

Position Statement

Navigating a complex landscape:
The Human Rights Bill for Scotland and the
Learning Disability, Autism and
Neurodiversity Bill

**Scottish Commission for People
with Learning Disabilities**

July 2022



Introduction

As we begin to emerge from what we hope was the worst of the COVID 19 pandemic, a complex landscape of new policy and legislation is developing which could bring significant benefits to people with learning disabilities in terms of the realisation of their fundamental human rights.

However, realising these benefits will require considerable initiative, collaboration, and engagement by a range of stakeholders. A collective effort is required to ensure that these new policies and laws directly address the discrimination experienced by people with learning disabilities and align in ways which deliver and sustain positive life outcomes. Leadership by people with learning disabilities must be central to this.

In this position statement, the Scottish Commission for People with Learning Disabilities (SCLD) outlines our vision and views on how we maximise the opportunities and overcome the challenges which people with learning disabilities face in Scotland.

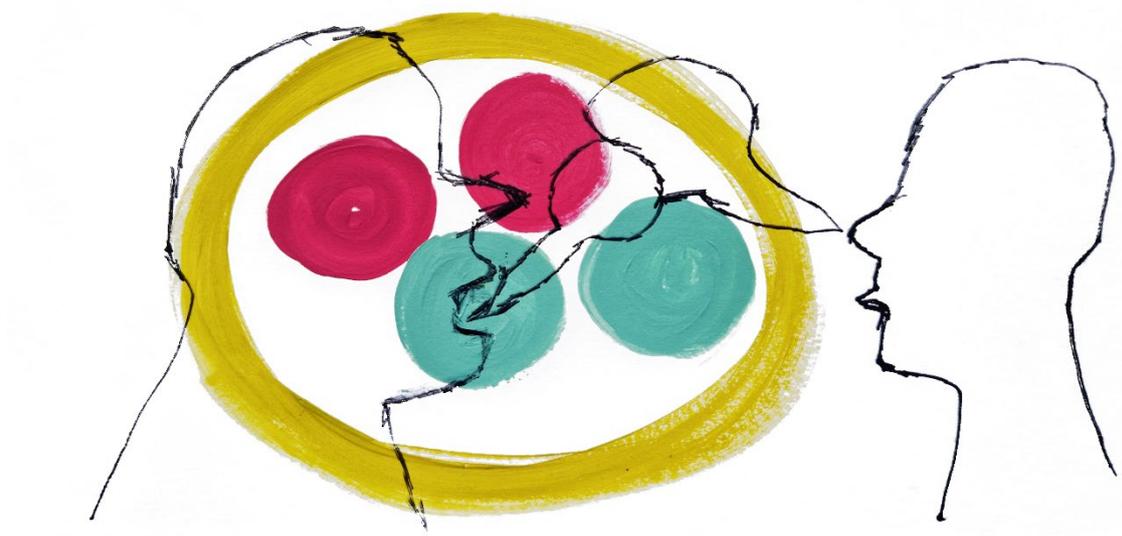
Position Statement

People with learning disabilities and their supporters in Scotland face a range of potentially complex opportunities and challenges at the moment.

As many of us are emerging from the COVID-19 pandemic and settling into routines old and new, people with learning disabilities continue to be concerned about the high levels of COVID-19 in the community. This comes on top of having experienced significant inequalities as a result of the pandemic, which themselves are built on unacceptable experiences of discrimination pre-pandemic.

Many people with learning disabilities are living with the enduring impact of the pandemic on their, and their families', wellbeing. Others

have told us that their social care support has not returned to pre-pandemic levels, and they have real concerns that it never will.



Added to this, the understanding, support, and resources for recovery from the pandemic seem to be in short supply. For many, there is a very real fear that we are going to fail to learn even the most critical lessons from the collective trauma we have all experienced and return to the old, unacceptable *'normal'*.

Despite all of this, a legislative and policy context is quickly evolving which could allow for major steps forward for people with learning disabilities in terms of the progressive realisation of their human rights. However this can only be achieved if the potential scope and interconnectedness of these opportunities is fully embraced and people with learning disabilities, their family/carers and supporters are fully involved throughout.

Central to this is Scotland's Human Rights Bill which represents a major opportunity to bring a range of international human rights treaties into Scots law. For people with learning disabilities in particular, the incorporation of the United Nations Convention on the Rights of Persons with Disabilities (UNCRPD) would act as the bridge between policy intentions and people's experience, preventing the most serious human rights violations. SCLD is therefore delighted to be hosting a Lived

Experience Board for people with learning disabilities on behalf of the Scottish Government as part of the development of this Bill. This is an excellent piece of positive action to ensure that those whose rights are most at risk have their voices heard and acted on.

Furthermore, the Scottish Government are also committed to developing a Learning Disability, Autism and Neurodiversity (LDAN) Bill and Commission/er. In embracing a human rights model of disability and recognising rights at risk for people with learning disabilities in Scotland, SCLD and others are in no doubt, as People First (Scotland) told us three years ago, that an LDAN Bill is critically important to ensure that the individual human rights of people with learning disabilities are respected, protected, and fulfilled.

The forthcoming Bill should address many of the wider implications of the Rome Review, including to legislate for a rights focused definition of learning disability, a well-resourced system of supported decision making, clear duties on public services to ensure equal and equitable access to all services and clear benchmarks to end out of area placements and inappropriate detention in hospital.

Moreover, we believe that an LDAN Commission/er is critically important for people with learning disabilities, autistic people, and those with neurodevelopmental differences in order to hold duty bearers to account.

Again, we are really encouraged to see the commitment of the Scottish Government to the engagement of people with learning disabilities and others in the development of the LDAN Bill and Commission/er and are assured that this will continue throughout the ongoing development process.

Any Commission/er body must ensure that it exercises its powers in partnership *with* people with learning disabilities not *for* them.

The LDAN Bill and Commission/er must link directly with the Scottish Human Rights Bill. Indeed, the capacity of a LDAN Commission/er could be significantly strengthened by the Scottish Human Rights Bill and, as a

result, be fully empowered in their ability to address the most serious human rights abuses.

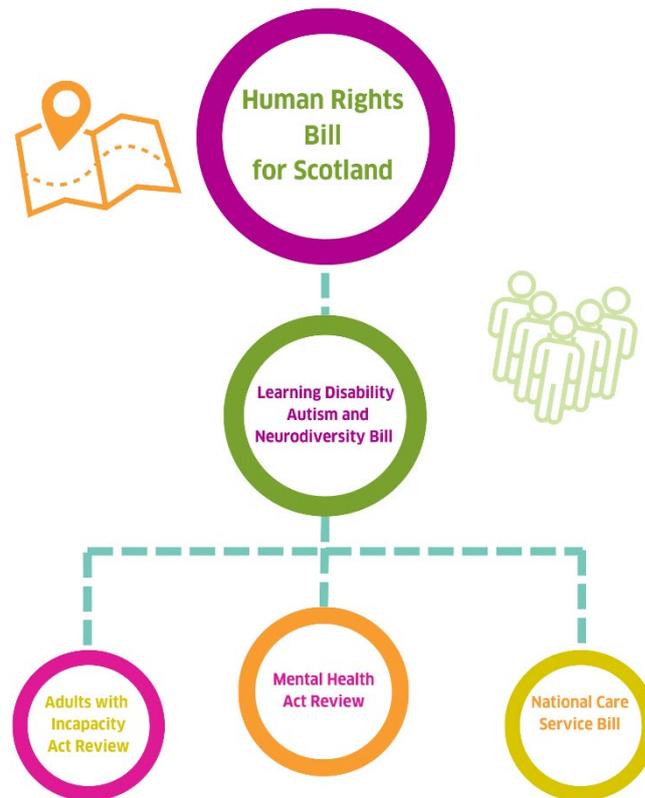


Fig. 1 A diagram showing the how the legislative landscape is connected.

At the same time, we are aware of calls to establish a Disability Commissioner for Scotland by a coalition of other organisations including Disabled People’s Organisations. SCLD is, in principle, supportive of this, but our primary concern is the commitment to deliver on an LDAN Bill and Commissioner and our attention is focussed on the advancement of this.

The evidence we have of the human rights abuses and inequalities faced by people with learning disabilities absolutely convinces us that the LDAN Bill and an LDAN Commission/er are urgently required to ensure people with learning disabilities can realise their human rights.

There are then two other potential opportunities and areas of further complexity to add to this landscape. The National Care Service (NCS) Bill

was published in June 2022. Whilst supportive of the Feeley Review, SCLD has expressed concerns about how this human-rights focussed Review may be translated in to the NCS. That the NCS must be central to the realisation of people with learning disabilities' human rights is without doubt; we are pleased the Scottish Government have committed to the full involvement of people in the co-design of the NCS. We are also pleased to be a member of the NCS Key Stakeholder Reference Group. However, close scrutiny of the Bill and supporting documentation is required to ascertain whether the proposed model will be able to deliver this.

The final area that needs to be considered in this evolving policy map comes in the form of the Scottish Mental Health Law Review (SMHLR). We believe that the proposals outlined in the most recent SMHLR consultation were a missed opportunity and did not substantively engage with some of the key recommendations of the Independent Review of Learning Disability and Autism in the Mental Health Act (the *Rome Review*).

In our opinion, and in the opinion of people with learning disabilities, it did not provide the blueprint for the '*paradigm shift*' we require in Scotland's mental health and capacity legal framework, nor did it recognise the impact a new human rights bill that incorporates the UNCRPD will have on this legislation.

SCLD does not believe that mental health legislation is the appropriate primary mechanism to advance the human rights of people with learning disabilities. In our view, the final SMHLR report should be in much greater alignment with and supportive of the UNCRPD, the forthcoming Scottish Human Rights Bill, the LDAN Bill and the NCS Bill.

Conclusion

Taken together, SCLD believes that this policy and legislative map presents a unique opportunity to take the necessary steps to comprehensively secure the human rights of people with learning

disabilities in Scotland. For this to happen the interconnectedness of these opportunities must be fully embraced. These developments cannot take place in siloes and we must ensure that the voices of people with learning disabilities and those who support them are woven throughout.

Fundamentally, leadership from people with learning disabilities is required to drive these developments forward. Leadership is also required from across different sectors and organisations that recognises that people with learning disabilities are active citizens first, not 'patients' or 'service users'.

Furthermore, the development of legislative, policy and practice change must be rooted around people's experience and reflect this nuance and complexity.

Finally, ongoing legislative change must ensure people with learning disabilities experience measurable improvements in their day-to-day quality of life. This requires comprehensive cultural change within policy and practice in agencies across Scotland as well as changes in understanding and behaviour at an individual level.

There is no doubt that these reforms can provide the catalyst for transformative change that delivers lifelong positive outcomes for people with learning disabilities in Scotland. Their voice, needs and concerns must be our absolute priority as we move forward.

The artwork used in this statement is by John McNaught in collaboration with Project Ability and SCLD.



The Scottish Commission for People with Learning Disabilities

Suite 5.2 Stock Exchange Court 77 Nelson Mandela Place
Glasgow G2 1QY

E: admin@sclد.co.uk T: 0141 248 3733 Tw: [@SCLDNews](https://twitter.com/SCLDNews) Fb: [@ScotCommission](https://www.facebook.com/ScotCommission) IG: [@sclدnews](https://www.instagram.com/sclدnews)