

Accountability

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Background

Accountability and access to justice are a fundamental pillar of a fair and equitable society. They ensure that individuals including people with learning disabilities have the means to seek legal remedies and uphold their rights.

However, currently people with learning disabilities are often unaware of their human rights and experience a number of barriers to accessing justice and are unable to hold public bodies to account.



What SCLD wants to see

- Availability of effective and accessible remedies both in practice and in law so that people with learning disabilities can be empowered to uphold their rights.
- Removal of barriers so that people with learning disabilities can use their rights to obtain justice and hold public bodies and government to account.
- Availability of accessible information and inclusive communication to help people navigate legal processes.



What is the consultation proposing?

The Scottish Government has identified 5 different options in the Consultation which could provide better accountability around human rights.

Option 1

A new LDAN Commission or Commissioner could be set up to make sure that the human rights of people with a learning disability and neurodivergent people are protected.

A new LDAN Commission or Commissioner for people with learning disabilities and neurodivergent people could have a wide range of powers and duties. This could include:

- Giving advice to people and organisations.
- Helping to change the law.
- Monitoring if organisations and/or people are following the rules.
- Taking organisations or people to Court if they do not do what they say they will.

Option 2

The Scottish Government could add powers to an existing public body like the Scottish Human Rights Commission.

The Consultation states that adding powers to an existing public body might be better than setting up a new organisation as it could stop two organisations doing the same work.

However, it notes that existing public bodies might not have the same focus on making sure people with learning disabilities and neurodivergent people have their rights upheld.

Option 3

The Scottish Government could tell Scottish public bodies to identify Champions for people with learning disabilities and neurodivergent people.

Champions could be people with lived experience themselves, or people chosen by people with lived experience. They could help to change things but would not have legal powers or duties to make change happen.

Option 4

The Scottish Government could give extra resources to existing Disabled Peoples' Organisations (DPOs). However, the Consultation notes that giving them extra

resources might not cover the needs of all people with learning disabilities and neurodivergent people. DPOs might not reach everyone across Scotland. Disabled Peoples' Organisations do not have legal powers to make change happen.

Option 5

The Scottish Government could work with neurodivergent people and people with a learning disability to make new standards for public bodies. However, the consultation notes that it might be hard to get organisations and people to uphold the standards if the law does not make organisations follow them.



Current SCLD thinking (Jan 2024)

SCLD believes that for access to justice to become a reality for people with learning disabilities public bodies must be held to account for their actions.

We believe that this could be through a new LDAN Commission or Commissioner or an existing Commission like the Scottish Human Rights Commission (SHRC).

The powers would need to include the monitoring of how the duties in the Bill are being implemented, conducting investigations on these issues, and providing regular reports on this.

We believe any new powers should be delivered through a co-production model, whereby a Board of people with learning disabilities and neurodivergent people are appropriately trained and supported to oversee and enact them in accordance with the legislation. It is critical that people with learning disabilities are fairly represented in this process and are given equal opportunities to discharge their duties. This must include accessible and inclusive communications to enable their effective participation. It will be necessary to ensure that these measures are enacted and sustained.

To deliver effective remedies for people with learning disabilities, the Scottish Government could also legislate for individuals to have access to legal services to challenge where duties in the LDAN Bill and other relevant legislation are not being met.

Another option would be to introduce a statutory duty as part of the LDAN Bill to make sure all local authorities, HSCPs and other public bodies in Scotland are required to report progress to the Scottish Government against all areas in the LDAN Bill.

This could be done by producing a yearly learning disability, autism, and neurodivergent scheme similar to the United Nations Convention on the Rights of the Child (UNCRC) Bill's Children's Rights Scheme and the Public Sector Equality Duty.



Glossary

Accessible Communication describes communication which is easy to understand.

Accountability means that it is someone's job to make sure that everyone can uphold their rights. It means holding people to account if rights are not upheld.

A **Commission** is an organisation that makes sure people's rights are upheld.

A **Commissioner** is one person who speaks for a certain group.

A **Disabled People's Organisation** is an organisation which is run and controlled by disabled people.

Duties are things that the law says organisations must do to protect people's rights.

Health and Social Care Partnerships (HSCPs) are public bodies where the NHS and local authorities work together.

Legal Remedies are ways that a court can enforce a right, provide compensation or make some other court order as a way of resolving a dispute.

Public bodies are organisations that are publicly funded to deliver a public or government service. A public body is any organisation that is publicly funded. Examples include local authorities, schools, police, and the NHS.

The **Public Sector Equality Duty** requires Scottish public authorities to have 'due regard' to the need to eliminate unlawful discrimination, advance equality of opportunity and foster good relations.

Standards are rules and ways of working to see how well an organisation or person is doing their job.

The **UNCRC Bill's Children's Rights Scheme** outlines ways to ensure compliance with the duty to act in line with the UNCRC.



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