



ALL OUR RIGHTS IN LAW



A New Human Rights Law for Scotland Engagement with All Our Rights in Law, hosted by the Health and Social Care Alliance Scotland (the ALLIANCE)

Introduction

On 17 December 2020, the ALLIANCE – in partnership with All Our Rights in Law¹ – hosted a public engagement event to inform and influence the work of the National Taskforce for Human Rights Leadership.² The National Taskforce was established in 2019 to develop a new human rights framework for Scotland.

Around 15 people took part in the event, including representatives of organisations whose work relates to human rights and people with lived experience of realising – or struggling to realise – their human rights.

This report contains a summary of the event discussions, which centred around the following five questions:

1. What difference do you think it would make to have these rights written into Scotland's laws?
2. Are there any people or communities whose rights seem particularly at risk?
3. What does government need to do to make sure this new human rights law makes a real difference to people's lives?
4. Everyone will be able to use this new law to claim their human rights. What kind of practical information, support or resources do you think people in your community will need to do this?
5. What is your final message to the National Taskforce and the Scottish Government?

The event chair, Claire McGillivray, also posed two discussion questions relating to a short video that preceded the discussion³:

¹ <https://www.allourrightsinalaw.scot/new-human-rights-law/>

² <https://www.gov.scot/groups/national-taskforce-for-human-rights-leadership/>

³ <https://www.youtube.com/watch?v=9UsynfgXlkQ>

- A. Was there anything surprising that came out of watching the film?
- B. What would it mean for us to have a new human rights law in Scotland?

1. What difference do you think it would make to have these rights written into Scotland's laws?

General

- Having new rights in law would increase participation, engagement and humanity.
- They could further ensure human rights for particular groups who may currently not be covered (or as comprehensively) by current laws.
- Incorporating further rights, such as the right to housing, is interconnected with positive health and wellbeing.

Accountability, Accessibility and Enforcement

- Bringing more rights into law would be positive, and necessary for remedy and redress. Without bringing duties into law, they can't be enforced.
- Clarity and accessibility of language used are highly important for accountability – terms like “highest attainable standard of health” and “reasonable adjustment” were felt to be vague. If someone cannot rely on a clear definition of “reasonable”, how can they hold others to account for failing to meet that standard?
- One participant raised the issue of inclusive communication, particularly for D/deaf people. “COVID-19 has raised the profile of inclusive communication, and I am worried things will go back to how they were before.” People cannot access their rights if they are not communicated.
- Legal support needs to become easier to access. Multiple participants shared their perception that equalities and human rights duties were often flouted as it was too expensive and difficult for people or advocacy organisations supporting them to pursue via the courts.
- Human rights need a robust and accessible reporting system.
- Investigations of breaches, perhaps using the Equality and Human Rights Commission, should be public and transparent.
- Greater use could also potentially be made of the existing European Convention and Court as a mechanism for accountability.

Education and Awareness

- People often do not know how to access their rights once they have been breached, so a new law needs to address this.

- Although means to enforce human rights were vital, many participants emphasised the need to also “embed” and “mainstream” human rights in society as a whole; as something everyone works towards rather than as a “stick” to threaten with.
- Promotion of a new law is very important. One participant stated, “there needs to be a big hype about it, so people are recognising that it’s a really important thing that’s happening.”
- Public organisations need to have human rights awareness as standard and undergo a cultural shift to being proactive about fulfilling their duties.
- Human rights education should start from an early age, teaching children to understand their rights and helping to support the next generation of adults.
- Incorporation of the UN Convention on the Rights of the Child (UNCRC) is a particular opportunity to talk to children and young people about their rights.

Other Comments from Discussion

- A new Scottish human rights law is a positive opportunity which is especially important given what was felt to be an erosion of rights at UK level.
- Access to independent advocacy services is a vital part of human rights.
- People with lived experience need to be included in the legislative process.
- One participant was highly sceptical that it would make any difference, based on their experiences with the existing Human Rights Act.

2. Are there any people or communities whose rights seem particularly at risk?

Women

- Particularly in relation to health and reproductive rights.
- Need to adopt an intersectional lens.

Migrant and Refugee Communities

- Major issues regarding access to basic rights including food and housing.
- Right to family life often denied by restrictive immigration and asylum policies.
- No recourse to public funds is a major barrier to accessing rights for asylum seekers.
- Refugees have more recognised rights but are still more likely to suffer from, for example, violence and unresponsive services.

Disabled People

- D/deaf people.

- People with learning difficulties were noted to have significant health inequalities, as well as facing specific issues such as restraint and exclusion, including of children.
- People with long term conditions, including chronic pain.
- People with dementia, particularly in care homes.
- People with mental health issues.

LGBTI+ People

- Particularly transgender people.
- Often an issue of lack of understanding of intersectionality, that someone can be both LGBTI+ and D/deaf for example, and experience barriers realising their rights in one area due to being viewed as coming under the LGBTI+ umbrella.

Other Groups (mentioned but not discussed at length)

- Unpaid and kinship carers.
- People living in poverty.
- Ethnic minorities.
- Workers/employees.

Other Comments from Discussion

- Lived experience of these population groups needs to be part of the policymaking process. Should not just be academic or professional expertise taken account of.
- Groups which have suffered under COVID-19 also need to be involved in the process.
- Concerns were raised around existing human rights protections for protected characteristic groups.

3. What does government need to do to make sure this new human rights law makes a real difference to people's lives?

Specific action points

- Ensure there is an independent Ombudsman for Human Rights.
- Show how human rights interact with people's daily lives, including by showing examples of best practice around human rights, and the positive impact of someone having their rights fulfilled.

- Ensure a new law is communicated inclusively and accessibly. As one participant put it, “communication is power. People need to know what their rights are.”
- Ensure promotion in different languages so that people who do not speak English at all or for whom it is not their first language are aware of their rights and how to claim them.
- A review of how laws are being translated and implemented in different local authority areas.

Other Comments from Discussion

- People don’t understand their rights as well as they could if there is not a narrative approach; using stories would support understanding
- There were concerns about recent court of appeal judgements in terms of the dilution of justice and changes within the legal profession.

4. Everyone will be able to use this new law to claim their human rights. What kind of practical information, support or resources do you think people in your community will need to do this?

Information

- Education and awareness raising on human rights (see earlier discussions), including in schools for young people, and training for people who are responsible for ensuring rights are upheld.
- A central Human Rights Hub, where clear, concise, and accessible information is available to anyone who needs it. Worth looking at how other countries have approached this; we do not need to reinvent the wheel.

Support

- Financial support for people to be able to claim their rights where necessary through the legal system.
- Availability of independent advocacy and intermediary services – halting and reversing cuts to advocacy and funding them from more stable central government rather than vulnerable local government funds.
- Consider putting independent advocacy on a statutory basis, accessible to all, as it is for mental health.
- Taking an intersectional lens, that ensures laws and services consider people’s often overlapping yet distinct identities and experiences.
- Support for patient associations/groups for people accessing their health-related rights.
- Trained human rights advocates to support people through the process.

Resources

- A Code of Practice for duty bearers.
- Equality Impact Assessments and Human Rights Impact Assessments need wider review to be more effective in evaluation.
- Embed the PANEL principles as part of the local authority commissioning process, particularly for independent advocacy.
- “Handbook of remedies”, tools for local authorities to help prevent situations from escalating.
- Make greater use of human rights budgeting.

5. What is your final message to the National Taskforce and the Scottish Government?

- Make sure they listen to as many people as possible.
- The judicial system needs better processes to actualise these new laws.
- “The Government should be bold and not wilt in the face of loud people on Twitter opposing human rights.”
- Link human rights to the Sustainable Development Goals.
- Involve the experts by experience.
- Make this happen with haste but as a robust process.
- “Really think about funding for third sector organisations as they are the people helping individuals at ground level.”

A. Was there anything surprising that came out of watching the film?

- Surprising that there are lots of human rights that are not already in our laws.
- Language in the video was simple and clear with no policy jargon – important and the National Taskforce needs to continue this approach.
- Was not anything about accessible/inclusive information. Rights to participation, freedom of speech etc should be underpinned by inclusive communication so that everyone can participate in democracy.
- Brexit seems to have made Scotland recognise ahead of the others that our rights are at risk: great that something proactive is being done about it.
- “Astonishing that there is no right to housing in law.”
- Lack of awareness of human rights law – people think the Human Rights Act covers everything, but that is not the case.

B. What would it mean for us to have a new human rights law in Scotland?

- A positive opportunity to address the inequalities faced by people with learning difficulties with incorporation of the UN Convention on the Rights of Persons with Disabilities (UNCRPD).
- Really help with understanding and implementation of interdependent rights if they are incorporated into law.
- Good implementation and resourcing to bring around structural change would give this potential to make a difference, but there were questions around how much change it will make. Important it is people-led and works with communities.
- Need a more direct connection from right to life and right to food, similar for right to housing. Lack of either of those is life-limiting and so directly connected to the right to life.

Appendix: Event Agenda

A new human rights law for Scotland

Date: Thursday 17 December 2020, 14:00 – 16:00

Venue: Zoom, online

Host: Health and Social Care Alliance Scotland (the ALLIANCE)

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| 14:00 | Welcome and Introductions |
| 14:10 – 14:20 | Human Rights |
| 14:20 – 14:40 | Introduction to #AllOurRightsInLaw |
| 14:40 – 14:50 | Break |
| 14:50 – 15:40 | Discussion questions (in Zoom breakout rooms) 1. What difference do you think it would make to have these rights written into Scotland's laws? Your answer can be about one of the rights, some of them, or all of them. 2. Are there any people or communities whose rights seem particularly at risk? 3. What does government need to do to make sure this new human rights law makes a real difference to people's lives? 4. Everyone will be able to use this new law to claim their human rights. What kind of practical information, support or resources do you think people in your community will need to do this? 5. What is your final message to the National Taskforce and the Scottish Government? |
| 15:40 – 15:55 | Feedback |
| 15:55 – 16:00 | Thank you and closing |
| 16:00 | End |

#AllOurRightsInLaw

About the ALLIANCE

The Health and Social Care Alliance Scotland (the ALLIANCE) is the national third sector intermediary for a range of health and social care organisations. We have a growing membership of nearly 3,000 national and local third sector organisations, associates in the statutory and private sectors, disabled people, people living with long term conditions and unpaid carers. Many NHS Boards, Health and Social Care Partnerships, Medical Practices, Third Sector Interfaces, Libraries and Access Panels are also members.

The ALLIANCE is a strategic partner of the Scottish Government and has close working relationships, several of which are underpinned by Memorandum of Understanding, with many national NHS Boards, academic institutions and key organisations spanning health, social care, housing and digital technology.

Our 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.

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.

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