

Health and Social Care Alliance Scotland

Submission to Lord Smith of Kelvin's Commission on the Devolution of Further Powers to the Scottish Parliament



31 October 2014

The Health and Social Care Alliance Scotland (the ALLIANCE) is the national third sector intermediary for a range of health and social care organisations. It brings together over 780 members, including a large network of national and local third sector organisations, associates in the statutory and private sectors and individuals.

The ALLIANCE's vision is for a Scotland where people of all ages who are disabled or living with long term conditions, and unpaid carers, have a strong voice and enjoy their right to live well, as equal and active citizens, free from discrimination, with support and services that put them at the centre.

Following the enthusiasm generated during the referendum campaign we are delighted that the Smith Commission is seeking to engage with a wider constituency of people around the issue of further powers for the Scottish Parliament. The ALLIANCE and our members recently produced a series of thinkpieces titled "Scotland – small country, big ideas, Imagining the Future"¹ geared to offer rich insight into shaping a fairer, healthier and more inclusive Scotland, no matter the result. These, and our submission below, reflect many of the issues that were at the heart of discussions during the referendum campaign about what kind of Scotland people want.

To shape our response to the Commission, the ALLIANCE held a roundtable meeting of thirty five of its members on 20 October 2014, supported by an online consultation.

Principles

These deliberations offer us the potential to create a **fairer, more equal Scotland** by further changing the relationship and respective powers of the UK and Scottish

¹ Health and Social Care Alliance Scotland, Imagining the Future, 2014: http://www.alliance-scotland.org.uk/download/library/lib_53a40ed57358b/

Parliaments and Governments. We must seek a range of powers which put people at the centre, going beyond administrative and structural differences and seeking to make real change in people's lives. The ALLIANCE believes that the Smith Commission's deliberations should centre on enabling realisation of the following key principles:

Put people and their human rights first

“If you put human rights in there first, you really can't go wrong.”

We strongly believe that future Governments should underpin their decisions using the lens of human rights. Human rights are increasingly part of the direction of travel in Scotland, with the Scottish National Action Plan on Human Rights² providing an important evidence based roadmap for the realisation of human rights and a robust framework that ensures the focus stays on enabling better, fairer outcomes for and with people.

Address deep seated poverty and health inequalities

“No-one, through illness or disability, should be condemned to live in poverty.”

Health inequalities remain a significant and long standing problem in Scotland and are at odds with people's right to health, and to the factors that enable good health. Health inequalities, and their root causes are avoidable and additional powers could provide substantial levers to make a meaningful impact in tackling health inequalities and poverty.

Holistic powers for Scotland

We should seek powers that seek to enable a holistic approach to achieve good health and wellbeing outcomes for people in Scotland. Powers should link well together to support this goal, rather than creating a more complex system. At present there are concerns about the nature, and often the inconsistency of, how support for disabled people and people who live with long term conditions comes from a range of different sources. This often results in a disjointed system that can exacerbate difficulties and, in some cases, worsen people's conditions.

There is some concern that there is the potential that piecemeal powers in one area could result in solutions that only address one area of a person's life – whilst not

² Scotland's National Action Plan for Human Rights 2013 – 2017:
<http://www.scottishhumanrights.com/application/resources/documents/SNAP/SNAPpdfWeb.pdf>

addressing an interdependent policy area. Scotland can, within the current set of devolved powers, set health and social care policy, however this is often undermined by differing social security and employability policies coming from the UK Parliament. Such a situation must not be exacerbated by any new settlement.

There is a greater understanding within civic Scotland of the needs of the Scottish people. Third sector organisations, for example, have rich data, information and insight into the population they represent, and MSPs are often much closer to people in Scotland than MPs are. This can lead to a greater understanding of the issues, circumstances and lead to the design of policy and systems that work better for people. We must seek a holistic package of further powers with people, their rights and their goals at the centre.

Power rather than administrative responsibility

In order for the transfer of powers to have a meaningful impact for the people of Scotland, they need to be accompanied by the right for the Scottish Parliament to take an approach that differs from that of the UK Parliament. The 'principle of parity' adopted in Northern Ireland has led to administrative responsibility rather than genuine power and should be avoided.

Additional Powers

Social security and welfare benefits

“The current system makes people more disabled.”

Levels of welfare and how the social security system operates are inextricably linked with a range of matters which are already debated by Scottish Ministers and in the Scottish Parliament, including health, social care, housing and transport. The Smith Commission's considerations of the future of social security should centre around creating the conditions for a fairer welfare system in the future that better supports people to access their rights as active citizens, including contributing through employment, caring, volunteering and supporting their local community, whilst recognising the above.

The ALLIANCE believes that there is fertile ground for all social security matters to be devolved to Scotland:

- Welfare benefits are inextricably linked to health outcomes, an area which is already devolved to the Scottish Parliament. Where the actions of devolved Scottish agencies (e.g. NHS Scotland) support people to move away from the

welfare benefit system, this has the perverse benefit of reducing spending by the UK Government rather than Scottish Government.

- Recent welfare reforms, whilst poor in their approach, have been focused on trying to make the benefits system simpler. By devolving only certain benefits and not others we risk undermining this aim and making the benefit system more complex and inaccessible. Disabled people and people who live with long term conditions often experience the impact of a disjointed and complex welfare benefits system. Our members have expressed concern that this would be exacerbated by a welfare system that is partially devolved.
- Ahead of the independence referendum the Scottish Government produced Rethinking Welfare³, a blueprint for a new welfare system in Scotland should Scotland become independent. The Expert Group on Welfare, who produced this document, consulted widely across civic Scotland and produced a number of meaningful solutions which could be adopted, for instance:
 - Detailed consideration of how Scotland should support disabled people and people who live with long term conditions through the welfare benefits system (including a review of current arrangements for the administration of Disability Living Allowance and Personal Independence Payment).
 - Increasing Carer's Allowance.
 - Re-establishing the link between benefit levels and the Consumer Price Index of inflation to make sure they reflect cost of living increases.

In order for the transfer of welfare powers to have a meaningful impact for people who use support and services however, these would need to be accompanied by the right for the Scottish Parliament to take an approach to social policy that differs from that of the UK Parliament. For example, while Northern Ireland has had devolved powers over the whole of the benefits system for most of the last century, those powers are constrained in practice by the 'principle of parity', which leads to benefits in the province being delivered strictly in conformity with the rules applied in the rest of the United Kingdom.^{4 5}

Employability and Job Support

Whilst we currently administer back to work programmes, we don't administer back to work benefits. The current situation has not enabled us to create an effective

³ Rethinking Welfare, 2014: <http://www.scotland.gov.uk/Resource/0045/00451915.pdf>

⁴ Professor Paul Spicker : Submission to the Smith Commission on the devolution of powers to Scotland <https://paulspicker.files.wordpress.com/2014/10/spicker-submission-to-smith-commission.pdf>

⁵ Devolution, Parity and Welfare Reform in Northern Ireland, http://www.scotlandfutureforum.org/assets/library/files/application/Research_Paper_2-Birrell_%26_Gray.pdf

response to employability support. In 2011, the Christie Commission⁶ concluded that the interface between reserved and devolved policies on employability (i.e. job search and support services) has compromised the achievement of positive outcomes and the extent to which this work has been coordinated at the local level.

For this reason, it stated that the full devolution of competence for job search and support to the Scottish Parliament is required to achieve the integration of service provision in the area of employability.

There are well established links between health and employability. People who are disabled and/or living with long term conditions are already far more likely than others to be living in poverty, experiencing debt and be unemployed or in low paid, less secure employment^{7,8,9}. Someone with a long term condition is¹⁰:

- Less likely to be employed
- Likely to have lower occupational status and fewer qualifications
- People claiming Incapacity Benefit, Disability Living Allowance, or both have been found to be five times more likely to report some form of financial difficulty. 83% reported their illness, health problem or disability as the main reason for this¹¹.
- Likely to experience a higher cost of living¹²

Given this close relationship we support the devolving of employability and job support as a further opportunity to take a holistic approach to the health and wellbeing of the people of Scotland.

Tax raising powers

Greater control over tax raising powers could offer Scotland the opportunity to make different decisions about how much we fund devolved issues, such as health and social care, in future. It would also make sense in the context of devolution of welfare policy and delivery, particularly in terms of avoiding a situation in which

⁶ Christie Commission on the Future Delivery of Public Services, 2011
<http://www.scotland.gov.uk/Resource/Doc/352649/0118638.pdf>

⁷ Wendy Loretto and Matt Taylor, Characteristics of adults in Scotland with long- term health conditions, University of Edinburgh and Scottish Executive Social Research (2007)

⁸ Clare Lardner, Paying the Price: The real costs of illness and disability for CAB clients, Citizens Advice Scotland (July 2006)

⁹ A Working Life for All Disabled People The Supported Employment Framework for Scotland – Summary Report, The Scottish Government (2010) <http://www.scotland.gov.uk/Resource/Doc/303629/0095168.pdf>

¹⁰ Characteristics of adults in Scotland with long-term health conditions,
<http://www.scotland.gov.uk/Resource/Doc/201273/0053758.pdf>

¹¹ Paying the Price: The real costs of illness and disability for CAB clients, Citizens Advice Scotland (2006)

¹² Counting the Cost, DEMOS (2010)

people in different parts of the UK pay the same tax but perceive themselves to receive differential benefits (for example, personal care).

This discussion must extend beyond income tax to include other forms of taxation and tax raising powers already in the purview of the Scottish Parliament which are currently not being exercised. The power to set a range of taxes would enable the Scottish Parliament to be responsible for delivering a fairer distribution of wealth throughout society. This is an essential lever in enabling effective responses to poverty and to the root causes of health inequalities.

Human Rights

Human rights are fundamental to the direction of travel and current context in Scotland and the devolution of further powers to the Scottish Parliament must be considered within this context.

We are concerned that a significant risk exists to the level of protection for human rights for people in Scotland in light of threats to repeal the Human Rights Act 1998. The Act currently requires all public authorities in Scotland to act compatibly with the rights in the European Convention on Human Rights (ECHR). It extends to both reserved and devolved areas.

As noted in the Scottish Human Rights Commission's response:

- Scotland has been consistent in its opposition to the repeal of the Human Rights Act and the development of a weaker British or UK Bill of Rights.
- The UK Commission on a Bill of Rights found very little support for such moves when they held consultations in Scotland.
- The Scottish Parliament has consistently expressed its support for the Human Rights Act, ECHR, and Scotland's National Action Plan for Human Rights (SNAP), a partnership that has cross-party support and extensive commitment and backing from across Scottish civil society and the public sector.

The ALLIANCE believes that devolution of powers over human rights legislation and equality would allow Scotland to show greater cognisance of the level of support for human rights based approaches in Scotland.

We also support calls for the Sewel Convention, through which the UK Parliament seeks consent of the Scottish Parliament in considering legislation that would impact on statutory matters, to be given statutory effect in order to provide a democratic check on reforms to UK human rights laws that would impact on Scotland.

Medical Research

There are clear uncertainties around devolving medical research funding and governance including a possible threat to drawing on the funds of the Research Councils UK. The ALLIANCE would support the continuation of the status quo with regard to medical research to avoid such a threat.

Access to health services in the rest of the UK

Many people who live with long term conditions, particularly those with rare conditions, who live in Scotland also use healthcare services in other parts of the United Kingdom. We must make sure that whatever is devolved through any new settlement does not undermine such existing arrangements.

For More Information

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About the ALLIANCE

The ALLIANCE has three core aims; we seek to:

- Ensure people are at the centre, that their voices, expertise and rights drive policy and sit at the heart of design, delivery and improvement of support and services.
- Support transformational change, towards approaches that work with individual and community assets, helping people to stay well, supporting human rights, self management, co-production and independent living.
- Champion and support the third sector as a vital strategic and delivery partner and foster better cross-sector understanding and partnership.