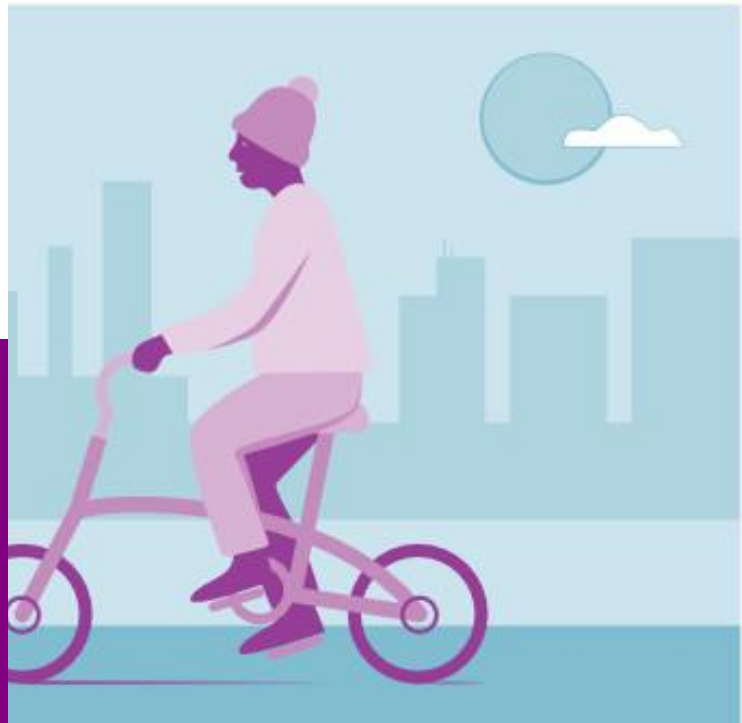




**The Health and
Social Care
Alliance
Scotland
(the ALLIANCE)**



**Disability Commissioner (Scotland)
Bill call for views
ALLIANCE response**

17 May 2024

Introduction

The Health and Social Care Alliance Scotland (the ALLIANCE) welcomes the opportunity to respond to the Equalities, Human Rights and Civil Justice Committee’s call for views on the Disability Commissioner (Scotland) Bill. We responded positively to the pre-legislative consultation on the Bill, supporting the principle behind it, and calling for such a commissioner to have the broadest possible powers of investigation and to have a duty to involve disabled people in their work. We are pleased to see that these priorities are reflected in the Bill as introduced to Parliament.

Whilst the ALLIANCE are strongly supportive of the principle behind this Bill, we are aware that there are ongoing discussions surrounding the number of proposed new commissioners in Scotland. Many of these proposals are rooted in patterns of service failure and breaches of people’s human rights. In 2023 the Scottish Human Rights Commission’s “At a Crossroads” report highlighted these and other contributions to the increasing number of proposed commissioners. It also outlined a range of possibilities, including an alternative “rapporteurship” model that we believe has significant merit and should be carefully considered.

At the time of this call for views, the Finance and Public Administration Committee’s inquiry into Scotland’s commissioner landscape is still ongoing. However, we would recommend that further progress on this and other commissioner-related Bills before the Scottish Parliament await the findings of that inquiry and take them into account.

Question 1: What are your views on the main proposal of the Bill, to establish a Disability Commissioner for Scotland?

The ALLIANCE are supportive of the principle of a Disability Commissioner. We responded positively to the pre-legislative consultation on the Bill¹, supporting the principle behind it, and calling for such a commissioner to have the broadest possible powers of investigation and to have a duty to involve disabled people in their work.



Disabled people make up approximately one fifth of the Scottish population, yet their views have often gone unheard and their rights are routinely infringed. The inequalities facing disabled people are long-established and deep-rooted. They long predate but have been further highlighted and exacerbated by the COVID-19 pandemic² and the cost of living crisis³. The Scottish Government and Scottish Parliament must do significantly more to improve the rights, lives and experiences of disabled people.

Although disabled people are incredibly diverse, with each person experiencing unique impacts from their disability or condition, there is a shared experience of facing barriers to equal participation in society. We consider that most of these barriers are primarily social in nature, arising from a failure of society to include disabled people, and constitute infringements of people's human rights.

We consider that a Disability Commissioner could act as a powerful and highly visible champion for disabled people. This is especially true if the commissioner has the powers to undertake investigations, as proposed in the Bill. A commissioner would be able to hold public bodies and service providers to account, whilst challenging the government to do more to enable the full and equal participation of disabled people in society.

However, as we expand upon in our responses to other questions, a dedicated Disability Commissioner is not the only way to deliver on the aspirations of this Bill. In addition, there is a wider discussion currently taking place in Scotland regarding the number of additional commissioners that are currently proposed.

We recommend that the Scottish Parliament carefully consider alternative proposals and models, such as those set out by the Scottish Human Rights Commission (SHRC) in their "At a Crossroads"⁴ report. In addition, the Finance and Public Administration Committee are currently undertaking an inquiry into Scotland's commissioner landscape⁵. We believe it would be wise for Parliament to wait for the conclusion of that inquiry before



progressing commissioner-related bills, in order to allow sufficient time for its findings and recommendations to be fully considered.

Question 2: What is your awareness of other commissions or bodies that exist to promote and protect your rights?

Overall, we would consider the ALLIANCE has a high level of awareness of the other commissions that exist to uphold human rights.

In particular we have a good working relationship with the SHRC and recognise the role that the UK-wide Equality and Human Rights Commission (EHRC) plays in relation to equalities, and in relation to human rights on reserved matters. Similarly, we understand the role that the Scottish Commissioner for Children and Young People (SCCYP) has played in, for example, advocating for the full incorporation of the United Nations Convention on the Rights of the Child (UNCRC).

We are also aware that a range of additional commissioners with an either wholly or partly rights-based remit have been proposed, including an Older People's Commissioner, a Learning Disability, Autism and Neurodiversity Commissioner, and a Wellbeing and Sustainable Development Commissioner.

It must be recognised that many of the proposed and existing commissioners could be relevant to the same individuals. For example, the rights of disabled children would be upheld not just the proposed Disability Commissioner, but also by the SCCYP, the SHRC, and the EHRC, depending on context and specific issue. This reflects the reality that people do not fit neatly into one box or another but are multifaceted individuals with a range of experiences and characteristics. The intersection of these characteristics can be complex but must be understood to best support people.

The range and number of commissioners, both existing and proposed, has recently become a topic of wider discussion. The Finance and Public



Administration Committee have been conducting an inquiry titled “Scotland’s Commissioner Landscape: A Strategic Approach”⁶, arising from the possibility that the number of commissioners in Scotland could double if all current proposals were implemented.

Similarly, last year the SHRC published their “At a Crossroads” report⁷ which investigated some of the issues surrounding commissioners. This report identified a range of factors that were driving demands for commissioners, including the “implementation gap between policy and legislation”, “the need for a champion”, and “dissatisfaction with accountability mechanisms”. They also argued that commissioners may be perceived as an “easy win” for the government and noted “the influence of comparative policy and new public bodies elsewhere in the UK.”

This potential growth in the number of commissioners may have significant implications. On the one hand, it may act to improve awareness and understanding of the challenges facing many groups in our society. Effective, empowered commissioners may be able to reduce the prevalence of service failure and facilitate access to justice and redress where it has been experienced. In so doing, they may result in an overall cost saving to the public purse.

On the other hand, it may be that the growth in commissioners results in a landscape that is complex and difficult to navigate. It may also overly separate and distinguish between different characteristics, when as we noted earlier, many people do not fit neatly into one category or another, but have many, intersecting characteristics and identities. In our response to the pre-legislative consultation, we also noted that care would need to be taken to avoid duplication of functions between this Disability Commissioner and any potential Learning Disabilities, Autism and Neurodiversity Commissioner.

Taking those arguments into consideration, the ALLIANCE found the “rapporteurship” model suggested by the SHRC compelling. This model, inspired by the approach taken by NHRIs in Costa Rica, Mexico, the



Netherlands and Peru, would see teams within the SHRC given a particular focus on specific groups or UN human rights treaties. They argue that this model allows for continuous and comprehensive monitoring of key human rights issues, the recruitment of champions and experts in their field, and stability in leadership combined with flexibility in resource.

We would particularly draw attention to the SHRC's specific use of the word "champion" in this section, which reflects the language used in many of the calls for commissioners, and our own answers in this response. We therefore believe this model has the potential to deliver on the principle of those calls, without the costs of establishing a range of separate commissioner's offices, and with the benefit of building up knowledge, expertise, skills and effective ways of working within a single organisation.

This is also likely to support an intersectional approach to rights – which are themselves interdependent and interrelated – reducing the risks of siloed working that might exist between separate commissioner's offices. It may also be worth considering whether to formally adopt the term "Champion" rather than "Rapporteur" under this model, both to reflect the widespread use of that term in calls for commissioners and as a matter of using terminology that will be more accessible and understandable for rights holders.

The SHRC argue that this structure would not necessarily need new legislation, and it may be wise for reasons of flexibility not to enshrine organisational structure too rigidly in statute. We would encourage the Scottish Parliament, Scottish Government and SHRC to further investigate the possibilities of the Rapporteurship model, and whether it would equally or better deliver on the policy intentions of the Disability Commissioner Bill, and to identify the level of funding necessary to ensure it functions adequately.

Question 3: What are your views on the proposal to use the definition of disability set out in the Equality Act 2010 – a physical or mental



impairment which has a substantial and long-term adverse effect on that person's ability to carry out normal day-to-day activities?

The ALLIANCE are broadly supportive of this definition, on the basis that it is an existing definition in a central piece of equality legislation. Both as a matter of clarity and practicality, we agree that definitions should align across different pieces of legislation. It is however important that a future Disability Commissioner takes a flexible and inclusive approach towards disability. They should work with a wide variety of individuals and groups, including groups with poorly understood or new conditions that may not yet be fully accounted for in legislation, policy and practice.

A recent example of such a condition is Long Covid, which arose during the COVID-19 pandemic. In research conducted on behalf of the ALLIANCE and Chest, Heart and Stroke Scotland⁸, people living with Long Covid described the challenges of being believed, and how that impacted on their ability to access support. A Disability Commissioner would have been able to advocate on behalf of people with Long Covid, as well as undertake and publicise earlier research into the condition.

Question 4: What are your views on the proposal for the Commissioner to have regard to the United Nations Convention on the Rights of Persons with Disabilities (UNCRPD) and to encourage and observe equal opportunities requirements?

Should a Disability Commissioner be created, the ALLIANCE strongly supports the proposal that they should have regard to the UNCRPD. In our response to the pre-legislative consultation⁹, we emphasised that the UNCRPD 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.

Ensuring that the Commissioner has regard to the UNCRPD is particularly important in the context of the proposed Human Rights Bill, which seeks to incorporate UN treaties including the CRPD into Scots law. Although the Human Rights Bill is still yet to be published, it is important that any



legislation to introduce new commissioners aligns with the provisions included in that Bill.

Question 5: What do you think about the Commissioner's powers as set out in the Bill?

We support the proposed list of functions that the commissioner would have to carry out their general function, namely, to promote awareness; keep law, policy and practice under review; promote best practice; and undertake research. So long as these functions are combined with the investigative power, we consider this to be a suitable form for the proposed commissioner.

Although we fully understand that the commissioner would only be able to act within devolved competencies, it is important that this is made as clear as possible to the public. Whilst many of the areas that are likely to present barriers to the full enjoyment of disabled people's human rights are devolved, including health, social care, transport, education, justice and devolved social security payments, some breaches may arise in reserved areas.

We have previously identified that, for example, human rights breaches in relation to reserved social security payments or to the asylum and immigration system would not be covered by the commissioner. This is simply the nature of devolution, but a lack of detailed understanding of the devolution framework must not be a barrier to disabled people accessing justice. Any future Disability Commissioner should therefore be aware from the outset of the need to create referral pathways, for example to the EHRC, where issues arise in relation to reserved policy areas.

Question 6: What do you think of the proposed power to undertake investigations of service providers to ask how they have given effect to the rights, views and interests of disabled people in general or an



individual disabled person? This power to investigate will be limited to devolved matters.

The ALLIANCE strongly support giving the proposed Disability Commissioner the power to undertake investigations of service providers. In our response to the pre-legislative consultation, we argued that these powers were necessary for a commissioner to fully act as a champion for disabled people. We believe that the ability to formally investigate problems and issue recommendations would provide a tangible benefit to disabled people.

We also stated our belief that powers of investigation are essential for disabled people and the wider public to have confidence in the commissioner. If they lacked the power to investigate possible breaches of disabled people’s human rights, the role would be seen as toothless and lacking in any real ability to effect positive change. In general, the ALLIANCE would argue that any rights-based commissioner should have powers of investigation to have “teeth”, as we stated in our response to the Finance and Public Administration Committee’s inquiry into Scotland’s commissioner landscape¹⁰.

Question 7: What do you think of the proposals to encourage the involvement of disabled people in the Commissioner’s work and use inclusive communication to enable the fullest involvement?

The ALLIANCE strongly support the proposals to encourage involvement and to have regard to the importance of accessible information and inclusive communication. We regularly highlight that people have a right to accessible information and inclusive communication in our consultation responses and wider policy work, and we welcome that this Bill recognises that importance.

Although we understand why the Bill is not proscriptive with regards to what counts as inclusive communication, it should follow the Six Principles of Inclusive Communication¹¹. This includes information and communication being made available in multiple inclusive formats like Community



Languages, BSL, Braille, Moon, Easy Read, clear and large print, and paper formats. The ALLIANCE recommends involving relevant experts – including Easy Read translators, BSL and language interpreters – at the earliest opportunity to ensure communications and information provision is inclusive for all.

Similarly, we welcome the explicit requirement in the Bill for the commissioner’s work to be informed by the views of disabled people, including to consult with disabled people and disabled people’s organisations, and for priority to be given to people who may find it difficult to share their views. It is essential however that this goes beyond simply consultation and includes long-term, sustainable processes of engagement, co-design and co-production.

Disabled people should be fully involved from the outset, including in establishing the commissioner and setting the initial priorities for the office. Engagement should be proactive, and the Commissioner’s Office must have enough resource to dedicate towards supporting everyone to engage, including by covering costs such as for interpreters and transport.

Question 8: Do you think there might be any unintended consequences as a result of the Bill’s proposals?

In line with our answer to an earlier question we acknowledge that the evolving nature of Scotland’s commissioner landscape may result in some complexity and confusion if a large number of new bodies are established. How much this impacts and is impacted by the Disability Commissioner may depend on how many of these bodies are established, what joint working arrangements are agreed, and what their remits are.

As previously stated, we recommend that Bills relating to commissioners should not be progressed to further legislative stages until the Finance and Public Administration Committee’s inquiry on Scotland’s Commissioner landscape has reported. It is important that any recommendations arising from the findings of that inquiry are properly accounted for when legislating



for a Disability Commissioner. We would also encourage Parliament to carefully consider the recommendations in the SHRC’s “At a Crossroads” report, and what commissioner framework would do the most to advance and uphold the rights of the people of Scotland.

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 The ALLIANCE, 'ALLIANCE response to the Disability Commissioner Consultation' (August 2022), available at: <https://www.alliance-scotland.org.uk/blog/news/alliance-response-to-the-disability-commissioner-consultation/>

² 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/>

³ The ALLIANCE, 'Disabled People, Unpaid Carers and the Cost of Living Crisis' (October 2022), available at: <https://www.alliance-scotland.org.uk/wp-content/uploads/2022/10/ALLIANCE-Cost-of-Living-Report.pdf>

⁴ 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

⁵ Scottish Parliament Finance and Public Administration Committee, 'Scotland's Commissioner Landscape: A Strategic Approach', 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>

⁶ As above.

⁷ 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

⁸ The ALLIANCE; Chest, Heart and Stroke Scotland, 'Accessing Social Support for Long Covid' (June 2022), available at: <https://www.alliance-scotland.org.uk/policy-and-research/research/accessing-social-support-for-long-covid/>

⁹ The ALLIANCE, 'ALLIANCE response to the Disability Commissioner Consultation' (August 2022), available at: <https://www.alliance-scotland.org.uk/blog/news/alliance-response-to-the-disability-commissioner-consultation/>

¹⁰ The ALLIANCE, 'ALLIANCE responds to inquiry into Scotland's Commissioner Landscape' (March 2024), available at: <https://www.alliance-scotland.org.uk/blog/news/alliance-responds-to-inquiry-into-scotlands-commissioner-landscape/>

¹¹ Inclusive Communication, 'Six Principles of Inclusive Communication'. Available at: <https://inclusivecommunication.scot/the-six-principles-of-inclusive-communication>

