

PE1741/B

Scottish Commission for Learning Disability submission of 28 October 2019

SCLD is an independent charitable organisation and partner to the Scottish Government in the delivery of Scotland's learning disability strategy, *The keys to life* and its most recent Implementation Framework - Unlocking Futures 2019 -2021.

The Implementation Framework defines a learning disability as follows:

"A learning disability is significant and lifelong. It starts before adulthood and affects a person's development. This means that a person with a learning disability will be likely to need help to understand information, learn skills and live a fulfilling life. Some people with learning disabilities will also have healthcare needs and require support to communicate."

(The keys to life, 2019-2021, p.9)¹

To note your discussions on the September 19th, and to clarify the nature of our work, our definition, and therefore our delivery, does not focus on people with learning difficulties such as dyslexia.

SCLD is committed to creating an environment in which systems and culture are changed and in which people with learning disabilities have opportunities and are empowered to live their best lives. SCLD aims to be a knowledge hub and to build an evidence base, influencing how policy is developed and implemented as well as building on an understanding of what really works. In particular, SCLD is focused on sharing innovation and good practice so that those providing services and interventions can learn from each other.

Given the timescales involved in responding to the petition, we have not been able to fully consult with people with learning disabilities, those who work with and for them, and the wider learning disability community and sector in Scotland. On that basis, please treat this as an initial response regarding these issues, it should not be treated as definitive or final. However, that being said, many of the issues raised in the petition are not new, and we have engaged in deliberation and consultation on these issues in the past.

As we understand it, the petition before the Committee is asking for a new law that seeks a new and holistic legal framework in place intended specifically for people with intellectual impairments. The petition also requests guarantees in policy areas including education, employability and criminal justice.

As such, SCLD is fully supportive of the spirit and intention of the Petition and indeed, share many of the frustrations expressed in it. People with learning disabilities in Scotland no longer live in institutions, but neither are they yet at the heart of their communities, enjoying equal opportunities as active citizens.

¹ The keys to life (2019-2021)

Despite considerable progress in many areas, and many noteworthy improvements, there remains a disconnect between strategic intent and the transformational change required at an individual and community level. We believe this transformational change is necessary to create the culture and environment which enables people with learning disabilities to enjoy full and active participation in their communities and realise their human rights on an equal basis with others.

People with learning disabilities should exist as active citizens in all parts of life. They should not be excluded and viewed only as individuals who receive treatment and care. Instead, they should be seen and valued as people with a wide range of strengths and aspirations, who may require support to help them achieve their goals and to live the life they choose.

Trying to address this gap between policy ambitions and lived experience sits at the heart of our mission and purpose as an organisation and led to the embedding of a whole system and multi-agency approach within the latest keys to life Implementation Framework.

When we consider *The keys to life* alongside *A Fairer Scotland for Disabled People*, the Human Rights Act 1998, the Equalities Act 2010, and commitments to the UNCRPD, it is clear that there is already a considerable legal and policy framework that seeks to drive change to improve the outcomes for people with learning disabilities.

However, the challenge as we see it is not that there is a lack of strategic intent in certain fields, but more about how we realise this across wider national-level policy which impacts on all parts of the lives of people with learning disabilities and how we best drive and deliver transformational change at a local level.

The Committee is considering this petition at a time when the legislative framework which most directly impacts on lives of people with learning disabilities in Scotland is in a state of significant flux. There are no less than three reviews ongoing which are of significance:

- Adults with Incapacity (Scotland) Act 2000 (awaiting report)
- The independent review of Learning Disability and Autism in the Mental Health Act (consultation ongoing – the review's final report and recommendations will be submitted to the Minister for Mental Health in December 2019).
- The Mental Health (Care and Treatment) (Scotland) Act 2003 (still to begin)

Further work of national importance is also ongoing with the Independent Review of Additional Support for Learning, due to report in February 2020.

These reviews raise significant questions regarding the fundamental legal capacity of people with learning disabilities as well as how they are treated by mental health services and, more broadly, how Scotland perceives, categorises and supports them.

Discussions regarding all four reviews are live and ongoing. Taken both separately and together, they could lead to a definitive opportunity to transform the lives of people with learning disabilities and the long-term re-alignment of the legislative framework underpinning their lives.

This opportunity is reinforced by consideration of Article 12 of The United Nations Convention on the Rights of Persons with Disabilities 2006 (UNCRPD). Article 12 addresses the right to equality before the law and the issue of legal capacity, which is the law's recognition of the decisions a person makes. It lies at the heart of a human rights-based approach to disability and underpins the exercise of many other rights.

SCLD does not yet have a definitive or final position about all of the issues raised or likely to be raised by the reviews given their significance, scale and potential impact. However, we believe that a full and well-informed debate about them must take place over the coming months and years. This debate will include whether either existing legislation needs to be amended, or new legislation is required - as well as the role of the UNCRPD in achieving this whole-systems culture change.

Furthermore, the scope of the existing national policy framework that impacts on the needs and rights of people with learning disabilities is wider than mentioned in the petition and currently cuts across multiple ministerial portfolios. Housing, Children and Families, Transport, Employment, Education and Health and Social Care are all priority areas.

SCLD would welcome the opportunity to further explore how, in considering the outcomes of the ongoing reviews, we can ensure the strengths, aspirations and needs of people with learning disabilities and the realisation of their human rights are reflected at both national and local levels. This is especially important if we are to avoid duplication with existing legislation, international human rights treaties, the possible outcomes of the ongoing reviews and the potential for unintended consequences. We believe it would be challenging for a single piece of legislation, developed at present, to coherently capture such a complex and dynamic process.

In conclusion, SCLD agrees with the petitioner about the urgent need for culture and systems to change to allow Scotland's progressive policies and strategies in relation to the rights of people with learning disabilities to be realised. However, we are not at this time convinced that a single piece of legislation can provide the cohesive framework to actually make this culture and systems change happen.

Fundamentally, however, we fully appreciate People First's arguments in raising this petition. SCLD agrees with many of these and are concerned that people with

learning disabilities continue to experience such poor outcomes compared to the general population. In time, it may be that separate and stand-alone, rights-based legislation is required to address these inequalities for people with learning disabilities. We also foresee future opportunities for the learning disability sector to work collaboratively to discuss how the concerns in this petition can be addressed. SCLD continues to be committed to taking action to address these significant inequalities through open and constructive dialogue, and to working to address these inequalities with partners, including the petitioner so that people with learning disabilities have their rights and needs truly realised in communities across Scotland.