

# Health and Social Care Alliance Scotland (the ALLIANCE)

## Consultation on the Proposed Disability Commissioner (Scotland) Bill

2 August 2022

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The Health and Social Care Alliance Scotland (the ALLIANCE) welcomes the opportunity to respond to the consultation on the proposed Disability Commissioner (Scotland) Bill.

The ALLIANCE have consistently called for public services to take a human rights based approach. A Disability Commissioner is one possibility for upholding and further advancing the rights of disabled people, if appropriately empowered to investigate and challenge public bodies and service providers that are failing in their duty of inclusion. Commissioners are often seen as giving specific voice to communities that need it, acting as their advocate in the public sphere, ensuring their views are heard and rights are protected.

Commissioners for other groups are well established and make an impact, include for Children and Young People in Scotland, or in Wales the Commissioner for Older People.

### Response

Question 1: Which of the following best expresses your view of the proposed Bill?

Fully supportive.

The ALLIANCE supports the general principle and aims of the proposed bill. As the consultation document notes, although disabled people make up approximately one fifth of the population in Scotland, their views have often gone unheard and their human rights unrealised. Any measure that would raise the profile of disabled people and seek to improve inclusion in society is welcome.

Question 2. Which of the following best expresses your view on whether there is a need for a specific, dedicated commissioner focussing solely on people with a disability?

Fully supportive.

The ALLIANCE agree that there is a need for a dedicated commissioner for disabled people. Disabled people are a diverse section of society, encompassing a range of different disabilities and conditions with impacts unique to each individual. However, there is a shared experience of facing barriers to equal participation in society. These barriers are themselves social in nature, arising where appropriate adjustments have not been made by society to enable disabled people's inclusion.

A commissioner acting as a champion for disabled people would be empowered to more visibly and actively challenge these barriers than is currently possible. The role should be rooted in an understanding of the social model of disability, seeking to deliver change in how disabled people are included in and by society, rather than a medical model treating disabilities as something to be personally overcome.

In addition to working well with other existing commissioners, it is essential that the proposed Disability Commissioner accounts for future developments that may impact on their role. In particular, the Scottish Government has committed to an Autism and Learning Disability Commissioner as part of their proposed Learning Disability, Autism and Neurodiversity Bill. This would potentially result in separate commissioners for Learning Disability and other disabilities.

This should not be considered a barrier to a dedicated Disability Commissioner, as the Autism and Learning Disability Commissioner would have their own specialised role. However, it is likely to increase the need for joint working and a specific memorandum of understanding between the two commissioners, particularly as many people with autism or a learning disability will also live with other disabilities or long term conditions. It would be important to ensure that there is clarity as to which commissioner should be approached in a given circumstance, and processes for seamless redirection to their counterpart should an individual initially contact the "wrong" commissioner.

**Question 3. Do you think legislation is required, or are there other ways in which this Bill's aims could be achieved more effectively? Please explain the reasons in your response.**

Yes. In practical terms, it would not be possible to introduce a Disability Commissioner without legislation, and it is difficult to see how the specific aims of a Disability Commissioner could be achieved in another way. Although there is other legislation that the Scottish Government intends to pursue related to human rights, that is unlikely to be the correct forum to introduce a new commissioner.

**Question 4. Which of the following best expresses your view of the Disability Commissioner role covering all disabilities; physical, mental, hidden and fluctuating conditions.**

Fully supportive.

A broad remit for the Disability Commissioner makes sense, given the scope of what is considered a disability and that many disabled people would consider themselves to come under multiple categories, for example both physical and mental disabilities. Whilst it would not be possible to provide an exhaustive list, consideration should be given to how to communicate the range of disabilities the role would cover – for example, stating whether it includes dementia or Long Covid.

As noted in our answer to question 2, the precise remit of the Disability Commissioner may not extend to learning disabilities should an Autism and Learning Disability Commissioner also be created. If this was the case, the role would therefore not cover “all disabilities”, and it would be important to ensure it was clear that learning disabilities were the remit of a separate commissioner.

Question 5. Which of the following best expresses your view of the Disability Commissioner having a role in reviewing laws and policies that might impact on disabled people?

Fully supportive.

As a champion for disabled people, the Disability Commissioner should play an active role in shaping the laws and policies that may impact disabled people. In addition to ensuring the voice of disabled people is heard in the policymaking process, the commissioner would also be a clear and accessible contact for policymakers themselves, offering an opportunity for early engagement to ensure they get policy right from the outset, rather than having to make changes later in the process.

Question 6. Which of the following best expresses your view of the Disability Commissioner promoting best practice and learning from service providers, key stakeholders and third sector?

Fully supportive.

Sharing best practice and learning is key to ensuring that services operate to the best possible level they can, and that mistakes made by one organisation or group aren't repeated by others. However, at present it can be difficult to disseminate this kind of information, given the range of both potential users and sources, and the limited resources that smaller service providers or third sector organisations have at their disposal.

Giving the Disability Commissioner a role in promoting this information would mean there is a clear, central resource that anybody could access. One way of delivering

on this goal would be to have dedicated staff in the commissioner's office that can work with anyone wanting to share best practice and learning, to collate the information and make it available. In addition ensuring that there is adequate funding to, for example, have documentation appropriately and professionally designed, as well as translated into a range of accessible formats, would help to disseminate the information to the widest possible audience.

Question 7. Which of the following best expresses your view of encouraging involvement of disabled people and DPOs (Disabled People's Organisations) in the work of the Disability Commissioner?

Fully supportive.

The ALLIANCE strongly advocates for the voice of lived experience to be heard through all aspects of policymaking, legislation and implementation. We fully agree that disabled people and Disabled People's Organisations (DPOs) should be involved, not just with the work of the Disability Commissioner, but in a process of co-design in legislating for the role, setting its remit and in establishing working practices, standards and procedures.

It may be worth making a distinction between encouraging and actively supporting involvement. Encouraging involvement may suggest that whilst opportunities for involvement will be available, the onus will be on disabled people and DPOs to find the time and resources for them to do so. Actively supporting involvement would instead mean the Disability Commissioner's office proactively reaching out to disabled people and DPOs, providing the funding and administrative support necessary to enable them to fully engage with the work of the commissioner. The commitment in the consultation document to "involve [disabled people] in policy and decision making, ensuring inclusive communication" is welcome in this context, and further detail as to what duties this will put on the Disability Commissioner should be provided in any draft legislation.

Inclusive communication should follow the Six Principles of Inclusive Communication, and should be publicly available in multiple formats, including Community Languages, British Sign Language (BSL), Braille, Moon, Easy Read, clear and large print, and paper formats. The ALLIANCE recommends involving relevant experts – including BSL and language interpreters – at the earliest opportunity to ensure communications and information provision is inclusive for all.

Question 8. Who should the Disability Commissioner be allowed to investigate?

Both Scottish Public Bodies and service providers.

In order for the Disability Commissioner to fully act as a champion for disabled people, they must have the broadest possible powers of investigation. Although there is likely to be limited scope for enforcing recommendations emerging from any investigations into service providers that are not Scottish Public Bodies, the very act of having investigated an issue and the ability to “name and shame” providers that have breached the rights of disabled people is likely to encourage change.

These powers of investigation are also important to how the Disability Commissioner is perceived by disabled people and by the public in general. If they lacked the power to investigate possible breaches of disabled people’s human rights, the role is likely to be seen as toothless and lacking in any real ability to effect positive change. In addition, there may be grounds for allowing anonymous complaints to be submitted and initiate an investigation, where individuals may otherwise feel uncomfortable or unable to come forward with issues of concern.

**Question 9. What financial impact do you think this proposal could have if it became law?**

Some increase in costs.

As noted in the consultation document, the creation of a new commissioner post will naturally have financial consequences, particularly in terms of salaries for the commissioner, their staff, inclusive communications and other administrative expenditure. However, relative to overall public expenditure in Scotland, only a very modest sum would be required for the Disability Commissioner, and it is unlikely to have any wider financial implications.

**Question 10. What [equalities] impact could this proposal have on particular people if it became law?**

The creation of a Disability Commissioner is intended by its very nature to have a positive impact on disabled people and their rights. The ALLIANCE agree that the role is likely to have a net positive equalities impact by raising awareness of the rights of disabled people and offering a mechanism by which breaches of those rights can be highlighted, challenged and addressed.

**Question 12. Do you have any other additional comments or suggestions on the proposed bill?**

One possibility that has arisen in discussions around the proposal for a Disability Commissioner is whether the commissioner should be a disabled person themselves. Whilst it may not be possible to include this as an absolute requirement, ensuring that lived experience is at least one of the core considerations alongside other qualifications would be a reasonable approach.

The consultation document suggests that the Children and Young People's Commissioner could be taken as a model. In principle, the ALLIANCE agree that following an established model is likely to be advantageous, ensuring consistency between different Commissioners and how public bodies and service providers interact with them. If legislation is brought forward, specific engagement with and evidence from the Children and Young People's Commissioner, and people with experience engaging with them and their office, should be carried out.

We specifically welcome the suggestion that the Disability Commissioner should give specific regard to the UN Convention on the Rights of Persons with Disabilities (UNCRPD). This is a widely recognised and understood standard for defining and upholding the rights of disabled people, and will give the role a clear, rights-based grounding. The ALLIANCE, alongside over one hundred other signatories, have called on the Scottish Government to incorporate the UNCRPD into Scots Law<sup>1</sup>, and they have committed to do so in an upcoming Human Rights Bill. The process of legislating for a Disability Commissioner should take appropriate regard of the progress of incorporation.

It is important to ensure that it is as clear as possible to the public that the substantive powers of a Disability Commissioner would be limited to the matters devolved to the Scottish Parliament. Although this is likely to cover the bulk of areas where disabled people might experience breaches in their rights including health, social care, transport, education, justice, and disability aspects of social security, there will be reserved areas where issues arise.

In particular, there is substantial scope for breaches to arise in reserved aspects of social security and the asylum and immigration system, but which would not be covered by the Commissioner. We welcome that in these instances the Commissioner would nonetheless have the ability to publicly report on breaches, and to develop and communicate policy on reserved matters.

## **About the ALLIANCE**

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.

## Contact

**Allan Faulds, Policy and Information Officer**

Email: [allan.faulds@alliance-scotland.org.uk](mailto:allan.faulds@alliance-scotland.org.uk)

**Rob Gowans, Policy and Public Affairs Manager**

Email: [rob.gowans@alliance-scotland.org.uk](mailto:rob.gowans@alliance-scotland.org.uk)

Telephone: 0141 404 0231 (switchboard)

Website: <http://www.alliance-scotland.org.uk/>

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<sup>1</sup> The ALLIANCE, “126 sign Joint Statement on CRPD incorporation” (March 2021), available at: <https://www.alliance-scotland.org.uk/blog/news/126-sign-joint-statement-on-crpd-incorporation/>