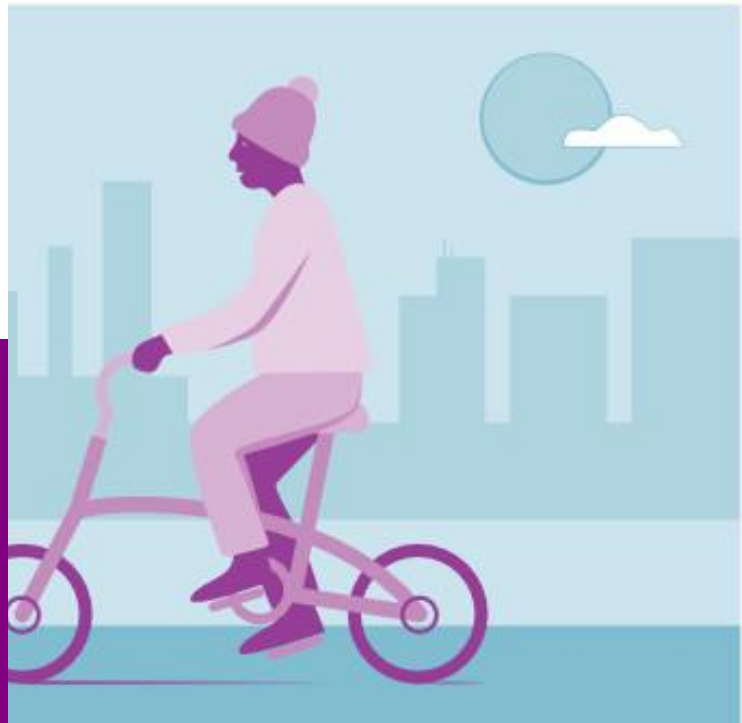




**The Health and
Social Care
Alliance
Scotland
(the ALLIANCE)**



**Wellbeing and Sustainable
Development Bill Consultation
ALLIANCE Response**

12 February 2023

Introduction

The Health and Social Care Alliance Scotland (the ALLIANCE) welcomes the opportunity to respond to this consultation on the proposed Wellbeing and Sustainable Development Bill. We would however note that the consultation timescale was somewhat challenging, as not only was it shorter than the typical three month period, but part of that period covered the Christmas and New Year holidays.

The ALLIANCE are longstanding advocates for rethinking Scotland's approach to the economy, through embedding complementary principles such as human rights budgeting, gender budgeting, and the wellbeing economy. The current economic approach, which centres on economic growth and Gross Domestic Product (GDP), does not work for many people, nor does it necessarily correctly capture the true value of essential parts of our society such as care.

We recognise this Bill as another step towards a redefined and refocused economy. Although the focus of the Bill is on the public sector in Scotland, by defining duties with explicit reference to wellbeing and sustainable development it sets a direction of travel that could have longer term positive effects more widely. In this response, the ALLIANCE:

- Recommends that human rights be put at the centre of the definition of wellbeing.
- Recommends that the definition of sustainable development explicitly recognises the environmental, global and rights implications of decision making.
- Highlights the centrality of care to wellbeing, and further urges the adoption of a National Outcome of Care.
- Calls for a stronger public duty to work towards the National Outcomes.
- Recommends that the Bill apply as broadly as possible to all public bodies and policy areas within the scope of devolved powers.



- Recommends that the Scottish Government carefully consider the outcome of the Finance and Public Administration Committee’s inquiry into commissioners and engage with the Scottish Human Rights Commission before taking a final decision on implementing a Future Generations Commissioner.
- Suggests that, subject to the outcome of the inquiry and engagement, a Champion role may be a suitable alternative.

Question 1. Is a statutory definition of 'wellbeing' required?

Yes.

Question 2. Do you have any views on how ‘wellbeing’ can be clearly defined in legislation?

A statutory definition of wellbeing is essential in order for public sector duties themselves to be clearly defined and actionable against. It is important that any definition of wellbeing adequately captures the centrality of human rights to wellbeing. Human rights provide an already existing and well-established international framework that lays out a wide range of measures essential to our wellbeing that we should all be able to expect our governments to deliver on. These rights are contained across a range of international declarations and treaties to which the UK is a party.

The Universal Declaration of Human Rights for example includes the rights to social security, to work, to rest and leisure, to education, to participate in cultural life, and to the standard of living adequate for health and wellbeing, which covers access to food, clothing, housing and medical care. The International Covenant on Economic, Social and Cultural Rights (ICESCR) further expands on these rights, such as by naming the right to the “highest attainable standard of physical and mental health” and to “the improvement of all aspects of environmental hygiene.” It also introduced the concepts, for the rights contained within it, of progressive realisation of rights and the use of maximum available resources to do so.



The Scottish Government have stated their commitment to incorporating ICESCR and other UN human rights treaties (ICERD, CEDAW and CRPD) through the proposed Human Rights Bill. The ALLIANCE recommends that the Scottish Government ensure that both proposed bills, the Human Rights Bill and the Wellbeing and Sustainable Development Bill, have appropriate regard for one another, such that they are consistent in their aims, complementary in their duties, and together ensure the fullest realisation possible of human rights for everybody in Scotland. This may include aligning the National Outcomes and the definition of wellbeing within this Bill with the definition of Minimum Core Obligations in the Human Rights Bill or subsequent secondary legislation.

The ALLIANCE recognise that a number of partner organisations across the Third Sector have submitted a proposed definition through this consultation. We would propose a similar definition which puts human rights at the centre:

“Collective wellbeing is the progressive realisation of social, economic, environmental and democratic human rights which enable people to meet their needs, as identified through consultation with the people of Scotland, pursued in a way that reduces inequalities in wellbeing between different groups. It also recognises the importance of protecting the interests and needs of future generations and fostering intergenerational equity.”

In addition, it is important that in defining and discussing wellbeing that we look beyond Scotland’s borders to the wider world. We share in the collective responsibility that humankind has to one another and to the world we inhabit. This means that Scotland has a duty to contribute to the realisation and defence of human rights across the world. Acting on this duty may involve ensuring that procurement and investment policies are ethical and take due regard for the wellbeing of people in other countries, for example by preventing organisations implicated in human rights breaches elsewhere from being granted public contracts in Scotland.



Question 3. Is a statutory definition of ‘sustainable development’ required?

Yes.

Question 4. Do you agree with our proposal that any definition of sustainable development should be aligned with the common definition: “development that meets the needs of the present without compromising the ability of future generations to meet their own needs”?

Don’t Know.

Question 5. Do you have other views on how ‘sustainable development’ can be clearly defined in legislation?

A statutory definition of sustainable development is essential in order for public sector duties themselves to be clearly defined, actionable and accountable. Whilst we recognise the Scottish Government’s stated intention to mirror an already existing, international definition of “sustainable development”, we believe this definition should be expanded and built upon to provide further clarity, guidance and accountability.

We propose an alternative definition, using the initial proposal as the starting point whilst including reference to the “planetary boundaries” model¹ which outlines safe environmental and ecological limits that humanity should strive to remain within. Our suggestion reflects the UN’s position that “Human rights are essential to achieving sustainable development that leaves no one behind and are central to all its three dimensions – social, environmental, and economic.”²:

“Sustainable development is development that equitably meets the needs of the present without compromising the ability of future generations to meet their own needs and realise their human rights, within the safe limits of planetary boundaries, and with due regard to the global impact of decisions taken in Scotland.”



Question 6. What future wellbeing issues or challenges do you think legislation could help ensure we address?

We believe this Bill is an opportunity build on the Scottish Government's progress to date on rethinking Scotland's approach to the economy and society. This was given visible institutional form by appointing a Cabinet Secretary for Wellbeing Economy in 2023, but also includes the Scottish approach to social security which is rooted in human rights, and the ongoing incorporation agenda which has so far seen the UN Convention on the Rights of the Child (UNCRC) incorporated, with a further four international human rights treaties and the right to a healthy environment to be incorporated through the proposed Human Rights Bill.

The ALLIANCE are longstanding advocates for alternative approaches to the economy and budgeting. Beyond the wellbeing economy, these include the care economy, gender budgeting, and human rights budgeting³. Although there is a slightly different focus for each of these concepts, they are complementary rather than competing, and offer useful lenses through which to view Scotland's economy. We further reaffirmed the importance of rethinking our approach to the economy in our 2022 report on the impacts of the cost of living crisis⁴.

The ALLIANCE are particularly keenly interested in ensuring that care is fully recognised for the essential contribution it makes to individual and collective wellbeing. Social care is a fundamental necessity for many people, and the provision of reliable, high quality, person centred social care enables them to realise their rights to independent living and to equal participation in society. Other forms of care, such as family and childcare, are equally vital, regardless of whether the caring is formal or informal.

Yet despite its centrality to wellbeing, care remains seriously undervalued in Scotland. This is experienced by those receiving care through strict eligibility criteria, inconsistency in the availability of different kinds of care in different places, inflexible care packages which do not suit their individual lives, and costly care charges. For those providing care, the lack of value



put on their role is seen through chronic low pay in the social care workforce, and the limited social security support and availability of respite for unpaid carers. The fact that care, paid and unpaid, is both undervalued and largely provided by women is not a coincidence, and reflects a longstanding failure of society to recognise and value women's work.

In 2023, the ALLIANCE joined partner organisations from across Scotland, led by the Scottish Women's Budget Group, Oxfam Scotland, Carers Scotland, One Parent Families Scotland and Scottish Care, to call for a National Outcome on Care as part of the review of National Outcomes⁵. The resulting A Scotland That Cares⁶ campaign argues that explicit recognition for care will make care "visible in Scotland's wellbeing framework" and act as focus for policy development and budget setting to properly account for care.

Introducing a National Outcome on Care is particularly important in the context of an aging population. As more people in Scotland enjoy longer lives, the demand for social care is anticipated to increase in the coming years⁷. At present, too much of the framing of this demographic shift relates to the perceived costs to society of spending more money on social care. This should instead be seen as an opportunity, with expenditure on social care being an investment in wellbeing, dignity and human rights, and the potential to provide well-paid, good quality employment. This can only happen however if wellbeing is the central motivator of Scotland's economy, and if care is properly recognised within the framework of wellbeing.

Question 7. We are aware that the term 'sustainable development' has been set out in various legislation of the Scottish Parliament since devolution in 1999, and that careful consideration will need to be given to how any new definition will impact on these. What impact, if any, would the proposed definition have on other areas of legislation?

Rather than introducing new duties or concepts to existing legislation, a clearer definition of "sustainable development" will generally provide an updating understanding of what that legislation must work towards. In the



event that there are specific pieces of legislation where the definition would result in conflicting duties, the Scottish Government should amend the original legislation to bring it in line with the Bill. Where this is necessary, there should be appropriate communication and consultation with relevant stakeholders, particularly those who may be impacted by any change in applicable duties.

Question 8. How should a legal duty be defined to ensure that public authorities uphold sustainable development and the interests of future generations?

The ALLIANCE do not believe the current “have regard to the National Outcomes” duty is sufficient. We noted in our response to the review of National Outcomes in 2023 that “they do not yet appear to be fully embedded in all government processes.”⁸ We suggested that the Scottish Government consider how to strengthen its own use of the National Outcomes, “for example by ensuring that all Scottish Government legislation, strategies and related publications outline how they will contribute to achieving the National Outcomes.”

One way to do this may be via a more clearly defined duty in this Bill. This duty should include an explicit requirement to work towards the National Outcomes. We largely agree with the proposed phrasing put forward by partners active in the wellbeing space, but would again make explicit reference to human rights, such that public authorities are required to:

“... promote and deliver sustainable development while protecting the wellbeing and human rights of current and future generations ensuring that they take all reasonable steps to support the realisation of the National Outcomes, minimise trade-offs, and resolve policy conflicts in a way that does not undermine sustainable development or the wellbeing of current and future generations.”

Given that the National Outcomes are an already existing framework, the aim should be to improve and streamline reporting and measurement



against that framework, rather than result in onerous new requirements. As noted in our response to an earlier question, given the centrality of human rights to wellbeing and sustainability, the duties arising from this Bill should be clearly aligned with and complementary to duties in the proposed Human Rights Bill, as well as the actions outlined in SNAP 2⁹.

Question 9. Are there specific areas of decision making that should be included or excluded from the Bill?

Included

The Bill should apply as broadly as possible to decision making in Scotland, covering the full range of public authorities and policy areas that are within the scope of devolved powers.

Excluded

We do not believe any areas of decision making should be excluded from the Bill. There are no areas of decision making that do not relate in some degree to wellbeing and sustainable development, and excluding some areas from the scope of the Bill's duties would negatively impact on policy coherence.

Question 10. What issues, if any, may result from strengthening the requirement to have regard to the National Outcomes?

It is important for accountability that any strengthening of the duty relating to the National Outcomes is accompanied by appropriate guidance to support public bodies to meet it. This includes the definitions embedded within the Bill, as well as ways of working, frameworks for collaboration across the public sector, and clear reporting processes. In the short term, this may require additional resource in order to develop guidance and deliver training.



Question 11. Should any duty apply to the Scottish Government?

Yes. If Scotland is to uphold a collective responsibility for wellbeing, sustainable development and to future generations, that duty must apply as widely as possible. If the Scottish Government were exempt from such a duty, that would significantly increase the risk of the government taking the wrong decisions or implementing the wrong policies. It is also important for accountability that the duty explicitly apply to the Scottish Government, as otherwise it will limit the ability of people to seek legal remedy on the basis the government has not accounted for wellbeing, sustainability or future generations when exercising its powers.

Question 12. Do you have any views on the range and type of organisations that any duty should apply to?

The duty should apply as widely as possible across the public sector, capturing the full range of policymaking and service provision. In addition to the Scottish Government this should include local councils and public bodies such as but not limited to NHS boards, Integration Joint Boards and Community Planning Partnerships.

Where possible, the duty should also extend to private and third sector organisations contracted to deliver devolved public functions when carrying out those functions. This could follow a similar approach to Fair Work, whereby tendering and procurement processes are made conditional on adherence to the duty, but where responsibility and accountability for ensuring compliance ultimately lies with the commissioning body.

Where there is a requirement to do so, to enable third sector organisations to comply with the duty there must be a respectful and equal relationship between the commissioner and the commissionee, supported by adequate and sustainable funding and good communication. In order to carry out their duties under the Bill, like their public sector counterparts, third sector organisations may require additional support, training and capacity building.



Question 13. Do you have any views on how we can better report the achievement of wellbeing objectives which supports clear accountability and scrutiny of public bodies in Scotland?

In line both with our responses to other questions in this consultation and our response to the review of National Outcomes¹⁰, the ALLIANCE recommend that the National Outcomes be more firmly embedded in policy development and reporting. This could include more frequent updates from Scottish Ministers on progress towards the National Outcomes, ensuring sufficient opportunities for scrutiny by the Scottish Parliament, and ensuring that reporting against the National Outcomes becomes the norm for public bodies within their already existing reporting obligations.

Public authorities should be required to identify how they have maximised their available resources, or will do so in future, to meet this duty. As well as identifying actions, reports should identify gaps that currently exist and measures taken to address these; reporting on challenge as well as success is essential to support transparency and accountability.

Requiring public authorities to consult with people as part of their reporting process will yield vital information about whether their actions have delivered the positive outcomes expected under the duty. Comprehensive and consistent reporting across public authorities is required. This will help avoid a siloed approach so that findings can be compared across sectors and a systematic approach is taken to learning and improvement.

Question 14. What additional steps are needed to ensure collaboration and working across boundaries?

In addition to joint working between organisations, it is important that the people of Scotland are as involved in policy making and implementation as possible. In line with our recommendation that human rights be at the centre of wellbeing and sustainable development, we would emphasise the importance of following the PANEL principles when developing policies. These lie at the heart of a human rights based approach to policy



development and offer an easy to understand mechanism for practical implementation of that approach¹¹. The PANEL principles are:

- Participation
- Accountability
- Non-Discrimination and Equality
- Empowerment
- Legality

Question 17. Should Scotland establish an independent Commissioner for Future Generations?

Don't Know.

Question 18. In what ways could an independent Commissioner for Future Generations increase the accountability, scrutiny and support for decision making?

In principle, the ALLIANCE recognise the benefits that a dedicated independent Commissioner for Future Generations could offer. A commissioner would be able to act as a highly visible champion for future generations, raising awareness amongst the general public about the issues at stake, supporting policy development, and challenging the Scottish Government where it fails to properly account for future generations. This could include the power to conduct formal investigations and open legal proceedings. The ALLIANCE has in recent years supported other proposed commissioners on this basis.

We have however become increasingly aware of the growing concerns raised about the number of commissioners which have been proposed across a range of areas in recent years. Some of these concerns relate to the costs of maintaining a commissioner's office, particularly staffing, as has previously been noted by the Finance and Public Administration Committee and Scottish Parliament Corporate Body¹². The committee began an inquiry into commissioners in December 2023, with their call for views running concurrent to this consultation¹³.



Whilst costs may be a particularly important consideration for the Scottish Parliament at a time of financial difficulty, we have also noted concerns about under-funding, fragmentation, duplication and inconsistency of remits across existing and proposed commissioners¹⁴. These risk inhibiting the ability of commissioners to work effectively, as well as presenting a confusing landscape for people seeking information or remedy to navigate.

As noted in our responses to earlier questions, the ALLIANCE strongly urges that human rights are embedded within the definitions of wellbeing and sustainable development. This would include for example the rights contained within the UN Convention on the Rights of the Child (UNCRC) which was recently incorporated through the UNCRC (Incorporation) (Scotland) Act. Some breaches of children's rights could be argued to fall under the remits of the Scottish Human Rights Commission (SHRC), Scotland's Commissioner for Children and Young People (CYPCS) (both already existing commissioners), and the proposed Commissioner for Future Generations.

In such cases, it could be difficult to establish which commission the issue sits with. In addition, the legislative framework regulating the CYPCS specifically limits its ability to investigate where another body is able to do so. Further adding to this landscape may weaken rather than strengthen accountability and scrutiny, as different commissioner's offices take up different issues, apply different approaches, and have less opportunity to develop institutional knowledge and expertise.

We would therefore recommend that before reaching a final decision on a Future Generations Commissioner, the Scottish Government carefully consider the findings of the Finance and Public Administration Committee's inquiry into commissioners. The government should also arrange further independent research into commissioners of its own and engage with the SHRC and other stakeholders regarding possibilities for reform of that commission.



Question 19. Are there alternative ways we can increase the accountability, scrutiny and support for decision making?

Many of the proposals for commissioners specifically call for them to be a “champion” for a group or concept, a term we have also used in this response. For example, the SHRC noted that this featured in calls for an Older People’s Commissioner, a Learning Disabilities, Autism and Neurodiversity Commissioner, and a Disability Commissioner¹⁵. The appeal of and desire for such champions is understandable, particularly in light of recent crises such as the COVID-19 pandemic¹⁶ and the rising cost of living¹⁷, where groups including older people and disabled people have argued that their rights were not properly considered by policymakers.

However, this understandable desire for a champion does not necessarily have to be met by a commissioner. The Scottish Government appointed a Women’s Health Champion in January 2023, in line with their commitments under the Women’s Health Plan¹⁸. This approach may offer a lower-cost and more flexible alternative to commissioners, and a Future Generations Champion may be an appropriate means by which to empower an individual to advocate for future generations. Such a champion could work with the Scottish Government and public bodies to develop and implement a clear and transparent plan to ensure that public bodies’ policies and practice align with their duties under the Bill, whilst publicly challenging them where they are failing to do so.

Where a Future Generations Champion would most clearly differ from a commissioner would be in relation to powers of investigation and remedy for such failures. Where there is need for investigation or legal remedy relating to the duty, this should be considered with regards to human rights and be taken up by the appropriate existing commissioners, potentially including reforms to the SHRC as outlined in their ‘At a Crossroads’ paper¹⁹.

In line with our response to an earlier question, any such Future Generations Champion should report and measure against the National



Outcomes, as well as on maximising available resources and existing gaps and possible measures to address them. They should also consult with people to inform their work and their reporting.

About the ALLIANCE

The Health and Social Care Alliance Scotland (the ALLIANCE) is the national third sector intermediary for health and social care, bringing together a diverse range of people and organisations who share our vision, which is a Scotland where everyone has a strong voice and enjoys their right to live well with dignity and respect.

We are a strategic partner of the Scottish Government and have close working relationships with many NHS Boards, academic institutions and key organisations spanning health, social care, housing and digital technology.

Our purpose is to improve the wellbeing of people and communities across Scotland. We bring together the expertise of people with lived experience, the third sector, and organisations across health and social care to inform policy, practice and service delivery. Together our voice is stronger and we use it to make meaningful change at the local and national level.

The ALLIANCE has a strong and diverse membership of over 3,500 organisations and individuals. Our broad range of programmes and activities deliver support, research and policy development, digital innovation and knowledge sharing. We manage funding and spotlight innovative projects; working with our members and partners to ensure lived experience and third sector expertise is listened to and acted upon by informing national policy and campaigns, and putting people at the centre of designing support and services.

We aim to:



- Ensure disabled people, people with long term conditions and unpaid carers voices, expertise and rights drive policy and sit at the heart of design, delivery and improvement of support and services.
- Support transformational change that works with individual and community assets, helping people to live 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 cross-sector understanding and partnership.

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¹ Stockholm University, Stockholm Resilience Centre, 'Planetary Boundaries', available at: <https://www.stockholmresilience.org/research/planetary-boundaries.html>

² United Nations Office of the High Commissioner for Human Rights, 'OHCHR and the 2030 Agenda for Sustainable Development', available at: <https://www.ohchr.org/en/sdgs>

³ The ALLIANCE, 'Human Rights Budget Work', available at: <https://www.alliance-scotland.org.uk/policy-and-research/policy/human-rights/human-rights-budget-work/>

⁴ The ALLIANCE, 'Disabled People, Unpaid Carers and the Cost of Living Crisis: Impacts, Responses and Long Term Solutions' (October 2022), available at: <https://www.alliance-scotland.org.uk/wp-content/uploads/2022/10/ALLIANCE-Cost-of-Living-Report.pdf>

⁵ The ALLIANCE, 'ALLIANCE responds to National Outcomes review 2023' (June 2023), available at: <https://www.alliance-scotland.org.uk/blog/news/alliance-respond-to->



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⁶ A Scotland That Cares, available at: <https://ascotlandthatcares.org/>

⁷ University of Strathclyde Fraser of Allander Institute, 'Projecting future demand and expenditure for adult social care in Scotland' (October 2022), available at: <https://fraserofallander.org/wp-content/uploads/2022/10/Perspective-3-Projecting-future-demand-and-expenditure-for-adult-social-care-in-Scotland.pdf>

⁸ The ALLIANCE, 'ALLIANCE responds to National Outcomes review 2023' (June 2023), available at: <https://www.alliance-scotland.org.uk/blog/news/alliance-respond-to-national-outcomes-review-2023/>

⁹ Scotland's National Action Plan for Human Rights, 'SNAP 2: Scotland's second National Human Rights Action Plan' (March 2023), available at: <https://www.snaprights.info/wp-content/uploads/2023/03/SNAP-2-March-2023-FINAL-PDF.pdf>

¹⁰ The ALLIANCE, 'ALLIANCE responds to National Outcomes review 2023' (June 2023), available at: <https://www.alliance-scotland.org.uk/blog/news/alliance-respond-to-national-outcomes-review-2023/>

¹¹ Scottish Human Rights Commission, 'Human Rights Based Approach', available at: <https://www.scottishhumanrights.com/projects-and-programmes/human-rights-based-approach>

¹² Scottish Parliament Finance and Public Administration Committee, Letter to Health, Social Care and Sport Committee on the Patient Safety Commissioner (January 2023), available at: <https://www.parliament.scot/chamber-and-committees/committees/current-and-previous-committees/session-6-health-social-care-and-sport-committee/correspondence/2023/fpac-patient-safety-commissioner-for-scotland-bill>

¹³ Scottish Parliament Finance and Public Administration Committee, 'Scotland's Commissioner Landscape: A Strategic Approach' (December 2023), available at: <https://www.parliament.scot/chamber-and-committees/committees/current-and-previous-committees/session-6-finance-and-public-administration-committee/business-items/scotlands-commissioner-landscape-a-strategic-approach>

¹⁴ Scottish Human Rights Commission, 'At a Crossroads – which way now for the human rights system in Scotland?' (June 2023), available at: https://www.scottishhumanrights.com/media/2456/crossroads_what-next-for-human-rights-protection-in-scotland-shrc-june-2023.pdf



¹⁵ As above.

¹⁶ The ALLIANCE, 'ALLIANCE tells Scottish COVID-19 Inquiry of "invisible" and "forgotten" voices of the pandemic' (November 2023), available at: <https://www.alliance-scotland.org.uk/blog/news/alliance-tells-scottish-covid-19-inquiry-of-invisible-and-forgotten-voices-of-the-pandemic/>

¹⁷ The ALLIANCE, 'Disabled People, Unpaid Carers and the Cost of Living Crisis: Impacts, Responses and Long Term Solutions' (October 2022), available at: <https://www.alliance-scotland.org.uk/wp-content/uploads/2022/10/ALLIANCE-Cost-of-Living-Report.pdf>

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¹⁹ Scottish Human Rights Commission, 'At a Crossroads – which way now for the human rights system in Scotland?' (June 2023), available at: https://www.scottishhumanrights.com/media/2456/crossroads_what-next-for-human-rights-protection-in-scotland-shrc-june-2023.pdf

