



# **Scottish Commission for people with a Learning Disability**

## **Statement on Human Rights and COVID-19**

For all of us, this is a deeply unsettling and challenging time. People across the UK are coming to terms with the need to stay indoors and to take extra precautions to avoid the spread of COVID-19. These are important measures to ensure we are not putting ourselves or other members of society at unnecessary risk. These are difficult for all of us, but they present particular challenges for the health and well-being of people with learning/intellectual disabilities.

The UK Government has passed emergency legislation to enact The Coronavirus Act (2020). The Scottish Government will introduce its emergency legislation with the Bill being considered on Wednesday 1 April 2020. These emergency measures are necessary at this time, to protect everyone's human rights. These are discretionary and should only be applied as a last resort. The Act allows Scottish Ministers to apply these new emergency powers when they are needed and to stop their use these when they are no longer necessary.

SCLD is clear that human rights must be a central consideration in how we move forward in the coming week and months. Protecting the right to life is paramount. However, every effort must be made to ensure that people with learning/intellectual disabilities' health and well-being

is not disproportionately impacted by measures intended to protect and safeguard us all.

The use of emergency measures must pay due regard to existing legislative principles and adhere strictly to international human rights conventions.

We must ensure that people with learning/intellectual disabilities' human rights are not disproportionately impacted as a result of the structural inequality, barriers and discrimination they continue to experience.

Attention and adherence must at this time be given to the [statement made by UN human rights experts](#). This stated that the COVID-19 emergency cannot be tackled only by health and emergency measures but must also be addressed through human rights. They stated:

*“Everyone, without exception, has the right to life-saving interventions and this responsibility lies with the government. The scarcity of resources or the use of public or private insurance schemes should never be a justification to discriminate against certain groups of patients.”*

This statement covers people with learning disabilities, those of other protected characteristics and those who may face additional barriers and discrimination. For SCLD, we must all keep this message to the forefront of our minds over the coming weeks and months.

In doing this we must seek to address emerging concerns heard from people with learning/intellectual disabilities, their family carers and those who support them. These include:

- Support packages being reduced or withdrawn with life-limiting impacts
- Providing support or care during social distancing/isolation
- Reduced scrutiny of decision making concerning mental health legislation
- Deprivation of liberty and restrictive measures
- Loosening of legislation surrounding disclosures for regulated work
- Confusion over public health information
- Increasing experiences of loneliness and social isolation
- Limited access to education due to school closures
- Discriminatory discourse in the media and public spheres.

SCLD has already refocused our work to ensure we best support people with learning disabilities in line with Inclusion Europe's ['5 Steps to Prevent Harm to People with Intellectual Disabilities and their Families in the Coronavirus Emergency'](#). Our continuing focus in the coming months will be protecting and supporting the human rights of people with learning/intellectual disabilities.

### **Emerging Issues**

In the following sections, we have outlined the emerging concerns in more detail. We have also highlighted the work SCLD is doing to support

people with learning/intellectual disabilities during the COVID-19 emergency.

This is not a comprehensive list of all issues faced by people with learning/intellectual disabilities and those who support them at this time. As the situation progresses we will collate examples of human rights issues facing this population.

### **Support packages being reduced or withdrawn with life-limiting impacts**

At the moment, everyone is restricted in terms of leaving the house and taking part in social activities. We have heard stories from people with learning/intellectual disabilities that their support packages have been reduced to reflect this. This may be necessary and proportionate in some circumstances, for example, support in taking part in outside recreational activities. However, people with learning/intellectual disabilities must continue to receive high-quality support wherever possible to meet their needs, including personal care and support to understand information.

### **Concerns about social distancing/isolation and providing support and care**

Through our networks, we are becoming increasingly aware of the anxiety that exists for family carers in providing care and support to people with learning disabilities including those with profound and multiple learning disabilities. A key concern for many is the fear of passing COVID-19 onto individuals who may be in a high-risk group. Earlier this month, the UN Rapporteur for the Convention on the Rights

of Persons with Disabilities (Catalina Devandas Aguilar) released a [statement](#) which highlighted that social distancing/isolation measures were leaving people with disabilities who require support feeling left behind. She commented,

*"Containment measures, such as social distancing and self-isolation, may be impossible for those who rely on the support of others to eat, dress and bathe."*

Proactive solutions to this issue are required. This includes early testing for COVID-19 of those working in health and social care, people with learning disabilities and family carers. SCLD believes individuals knowing their status regarding COVID-19 would help significantly to both relieve anxiety for all parties and assist people in containing the spread of the virus.

### **Reduced scrutiny of decision making concerning mental health**

Catalina Devandas Aguilar *also drew attention to the high risk of contamination from COVID-19 in psychiatric and other institutional settings.* Additional concerns are beginning to emerge regarding the potential for reduced oversight of compulsory mental health measures and the continued need for appropriate levels of scrutiny during this period of national emergency.

The Coronavirus Act can allow for temporary changes to the Mental Health (Care and Treatment) Scotland Act 2003. These include the power to:

- Reduce the required involvement of medical practitioners and mental health officers in detention orders
- Increasing certain periods of detention
- Reducing the role of the Mental Health Tribunal Scotland
- Relaxing rules concerning oversight of the administration of non-consensual medication.

If used, these powers could have significant implications for the rights and safeguards to protect people with learning/intellectual disabilities who are in mental health settings such as Assessment Treatment Units (ATUs). Exercise of these powers must, at all times, be proportionate and non-discriminatory. People with learning disabilities must not be afforded fewer rights, safeguards or a lower standard of support, care and treatment than others.

SCLD believes it is important to ensure ongoing review of The Coronavirus Act and its impacts on people to ensure that adequate checks and balances are in place to protect the health and well-being of people with learning disabilities and everyone else living in mental health care settings.

### **Deprivation of liberty and restrictive measures**

The [Restraint Reduction Network](#) has warned of the increased risk of restrictive practices being used during times of stress. As ever, we would expect that the United Nations and European Conventions against Torture and Other Cruel, Inhuman or Degrading Treatment or

Punishment will be adhered to for people including people with learning/intellectual disabilities who are deprived of their liberty.

The Coronavirus Act does not make explicit reference to the Adults with Incapacity (Scotland) Act 2000. However, due to the current emergency, people with learning/intellectual disabilities who are subject to guardianship orders and/or living in care homes may experience greater restrictions than normal. The Centre for Mental Health and Capacity Law has observed that *“some people may need to be accommodated in or moved to situations that amount to a deprivation of liberty and other restrictions of autonomy”*. Any restrictions of this nature must be necessary, proportionate and have a clear legal basis to ensure they are applied in an equitable and non-discriminatory way.

*Catalina Devandas Aguilar* stated that *“Restrictions should be narrowly tailored and use the least intrusive means to protect public health”*.

### **Loosening of legislation surrounding disclosures for regulated work**

SCLD is concerned about the potential unintended consequences of the loosening of legislation surrounding disclosure for regulated work. We recognise and understand that the intention is to fast track the ability to recruit key workers in a time of emergency. However, we must continue to balance this with the need to ensure that people with learning/intellectual disabilities are adequately safeguarded during this time. Indeed, they may well be at risk of increased levels of abuse and exploitation because of the emergency situation and their increased isolation at this time.

## **Confusion over public health information**

There is currently a great deal of uncertainty and confusion surrounding COVID-19 and how best to act to limit the spread of infection. For people with learning/intellectual disabilities, this can be more pronounced. People with learning/intellectual disabilities have told us they have experienced confusion around the information available about how to protect themselves during the COVID-19 outbreak.

We are also aware that many do not have access to information about how to carry out important daily tasks including financial management in the current circumstances. We must ensure that people with learning/intellectual disabilities, in line with the wider population, have access to accessible and clear information during this time.

This is a key priority for SCLD and many of our partner organisations and we are working with the Scottish Government and others to ensure that there is a range of accessible information available for people with learning/intellectual disabilities and those who support them.

Despite this, we are also aware of emerging issues regarding how best to share this information with individuals during social distancing/isolation as many people with learning/intellectual disabilities have limited access to both ongoing support and IT including mobile phones. We are currently working with our partners to highlight this concern and seek solutions for this. Part of this is the work we and others are prioritising to ensure that people with learning/intellectual disabilities stay safely connected to as many people as possible whilst they are self-isolating.



## **Increasing experiences of loneliness and social isolation**

Like all of us, people with learning/intellectual disabilities are experiencing increased loneliness and social isolation during this time. It needs to be recognised that this is likely to be more pronounced for people with learning/intellectual disabilities and will be experienced by them in a range of settings including people living alone, those removed from educational settings and those in care settings.

This is a key concern with an additional risk being that people's increased loneliness and isolation during this emergency may affect the sustainability of their self-isolation.

The International Initiative for Disability Leadership (IIDL) has also recognised these challenges and has highlighted the key role that preparedness plays in making isolation more sustainable. It also highlighted the critical importance of having people within an individual's isolation '*bubble*' and the role that they can play in supporting family members.

Additional support required identified by IIDL includes clarity on the following issues:

- How people will access GP or pharmacy supports
- How and when individuals will get communication and wellbeing checks
- Ready access to the supplies they may need
- How individuals will communicate their needs, history, and symptoms if their usual supporters cannot be with them.

SCLD is committed to seeking creative solutions to ensure we reduce social isolation and loneliness for people with learning disabilities and support actions of community kindness where safe to do so. We, therefore, welcome the Scottish Government's commitment to [not restricting visits to hospitals for people with learning disabilities](#).

### **Limiting access to education due to school closures**

[Human Rights Watch](#) has highlighted the need for the right to education still to be met through online learning. SCLD has concerns regarding the accessibility of additional support for learning during this time especially for low income families who may not have access to the necessary equipment to support learning. At this time SCLD supports the following statement made by Human Rights Watch:

*“Governments should focus on adopting strategies that support all students through closures – for example, monitoring students most at risk and ensuring students receive printed or online materials on time, with particular attention provided to students with disabilities who may require adapted, accessible material.”*

We would, therefore, urge schools to provide as much necessary equipment and resource for home learning as is possible while considering the particular challenges online learning may present for children and young people with learning/intellectual disabilities.

## **Discriminatory discourse in the media and public spheres**

The media and public also have a collective duty during these times to protect the inherent human dignity of one another. Concerns expressed by [The Alliance](#) and [Scottish Care](#) over the public discussion surrounding coronavirus '*not impacting most people*' and '*only effecting the vulnerable*' are well made.

As we move forward, we must be careful to not inadvertently discriminate against people with learning/intellectual disabilities through these kinds of statements. This is especially important because the experience of disability is not always visible. This risks devaluing people with learning/intellectual disabilities at the very time when we need to ensure that people with learning/intellectual disabilities are recognised as full and active members of our society.

SCLD would, therefore, caution against any kind of narrative that places people with learning disabilities and other disabled people as passive victims of Coronavirus. Instead, we would encourage public kindness and offers of support where appropriate and safe to do so.

## **Moving Forward Together**

More than ever, Human Rights must guide society's actions. Over the coming weeks and months, we must ensure that we all work to best protect individuals' right to life (ECHR, Article 2) ensuring only proportionate and scrutinised limits on all other EHRC rights. As [Colin Mackay and Jill Stavert](#) state, what will be critical is in ensuring that no rights under the European Convention on Human Rights should be limited to such a degree that a person with a learning/intellectual

disability will have fewer safeguards or support, care and treatment than any other person.

Central to this is the need for the UK and Scottish Government's ongoing commitment to obligations set out in Article 11 of the United Nations Convention on the Rights of Persons with Disabilities (UNCRPD). This states that Governments must take all measures to protect persons with disabilities, including people with learning/intellectual disabilities, in situations of risk.

Whilst we recognise that the UNCRPD is not incorporated into Scottish Legislation, there is a strong underlying policy commitment and change agenda surrounding the UNCRPD in Scotland which must continue.

Keeping Human Rights central to all that we do will help us to protect everyone's right to life, including people with learning disabilities in these challenging times. What matters most now is that we all work collectively to ensure we protect everyone equally.

To help us to achieve this the ethical framework for Scotland, as proposed by the [Scottish Commission for Human Rights](#), will be helpful. This framework should have human rights and rights of people with learning/intellectual disabilities at its centre. This framework must also encourage transparency and consistency of decision making across Scotland.

Finally, SCLD asks that we keep the [statement](#) made recently by UN experts in mind in the coming weeks and months.

## **SCLD's Actions**

In line with Inclusion Europe's ['5 Steps to Prevent Harm to People with Intellectual Disabilities and their Families in the Coronavirus Emergency'](#), SCLD is working with our partners to support people with learning disabilities and protect their human rights. We are committed to and actively engaged in a range of activities which will:

### **Inform Clearly**

We are collating a central resource bank of accessible information regarding COVID-19 for people with learning disabilities. [View this here.](#)

We are producing new Easy Read materials for people with learning disabilities in partnership with the Scottish Government. [View this here.](#)

### **Deliver information**

We are linking in with other intermediary organisations to highlight the availability of new resources and promoting proactive ways in which this can be disseminated to people with learning/intellectual disabilities.

### **Help deal with the emergency**

We will ensure, wherever possible, that people are connected to support organisations who can help them immediately.

## **Help to overcome social isolation and loneliness**

We are developing new and creative networks for people with learning/intellectual disabilities and the people who support them to enable them to stay in touch and reduce social isolation and loneliness.

People with learning/intellectual disabilities and those who support them can join our moderated Facebook group - SCLD stay in touch.

[View this here.](#)

## **Protect Disability Rights**

We are collating evidence regarding people with learning disabilities experiences during this emergency to inform the ongoing development of policy and legislation.

We will continue to highlight human rights issues facing people with learning disabilities during the COVID-19 emergency.

We will work with Scottish Government colleagues and others to promote and protect the rights of people with learning disabilities throughout the ongoing emergency.

## Contact us

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For information on Scotland's Learning Disability Strategy *The Keys to life*, visit: [www.keystolife.info](http://www.keystolife.info)

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