consider to be the most urgent human rights issues which should be addressed in Scotland's National Action Plan for Human Rights?

I think an issue that remains outstanding is clearly the issue of prisoner voting rights. The Scottish courts have already issued a s4 declaration of incompatibility, yet still Parliament chooses to ignore the issue for political reasons. Of interest will be the decision of the case of McGeoch by the Supreme Court. In any event, the continued attempt to avoid the implications of the decision in the Hirst case is disappointing. Accordingly, I agree with the report's finding that political debate is slow to react. The reference to the role of human rights in the care system is particularly apt, given the economic pressures that are currently being placed on the sector.

I would also like to note a concern as regards the stop and search powers under s47A of the Terrorism Act 2000. I find it concerning that although it is more difficult to set up a zone within which the exceptional powers can be used, they are still arbitrary. I accept the Home Office released guidance that the power should not be used if the situation would be better suited to using grounds of reasonable suspicion. Nonetheless, I do wonder whether s47A actually complies with the decision of the ECHR in the case of Gillan.

What specific and achievable actions do you consider would best address the concerns you identify in your response to question 1?

I think eventually Parliament will have to remove the blanket ban on prisoner voting; no doubt it will choose to only give the vote to some prisoners. However, it will eventually have to choose to comply with the ECHR or not do so.

As refers the questioning for terrorism offences, I think that the reasonable suspicion test must be put in statute, rather than a code of conduct for the police.

Name: INV-029a-VPerezSaez-000.doc

Based on the evidence presented in the report "Getting it right? Human rights in Scotland", or your own experience, what do you consider to be the most urgent human rights issues which should be addressed in Scotland's National Action Plan for Human Rights?

I believe that the issue of homeless people should be addressed in Scotland. It is quite a common thing to see around the streets in Edinburgh even in the harsher months of winter time. To this extent, a socio-economic dimension of the right to life should be taken into account. Moreover, the right to have an adequate housing is, in my view, one of the most basic elements giving a practical definition of the right to live with dignity.

What specific and achievable actions do you consider would best address the concerns you identify in your response to question 1?

Given the current economic situation in Europe the question of how to address this problem is not an easy one to answer and I don't see myself as fit to do so. But one practical way of getting started would be to have a stable volunteer/state-funded programme with trained volunteers to assist people on the streets. In a little town called Poitiers in France, I had the opportunity to get acquainted with a small organization called the 'Samu Social'. Basically they were a group of trained volunteers that on a weekly basis would go to talk to homeless people, to get to know them, give them a hot drink or water or something to eat. Another important aspect of their job was to assist them with any paperwork they eventually had, such as to get health treatment or for a job application. However, what homeless people most appreciated about their action was that they had someone to talk to. All the people working at the 'Samu Social' were volunteers. The organization got a small financial help from the State in order to buy the food and drinks or any other things they happened to need (such as blankets, first-aid kits, ect.). Even if this should stay a provisional measure and not a long-standing solution, this type of initiative did make in difference in Poitiers and eventually in one or two cases it gave the means and courage for people to start their lives again.

Based on the evidence presented in the report "Getting it right? Human rights in Scotland", or your own experience, what do you consider to be the most urgent human rights issues which should be addressed in Scotland's National Action Plan for Human Rights?

I think the situation of asylum seekers MUST be addressed. I find it very upsetting to see that a legal system pushed people into destitution and that the traumatic deportation procedures are used.

What specific and achievable actions do you consider would best address the concerns you identify in your response to question 1?

- get a thorough human rights check not the asylum procedure: I believe the government must prove to the refugee that this country values human rights - people should not end up in destitution because some deadline can't be met, or a doorbell isn't working or whatnot. -> prolong the period of social security and safety. - no children in detention centres, or - as a development stage - staff (!) and furnish the centre appropriate for children. no deportation of young minors. - end traumatic deportation procedures incl. storming houses in the middle of the night!

Based on the evidence presented in the report "Getting it right? Human rights in Scotland", or your own experience, what do you consider to be the most urgent human rights issues which should be addressed in Scotland's National Action Plan for Human Rights?

Migrant rights are not up to the standards you would expect from a developed country such as Scotland.

What specific and achievable actions do you consider would best address the concerns you identify in your response to question 1?

Push the Scottish Government works proactively with the UKBA to develop immigration policy that accurately assesses impact and value for Scotland's unique needs. -Exercise leadership in delivering progress from the baseline findings of the 2010 Equal Opportunity Committee's Inquiry into Migration and Trafficking. -Push the Scottish Government works to counter widespread misinformation about and negative perceptions of migrants, their rights and their contribution to Scottish society and economy. -Work with migrants and their community organisations to build awareness of migration issues across Scottish society, the private, public and third sectors. -Push the UK Government to sign the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families.

Name: INV-032a-CLadda-000.doc

Based on the evidence presented in the report "Getting it right? Human rights in Scotland", or your own experience, what do you consider to be the most urgent human rights issues which should be addressed in Scotland's National Action Plan for Human Rights?

Several issues seem pressing and it is important to generally address discrimination and ensure that laws are followed and victims of discrimination are protected.

Name: INV-033a-CSperandio-000.doc

Based on the evidence presented in the report "Getting it right? Human rights in Scotland", or your own experience, what do you consider to be the most urgent human rights issues which should be addressed in Scotland's National Action Plan for Human Rights?

Homeless people : everywhere in Edinburgh, hoping to get a few pence.

What specific and achievable actions do you consider would best address the concerns you identify in your response to question 1?

Go and ask them what there situation really is. Build a shelter where they can sleep at night (instead of under doors). Help them to find jobs, opportunities to re-start their lives.

Name: INV-034a-LEvens-000.doc

Based on the evidence presented in the report "Getting it right? Human rights in Scotland", or your own experience, what do you consider to be the most urgent human rights issues which should be addressed in Scotland's National Action Plan for Human Rights?

Environmental context. I.e fracking. Destruction of OUR environment for short term economic gain. Drinking water, habitat etc is destroyed. Extreme health problems have been proven to arise in cases worldwide with Fracking.

What specific and achievable actions do you consider would best address the concerns you identify in your response to question 1?

Having a dedicated team of environmental advisors to oversee and regulate large scale environmental actions. Who also have the power to deny these from happening in Scotland. Tackling large corporations and holding accountability for environmental destruction. Irrespective of money involved in the process, fear of negative economic result. There should be financial incentive for alternative renewable energy sources offered by this team of advisors and judges. I think that the people of the region affected should play a significant part too.

Name: INV-035a-JAinslie-000.doc

Based on the evidence presented in the report "Getting it right? Human rights in Scotland", or your own experience, what do you consider to be the most urgent human rights issues which should be addressed in Scotland's National Action Plan for Human Rights?

Accommodation Sites for Gypsy/Travellers Education for Young Gypsy/Travellers

Living Conditions and Education for Young Asylum Seekers

Recidivism among Scottish Young Offenders

What specific and achievable actions do you consider would best address the concerns you identify in your response to question 1?

A review of planning legislation as it relates to applications by Gypsy/Travellers for the creation of summer accommodation sites. Better educational opportunities for young offenders in HMYOI Polmont and HMYOI Carson Vale. A review of educational opportunities offered by Youth Justice Teams in Scotland. The creation of a special category of asylum seeker for those aged below 16 or falling within a category of vulnerable person (e.g. disabled) and a duty to review their living conditions and treatment on a regular basis.

Name: INV-036a-CMoody-000.doc

Based on the evidence presented in the report "Getting it right? Human rights in Scotland", or your own experience, what do you consider to be the most urgent human rights issues which should be addressed in Scotland's National Action Plan for Human Rights?

Equal marriage and adoption. Poverty and access to education. Immigration and asylum seekers.

What specific and achievable actions do you consider would best address the concerns you identify in your response to question 1?

Changes in legislation immediately, not promises for further down the line

Name: INV-037a-CAta-000.doc

Based on the evidence presented in the report "Getting it right? Human rights in Scotland", or your own experience, what do you consider to be the most urgent human rights issues which should be addressed in Scotland's National Action Plan for Human Rights?

Those living below the poverty line in certain urban areas

What specific and achievable actions do you consider would best address the concerns you identify in your response to question 1?

Better access to work

Name: INV-038a-GStecklemacher-000.doc

Based on the evidence presented in the report "Getting it right? Human rights in Scotland", or your own experience, what do you consider to be the most urgent human rights issues which should be addressed in Scotland's National Action Plan for Human Rights?

Freedom from oppression, and access to drinking water.

Name: INV-039a-SSingh-000.doc

Based on the evidence presented in the report "Getting it right? Human rights in Scotland", or your own experience, what do you consider to be the most urgent human rights issues which should be addressed in Scotland's National Action Plan for Human Rights?

Scotland's pretty liberal and very progressive compared to my country, so I'm really tempted to say that everything here is perfect. But of course that's not true for anywhere. I'd say transexual and transgender people are still one of the most marginalised social groups.

What specific and achievable actions do you consider would best address the concerns you identify in your response to question 1?

Better safety? More awareness? It's hard to say because so much bigotry operates on a subtle level; in most cases it isn't outright.

Name: INV-040a-PBocquet-000.doc

Based on the evidence presented in the report "Getting it right? Human rights in Scotland", or your own experience, what do you consider to be the most urgent human rights issues which should be addressed in Scotland's National Action Plan for Human Rights?

Homeless people

What specific and achievable actions do you consider would best address the concerns you identify in your response to question 1?

Home to welcome everyone

Name: INV-041a-MDeLuca-000.doc

Based on the evidence presented in the report "Getting it right? Human rights in Scotland", or your own experience, what do you consider to be the most urgent human rights issues which should be addressed in Scotland's National Action Plan for Human Rights?

According to me, equal rights should be guaranteed to heterosexual and LGBT people.

What specific and achievable actions do you consider would best address the concerns you identify in your response to question 1?

Consequently I believe that gay marriage and adoption should be legalised for gay people in order to give them the possibility of loving each other and/or starting a family while being legally recognised. Besides, LGBT people should also have the right to benefit from all the assisted reproductive technologies (ART) that are provided to heterosexual couples who want to have children, that is to say for instance the artificial insemination (AI) and surrogate mothers.

Name: INV-042a-RDevaney-000.doc

Based on the evidence presented in the report "Getting it right? Human rights in Scotland", or your own experience, what do you consider to be the most urgent human rights issues which should be addressed in Scotland's National Action Plan for Human Rights?

The integration of immigrants, and particularly Roma travellers, into Scottish society.

What specific and achievable actions do you consider would best address the concerns you identify in your response to question 1?

More education within the Scottish School system to help to tackle prejudices which build and currently exist against different ethnic groups to prevent this in future generations.

Name: INV-044a-SBonino-000.doc

Based on the evidence presented in the report "Getting it right? Human rights in Scotland", or your own experience, what do you consider to be the most urgent human rights issues which should be addressed in Scotland's National Action Plan for Human Rights?

Discrimination towards ethnic minorities within the workplace and at particular loci of security (airports in particular, where visible minorities, predominantly Muslim, are stopped, questioned and searched without proof of reasonable suspicion under Schedule 7 of the Terrorism Act 2000). Also, the striking class divide that characterises Scotland has impacted on the ability of the socio-economically more deprived strata of the population to access basic services (housing, health, education, jobs, etc.).

What specific and achievable actions do you consider would best address the concerns you identify in your response to question 1?

A radical change in the socio-political attitudes towards diversity, especially 'visible (ethnic, cultural and religious) diversity'. This can be achieved by providing a more nuanced and better informed education to the new generations that will constitute Scotland's future leaders. Addressing the socio-economic difficulties faced by the lower classes should start by broadening access to vocational higher education and encouraging the development of skills and abilities that can be well-received by the current job market.

Name: INV-045a-NDowers-000.doc

Based on the evidence presented in the report "Getting it right? Human rights in Scotland", or your own experience, what do you consider to be the most urgent human rights issues which should be addressed in Scotland's National Action Plan for Human Rights?

Probably education about human and civil rights - to help people know and understand what their human and civil rights are.

What specific and achievable actions do you consider would best address the concerns you identify in your response to question 1?

Education in schools, possibly by guest teachers with experience and knowledge of human rights.

Name: INV-046a-GNelson-000.doc

Based on the evidence presented in the report "Getting it right? Human rights in Scotland", or your own experience, what do you consider to be the most urgent human rights issues which should be addressed in Scotland's National Action Plan for Human Rights?

The report does a good job to address both the importance economic and social rights and civil and political rights. Based on the report the most pressing issue is to create positive based outcomes in order to institute Scotland's international and domestic obligations at the local level that affects people most. There is a greater need for impact assessments to monitor compliance with an inclusive approach across all sections of Scottish society.

What specific and achievable actions do you consider would best address the concerns you identify in your response to question 1?

***More training for organizations to learn how to institute approaches based on outcomes.
More workshops in schools and work places which tackle discrimination issues head on and educate people on what the government does. Address people's ignorance and their attitudes at a local level in order to promote a more equal, inclusive and prosperous society.***

Name: INV-047a-NSkold-000.doc

Based on the evidence presented in the report "Getting it right? Human rights in Scotland", or your own experience, what do you consider to be the most urgent human rights issues which should be addressed in Scotland's National Action Plan for Human Rights?

I consider refugee and asylum issues to be amongst the most urgent human rights issues to address.

What specific and achievable actions do you consider would best address the concerns you identify in your response to question 1?

As of now, asylum seekers must travel to Croydon to seek asylum in the UK. Often, those most in need of asylum do not have the money or possibility to travel there. There many aspects of the asylum system that should be developed, but a simple first step in the right direction would be to pay for the travel costs of getting to Croydon. A long-term goal would then be to make it possible to seek asylum from Scotland.

Name: INV-048a-KDunn-000.doc

Based on the evidence presented in the report "Getting it right? Human rights in Scotland", or your own experience, what do you consider to be the most urgent human rights issues which should be addressed in Scotland's National Action Plan for Human Rights?

Dignity and Care, Health, Education and Work, Safety and Security

What specific and achievable actions do you consider would best address the concerns you identify in your response to question 1?

Ensuring human rights are enshrined in Scots Law. Working to implement new and existing laws concerning human rights.

Name: INV-049a-ARBlanco-000.doc

Based on the evidence presented in the report "Getting it right? Human rights in Scotland", or your own experience, what do you consider to be the most urgent human rights issues which should be addressed in Scotland's National Action Plan for Human Rights?

Focusing on the core of the problem, rather than trailing behind and helping those who are failed by society. Instead of focusing on charities or gifts for the homeless, prevent them from turning homeless in the first place.

What specific and achievable actions do you consider would best address the concerns you identify in your response to question 1?

Guarantee an accessible education for the whole population, decrease the power than banks and debt hold over the average Joe and stop evictions from taking place, as these breach humanitarian law.

Name: INV-050a-JVillardeOnis-000.doc

Based on the evidence presented in the report "Getting it right? Human rights in Scotland", or your own experience, what do you consider to be the most urgent human rights issues which should be addressed in Scotland's National Action Plan for Human Rights?

I consider the blanket ban on votes for prisoners. The ECHR has already ruled this as illegal in 2005. David Cameron made it clear that: "no-one should be in any doubt - prisoners are not getting the vote under this government". The UK is in breach of its international obligation and its human rights obligations towards its citizens, more particularly in this case towards its prisoners. The reason behind why a prisoner who will be in jail for 6 months cannot take part in the decision for his future government or others like any other person is unclear to me.

What specific and achievable actions do you consider would best address the concerns you identify in your response to question ?

Pressuring the Scottish government/Westminster to follow the recommendations made by ECHR and to drop the blanket ban.

Name: INV-051a-ATGarcia-000.doc

Based on the evidence presented in the report "Getting it right? Human rights in Scotland", or your own experience, what do you consider to be the most urgent human rights issues which should be addressed in Scotland's National Action Plan for Human Rights?

In many countries a lot of work needs yet to be done to reinforce legislation and to come up with better mechanisms for accountability in the implementation of HR. The attention devoted to child services, education and health is well presented and highlights how important these issues are for the future of any society.

What specific and achievable actions do you consider would best address the concerns you identify in your response to question 1?

Scotland has made significant efforts in many issues.. The report rightly considers the need for a suitable impact assessment, applicable for the development of policies and practice, for all the key public sector areas in its Action Plan.

Name: INV-052a-AJaeger-000.doc

Based on the evidence presented in the report "Getting it right? Human rights in Scotland", or your own experience, what do you consider to be the most urgent human rights issues which should be addressed in Scotland's National Action Plan for Human Rights?

Safety and Security

What specific and achievable actions do you consider would best address the concerns you identify in your response to question 1?

Take into account discrimination as an offence and condemn racial prejudice, hate crimes...

Name: INV-053a-PSandro-000.doc

Based on the evidence presented in the report "Getting it right? Human rights in Scotland", or your own experience, what do you consider to be the most urgent human rights issues which should be addressed in Scotland's National Action Plan for Human Rights?

immigrants' rights

What specific and achievable actions do you consider would best address the concerns you identify in your response to question 1?

implement shared protocols with countries of provenience to address issues

Name: INV-054a-MDempster-000.doc

An opinion on linguistic rights for speakers of the Scots language

Dr Michael Dempster, researcher in psychology and linguistics.

"In our society a disproportionate number of people in socially disadvantaged groups speak Scots, widely and incorrectly known as 'bad English.' I believe the social and educational barriers faced by those of us who speak Scots as a first language need to be addressed within a linguistic rights framework. Does the panel have any views on linguistic rights for Scots speakers?" – asked 6th March 2013

Thank you for considering my question in your online discussion. Further thanks for the invitation to contact you with further comment on linguistic rights pertaining to the Scots Language.

I write to you as an individual. I am an early career researcher in auditory communication, a participant in Scots language communities and a first language Scots speaker. I could relate to you a vast number of personal or second hand anecdotal testimony of linguistic prejudice in education and the wider community, but I would like to focus on some of the research that has been done into Scots language that may be particularly relevant to linguistic rights. For further research and opinion I suggest contacting the organizations listed at the end of this document.

I also wish to state my opinion that although Scots and Gaelic linguistic rights may be addressed within the context of general linguistic rights, they are languages that are native to Scotland we have an additional moral obligation to protect and preserve the languages and the rights of those who speak them.

Below I present some information and cite references for:

1. The status of Scots
2. Who speaks Scots
3. Where Scots is spoken
4. Scots in education
5. Scots in the media
6. Attitudes towards Scots

Subsequently, I offer some interpretive opinion on why I believe speakers of Scots language need protection in a human rights context. I understand there is a limitation to time for submission of comment, so I present this in the knowledge that it is a rough overview of opinion and not a full research document.

1. The status of Scots

Scots is a West Germanic language spoken in Scotland. It is recognised as a language by the Scottish Government, the UK Government and the European Union. It is protected under The European Charter for Regional or Minority Languages – part II, but not yet part III. Presumably it should also be protected by articles 2, 10, 19 and 26 of the Universal Declaration of Human Rights; The International Covenant on Civil and Political Rights; and the Universal Declaration of Linguistic rights.

In the 2011 census a question on Scots was included. As the findings of this will be self reported usage of Scots, the attitudes towards Scots outlined below are expected to be reflected in the results.

Scots and Gaelic have also been included in two draft constitutions for Scotland, in one case as a rights issue.

"19. For all purposes, every person has the right to use any of Scotland's three official languages, Gaelic, Scots or English."

"(112) English shall be the principal official language of the Kingdom. The use of Scots and Gaelic shall be recognised as co-official. Provision shall be made for promoting the use of Scots and Gaelic in Parliament and in public education, broadcasting and administration."

It has a continuous literary tradition, traditionally dated from 1375 to the present. It has its own grammar, phonology, orthography and 22 volume dictionary of words.

Who Speaks Scots?

In 1996 it was estimated that 1.5 million people in Scotland speak Scots. In 2010 research carried out on behalf of the Scottish Government 85% of those surveyed identified themselves as speaking Scots at some point, the data is shown in figure 1.

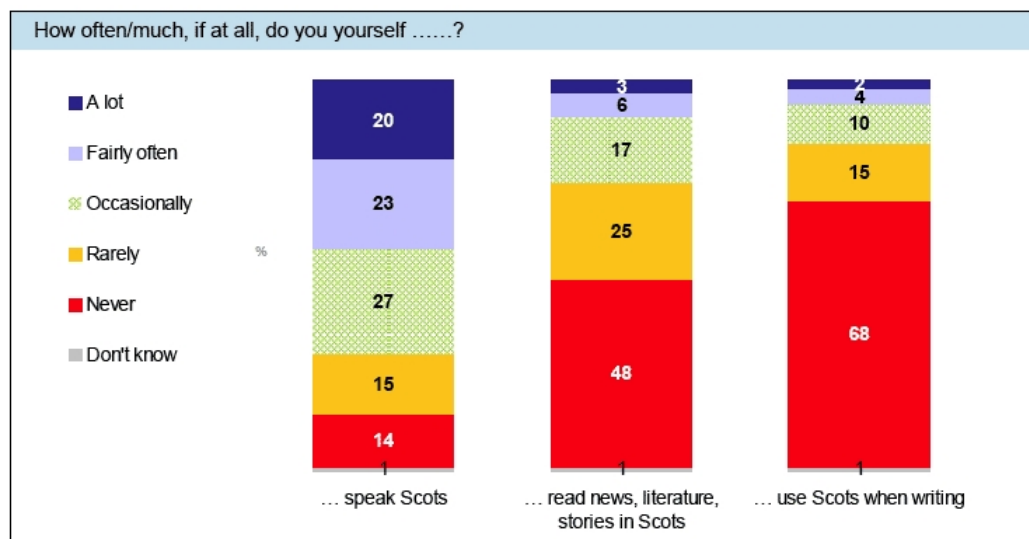


Figure 1

Where is Scots spoken?

When asked the degree to which Scots was spoken in their neighbourhood two thirds agreed that it was spoken "a lot", however there was a significant difference across NRS social grade groups.

"In total, two thirds agree that Scots is spoken a lot in their area, with the remainder broadly split between those neither agreeing nor disagreeing, those

disagreeing slightly and those disagreeing strongly. However, in line with the demographic profile of Scots speakers, there is also a significant difference amongst socio-economic sub-groups at this measure, with levels of agreement rising to 74% and 72% amongst DEs and C2s respectively, compared to 63% of C1s, and just 57% of ABs. The relative economic status of a local area thus appears to have a strong influence on whether or not Scots is widely heard.”

Among those who identified themselves as speaking Scots a significant difference between public and private usage is clear (figure 2.)

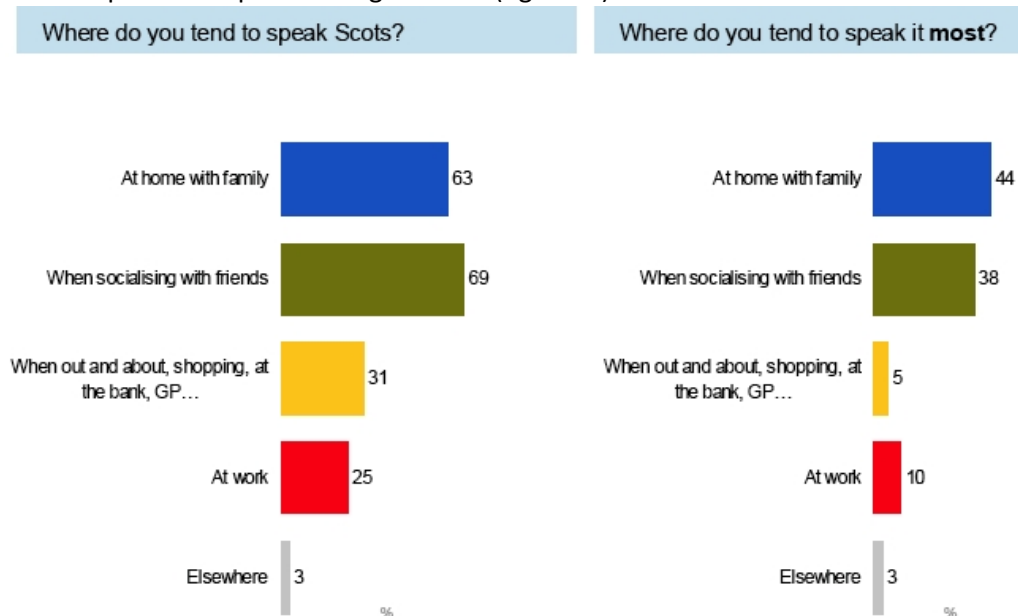


Figure 2

Scots in Education

The study of English as an academic subject began with Adam Smith, primarily known for economics, at Glasgow University in the 18th century. At that time there was a prevalent view that Scots was, in the words of David Hume “a very corrupt Dialect of the Tongue we make use of [i.e. English].” There was a “major and sustained attempt to establish what were viewed by a small social and educational elite as the norms for a ‘correct’ and ‘standard’ pronunciation of the English Language.” This perspective has persisted into the present day. In recent history there are many well documented accounts of corporal punishment being given to those who spoke Scots in the classroom.

A recent project using the Scots language in schools reports the response of teachers:

“There was a genuine feeling of shock and concern when they very honestly recognised that they were not respecting Scots in the way that they did other home languages, and an acknowledgement that Scottish texts did not permeate the curriculum, as recommended in English 5 - 14. Many felt Scots was something

they had been told not to use, and that they should only use "correct" English in school when working with the children. "

This project prompted Dr Bill Wilson MSP to conduct a survey of local education authorities asking:

"Scots has all too often been denigrated and downgraded, and those who speak it made to feel inferior...I would like to know whether the subject of discrimination against Scots speakers and/or the benefits of introducing a Scots language element into the classroom are ever broached during your teachers' in-service days? If not, would you consider it?"

He reports that there is a change in the attitude to Scots language, but that there is much still to be done:

"I want to denounce the poisonous racism inherent in the system by which generations of Scots have been taught to reject their own language. "Speak properly" has long meant for Scottish school-children "Speak English". This is a monstrous piece of cultural oppression and something I am glad to report our Universities and schools are beginning to banish from their curricula."

To return to the public attitude study, there is support for the use of Scots in schools, however there is a significant minority opposed to it being used:

"when asked whether children in Scotland should be encouraged to speak Scots, just under two thirds (64%) agree, with around a third definitely in favour. There is, however, a relatively large minority against children being encouraged to speak Scots (31%)."

Scots has a written form, however this is not systematically taught in schools. It should be noted from figure 1 that 68% of those surveyed never write in Scots, with only 2% claiming regular use.

In dealing with adult literacy and internalization of inadequacy Crowther demonstrates the tensions inherent in Scots speakers approaching English literacy and concludes:

"If vernacular literacies are unacknowledged or actively suppressed then coming to voice is particularly difficult; asserting the relevance and value of the literacies of the home and community helps to make clear the role of power in shaping our understanding of literacy."

There are currently no Scots language medium schools.

Scots in the media

In written media Scots has suffered a relatively recent decline in extended prose with Scots being identified as being used as a tool for negative characterization "see Unger 2004 for further discussion of how Scots can be used for characterization in fiction, e.g. representing Scots speakers as uneducated, tough etc" Although there is continued prose use in the sole Scots language journal, *Lallans*, and online communities, in particular see the Scots Language Centre's website.

In broadcast media the cross party working group on the Scots language identifies the underrepresentation of spoken Scots, particular attention may be drawn to the BBC Scots language policy:

“While there is very limited evidence of demand for dedicated provision in Scots, the Scots tongue is to be heard across BBC Scotland's output - for example, all BBC Scotland presenters are encouraged to use their natural speech patterns.”

which seems to contradict the findings of the public attitudes survey:

“Interestingly though, when asked whether the use of Scots across these 5 different areas is enough, not enough or too much, the arena which achieved the highest level of support for **more usage** was broadcasting (at 29%), just ahead of culture, at 28%. The corresponding figures for civic/political, legal and business life were only slightly lower at around 20% for each. Most however are content with the current level of usage across all aspects rated.”

It may also be noted that as Scots language policy is left to the presenters to decide, given education is in the medium of English, the dominant ideologies towards Scots may determine their personal approach to how they best use language.

Attitudes to Scots

There are three findings from the “public attitudes towards the Scots language” study that indicate that speakers of Scots face delegitimization and being negatively perceived when using their natural speech.

“The majority of adults in the sample (64%) agree that they do **not** think of Scots as a language, with around half of this group holding this view with conviction (34% of the total sample). However many of those who disagree (30%) do so strongly (16% in total) highlighting the absence of a real consensus on this issue.”

“On the issue of whether Scots “ *doesn't sound nice - it's slang*”, just under two thirds (63%) disagree, with most who disagree doing so strongly (40% in total compared to 23% disagreeing slightly). However although many are not concerned with the way Scots sounds, a significant proportion do agree (26%), highlighting that some have negative perceptions of Scots as a language.”

“At a general level the majority (67%) regard it is as important that Scots is used in Scotland these days, and indeed for a significant minority this view was expressed with conviction (29%). However although opinion is more likely to be positive than negative on the importance of using Scots these days, the percentage claiming it is **not** important is fairly substantial, at just under a third (31%). For the latter group the lack of importance appears to stem from the perception that it is not required /pointless and clearly some are simply not engaged with the language. Other concerns with understanding Scots, with it being old fashioned, inferior to English, and not being as universally used as English were also raised but only by small minorities in each instance.”

There is a noted case where negative treatment by the courts of a witness was held in contempt for using Scots:

“An extreme example of this occurred in 1993 in Edinburgh when a young man was jailed for contempt of court for repeatedly saying 'aye' when asked by the sheriff to say 'yes' or 'no'. This case highlights a visible way in which the dominant language serves to discriminate against the users of vernacular languages;”

Discussion

A picture that emerges from the studies shown above is that Scots is spoken by a large number of people in Scotland, but most people remain illiterate in Scots. Spoken Scots is linked to socio-economic status and it is available as an indicator of social standing. There is a strong minority who are opposed to it being used in schools, and its usage is significantly reduced in more formal settings. I don't believe that it would be a great leap to interpret this as suggesting that Scots is deemed inappropriate for social interaction outwith family and friends. When combined with the substantial numbers who hold “negative perceptions” about Scots and the view that Scots is “not important” this suggests that there may be a social impediment to those who use Scots inappropriately.

As Scots is spoken at home and with friends this will continue to be the first language children acquire in up to 85% of households in Scotland. With there being no Scots language medium schools or nurseries in Scotland children's first experience of interacting with the wider world will be, in the best case a lesson that their language is valued, but not appropriate; or in the worst case that it is wrong and bad.

I have been unable to find research on the number of people who are monolingual in Scots, those who are unable to speak the standard of English required by our education system. However, I do suspect that this may be reflected in Scotland's literacy figures. From my own teaching experience I have found that making the distinction between Scots and English language helps learners with English literacy. This observation is also noted in the report by Itchy Co.

By specifically recognising and protecting Scots speakers right to full expression in their own language, spoken and written, I believe we can encourage people to “come to voice” about a wide number of unspoken rights issues and work towards a more engaged Scotland.

Scots Language Groups

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PH2 8EP
Phone (44) (0) 1738 440199
Fax (44) (0) 1738 477010
Email: info@scotslanguage.com
<http://www.scotslanguage.com/>
- Minister for Learning, Science & Scotland's Languages

Dr Alasdair Allan MSP
The Scottish Parliament
Edinburgh
EH99 1SP
<http://www.scotland.gov.uk/About/People/14944/Scottish-Cabinet/AlasdairAllanMSP>
scottish.ministers@scotland.gsi.gov.uk

Including the members of the ministerial working group on the Scots Language
<http://www.scotland.gov.uk/Publications/2010/11/25121454/5>

- Cross-Party Group on the Scots Language
Rob Gibson MSP
M4.06
Scottish Parliament
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0131 348 5725
01955 605016
<http://www.scottish.parliament.uk/msps/50090.aspx>

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Name: INV-055a-GHillyard-000

1. Based on the evidence presented in the report Getting it right? Human rights in Scotland, or your own experience, what do you consider to be the most urgent human rights issues which should be addressed in Scotland's National Action Plan for Human Rights?

Assisted dying

2. What specific and achievable actions do you consider would best address the concerns you identify in your response to question 1?

Consideration of SCOOP – a procedure for legalizing AD without medical involvement

EXPERIENCE
OF
PEOPLE
WHO
HAVE
USED
SCOOP

as assessed by and approved by
over 100 Scots in and around
Dundee!

Name: INV-056a-name redacted-010

Based on the evidence presented in the report Getting it right? Human rights in Scotland, or your own experience, what do you consider to be the most urgent human rights issues which should be addressed in Scotland's National Action Plan for Human Rights?

I am concerned that though the paper raises the issue of protecting the Human Rights of disabled people and minority ethnic groups it does nothing to address the Human Rights of women, disabled people including those with mental health problems, young people and people concerned about their sexual orientation within minority ethnic groups. Many continue to experience stigma and inequality within their minority ethnic community based on the concept of culture and not Human Rights which everyone is entitled to which impacts negatively on their rights and opportunities to live as equal citizens within the Act.

What specific and achievable actions do you consider would best address the concerns you identify in your response to question 1?

A move away from protecting 'traditional cultural practices' towards mainstreaming Human Rights based approaches in the commissioning of support services and building cohesive communities. This would require public sector bodies to contract on a geographic basis taking account of the diversity of the population within a Human Rights context rather than funding separate minority ethnic community groups who may continue to stigmatize people in their own community based on their gender, disability, sexual orientation etc.

Name: INV-057a-name redacted-011

1. Based on the evidence presented in the report Getting it right? Human rights in Scotland, or your own experience, what do you consider to be the most urgent human rights issues which should be addressed in Scotland's National Action Plan for Human Rights?
poverty and related exclusion, discrimination
2. What specific and achievable actions do you consider would best address the concerns you identify in your response to question 1?
income redistribution, job creation, welfare

Name: INV-058a-TMartin-000.doc

Based on the evidence presented in the report Getting it right? Human rights in Scotland, or your own experience, what do you consider to be the most urgent human rights issues which should be addressed in Scotland's National Action Plan for Human Rights?

As a member of the Humanist Society Scotland I am of the opinion that within the spread of issues that most challenge discrimination and injustice in Scottish society, the question of human disability demonstrates the greatest affront to human dignity. Linked to the human rights of the disabled in Scotland is access to health care, and as subsets of this accessibility of the disabled and impaired are crucial protection rights for medical research and genetic interventions. Rights are justifiable claims that individuals and groups can make; the barriers to these claims are environmental and attitudinal within Scottish society, so that humanists speak out for the elimination of structural and moral discrimination in all of their manifestations, not least within health care. Medical science holds out the potential for alleviating such barriers to opportunity that the disabled are confronted with, not least in terms of preventative medicine and genetic interventions.

There is an epigenetic dimension to medical science that carries a subset of human rights. These rights are contained within the totalizing concept of reproductive rights. They are: screening and testing for impairment as specific research interventions; pre-implantation genetic diagnosis; genetic enhancement. Scottish humanists support the human right of every woman to open access to contraception, to birth control, to abortion, in the face of religious dogma, censorship and controls over the autonomy of procreation rights.

What specific and achievable actions do you consider would best address the concerns you identify in your response to question 1?

Humanist Society Scotland would want to see a commitment from the SHRC to defending the rights of disabled and impaired men, women and children, along with a consistent acknowledgement of the centrality of medical science as a secular component of this commitment. We Scottish humanists are aware of the wider programme of human rights in Scotland as a stand against injustice and prejudice as well as a regard for equality of opportunity as a cornerstone of these rights. The disabled and impaired community is almost by definition a group whose departure from normal functioning characterizes their state of otherness. This departure entails natural disadvantages, physical and mental, that can become colonized by injustice through barriers to opportunity. Equality in respect of fair treatment and removal of these structural, social, educational and emotional barriers is really about justice in the treatment of the impaired and disabled. How does Humanist Society Scotland propose to define these specifics of injustice experienced by the disabled in Scotland? By focusing on health law and policy making; healthcare quality; health promotion; non-discrimination within health care, and mental health care and treatment.

Name: INV-059a-name redacted-011

Based on the evidence presented in the report Getting it right? Human rights in Scotland, or your own experience, what do you consider to be the most urgent human rights issues which should be addressed in Scotland's National Action Plan for Human Rights?

Human rights with regards mental health, particularly the area of forced medication and restraint (sectioning.)

What specific and achievable actions do you consider would best address the concerns you identify in your response to question 1.

The right to dignity and choice are violated frequently in this area. Also the knock on effects have lifelong consequences. Patients being treated in a generalized way and not as individuals is also an issue.

Based on the evidence presented in the report Getting it right? Human rights in Scotland, or your own experience, what do you consider to be the most urgent human rights issues which should be addressed in Scotland's National Action Plan for Human Rights?

I consider the most important human rights issue at present in Scotland, which ought to be addressed directly by the National Action Plan for Human Rights, to be that of poverty. The report highlights that a number of individuals, particularly those from minority or marginalised groups, suffer as a direct result of problems which result from disadvantages. However, these problems are exacerbated when set against a backdrop of economic deprivation. I would therefore identify the issue of poverty as the most urgent human rights issue in Scotland at present.

What specific and achievable actions do you consider would best address the concerns you identify in your response to question 1?

The concept of a living wage should replace that of the minimum wage. There remains no justification for applying distinctions based on age between the different bands of minimum wage – if it were to be applied at the other end of the age spectrum, it would be automatically rejected on the grounds of unjustified discrimination – and requiring employers to pay a living wage instead would eradicate this issue. Creating a right to a living wage, and enshrining that wage in law, would assist those on lower incomes in meeting their living costs.

I think it would also be of value to create responsibilities in respect of directing and advising young people from deprived backgrounds in respect of their careers. There have been various methods devised of ensuring that young people have access to education, in a rather clumsy quota fashion based on postcodes, but it may be worthwhile to examine whether this is the desired road down which they wish to go with their lives. Further advice and information, across the board, from specialists with an understanding of the myriad career, training and educational opportunities available in life, ought to be available to those from deprived backgrounds in particular so as to assist them in identifying their own talents and abilities, and ultimately, to allow them to take control of their own lives.

INV-005a-name redacted and submission confidential-101
INV-013a-name redacted and submission confidential-101
INV-021a-name redacted and submission confidential-101
INV-023a-name redacted and submission confidential-100

PE-004a-CRER-Mar2113 PDF Submission



SNAP! What does it mean for race equality?

21 March 2013

CRER Seminar Report

Coalition for Racial Equality and Rights Published: March 2013



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Introduction

This report aims to draw together information from the Coalition for Racial Equality and Rights (CRER) seminar ‘SNAP! What Does it Mean for Race Equality?’ This event on Scotland’s National Action Plan for Human Rights (SNAP) and its implications for race equality was held in February 2013 in co- operation with the Scottish Human Rights Commission (SHRC).

It is hoped that this seminar report provides an overview of the opinions put forward by members of black and minority ethnic communities and voluntary and public sector staff with expertise in race equality issues during the seminar. The report will be used by SHRC as part of its evidence base for the development of Scotland’s National Action Plan. It is hoped that it will also encourage engagement in the on-going consultations for the development of SNAP.

National Action Plans for Human Rights have been developed in over 30 states. United Nations High Commissioner for Human Rights, Navi Pillay, endorsed the Scottish process; “National Action Plans can bring clarity to states in identifying the steps they must take to improve the promotion and protection of human rights, especially for the most vulnerable people.” National Action Plans are evidence based, developed in an inclusive way and independently monitored. They set out realistic and practical ways to fill gaps, build on good practice and help countries to look outwards and move forward.

The aims of the ‘SNAP! What does it mean for race equality’ event were to:

- Discuss the reasoning and research conducted for the development of Scotland’s National Action Plan
- Explore issues around race equality and human rights for the development of the National Action Plan

The purpose of this report is not to provide a full account of the contributions made by speakers and delegates, although all contributions were valuable. Rather, the report seeks to outline the most pressing points arising from the seminar, highlighting priorities, evidence gaps and opportunities for change.

Copies of the report will be distributed to all attendees, to the Scottish Human Rights Commission and also made publicly available on the CRER website.

For more information on this report or the work of the Coalition for Racial Equality and Rights, or to request this report in an alternative format, please contact:

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Overview of Presentations

Overview on the development of Scotland's National Action Plan and research on *Getting it Right? Human Rights in Scotland* report

Diego Quiroz, Policy Officer, Scottish Human Rights Commission Alison Hosie, Research Officer, Scottish Human Rights Commission

Diego provided background information on the significance of national action plans, in particular, in regards to its significance for the people of Scotland. Alison presented information on the research methodologies and findings of SHRC's report *Getting it Right? Human Rights in Scotland*, leading up to the development of SNAP.

Key points included:

- The Scottish Human Rights Commission as the national human rights institution for Scotland is leading the development of Scotland's National Action Plan for Human Rights
- Close engagement with experts, membership organisations, the public, private and voluntary sectors and the voices of the most vulnerable in our society is essential in creating a fully informed Action Plan
- *Getting it Right?* identified gaps and good practice for human rights in Scotland's legal, political, economic, social, technological and environmental contexts
- Eight broad areas of life were identified in *Getting it Right?*; dignity and care, health, where we live, education and work, private and family life, safety and security, living in detention, and access to justice and the right to an effective remedy
- Development of SNAP has been praised by United Nations High Commissioner for Human Rights, Navi Pillay, and Council of Europe Commissioner for Human Rights, Nils Muižnieks
- Other nations whose National Action Plans have potential learning implications for Scotland include New Zealand and Columbia
- Three types of human rights indicators can be distinguished to measure human rights enjoyment (i.e. the extent to which people benefit from their human rights in practice) and implementation;
 - Structural indicators
 - Process indicators

– Outcome indicators

- Commitments to the development of SNAP need to be independently monitored
- A series of participation events focussed on all sectors and rights holders on priority gaps, good practices and actions are taking place over February – March 2013
- Written participation is possible through SHRC's website where two consultation questions are outlined. To participate in the written consultation process before the end of March [click here](#).

For the full report and executive summary of *Getting it Right? Human Rights in Scotland* please visit the Scottish Human Rights Commission's website at: <http://www.scottishhumanrights.com/actionplan/home>. For more information regarding research, findings and development of Scotland's National Action Plan please email: actionplan@scottishhumanrights.com.

SNAP! Implications for race equality in Scotland

Jennifer Glinski, Policy Officer, Coalition for Racial Equality and Rights

Jennifer provided an overview of four of the eight human rights themes presented in *Getting it Right* as they applied to the obstacles and achievements of race equality in Scotland. These four themes; health, education and employment, family and private life, safety and security, also formed the basis for group discussion during the event.

Key points included:

- Although human rights apply equally to majority and minority ethnic people, there are certain areas where repeated and severe discrimination occurs (health, education and employment, private and family life, safety and security), restricting minority ethnic communities and individuals' enjoyment of those rights.
- Knowledge of and access to healthcare facilities is limited, with individuals learning of healthcare options via word of mouth rather than through official means.
- Language barriers present a significant obstacle to the attainment of the right to health and other social services.
- Muslims are the most educationally disadvantaged religious group in the UK, with one third of working age Muslims having no formal educational qualifications; this

has a race equality impact because the majority of Muslims in the UK are from a minority ethnic background.

- Scottish Gypsy/travellers have lowest educational performance compared to any other category of children/young people.
- There is a continued and consistently high unemployment rate among ethnic minorities and over-representation in low paid jobs.
- Common barriers for migrants and ethnic minorities in accessing employment in Scotland include: lack of access to training and development skills, lack of appropriately trained staff in job centres, language barriers, legal status and lack of recognition of overseas qualifications.
- Migrants with professional roles in their countries of origin meet significant obstacles in re-engaging professionally and end up in low paid, unskilled jobs.
- New and on-going research is needed for settled BME communities where a different set of barriers exist in gaining appropriate employment.
- Discrimination and intersectional issues in employment need to be further analysed; inherent prejudices, lack of appropriate childcare, lack of self- confidence and lack of understanding of religious practices by employers are some barriers identified in race equality research.
- Current domestic abuse responses have been criticised in their approach to minority ethnic groups. Intersectional aspects of discrimination (race, sexual orientation, age) are not given proper consideration.
- Knowledge and access to domestic abuse services is limited in many BME communities. Additionally, misinformation and stigma surround issues of domestic abuse in many BME communities.
- Immigration, deportation, detention, and funding of asylum seekers are all matters reserved to Westminster, however, Scotland's devolved powers are crucial for successful integration and well-being (health, housing, education, child protection, support services, etc.).
- Asylum-seeking children in Scotland are of particular concern, especially in regards to transitioning from asylum seeker to refugee and navigating the social housing system.
- Hate crime is now formally recognised in Scots law, however, public awareness and information on what defines a hate crime is lacking.
 - 8% rise in recorded cases of hate crime across Scotland (2011/12)
 - Religiously aggravated charges rose by 29%
- Violence and harassment are often regarded as part of everyday life and not worth reporting to authorities.
 - 60% of hate crime victims did not make a report to the police. They believed nothing could or would be done and it would make matters worse for the victim (Lothian & Borders Police Survey, 2010)

Question and answer / discussion sessions

A question and answer session was held after the presentation of all three speakers.

Some of the main points raised included:

- The importance of recognising indirect power of Scottish Parliament in regards to issues that are not devolved, i.e. asylum. Regardless of devolved or reserved powers, Scotland must look at all issues at hand and deal with them as it can.
- That human rights are enshrined in Scotland through the Human Rights Act and that issues must be articulated further.
- Ownership must be established above / beyond Government level to secure sustainable commitment for a National Action Plan over the long term - economic and political climates change rapidly and resources are at an all- time low, whilst the changes needed could take decades in some cases.
- Scotland already has a myriad of legislative and evaluative tools which public bodies must incorporate into their work. More needs to be done to map and streamline these, including SNAP and human rights compliance generally.
- Involving young people in the development of SNAP is vital; this must be done in a way that is genuinely representative.
- SHRC will endeavour to pass issues which are reserved on to the Scotland Office so that concerns raised through SNAP consultation are not lost.
- Development of SNAP needs to take into account the effectiveness of legal remedies.
- Peer review by the independent research advisory group will help to ensure transparency and quality of the work being done by SHRC.
- It should be remembered that legislation is in place to ensure that the Scottish Parliament cannot act in conflict with European human rights law.

The question and answer session was followed by a group discussion examining the four human rights themes outlined in the previous presentation (health, education and employment, family and private life, safety and security). Participants were asked to identify their two highest priorities in regards to each theme for race equality and human rights in Scotland. In addition to these themes, the dilution of emphasis on race equality through poor practice in areas such as mainstreaming and equality impact assessment was raised as an overarching issue. Bringing strands together through the Equality Act 2010 was intended to increase intersectional approaches but seems in many cases to have pushed race equality to the side.

Priorities raised by participants included:

Health

- Not enough awareness or research in the medical community on specific disease risks or frequencies that impact BME individuals (i.e. Sickle cell anaemia, diabetes)
- Overarching problem that remains is racism and discrimination in terms of status, access, and the physical and mental health impacts of discrimination on health over the long term
- More research and information needs to be available in regards to asylum law and mental health
- Disengagement between communities and authorities - capacity and support for communities to help determine health expenditure needs to be increased
- Equal and fair access needs to be available to all and across the board of services that are available
- Need for accurate, robust, evidence-based and proactive healthcare
- Role of 'champions' for groups often invisible in health services - including people who have been trafficked, child refugees, Gypsy/travellers
- Stigma of mental illness and particularly prejudices associated with people from some BME communities needs more consideration

Education and Employment

- More resources, services and support required to reach out directly to immigrants and other BME communities of all ages for capacity building, skills and English as a Second or Other Language (ESOL) provision
- Innovation in combining budgets - for example in community awareness and language training – to combat the impact of recession on provision of services critical to race equality
- Tackling under-employment
- More support for young BME communities at risk of under-achieving (eg. Bangladeshi)
- ESOL teaching must be more comprehensive
- Digital exclusion creates further barriers, increasing reliance on 'virtual world' in both education and employment
- Continued 'glass ceiling' / 'sticky floor' in both education and employment
- Potential impact of future BME community specific faith-based schools in Scotland
- "Times have never been great" for BME communities so recession and austerity will have deeper impacts

Private and Family Life

- Review of how 'private & family life' is interpreted informally by those working with BME communities is needed in regards to preventing criminal abuse
- More childcare facilities and more services in family support are required

- “Caring involves much more than beds and food”
- Larger families appear to be penalised (e.g. ‘bedroom tax’) which impacts race equality as some BME communities tend to have larger families or live with extended family
- Family values are very important to BME communities
 - Government tends to undermine these values due to lack of attention to BME life and conditions
 - Families should not need to conform to a particular model; the full diversity of family / household make up should be respected
- Continuing issues around immigration and asylum detention (Dungavel)
- Impact of family migration law, asylum status and ‘sham marriage’ investigations on non-EU spouses/couples
- Wider issues around family migration including deportation of fathers where father and child rights to family life are not considered
- Intrusion of welfare state – expectations and regulation around work, income, caring, household circumstances. Emphasis on assessing people out of welfare system rather than establishing eligibility.
- Negative impacts of welfare reform assessments / reassessments
- Protection from forced marriage
- Manipulation of public understanding of the right to family and private life by Government and media

Safety & Security

- Lack of access to information on how criminal justice / law works for BME communities
- Improvement of police services as well as housing services
- Isolation
- Discrimination, hate crime and fear of these prevent integration
- Poverty / destitution
- Poor housing conditions, especially in under regulated private sector housing
- Child sexual exploitation and trafficking particularly young women and girls
- Denial of due process (e.g. in asylum detention decisions - Dungavel); detention in immigration and asylum cases is a breach of human rights and in ethical terms is disproportionate compared to criminal sentencing
- Privacy concerns around the use of CCTV and the retention of material that is recorded
- Privacy concerns around DNA retention
- Detention / forced removal in immigration and asylum
- Balance of human rights for victims, ex-offenders and offenders

Summary

This joint seminar between the Coalition for Racial Equality and Rights and the Scottish Human Rights Commission revealed a variety of human rights issues that

members from the black and minority ethnic community considered priorities in achieving race equality in Scotland. Due to time restrictions, only four of the eight themes in *Getting it Right* were discussed throughout the seminar; **health, education and employment, family and private life, safety and security**. Participants were given detailed information on how to further engage in the consultation process with SHRC to have their voices heard in the development of Scotland's National Action Plan for Human Rights.

Although a variety of issues were discussed and no hierarchy was given to any rights, there were some issues that stood out in participants' discussion.

- Health inequalities in the BME community. Starting with awareness of resources to lack of consideration in the health community for BME specific health problems (e.g. sickle cell anaemia).
- Access to and affordability of English language courses and training for personal and professional development.
- The "glass ceiling" in employment for BME communities. Employment has always been difficult for communities but the recession has added further complexities. Underemployment in BME communities is a consistent problem.
- Immigration law, especially on it impacts relating to family migration.
- Policies that appear to directly penalise BME communities with larger families (e.g. bedroom tax).
- Intrusion of welfare state – expectations and regulation around work, income, caring, household circumstances.
- Lack of clarity around the criminal justice system and sense of hopelessness for reporting incidents.
- Complex understanding of devolved powers and human rights, i.e. what can Scottish Government legally do over asylum issues?

Participants actively engaged in both speakers' presentations and during the discussion portion of the seminar. As a result of these consultations, SHRC is setting up a follow-up mechanism to engage further with participants to ensure that their voices are represented in the final report and to gauge development on issues that were brought forth.

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