

Scottish Consortium for Learning Disability
Submission for UPR United Kingdom of Great Britain and Northern Ireland.

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Scottish Consortium for Learning Disability

The Scottish Consortium for Learning Disability (SCLD) is a registered charity and is the Scottish Government's Centre for Excellence in learning disability. SCLD was founded in 2001 following a recommendation of 'The same as you?', the Scottish Government's policy on people with learning disabilities. 'The same as you?' said people with learning disabilities and their families should be able to have a good life, like anyone else. Our mission is to work in partnership with people with learning disabilities of all ages as well as family carers to challenge discrimination and to develop and share good practice. Our goal is an inclusive Scotland where everyone is valued and respected for who they are and what they contribute as equal citizens. SCLD undertakes training, consultancy and research as well as disseminating information for and about people with learning disabilities. We also support the National Development Team for Local Area Co-ordination and undertake the annual collection of data on people with learning disabilities in Scotland, the eSAY statistics.

SCLD has 12 partner organisations: Association for Real Change (ARC) Scotland, Badaguish Outdoor Centre, British Institute for Learning Disabilities, Capability, Central Advocacy Partners, Down's Syndrome Scotland, ENABLE Scotland, PAMIS, Key, University of Dundee, University of Glasgow and University of St Andrews.

Executive Summary

1. SCLD welcomes the signature and ratification of the UNCRPD and its Optional Protocol and urges both the United Kingdom and Scottish Governments to continue to work towards its full implementation.
2. SCLD urges the Scottish Government to work with relevant stakeholders to resolve the issue of indefinite welfare guardianship orders placed on people with learning disabilities.
3. SCLD urges both the UK and the Scottish Governments to tackle the issue of hate crime towards disabled people, including people with learning disabilities.
4. SCLD urges the Scottish Government to continue its work in making the criminal justice system fairer for both victims of crime and offenders who have learning disabilities. Prisoners with learning disabilities must be supported comprehensively by social, housing and employment services upon leaving prison.
5. SCLD urges the UK and Scottish Governments to recognize the progress which has been made towards independent living and that disabled people often require support to achieve this. Cutting support services and benefits which help disabled people to be part of society, to undertake self-care, to work, to travel and to make friends will be detrimental to the realization of the rights of disabled people.

Background

1. The information contained in this report comes from a variety of sources, such information gathered through literature review, or research reports conducted by SCLD, our Partners or relevant stakeholder organisations. This includes recent research undertaken by SCLD designed to evaluate 'The same as you?' following 10 years of implementation, which featured an extensive literature review and interviews with 50 people with learning disabilities and 51 family carers across Scotland.

Framework

2. The Scottish Government is the administration responsible for those policy areas which are not reserved to the UK Government at Westminster, which include policing, health and social care policy. The Scottish Government is bound by the obligations set out in those United Nations treaties which have been signed and ratified by the United Kingdom of Great Britain and Northern Ireland (UK). In

addition, people with learning disabilities in Scotland enjoy the protection of the European Convention on Human Rights incorporated into domestic law through the Human Rights Act (1998).

3. The Scottish Parliament is empowered by the *Scotland Act* (1998) to make laws for Scotland on matters which are not reserved, providing that these are compatible with the *Human Rights Act* (1998). It should be noted that Scotland has a distinct legal system.

Progress since 2008 UPR UK

4. SCLD is concerned that none of the recommendations made to the United Kingdom during 2008 UPR UK related to disabled people, including people with learning disabilities. While recognising that people with learning disabilities in Scotland enjoy the protection of all United Nations human rights treaties signed and ratified by the UK, we are concerned that disabled people, including people with learning disabilities have been forgotten. This is despite the fact that people with learning disabilities in Scotland are more likely to live in poverty, to be unemployed, to experience discrimination, to be denied choice and autonomy, to be subject to hate crime, abuse and assault and sadly even to experience cruel, inhuman and degrading treatment. People with learning disabilities often depend on services provided or contracted by government bodies to a much greater extent than people in the general population, meaning that the safeguards provided by human rights law are particularly important to this group of individuals. Therefore, SCLD particularly welcomes the signature and ratification of the United Nations Convention on the Rights of Persons with Disabilities (UNCRPD) and its Optional Protocol by the UK and urges both the UK Government and the Scottish Government to continue towards the full implementation of the UNCRPD.
5. The Scottish Human Rights Commission, Scotland's National Human Rights Institution, was founded in 2008 and has 'a general duty to promote awareness, understanding and respect for all human rights - economic, social, political, cultural and civil - to everyone, everywhere in Scotland, and to encourage best practice in relation to human rights.'¹ SCLD welcomes the focus on human rights which the Commission's work will bring and the support which the Commission has provided. In particular, SCLD notes the emphasis which the

¹ Please see <http://www.scottishhumanrights.com/about/what>

Commission has placed upon the rights and dignity of people who use care and support services.

6. SCLD has collected data from local authorities about people with learning disabilities on an annual basis since 2008. The eSAY statistics assist the Scottish Government and Scottish Local Authorities in policy making and provide an indicator of the implementation of 'The same as you?' as well as showing where progress needs to be made in realizing economic, social and cultural rights. For example, the eSAY statistics show that only 14% of people with learning disabilities known to services are currently in employment or work placements.² This is a much lower proportion than that of the general population or other disabled people.

Implementation of International Human Rights Obligations

7. SCLD recognizes that people with learning disabilities in Scotland enjoy the protection of the United Nations human rights treaties to which the UK is a party. Since the UNCRPD contextualises and tailors international human rights obligations to disabled people, we have chosen to focus most of our response on the obligations set out therein.

Article 9 UNCRPD - Accessibility

8. In order to be included and participate in the community, people with profound and multiple learning disability or complex health needs may require the use of a Changing Places Toilet. This is a toilet which is fully accessible and includes the right equipment as well as enough space for the person and their carers or support workers. At present there are 61 Changing Places Toilets in Scotland. SCLD welcomes the progress which has been made on this issue. However, there remain entire Local Authority areas which do not have Changing Places Toilets or very large areas in which there may only be one or two Changing Places Toilets. This seriously limits the ability of people with profound and multiple learning disabilities and their family carers to get out and about and participate fully in their communities and Scottish society. SCLD urges the Scottish Government and public authorities in Scotland to increase the coverage of Changing Places Toilets.

² Scottish Consortium for Learning Disability, 2011, *Statistics Release: Adults with learning disabilities - implementation of 'The same as you?' Scotland 2010*, Glasgow: Scottish Consortium for Learning Disability <http://www.sclld.org.uk/sclld-projects/esay/publications-and-resources/statistics-releases>

9. People with learning disabilities are not always able to obtain accessible information about issues which are important to them. For example, plain English and/or easy read information is not routinely available for people with learning disabilities, despite the fact that the most recent Scottish Social Attitudes Survey found that 93% of people felt that the production of such information was a good use of public money.³ SCLD would urge all government departments and public authorities who provide information to members of the public to ensure that accessible information is available for people with learning disabilities. This may require investment in workforce capacity so that public sector workers and workers in other relevant agencies have the skills necessary to produce good quality accessible information for people with learning disabilities. We would also remind public authorities that people with learning disabilities and people on the autism spectrum may also have sensory impairments and therefore require information in other formats, such as Large Print, Braille or British Sign Language.

Article 12 UNCRPD - Equal Recognition before the Law

Article 13 UNCRPD - Access to Justice

10. In Scotland, the *Adults with Incapacity Act (Scotland) 2000* is designed to regulate the way in which decisions are made for individuals who do not have the capacity to make decisions for themselves in important issues such as their personal welfare, their property, their financial affairs or any medical treatment which they may require.⁴ People covered by the Act are those over the age of 16 who cannot act or make, communicate, understand or remember their decisions. One feature of the Act is that it permits the issuing of intervention or guardianship orders for adults who lack capacity. An intervention order is typically used where a discrete, one-off decision is required; a guardianship order permits the appointed guardian to make financial and welfare decisions over the longer term. Guardianship orders typically last for 3 years, however, the Sheriff has discretion to shorten or lengthen them as required.

³Ormston et al, 2011, Scottish Social Attitudes Survey 2010: Attitudes to Discrimination and Positive Action, Edinburgh: Scottish Government
<http://www.scotland.gov.uk/Resource/Doc/355716/0120166.pdf>

⁴ Please see Patrick, H, Smith, N (2009). *Adult Protection and the Law in Scotland*, Haywards Heath: Bloomsbury Professional

11. The AWI is underpinned by a number of important principles which speak to human right values, including a presumption in favour of capacity; that any actions taken should be for the benefit of the adult concerned and should be the least restrictive option possible; that the person in question's views are taken into account; and, that the views of significant people in their life are also respected. However, recent reports of the Mental Welfare Commission for Scotland (MWC Scotland), which is responsible for monitoring the *Mental Health (Care and Treatment) (Scotland) Act 2003* and welfare guardianship under the AWI, have shown that Sheriffs are granting indefinite welfare guardianship orders on people with learning disabilities, including upon young people with learning disabilities. Furthermore, private applicants are seeking indefinite orders at a much higher rate than local authorities. This is closely bound up with issues relating to consent to medical treatment. The Chief Executive of the MWC Scotland has raised the issue continually in his advice notes, the most recent published in November 2011, in which he states:

“We remain concerned about the practice of applying for indefinite welfare guardianship for young adults. Our concerns are greatest where the powers sought are wide-ranging and do not appear tailored to the individual person's needs. Practitioners should remember that there is no automatic judicial review of indefinite welfare guardianship. We have already expressed concerns that restrictive powers, exercised indefinitely without review by a court or tribunal, may not be compatible with human rights legislation. We recommend applying for time limited periods.”⁵

12. To be placed under a welfare guardianship order represents a serious infringement into the choice, autonomy and privacy of a human being. It is critical that welfare guardianship orders are both legitimate and proportionate to the individual's situation and in addition, that safeguards such as review are built in. SCLD is concerned that indefinite welfare guardianship orders, especially when applied to young adults with learning disabilities, may infringe Article 12 (4) of the UNCRPD, since they may not be proportional to the individual's circumstances, do not apply for the shortest time possible and are not subject to review by a competent, independent, impartial authority or judicial body. SCLD urges the Scottish Government to work in partnership with the MWC Scotland, the Scottish Human

⁵ Mental Welfare Commission for Scotland, Chief Executive Advice Note , Issue 4, http://www.mwcscot.org.uk/bulletins/Chief_Executive_Advice_Note_June2011.asp

Rights Commission, the judiciary, people with learning disabilities and family carers to resolve this issue satisfactorily, potentially by time-limiting welfare guardianship orders or requiring regular review. SCLD understands that the Scottish Law Reform Commission is undertaking a review of the AWI and welcomes the news that it will consider this issue.

13. The *Offences (Aggravation by Prejudice) (Scotland) Act 2009* (OABPS) came into force in 2010. The OABPS provides that where it can be shown that an offence was aggravated by malice or ill will towards someone because of their disability or perceived disability, the court must state this on conviction, record this on conviction and take the aggravation into account when sentencing. SCLD welcomes this development but notes that only 50 cases of disabled hate crime were reported in the first year of operation the OABPS, compared to more than 4,000 cases of racially motivated hate crime.⁶ Government statistics have shown that around 17% of disabled people have experienced hate crime in Scotland⁷ but other research shows that the rate may be much higher.⁸ On the basis of the eSAY statistics, it could be expected that at least 4,500 people with learning disabilities in Scotland have experienced hate crime. Figures from a recent Scottish Government summit on adults with learning disabilities in the criminal justice system show that 73% of people with learning disability have experienced discrimination; 35% have been physically assaulted; 40% have reported incidents to the police; 90% have told other people of incidents; 25% have been forced to move home because of harassment; and 63% report feeling frightened.⁹ Recent research by the Equality and Human Rights Commission shows that hate crime towards disabled people is a significant and ongoing issue. The 'Hidden in Plain Sight'¹⁰ report documented two cases of serious assault and/or murder of people with learning disabilities in Scotland.

⁶ Crown Office and Procurator Fiscal Service, 2011, *Hate Crime in Scotland 2010-2011*, Edinburgh: Crown Office and Procurator Fiscal Service, available at <http://www.copfs.gov.uk/News/Releases/2011/05/Hate-Crime-Scotland-2010-11>

⁷ Equality and Human Rights Commission, 2011, *Hidden in Plain Sight: Inquiry into Disability Related Harassment*, Equality and Human Rights Commission, see page 58. <http://www.equalityhumanrights.com/legal-and-policy/inquiries-and-assessments/inquiry-into-disability-related-harassment/hidden-in-plain-sight-the-inquiry-final-report/>

⁸ Disability Rights Commission and Capability Scotland, 2004, *Hate Crime Against Disabled People in Scotland: A Survey Report*, Disability Rights Commission, <http://www.leeds.ac.uk/disability-studies/archiveuk/DRC/Hate%20Crime%20report.pdf>

⁹ Scottish Government, 2009, *Adults with Learning Disabilities and the Criminal Justice System*, Edinburgh: The Stationery Office. Statistics come from Disability Rights Commission and Capability Scotland, 2004, *Hate Crime Against Disabled People in Scotland: A Survey Report*, Disability Rights Commission

¹⁰ Please see note 7.

The report recommends that there should be greater ownership of the issue, improved data collection, a more accessible criminal justice system and better recognition of hate crime by the police and other agencies. SCLD urges the Scottish Government and other public authorities to implement these recommendations as a matter of urgency.

14. SCLD is also concerned about the rights of prisoners with learning disabilities. Recent research by the Prison Reform Trust¹¹ and some preliminary research by us on this problem shows that learning disability is largely unrecognised and that as a result, many of the programmes aimed at rehabilitation and parole of prisoners with learning disabilities are not accessible. This can have the effect of disadvantaging and further disenfranchising this group of individuals. Moreover, appropriate throughcare services may not be being offered or put in place to support prisoners with learning disabilities on leaving prison, putting them at significant risk of homelessness, addiction and hate crime.

Article 19 UNCRPD – Living independently

15. Article 19 of the UNCRPD provides that disabled people should be able to live independently and stresses their full inclusion and participation in the community. SCLD welcomes the fact that the Independent Living in Scotland project is central to the Scottish Government's approach to disability and recognizes the significant progress which has been made towards this for people with learning disabilities following 'The same as you?' This has included closure of long-stay learning disability hospitals. However, to achieve independent living and inclusion, people with learning disabilities often need support, whether this is financial or from support staff. Removing this support - whether this takes the form of cuts to care packages by Local Authorities or cuts to UK wide benefits such as the Disability Living Allowance - will significantly constrain the ability of people to live independently and to participate in their communities. There is often a very narrow margin between being able to live independently and being excluded and isolated. For example, by removing the support hours a person with learning disabilities may need to help them travel, that person is then effectively unable to get to work or college, with detrimental effects on their finances, self-

¹¹ Loucks, N, 2007, *No One Knows: Offenders with Learning Difficulties and Learning Disabilities - Review of Prevalence and Associated Need*, London: Prison Reform Trust

esteem and inclusion. On the contrary, investing in properly supporting people with learning disabilities prevents crisis in the long term and enables the realization of their human rights.

Article 29 Participation

16. Recent campaigns run by SCOPE in partnership with SCLD's Consortium Partner, Capability, have shown that participating in elections, one of the fundamental rights of a citizen in a democratic society, is problematic for people with learning disabilities due to a lack of accessible information, inaccessible polling stations and ballot papers.¹² Furthermore, some political parties in Scotland failed to produce an easy read version of their manifesto until 2 weeks before the election, which meant that people with learning disabilities were not able to participate fully in the democratic process.

Other issues of concern

17. There are a number of other significant signs of progress and issues of concern in the realization of the rights of people with learning disabilities in Scotland which have not been mentioned here due to space constraints. These include:

- the coming into force of the *Adult Support and Protection (Scotland) Act 2007* in October 2008;
- the rights to liberty and security of adults with learning disabilities, particularly where the adult may fall under the protection of the *Adults with Incapacity (Scotland) Act (2000)*;
- the rights of parents with learning disabilities in Scotland;¹³
- the rights to an adequate standard of living and social protection;
- new forms of institutionalisation as well as the obligations and responsibilities of private actors to promote and protect the rights of people with learning disabilities. This is particularly in light of the footage filmed by the BBC at Winterbourne View, a

¹² Scope, 2010. *Polls Apart 5 2010: Opening Elections to Disabled People*, Scope
<http://www.pollsapart.org.uk/pages/2010report.php>

¹³ Scottish Consortium for Learning Disability, 2009, *Scottish Good Practice Guidelines for Supporting Parents with Learning Disabilities*, Glasgow: Scottish Consortium for Learning Disability.
<http://www.sclcd.org.uk/sclcd-projects/working-with-parents/parenting-guidelines>

private hospital run by Castlebeck Care and funded by the NHS, in which people with learning disabilities were shown being verbally abused and physically assaulted by staff. The treatment at the unit has the potential to engage UNCRPD Article 15 rights as well as rights under the *Convention Against Torture (CAT)* to which the UK is a party;

- the higher rate of gender based violence towards children and adults, particularly women with learning disabilities; and
- the rights of offenders with learning disabilities diverted from the criminal justice system and detained instead under the *Mental Health (Care and Treatment) (Scotland) Act 2003*.¹⁴

SCLD would be happy to discuss any of the issues mentioned in this report in further detail.

2,808 words excluding foot notes and cover page.

¹⁴ People First (Scotland), 2011, *Citizens' Grand Jury Report: Care, Protection and Human Rights or Danger, Neglect and Human Wrongs?* People First Scotland, http://www.uoa7.net/peoplefirst/?page_id=73