

**PE1741/F**

Petitioner submission 3 December 2019

Response to the submissions from the Mental Welfare Commission for Scotland; Scottish Commission for Learning Disability; Scottish Learning Disability Observatory; Scottish Government and Scottish Commission for Human Rights

People First Scotland, as the Disabled Persons' Organisation of people with learning disability in Scotland welcomes the opportunity to respond to the submissions received on our petition.

Firstly, we thank the SCLD for reminding the committee that the petition is in respect of people with lifelong impairment of intellect (learning disability) and does not cover people with other learning difficulties such as dyslexia or ADHD.

We welcome and are grateful for the recognition in most of the submissions that the problems identified in our petition are very real problems and need to be addressed. Specifically, there is common agreement that the human rights of people with learning disabilities are not protected at the moment; that people with learning disabilities are subject to detention and compulsory treatment in a way that does not happen with non-disabled citizens and that the current laws are used to legitimise breaches of our human rights rather than protect us from those breaches. There is recognition in all of the submissions that people with learning disability have poorer health and poorer life outcomes than other Scottish citizens.

Apart from the Scottish Government submission, there appears to be agreement in the submissions that despite well-intentioned and sometimes superficially progressive policies and laws, there is a significant and noticeable gap between the intent of policy and the impact and outcomes on the lives of people with learning disabilities in Scotland. The Scottish Government submission does acknowledge ".... that people with learning disabilities continue to experience poorer outcomes than the general population. There is the need for culture change and systems to change ...."

In all of the submissions, there is reference to the current law and policy reviews' attempts to address some of the inequalities and discrimination and to recognise the potential for change in the remits of the reviews. That sits alongside the recognition that policies in Scotland (at least since the Same As You? in 2000 and the subsequent Keys to Life policy) have attempted to move away from institutional service settings and towards active citizenship for people with learning disabilities.

Unfortunately, none of the submissions offer any explanation to why those policies have been largely unsuccessful in removing the barriers to independent living, active citizenship and preventing unnecessary detention and compulsory treatment and removal of legal capacity from people with learning disabilities. Our petition suggests that the law, in its present form, still relies on seeing learning disability as a treatable mental disorder rather than an impairment of intellect and that simple fact allows a range of professionals to deal with us in a way that would not be permitted, in any interpretation of human rights legislation, for other Scottish citizens. In our view, the law is blatantly discriminatory towards people with learning disability in its current form.

There is a common theme in the submissions that many of the things looked for in the petition might possibly come about through the current reviews and consultations on: the Adults with Incapacity Act; the Mental Health (Care and Treatment) Act as it affects people with learning disability and Autism; the broader review of mental health law and possibly even the additional reviews of the Adult Support and Protection law and the additional Support for Learning mechanisms, maybe even the review of Forensic Mental Health Services.

We have followed and actively contributed to all of these consultations and reviews, but we do not share the optimism that our hopes will be realised through them.

The Independent Review of Learning Disability and Autism in the Mental Health Act will soon release its recommendations but indicators are that, although it fundamentally will agree that the operation of the Act is probably not compliant with the European Convention on Human Rights in respect of people with learning disabilities and that the term Mental Disorder should not be applied to learning disability, it will stop short of recommending immediate changes to the law until such time as a new raft of specialist treatment centres are created. The phrase used by the Review Team so far is that “Scotland is not yet ready to make these changes”.

The Adults with Incapacity consultation, we are reliably informed, will continue to develop proposals to reform guardianship rather than protect the rights of people with intellectual impairments to self-determination and protect us from removal of our legal capacity and imposition of substitute decision-making regimes. The grounds for these breaches of our rights have still to emerge but it is clear we cannot rely on that review to deliver our rights.

We do have some hopes about the yet-to-begin broader review of mental health legislation, but we are afraid that it will be unwilling to reverse the recommendations of those other reviews and we will continue to have less access to the human rights that other Scottish citizens enjoy.

Scotland has an obligation to comply with the European Convention on Human Rights in all of its legislation and there is growing realisation that Scotland’s mental health and capacity laws are not, in fact, compliant with that Convention. We argue that to leave the laws unchanged with that knowledge is in breach of the Scotland Act and we do not understand why that can be allowed.

While the United Nations Convention on the Rights of Persons with Disability does not (we are told) have the same weight as the European Convention and does not form part of Scotland’s domestic law, nevertheless, Scotland and the UK has been a party to the convention since 2009 and, in policy terms, has sought to move towards the Convention through the Fairer Scotland for Disabled People policy.

Paragraph 15 of that policy states: “We will work with disabled people and the organisations that represent them to develop changes to the **Adults with Incapacity Act**,

in relation to deprivation of liberty, and to assess compliance with UNCRPD by 2018.”

Since the UN Convention explicitly states that substitute decision-making regimes, including guardianship must be abolished by States Parties and the AWI review is still intent on proposing new forms of substitute decision-making, not only are we behind the 2018 target, we are still moving in the opposite direction.

The Law Society of Scotland, in its submission to the UN Committee, alongside all of the 5 submissions to Petitions Committee, suggests that compliance with the UN Convention can be, and should be, achieved through reform of existing practice under current laws. None of those submissions give any hint towards why, if that were likely, it has not yet happened or been progressed. If anything, there are more unnecessary guardianship orders awarded, more scandals of abuse while under detention, and Scottish court rulings which reinterpret the existing laws to justify compulsion and detention and substitute decision-making than we had prior to becoming party to the UN Convention.

We are of the view that as long as Scots law defines people with learning disabilities as different from other human beings and suggests that our impairment is a treatable condition, then the systems which govern us will use those legal powers to continue to remove our rights and deny us the rights and opportunities open to other people.

We are seeking a law which will, for the first time in Scotland, properly define us as human beings with an intellectual impairment; acknowledge that we have the same needs and rights as other human beings; identify methods by which we can be supported to develop as citizens and community members and take our place in society rather than focus, as laws in Scotland currently do, on how we can be removed from society, placed in segregated settings, denied access to justice including fair trials and have our legal and human rights removed.

The law is undeniably discriminatory towards us at the moment. We need a new law in Scotland to make clear that removal of our rights on the basis of our impairment and disability should not happen.