

# Consultation on a Human Rights Bill for Scotland

## Citizens Advice Scotland Response

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The Citizens Advice network in Scotland is an essential community service that empowers people in every corner of Scotland through our local Citizens Advice Bureaux (CAB) and national services by providing free, confidential, and independent advice and information to ensure that people understand their rights and responsibilities. We use people's real-life experiences to influence policy and drive positive change. We are on the side of people in Scotland who need help, and we change lives for the better.

Our Vision is for a Fairer Scotland where everyone has the advice and information they need to realise their rights, and where the barriers to accessing those rights are effectively challenged. Our mission is to help people navigate systems and access their rights, build resilience in local communities, support the realisation of human rights, and help change policies and practices to ensure they work for people. We campaign and influence to tackle the root cause of the problems people face, and to work to strengthen their rights.

CAS strongly supports the proposal to incorporate International Human Rights treaties into Scots law, and place new duties on public bodies and those delivering devolved public functions to meet agreed international standards in delivering these rights for people in Scotland.

### Summary of CAS points

- > CAS believes there is huge potential for this Bill to improve the lives of people in Scotland, through establishing enforceable minimum standards and improved channels for redress and accountability over the delivery of economic, social and cultural rights.
- > Resourcing and capacity-building across duty-bearers, scrutiny bodies, and advice, information and advocacy providers will be vital if the Bill is to realise its transformative potential.
- > CAS welcomes the acknowledgement of the vital role of advice, information and advocacy provision in successfully implementing the Bill.
- > Resource implications for the advice sector should be considered as soon as possible, in dialogue with communities and providers, and included in any financial memorandum accompanying the Bill. CAS is calling for entitlement to information, advice, and advocacy to be included on the face of the Bill, and as a core element of the Human Rights Scheme.
- > More detail is required on the need for legal aid reform, to enable more equitable access to justice. CAS has been highlighting serious gaps in access to legal aid across Scotland for many years, and the lack of accessible, affordable routes to remedy will be a serious hurdle to the success of this Bill.

- > CAS agrees that the Bill should support effective culture change towards rights-focussed decision-making and service delivery. CAS is aware that capacity and resourcing constraints amongst both duty-bearers and scrutiny bodies are limiting their ability to meet demand and deliver timely and effective justice where existing duties have not been met.
- > CAS agrees that capacity building at the local level will be crucial to ensure more people can access their rights at the point of delivery. Increased resources for ombudspersons and channels of accountability will be needed to increase capacity to meet future demand, under the new duties in the Bill.
- > CAS believes another key priority of this systemic change should be to simplify, as far as possible, the processes that rights holders have to navigate to access their entitlements, and to access justice and redress when things go wrong.
- > CAS supports the incorporation of the Right to a Healthy Environment and urges that this should include protections against environmental health risks experienced by too many people across Scotland - such as damp, mould, and poor sanitation.
- > CAS supports the specific inclusion of LGBT and Older People within the Bill's Equality Clause.
- > CAS strongly urges that the 'Equalities' treaties specifically protecting rights of disabled people, women, and racialised groups should receive equal treatment in the incorporation model, meaning that substantive elements should be included, under a duty to comply, as far as possible within devolved competence.

## Incorporating the Treaty rights (part 4)

### Dignity and human rights principles (Qs 1-3)

CAS supports the ambition of this Bill to drive transformative, positive change for people, help tackle poverty and inequality and improve lives. CAS agrees that, to strengthen and embed a human rights culture across the public sector and Scottish society and put human rights at the heart of decision-making, dignity should be built into the foundations of this legislation.

The Citizens Advice network in Scotland sees too many examples of people in Scotland unable to realise their fundamental human dignity. Citizens Advice Bureaux support many individuals whose human dignity has been violated at various stages over the course of their lives, the profound and long-term impacts of which are palpable in the following Citizens Alert.<sup>1</sup>

"A West of Scotland CAB highlights the case of a client who has been released from prison several months ago and currently lives in temporary

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<sup>1</sup> The Citizens Advice network operates a real-time case reporting system called Citizens Alerts. The system allows citizens advice bureaux (CAB) to submit case evidence to CAS demonstrating the impact of policies and services which they feel are failing to meet their clients' needs.

accommodation. He had a traumatic childhood and has suffered from poor mental health, which was not dealt with properly, resulting in addiction to drink and drugs, prison, and life-long mental health problems. His concentration is very poor, and he struggles to retain information. He gets highly anxious when outside or with other people and always feels under threat. He witnessed a lot of violence in prison, which has increased his anxiety. He suffers from depression and is unmotivated to wash and dress or leave the house and doesn't want to mix with others. He is currently taking medication and was referred to the local Crisis Assessment and Treatment team and another addiction support service but feels they're ignoring him. He has been getting some addiction support in prison but can't seem to access this now, and he is drinking again. He feels the system has badly let him down. He lacks life skills and chances, can't contribute to society and is pushed to the margins."

The ongoing cost of living crisis is compounding long-standing inequalities and leading many households and individuals across Scotland into prolonged situations of desperation where often multiple drivers of inequality intersect.

The wraparound nature of CAB advice allows us to observe where different types of advice intersect and detect emerging patterns of advice need on particular issues or areas - for example:

- > At every stage of the cost of living crisis there has been a clear and significant link between advice need on energy and food insecurity, with one in five people who sought additional help on top of energy advice requiring food insecurity advice.
- > On one in ten occasions, clients needed Crisis Grant support from the Scottish Welfare Fund, and on more than one in five occasions they needed help with debt.
- > This trend is continuing in Quarter 1 of this year - in 50% of cases in which utilities advice was provided alongside other advice, this related to either foodbanks or crisis support from the Scottish Welfare Fund.

The following Citizens Alerts illustrate what these network statistics mean for individuals in their everyday life in Scotland, where they experience violations of their human dignity.

"A South of Scotland CAB reports of a case of a disabled woman who sought their help after struggling with increased food prices during the cost of living crisis. She had lost two stone in weight which her GP believed was due to a lack of food. The CAB advised that she should never have to go hungry and to call them whenever she is in need of a food parcel and informed her of various grants and payments she could be receiving."

"An East of Scotland CAB reports of a case of a client, a single parent to a four-months-old baby, who attended the bureau for support to meet her energy costs. The client's income consists of Statutory Maternity Payment topped up with Universal Credit and Child Benefit. The client has applied for Scottish Child Payment and is awaiting the outcome. She is repaying rent arrears in accordance with an agreement with her social landlord. The client

reported self-disconnecting due to financial hardship. The client's energy supplier is recovering debt at a rate of 35%, meaning that every time the client tops up her utilities meter, a significant proportion of the money is servicing debt rather than meeting the household's energy needs, leaving her and her baby in a cold home and entrenching a cycle of financial hardship."

We strongly support the proposal to **restate human dignity as the value that underpins all human rights**, and to recognise it as the key threshold for defining the Minimum Core Obligations of rights in the Bill. We welcome proposals to allow courts to consider dignity in their interpretation of the rights but would also ask whether the legislation could go further and compel or oblige courts to consider dignity in their interpretation of the rights and of the respective responsibilities of duty-bearers, rather than just allowing them to do so. This could be accomplished through a defining **purpose clause** as recommended by the Taskforce, which embeds fundamental human rights principles as the very basis of the legislation.

CAS is also supportive of allowing duty-bearers and courts and tribunals to consider wider international human rights law, materials and mechanisms in their interpretation of the rights. An **interpretative clause** could further embed the principles of universality, indivisibility, interdependence, and interrelatedness of human rights, which would assist with effective interpretation of the rights by courts and duty-bearers, by embedding a clear human rights culture with shared responsibility for realising interconnected rights and human dignity.

## Model of Incorporation (Q4)

CAS largely supports the model of incorporation proposed for economic, social and cultural rights and the right to a healthy environment. The ICESCR rights are of huge significance for the issues clients bring to the Citizens Advice network every day, as are many elements being considered as part of a right to a healthy environment.

The Scottish Government should provide clarity as to which elements of ICESCR are considered to be reserved and therefore omitted from the Bill. In particular, areas where there are both devolved and reserved components will require transparency, clarity and dialogue with various stakeholders to ensure a maximalist approach is taken.

- > The **right to social security** relates to areas that are partially devolved, and the development of Social Security Scotland is a strong example of how a rights-based approach, centred on dignity and fairness, can create more supportive and enabling conditions for the protection and realisation of rights under Scotland's devolved powers.
- > Much of the law around **employment rights** remains reserved, however the devolved employability functions can play a major role in enabling access to the right to work and to just and favourable conditions of work, in particular for protected groups – for example, actions to address the disability employment gap,

or, as highlighted in recent research from the Joseph Rowntree Foundation,<sup>2</sup> tackling race disparities in the rights to work and to fair conditions of work.

- > While some of these measures may overlap with reserved Equality duties, CAS believes a maximalist approach must transparently identify areas, such as employability programmes, where positive progress could be made within devolved competence, and ensure these are secured within the Bill to the maximum possible extent.

CAS supports wider calls for an **audit of legislation** to identify which legislative areas lie outwith the influence of the Bill and which existing legislation falls within its sphere of influence but is not currently compliant, therefore requiring amendments.

### **'Equalities' / Special Protection treaties (Q5)**

In 2022/23, the Citizens Advice network in Scotland supported more than 183,000 clients, many of whom belong to one or more of the groups afforded special protection by the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), the Convention on the Rights of Persons with Disabilities (CRPD) and the Convention on the Elimination of All Forms of Racial Discrimination (CERD).

- > The majority of our clients were women (57%) (43% of clients were men, 2% preferred not to answer).
- > Almost two thirds of our clients (64%) reported having a disability or health condition, while 36% said they did not have one. When asked about their employment status, 32,000 clients indicated that they were 'unable to work due to ill health/disability', amounting to 17.5% of all clients.
- > Our holistic advice and service provision is open to all, irrespective of nationality, ethnicity or immigration status. 7% of our clients identified as belonging to a minority ethnic group. However, this figure is likely to be underreporting the actual number of minority ethnic people we serve, as currently about 44% of clients choose not to specify their ethnicity, and under GDPR we do not routinely record this data where it is not directly relevant to the advice sought.

CAS supports the distinction drawn by Human Rights Consortium Scotland (HRCS) in referring to CEDAW, CERD and CRPD collectively not as 'Equalities treaties' but as 'group rights' treaties or 'Special Protection treaties'<sup>3</sup> – to emphasise their role in outlining the particular and substantive steps and protections that are required to ensure women, disabled people and racialised groups can access their human rights on an equal basis, without discrimination.

CAS is concerned that the proposal to apply only a procedural duty, rather than a duty to comply with the rights in the Special Protection treaties does not go far enough to address

<sup>2</sup> Glasgow communities of colour failed by employability services and workplace racism (August 2023), [https://www.jrf.org.uk/file/60068/download?token=dXMSI\\_vT&filetype=full-report](https://www.jrf.org.uk/file/60068/download?token=dXMSI_vT&filetype=full-report).

<sup>3</sup> Human Rights Consortium Scotland's Guide to responding to the Human Rights Bill for Scotland Consultation (August 2023), p. 13.



the major challenges faced by these groups in Scotland, in accessing their human rights on an equal basis with others, and would not provide adequate scope for recourse for those whose rights under the Special Protection treaties are not being met.

We are conscious of systemic barriers and inequalities which cause women, disabled people and people from a minority ethnic background to face greater deprivation and barriers to accessing their rights. For example, within our own network data, consistently more women than men seek advice on all types of housing issues, including homelessness, as well as advice on access to and provision of accommodation.

Such patterns of unequal enjoyment of rights persist despite existing Equality Act 2010 General Equality Duties which are themselves largely procedural in nature. CAS believes that **adequate protection and fulfilment of the group rights outlined in the Special Protection treaties require their full incorporation and a duty to comply.**

- > CEDAW requires state parties to 'take all appropriate measures' to ensure women's equal access to the rights specified in the treaty and includes specific steps required to ensure this – in devolved areas such as healthcare, education, and employability.
- > CERD calls on state parties to adopt immediate and effective measures in teaching, education, culture and information, to combat prejudices which lead to racial discrimination and compels them to guarantee equality before the law.
- > CRPD is particularly rich in substantive rights protections which are not (fully) covered by the rights enshrined in ICESCR but could have transformative potential for the lives of large numbers of CAB clients if properly incorporated into Scots law, rather than just being given effect as a procedural duty. These include:
  - > Art. 5 outlines the duty for state parties to make 'reasonable accommodation' for people with disabilities.
  - > Art. 9 outlines extensive measures that should be taken to ensure disabled people's equal access to the physical environment, transport, information and public facilities including schools, housing, medical facilities and workplaces.
  - > Art. 12 provides for equal recognition before the law, including the right to support they may require in exercising their legal capacity.
  - > Art. 13 enshrines disabled people's right to access to justice, including the requirement for duty-bearers to provide procedural and age-appropriate accommodations in order to facilitate disabled people's effective role as direct and indirect participants in all legal proceedings.
  - > Art. 14 imposes a duty to ensure that disabled people are not deprived of their liberty unlawfully or arbitrarily or for no reason than their disability alone.
  - > Art. 16 outlines a range of measures to protect disabled persons from exploitation, violence and abuse, including their gender-based aspects; duty-bearers are required to implement independent and effective monitoring of

all facilities and programmes designed to serve this group, and to promote the recovery, rehabilitation and social reintegration of persons who become victims of any form of exploitation, violence or abuse.

- > Art. 17 protects the right to respect for the disabled person's physical and mental integrity on an equal basis with others.
- > Art. 19 defines and protects the right to independent living, which includes provision of adequate levels of social care to support inclusion in the community.
- > Art 20. enshrines the right to personal mobility for disabled people, including through facilitated access to affordable, quality mobility aids, devices, assistive technologies and forms of live assistance.
- > Art. 24 outlines rights to inclusive education on a life-long basis, with duty-bearers required to ensure, for example, that persons with disabilities are not excluded from the general education system on the basis of disability, and that children with disabilities are not excluded from free and compulsory primary education, or from secondary education, on the basis of disability.

Some of the issues faced by individuals belonging to one or more of the groups provided special protection in the above treaties also register in our qualitative network data.

In a number of cases, clients have sought support from our network to escalate complaints of a safeguarding nature, for example, with regard to alleged abuses and instances of violence such as in care settings, where disabled clients and those with multiple vulnerabilities had complained to social work or the Care Inspectorate directly themselves but had no response. Bureau advisers have provided detailed advice, in particular on reporting these allegations and any evidence to the police, and on the next steps in case they receive no immediate response. Due to their sensitive and potentially criminal nature, we have not included details of these alerts here but are highly concerned that in some cases existing complaints and reporting mechanisms seem to be unresponsive, allowing serious human rights violations to continue.

The following Citizens Alerts also highlight instances when rights enshrined in the Special Protection treaties are not being met or are at risk:

"A North of Scotland CAB reports of a client who cares for two children with severe disabilities and has been living in unsuitable accommodation for 4 years. The 2-bed council house is overcrowded, as the children need separate rooms due to their care needs, and the client is sleeping in the living room. The client has social work input and is on the waiting list for transfer/exchange, has made the local council aware of her situation as a full-time single carer with no earned income. But there is no suitable housing forthcoming due to a lack of properties available locally. She is suffering from significant stress as a result."

"A West of Scotland CAB reports of a female client of African origin who has a slipped disk in her neck as well as her lower back among other health issues that significantly limit her day-to-day activities and cause her a lot of pain.

She is currently living with her family (husband and two dependent children) in temporary accommodation which has a lot of steps which she can't manage. She and her husband require an interpreter to communicate with the local authority's homeless and housing services which can be difficult, as not all interpreters seem to do their job well. The client's husband is desperate, as the client's situation is worsening, there are times when his wife is completely 'out of this world' for days which seriously affects his own and their children's well-being which, in turn, is impacting his job. The family indicated they're willing to move into a 2-bed accommodation to improve their housing options but are not given opportunity to discuss their request with the homelessness team. The bureau reports concerns about the ongoing lack of communication and potential mishandling of the client's case by the local council."

"A North of Scotland CAB reports that a client's daughter who is 16 has not been in education for over a year, having been diagnosed with schizophrenia. The client's daughter wishes to be in school - however the school is unable to accommodate her and is providing no educational support for home learning, although she is still on the school roll, and the intention is for her to return to the academy that she used to attend."

"A West of Scotland CAB referred the case of a client who is a kinship carer for a young person who is looked after. The young person is struggling at school but is not receiving any additional support for learning despite having ADHD and autism and requests by the client to put this in place. The school wants him to move to a different education provider but has not had a meeting with the client and social work. The young person does not want to move schools and has attempted suicide. Their GP has referred them to CAMHS, but the young person is still waiting to be seen by CAMHS almost one month later – a lack of joined up action from all the corporate parents for a looked-after young person."

"An East of Scotland CAB highlighted that several different clients seeking help from the bureau reported feeling discriminated against by staff at the foodbank on the basis of their foreign nationality which was the same across these different cases."

While we appreciate the need to navigate complexity around the 'Equality Reservation' in the Scotland Act, **more clarity is required on the exemptions mentioned in the proposals**, and how these could be used to give maximum effect to the rights in the Special Protection treaties.

## Recognising the Right to a Healthy Environment (part 5)

### Definition, substantive and procedural aspects (Qs 6-11)

CAS is committed to making Scotland a fairer, greener and more equal society and advocates on behalf of individuals most affected by climate change and the net zero transition. We recognise that the right to a clean, healthy and sustainable environment



plays a vital role underpinning many of the rights issues clients bring to our network. Environmental rights are closely linked to rights to life, health, to an adequate standard of living including adequate housing and food, to education, and many of the substantive rights in the CRPD such as rights to accessible urban and rural environments as well as rights around transport and mobility.

CAS supports a **definition of a healthy environment which is not limited to the natural environment**, in line with the broad definition enshrined in the preamble and Articles 1 and 2 of the Aarhus Convention which highlight factors such as substances, energy, noise and radiation alongside elements of the natural environment including air, water, soil, land and landscape, and their interactions with conditions of human life, cultural sites and built structures. We support a definition which emphasises **the right to 'non-toxic environments in which to live, work, study and play'** as one of the substantive aspects of the right to a healthy environment, **alongside rights to clean air, safe climate, safe and sufficient water, healthy biodiversity and ecosystems, which all require standalone protections.**

This definition would recognise the role played, for example, by town and urban planning, and links with transport systems, water and sanitation infrastructure, building and heating regulations in enabling those rights, so that rightsholders are protected against environmental health risks such as those stemming from pollution, toxic substances, and conditions of damp.

For the Scottish CAB network, **damp and mould** constitute a highly relevant example of an area where an extensive definition of the right to a healthy environment could significantly strengthen other rights, such as the right to adequate housing. Of the total volume of housing advice given across the network each year (more than 13,000 pieces of advice in 2022/23), repairs advice is almost always the most common housing advice code regardless of what tenure the client is living in.

A thematic analysis of qualitative network data related to housing repairs for the past year found that issues relating to water, damp and mould were the most common theme across all analysed cases. This is an area of close scrutiny following the avoidable death of toddler Awaab Ishak who died in 2020 "as a result of a severe respiratory condition caused due to prolonged exposure to mould in his home environment."<sup>4</sup> Many of the Citizens Alerts involving damp and mould also referred to the health impacts being experienced by the household as well as being a significant cause of stress and worry, especially when these problems were longstanding and/or recurring, as often both tenants and landlords were unable to ascertain the source of the problem.

"An East of Scotland CAB highlights the situation of a client who has been trying to resolve a severe damp, mould and water ingress issue in her flat for the last nine months. The client has autoimmune issues, and her mental health has been badly affected. The client has had several visits and inspections from the council and been told that repair plans are in place, but she feels these are empty promises. The client left the property due to the

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<sup>4</sup> Brown, M. and Booth R. (2022) [Death of two-year-old from mould in flat a 'defining moment', says coroner](#) for *The Guardian*.

stress of living there but was told by the council she would be "considered guilty of abandonment", would lose her place on the housing list, and her partner, who is still in the flat, would have to leave as well and may become homeless. She feels she has no choice but to move back in and fears for her health and the health of her children."

"A West of Scotland CAB reports the situation of a client who has been trying to resolve serious issues with her home for 2 years. Her council house has a host of issues such as missing roof slates, a hole in the roof, black mould in all rooms, doors that are not sealed properly, no gutters on side of building. She has spoken to Environmental Health, has already exhausted council complaints procedure and been to the SPSO who confirmed the house is not meeting the tolerable standard. The SPSO upheld her complaint and recommended the client and her partner to be decanted for major repair works to be carried out. Three months later, the local council has still not implemented the SPSO recommendations which has led to the breakdown of the client's relationship and deterioration in the health of her ex-partner who has remained in the property."

Moreover, duties to protect the environment in this more expansive sense, then, could also strengthen people's **right to live in an energy-efficient home**, drawing from both the right to an adequate standard of living and the right to a healthy environment. Strengthening the right to an energy-efficient home is especially important in Scotland given that 613,000 Scottish households were in fuel poverty as of 2019.<sup>5</sup>

The following Citizens Alert presents another area where interactions between the right to a healthy environment, the ICESCR right to adequate housing, and the CRPD right to independent living could better protect a person's dignity and human rights.

"An East of Scotland CAB highlights the case of a client who is blind and lives in a council flat. He does not feel safe in his accommodation and cannot safely move about due to a neighbour who throws rubbish in communal areas rather than in the bin and lets his dogs defecate in the stairwell and in outside communal areas. The client cannot see the faeces and could slip, which is a health and safety issue for him. Also, the building is now infested with rats and flies. The client has repeatedly requested help to resolve the issue, the local authority has once cleared the rubbish, but it has piled up again. He has contacted the local authority's housing team, Environmental Health, police, his MSP, to no avail. Client has no support other than his parents to assist him and is waiting for social work to contact him."

CAS queries the proposed exclusion of the **right to adequate sanitation from the right to safe and sufficient water as a core environmental right**. The following Citizens Alerts highlight some of the issues our clients face with regard to water and sanitation.

"A North of Scotland CAB reports the case of a client and her partner, both experiencing chronic illnesses and receiving benefits, who live in council

<sup>5</sup> [Scottish house condition survey: 2019 key findings - gov.scot \(www.gov.scot\)](https://www.gov.scot/publications/scottish-house-condition-survey-2019/key-findings/pages/12.aspx).

housing in a rural area. Water in the building has historically been supplied by a private water company, until it was condemned for human consumption by Environmental Health. Since then, the local authority has supplied them with bottled water. However, no alternative is in place for bathing/washing purposes which seems to have exacerbated the client's skin condition. She continues to be charged for electricity for pumping the water into the building even though it is condemned. This situation has been ongoing for over a year which is unacceptable."

"A South of Scotland CAB highlights the case of an elderly client in a local village. Her water is supplied by Scottish Water, but the sewerage for the whole village is managed by a private company who owns the holiday caravan park in the village. The client has lived in her property for 12 years. Each annual bill for sewage has included an increase of around 2.5%. Last year there was no bill, but this year the client received an annual bill with a 34% increase without any explanation. She has no written contract with the company and has phoned them several times for an explanation but without success. This issue affects all village residents. She has complained to the Water Industry Commission Scotland with no result so far. She has spoken to her local councillors, but nobody seems able to help."

These cases highlight the existing complexity around water and sanitation, especially where private firms are involved in providing (aspects of) this essential utility and related services. Public bodies should have a duty to ensure that the infrastructure exists to deliver these essential services safely and fairly and that individuals and communities have access to timely and adequate remedies when something goes wrong.

## Further rights and equality (part 6, Qs 12-17)

Several citizens advice bureaux provide face-to-face advice and support projects in prisons, including inside HMP Barlinnie, HMP Addiewell and HMP Dumfries. A research report published by Parkhead CAB in 2021 based on their work with pre-trial remand prisoners in HMP Barlinnie<sup>6</sup> highlighted the level of harm due to being locked up for 22-23 hours a day and various forms of detriment faced by this group of prisoners.

The research reported a high incidence of illness and disability as well as low income and prior experience of homelessness as characteristic for remand prisoners they supported. It also highlighted that the significant number of remand prisoners who are subsequently found not guilty or given a community sentence are often those most adversely affected by complex interactions with housing and social security regulations. These are extremely difficult for prisoners to navigate, and all too often lead to them losing their home, income, and their ability to manage their own lives beyond prison.

Such problems appear to be exacerbated by the excessive lengths of time some prisoners are currently being held on remand. This is reflected in the following:

<sup>6</sup> [Inside Information \(parkheadcab.org.uk\)](https://www.parkheadcab.org.uk/inside-information) (March 2021).

"A West of Scotland CAB alerted us to the case of a client who has been held in prison on pre-trial remand for almost two years. The client, who might be completely innocent and already suffers from being detained for an extended period with no clear end date, is at risk of losing their home with all their treasured belongings and identity documents because rent payments for imprisoned persons are time limited. Remand prisoners like this client leave prison with a debt and without a home not because of their own criminal actions but because of delays in the system. Even if the client were to be found guilty, they are expected to walk from the court, so would have lost their home essentially due to court scheduling delays."

"A West of Scotland CAB reports that their client has been waiting on pre-trial remand for more than a year, with a court date scheduled to take place 15 months after them being detained. While they could expect to be released from court for time served if they pleaded guilty or were found guilty, the client intends to plead not guilty. The client has been made homeless during their time on remand; an eviction order was granted nine months after them entering prison. The client could not participate in the eviction hearing as the tribunal would only accept documents submitted electronically. Even if the client was willing and able to make representations at the hearing, they would have been blocked from doing so as prisoners are digitally excluded."

We would urge that **implementation of Scotland's Human Rights Bill should be treated as an opportunity to strengthen understanding and protection of the rights in the HRA.**

### Participation (Q13)

CAS believes that the real-life experiences of those struggling to access their rights must be central to driving change in policy and practice at the local and national level. We would therefore welcome provision in the Human Rights Bill to ensure that **participation of rights holders and their community organisations is built in throughout the Human Rights Framework.**

Again, a **purpose clause** which highlights the significance of participation would help to embed it as a fundamental component of the framework, in line with the PANEL principles of a human rights-based approach. Participation should **also be woven through the duties**, via a duty to involve rights holders and community organisations in the planning of policy and services, in contributing evidence and insights to human rights and equality impact assessments, human rights budgeting processes, and vitally to the monitoring and reporting against the human rights duties, both locally and nationally.

As we will explore further in our response to question 27, independent information, advice and advocacy providers will have a crucial role in giving effect to the Bill, by supporting rights holders to understand and access their rights and hold public authorities to account for the day-to-day realisation of the human rights in the Bill. This support will have to be resourced; it will also yield vital data and evidence as to patterns of success or challenge in implementing the rights in the Bill in people's daily lives.

Given the challenges of providing for full incorporation of the Special Protection treaty rights, any participation provisions in the Bill should confer **explicit duties to involve rights holder participants from the protected groups, as well as community-led organisations representing the protected groups alongside civil society organisations** which provide advice, information and support directly to rights holders.

## Equality Provisions (Qs 14-18)

CAS agrees with the Taskforce recommendation that stronger protections would be won by specifically naming **LGBTI and older people** as groups to be protected, rather than assuming their protection as part of 'other status'. The urgent need for their special protection is illustrated in the following Citizens Alerts.

"An East of Scotland CAB highlights the case of a client and her partner who have been subjected to four counts of homophobic vandalism to their front door, with homophobic graffiti and pictures being engraved into the wood over the course of one month. They have reported those incidents to the police, the last incident being reported to the police by a neighbour. They live in a council rented property and are scared to go back home. They have contacted the housing officer but feel they are not interested in helping them. The client and her partner, whose mental health is severely impacted by these attacks, are also upset at the inaction of the police and want to lodge a formal complaint."

"A South of Scotland CAB reports of a client who sought advice regarding discrimination that she and her 8-year-old daughter experienced at her daughter's school. It is known in the village that the client and her partner are a lesbian couple. Her daughter was taken out of her class and to the head teacher's office to be told that her drawing of a rainbow with a caption 'LGBTQ' was wrong and inappropriate. The client feels the school could not explain to her satisfaction what the policy was with regard to this issue. 'In today's society, should a primary school pupil be reprimanded for what she may have seen as an innocent drawing?' The adviser suggested to take up issue with the head teacher, then the education authority and, if necessary, the SPSO; the client was also signposted to the Equality Advisory Support Service."

"An East of Scotland CAB reports of an elderly client in her late 70s who does not own a computer or a smartphone and is not computer literate. She feels frustrated in her dealings with various organisations as she cannot seek advice face-to-face as she requires (with CAB being one of two exceptions she experienced). She feels the lack of face-to-face options for people like her constitutes discrimination."

CAS also agrees that '**other status**' could helpfully be expanded on in the guidance to include specific protections for other groups facing particular systemic barriers, such as care experienced people and people for whom English is an additional language.



## The Duties (part 7)

### Whom should the duties apply to (Q19)

CAS welcomes the introduction of new duties on public bodies to uphold agreed human rights standards in the planning and delivery of services. Further clarity is needed regarding the question whom else these duties might apply to. The definition suggested in the Bill refers to 'those delivering devolved public functions'. This could be interpreted as more restrictive than Taskforce recommendation 16 which includes an additional reference to 'functions connected to the delivery of rights within the framework' to ensure relevant private actors are within the scope of obligations in the Bill.

Where **public functions and those connected to the delivery of rights in the Bill are carried out by private, for-profit actors**, human rights duties would seem particularly important. The Bill should place clearer duties on all public and private bodies involved in safeguarding human rights within the justice system.

Further clarity is needed on how the **definition of duty-bearer in the Bill might interact with the proposals for a Housing Bill to create a new regulator for the Private Rented Sector**.<sup>7</sup> In particular:

- whether the duties in the Bill could be applied to private landlords, via this regulator, to enforce delivery of the Minimum Core Obligations in relation to rights to housing, health, and a healthy environment; and
- whether including this in the Human Rights Bill could strengthen channels of recourse where private rented tenants' rights are not being met.

Another mechanism through which resources of private bodies could be levered in to support implementation of the Bill is through taking a **human rights-based approach to procurement** – this would also support the principle of realising rights within the maximum available resources. Procurement should play a role in driving rights-respecting outcomes in all public spending, including via the private sector, for example, requiring developers to contribute to the Minimum Core Obligations and progressive realisation of rights around housing, adequate standard of living and the rights to a healthy environment. This could be through increased quotas for accessible, affordable homes, tighter standards around energy efficiency, and neighbourhood planning to protect rights around accessing safe and healthy environments, healthy and affordable food, medical facilities etc.

### Procedural Duty and Duty to Comply (Qs 20 -21, 24-25)

CAS supports the proposal to place **procedural duties on duty-bearers as soon as possible after the Bill is passed**.

This duty should be worded in the strongest and clearest way possible. Duty-bearers should be obliged at minimum to **have due regard** to the rights in the Bill in their policy and service delivery. CAS would support a definition of 'due regard' similar to that in the

<sup>7</sup> A New Deal for Tenants Draft Strategy Consultation Paper December 2021, Scottish Government, December 2021, Ch.6.

Equality Act,<sup>8</sup> which includes taking practical steps to remove or minimise disadvantage and meet the needs of protected groups.

Similarly, the procedural duty should include specific requirements to take active steps not only to avoid regression in delivering the rights in the Bill, but to maximise the positive impact of policies, decisions, budgeting processes, etc. on the progressive realisation of the rights in the ICESCR and specifically the realisation of those rights for groups protected by CERD, CEDAW and CRPD.

We would also see benefit **in retaining the procedural duty beyond the commencement of the duty to comply**. This would provide a clearer framework for the ongoing need to have due regard in decision-making and the planning of services and policies in order to achieve compliance. Retaining the procedural duty alongside the duty to comply could provide more avenues for accountability and redress, where rights have not been delivered.

CAS agrees that the **economic, social and cultural rights enshrined in the ICESCR as well as the right to a healthy environment** should be protected through a duty to comply.

As outlined in our response to question 5, CAS strongly believes that the duty to comply should, as far as possible, also apply to the rights in the Special Protection treaties, in particular to the CRPD which contains many specific, substantive rights which are essential to disabled people's equal enjoyment of their social, economic and cultural rights.

The **duty to comply should commence as soon as possible, no later than two years after the Bill is passed**.

CAS agrees with the proposals for compliance to be demonstrated through delivering the Minimum Core Obligations, and through progressive realisation of the rights in the Bill. We envisage that the requirement to use maximum available resources to achieve compliance will **need specific duties around human rights budgeting** approaches. This should be made explicit in the provisions.

## Reporting duty (Q22-23)

CAS agrees that public bodies should have a duty to report on the delivery and progressive realisation of the rights in the Bill. Further consideration is needed as to how existing reporting systems such as Public Sector Equality Duty reporting could be streamlined and integrated with Human Rights reporting to support a process that is as meaningful, engaging and impactful as possible.

CAS supports several recommendations made by the Lived Experience Panel, specifically:

- > For reporting to have a transformative effect, the **focus should be around outcomes met and progress realised, not simply actions planned or taken**. This would require a participatory and collaborative approach that would engage with rights holders – specifically those from protected groups - and their organisations, to gather evidence from which to measure MCO delivery and

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<sup>8</sup> Equality Act 2010 s149(1).

progressive realisation of the rights in the Bill.

- > Reports should be **accessible and public-facing and should reflect communities' lived experience of rights delivery in their day to day lives**. Human Rights Monitoring reports should contribute to the democratic process of both raising rights holders' awareness and enabling them to scrutinise and hold duty-bearers to account for delivery of the rights in the Bill.
- > Ideally, a collaborative reporting process would involve rights holders and their organisations in setting local-level human rights outcomes and delivery plans and monitoring progress throughout the lifetime of the plan – in contrast to some experiences of public authorities' outcomes setting, where engagement may seem to be concentrated around the start and end of the cycle, with gaps in accountability and delivery in the interim. A human rights outcomes roadmap, designed with local rights holders and community organisations, and against which progress is reported, drawing collaboratively on multiple sources of evidence from across services and communities - could be a transformative and empowering tool for communities and community organisations working to hold public bodies to account.

The reporting duty should include **regular public reporting on first-tier complaints each public bodies receives**, including anonymised data on their substance/issue, resolution time, outcomes, demographic of rights-holders, as well as looking at who is excluded from or underrepresented in their service provision, to ensure feedback loops and improve accountability.

## Ensuring Access to Justice for Rights-Holders (Part 8)

### Information, Advice and Advocacy (Q27)

The Citizens Advice network in Scotland plays a crucial role in supporting people across Scotland to understand their rights and responsibilities and to secure access to justice when things go wrong. We provide holistic advice across a range of civil and administrative issues, including benefits, debt, finance, utilities, housing, employment - and to a lesser extent their interactions with the criminal justice system - as well as advice and support on judicial and non-judicial redress and remedies.

- > In 2022/23, our network provided 665,500 pieces of advice and support to 183,800 individual clients across Scotland through multiple channels, including face-to-face, per phone or email.
- > We currently provide more than 3,200 pieces of **advice on legal proceedings** in an average month across the country. In 2022, citizens advice bureaux provided 39,509 pieces of advice on legal proceedings to almost 15,000 individual clients, which was broadly consistent with the volume of advice on legal proceedings provided in 2020 and 2021.

- > The economic value of the advice we give on legal proceedings was estimated to be £11.58million.<sup>9</sup>
- > In 2022/23, the network supported **1,829 clients at courts and tribunals, with 1,600 of these cases (87%) won or upheld.**
- > In 2022/23, our public-facing online information and advice site '[Advice for Scotland](#)' - which people can freely consult for self-help - registered more than 4,360,000 Unique Page Views (UPVs) across all advice areas, a slight increase from the more than 4,270,000 UPVs in 2021/22.
- > The Law and Courts pages have the highest number of UPVs across the whole site, accounting for 20% of all UPVs in 2022 (up from 18% in 2020).
- > The following pages were among those most viewed: 'using alternative dispute resolution to solve a problem' and 'taking legal action', especially with regard to 'help with legal costs', 'simple procedure' and 'using a solicitor', all with increased UPVs compared to 2020.

Based on our experience as the largest independent advice provider in Scotland, we believe that **access for all to independent information, advice and advocacy should be included on the face of the Bill**, so that everyone who requires support can access these services to realise their rights.

As the Bill aims to empower people to access and pursue remedies and enforce their rights, an uptick in demand for information, advice and support is likely, even without any active awareness raising activity. Adequate resourcing for the advice sector will be absolutely vital to give effect to the rights in the Bill.

Stability is another key concern for the consistent provision of information, advice and advocacy support. Year-on-year funding and often very late notice of funding renewal towards the end of the financial year places CAB in precarious positions regarding staffing and service delivery.

This is a particular concern with the introduction of a new overarching human rights framework, as significant capacity-building will be required across the advice sector, to maximise the expertise and support which can be offered to rights holders in understanding their rights and navigating associated channels of redress and accountability.

## Access to Justice

Access to Justice, as a fundamental element of human rights protections, is a key concern for CAS, and we are disappointed that the questions in part 8 of the consultation are quite limited in scope.

Nevertheless, we welcome the dual focus in the consultation paper on strengthening access to both judicial and non-judicial routes to remedy.

We support the proposed use of the international framework, outlining that routes to

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<sup>9</sup> The [economic value of advice report.pdf \(cas.org.uk\)](#) (March 2021), p. 20.

remedy should be **accessible, affordable, timely and effective**. We are also supportive of the recommendation of the Lived Experience Board that the inclusion of a further principle be considered to ensure routes to remedy are **supportive, empowering and person-centred**. This would acknowledge that rights holders are often seeking to access routes to remedy to resolve difficult, sometimes traumatic situations and rights violations; that they are made to carry the burden of righting a wrong which can take a huge emotional and financial toll and negatively affect their mental health. The following Citizens Alerts illustrate this:

"An East of Scotland CAB highlights the case of a client who made a complaint about the police, alleging serious abuse by Police Scotland, in relation to a situation which appears to have been traumatic for the client. They have been given no indication what to expect and no update since the initial information was gathered about 10 weeks ago in the presence of the client's witness. The procedure for complex issues appears to be relevant. However, having heard nothing for so long, the client is very worried, and some guidance about typical wait times or a review date to be given further updates might have spared her this ordeal."

"A North of Scotland CAB reports that a client has successfully appealed a rejection of their crisis grant application with CAB support. The application was denied on grounds that evidence was not submitted on time. The client could not afford internet at home, could not access the required evidence without travelling to a library or bureaux but relies on taxis due to a health condition and could not afford the travel costs. The Scottish Welfare Fund (SWF) stated they were unable to accept late evidence, and a First-tier review had to be requested. They have now overturned the decision and client has been awarded around £250. The SWF not giving the client a reasonable time to provide evidence has caused them unnecessary stress and worry. It also meant that they had to go through a stressful First-tier review process."

Processes to access justice often involve challenging more powerful actors, like state bodies, and this fundamental imbalance of power requires a conscious, supportive and empowering approach which should be trauma-informed. These **principles should be built into the provisions relating to routes to remedy, with guidance co-designed** with rights holders and advice providers to clarify how this should be delivered and monitored, including what resources, training and capacity-building may be required to roll this out across duty-bearers and the justice system.

## Accessible justice

We have regularly highlighted our concerns about the **complexity of the justice system and the existing barriers for rights-holders to access judicial routes to remedy** when their rights are being infringed or violated. Many of our clients seek our support because they are unaware of or need clarity about their rights and/or struggle to



engage or be heard in existing processes to remedy rights violations, for example, where procedures are not designed in ways that facilitate their active participation.

The shift towards digital technologies in the justice system such as Civil Online, for instance, constitutes a significant barrier for some CAB clients. Bureaux with In-Court Advice projects report that their specialist advisors spend increasing amounts of time supporting clients to navigate online court forms and digital technologies, losing valuable time which should have been spent on advising clients on their issue and proceedings. Similarly, the increased use of remote and online hearings, especially since the Covid-19 pandemic, may disproportionately disadvantage party litigants and those who need additional support, impeding access to justice for individuals who are experiencing **digital exclusion**. This often has significant consequences for the individual as illustrated in the following case:

“A North of Scotland CAB reports the case of a client who attended a virtual procedural hearing where the Sheriff had determined that he had no jurisdiction and had dismissed the case. The client was unrepresented, was unable to follow the legal arguments made around jurisdiction and had no understanding of the decision reached or the reasons for it. To compound things, no decision form was issued in the case (until CAS later intervened to raise the matter with the Scottish Courts and Tribunal Service), leaving the client unaware of any arrangements or deadlines for appeal.”

For many of our clients, the **justice system is overly complicated, legalistic, and difficult to navigate on their own**; there is an urgent need to embed **channel choice and inclusive communication across the public sector**, including the justice system, to ensure people are able to understand and participate in procedures and decisions that affect them, as exemplified in the following Citizens Alert:

“An East of Scotland CAB highlights the case of a client who has additional needs and receives benefits. He is faced with a decree issued against him last year that he owed the estate of his late mother more than £150,000 plus interest and assorted expenses. This seemed to be relating to allegations from his siblings that he abused access to his mother's finances. The client disputes this strongly, but it appears he did not defend the action, and so a decree against him for the sum was issued. The language used in documentation from court and the solicitor relating to the summons was impenetrable to the client as a lay person, and navigation of the legal procedure at the Court of Session impossible without qualified legal representation which he couldn't get, as no firms were willing to accept his legal aid case.”

## Affordable justice

CAS believes **no one should be excluded from accessing justice on the grounds of cost**. However, our network data shows that a lack of transparency and persistent gaps in people's access to legal professionals who could provide much needed legal advice and support rights holders' engagement with legal proceedings are often compounded by

**issues of affordability of solicitor<sup>10</sup> and court fees**, as illustrated by the following Citizens Alerts.

“An East of Scotland CAB reports of a client who has received an Ordinary Cause initial writ seeking to recover a significant loan guaranteed by the client. This client had acted as a guarantor for a friend and her husband, but the couple have since separated and stopped paying the loan. The client has been unable to respond to the action having been unable to obtain legal advice. The client resides with her estranged partner and their three children aged twelve to sixteen in a mortgaged property. The client works full-time for a low wage while managing mental ill health. Although her home is at risk due to the action, the client does not qualify for a fee exemption, and she is unable to afford the £137 to lodge a Notice of Intention to Defend.”

- > Difficulties for rights-holders in finding and accessing the services of a legal practitioner to help them navigate the system and effectively claim their rights are also borne out in our analysis<sup>11</sup> of YouGov polling we commissioned in late 2022.<sup>12</sup> Our analysis highlighted that a lack of transparency and an information deficit about the legal services landscape impeded people’s access to justice, as they often did not know what solicitor to choose and whether they would be charged reasonable fees. Furthermore, we found that worries about affordability, namely concerns related to solicitor fees and the cost of going to court had become the two most commonly cited reasons in 2022 that prevented people from using a solicitor.

We are concerned about the lack of attention in the consultation paper to the requirement of affordable remedies, the **vital role of Legal Aid**, and the considerable challenges people face to pursuing justice in Scotland today.

All too often, we see clients falling at the first hurdle as they are experiencing **difficulties in identifying a legal practitioner willing to take on their case** – especially under legal aid, but even for clients who have no recourse but to pay privately for a solicitor’s services.

Between 2020 and 2022, our network has seen an increased demand for legal aid advice (up 6%), with 52% of advice on legal aid linked to ‘access to a practitioner’. This upward trend has continued into 2023, with advice need on legal aid up by 14% between July 2022 and July 2023.

<sup>10</sup> The Scottish CAB Service provides free advice on legal issues as opposed to legal advice. If legal advice or representation is required, clients are advised of this and made aware of providers of legal services and ways to find the appropriate professional for their problem, but it remains the client’s choice to pursue this and seek a legal practitioner. As our network provides free and impartial advice, action is only taken on behalf of clients with their express and informed consent, placing client’s choice and empowerment at the heart of the service.

<sup>11</sup> A fuller analysis of this YouGov poll can be found in our [Response 351421829 to Regulation of Legal Services \(Scotland\) Bill - your views - Scottish Parliament - Citizen Space](#) (August 2023).

<sup>12</sup> Total sample size was 1,005 adults. Fieldwork was undertaken between 8<sup>th</sup> – 12<sup>th</sup> December 2022. The survey was carried out online. The figures have been weighted and are representative of all adults in Scotland (aged 18+). Some of the questions used in this poll were retained from YouGov polling we commissioned in 2020, allowing a comparative analysis of 2020 and 2022 results.

In some instances, this relates to issues of geography when clients are forced to seek a practitioner from a wider geographic area as there is a lack of local practitioners with experience and expertise in the legal specialism that is required; we also see clients with complex cases or with additional requirements such as language interpretation struggling to access a legal professional. This is of particular concern where specific groups experience multiple, often intersecting barriers to accessing justice as illustrated in the following Citizens Alerts:

"A North of Scotland CAB reports that one of their clients spent one month calling several solicitors to take on her separation case from her abusive husband. The only one she could find eventually was 150 miles away in Glasgow."

"A Central Scotland CAB reports that a client, a disabled single mother with disabled children, was desperate to find a solicitor: her ex-husband, who had been charged with and pled guilty to domestic abuse, was attempting to force the sale of their house which is in both their names. The house had been adapted to the specific needs of the family and the prospect of losing it was causing the client enormous stress and worry. The first solicitor she instructed changed careers, the second solicitor retired, and the firm dropped her case and closed her legal aid claim. She has been unable to get another firm to take on her case as none seems to be accepting new and especially legal aid clients."

"A West of Scotland CAB reports of a client who sought their help regarding an ordinary cause hearing at Sheriff Court. He has tried solicitors in his area but could not get a reply. Due to low immunity, he can't travel further but has no facilities to attend the WebEx court hearing. He required assistance from the court to lodge documents online but could not get any help. Court staff told him if he made one more mistake on the forms, they would refuse to accept the documents at all."

"A West of Scotland CAB highlights the case of a client, a British citizen from a Northeast African country. He and his wife have separated, both sharing the care of their young children. The client is very concerned for the children's welfare when they are under his ex-wife's care, fearing that she might take them to their mutual country of origin without the client's permission. He has raised child protection concerns particularly for his daughter who could be at risk of female genital mutilation practices there. The client requires an Arabic interpreter to enable him to access and receive legal help with achieving the separation and care of the children. Supported by the CAB advisor, it took the client five phone calls to different law firms on the Law Society Scotland and SLAB websites before they were successful in speaking to someone prepared to take on his case. All other firms that were contacted were unwilling to take his case based on the client requiring legal aid and an Arabic interpreter while the case seemed quite complex. The firm prepared to take on the client's case is in a different part of the city involving significant travel for the client to attend appointments."

We believe **significant reform of the Legal Aid system, placing rights holders at its heart and providing access to justice for all, is urgently required**. We would urge a shift towards early intervention and prevention of rights violations, in order to avoid drawn-out, stressful procedures and processes that prolong harm. We would welcome expanding the grant-aided part of legal aid spend to boost preventative advice, better triage and signposting; also, reducing the need for the demand-led judiciary element is likely to be beneficial. Reconsideration of the funding model in this way might also assist with the issues identified above in relation to a lack of access to legal practitioners. An innovative, mixed funding model thus could aid earlier intervention and lead to more timely, affordable and effective remedy.

At the same time, we recognise that some will choose to or have no choice but to pursue or respond to court action - and everyone should be adequately supported to claim and protect their rights in court. CAS is strongly in favour of simplifying the process by which individuals apply for legal aid while maintaining/extending its existing scope.

We understand that SLAB needs to consider a range of different circumstances to make decisions on legal aid applications; however, the application process can be extremely demanding on applicants, who are likely to already feel under a lot of stress and/or are vulnerable, such as women fleeing domestic abuse. Moreover, the current fifty-day turnaround for a legal aid application is too long, and every effort should be made to reduce this time period.

We therefore believe that the **Bill must include explicit measures to make justice accessible and affordable**, as often those whose human rights are most at risk simply do not have the financial means and/or stability to pay for access to judicial remedies. Alongside legal aid reform, **court fees should be removed for all equality and human rights cases**.

## Timely justice

We are concerned that some rights holders whose rights have been violated experience judicial proceedings and/or resolution to their case as providing **too little too late**. For some people, remedies can take too long to materialise or even commence, as exemplified in the following Citizen's Alerts.

"A West of Scotland CAB alerts us of the case of a client who has been waiting for many months to have his appeal regarding a decision made by Social Security Scotland listed at the Social Security Chamber; the current delay is having a major impact on this disabled client."

"An East of Scotland CAB expresses serious concerns about the scheduling of tribunal hearings, reporting that they are seeing not just substantial delays in scheduling for clients but, more importantly, that staffing issues in Aberdeen are causing hearings to be listed in Dundee which result in extra travel time and cost to clients, or that they are defaulting to video/phone hearings which is not ideal in terms of representation and participation for all clients."

The Lived Experience Board highlighted that it is crucial that remedies are timely, for example, for those battling illness or the terminally ill, or those at risk of homelessness or

destitution but also for those whose livelihoods and family life might be affected by drawn-out or late processes – we believe the justice system should regularly monitor and ensure the timeliness of remedies for people whose rights have been breached.

Regarding the **time limit** to bring cases that engage the rights in the Bill to court, we support HRCS's call to allow the time limit to be extended in a similar way as stated in the Human Rights Act 1998 (HRA), that is, if the court considers it to be 'equitable having regard to all the circumstances'.<sup>13</sup> The following Citizens Alert illustrates how a time bar can unfairly impede access to justice:

"An East of Scotland CAB reports of a client who has had serious health issues following mistakes made by their local Health Board. The client's father lodged an official complaint against the Board. They eventually admitted liability, but this was not until 3 years and one month had gone by. A legal action must be brought within 3 years. Lawyers have confirmed this. A lot of the three years was during the height of Covid, when services were very limited. I have tried to find anything which could help, all I have is a Covid 19 Clinical Negligence Protocol, but this only applies to England."

Allowing an extension to time limits not just in exceptional circumstances but where the court considers it as equitable seems particularly important in the case of judicial reviews. Not least the current situation where too often people simply cannot find a solicitor willing to take on their case, the 3 month-time limit might make it almost impossible for rights-holders to seek a judicial review.

## Complaints and Scrutiny Bodies (Q28-30)

CAS supports proposals to strengthen front-line complaints handling mechanisms and embed human rights principles and approaches within all relevant processes of complaints handling and scrutiny.

A recurrent concern across our network is the often unnecessary complexity of processes clients have to navigate in order to access their rights. CAS would urge that simplification of processes and documents should take priority in reforming routes to remedy – not just in court and tribunal proceedings as mentioned above, but also in front line complaints handling and mechanisms involving ombudspersons, while active steps must be taken to address the impacts of digital exclusion on people's access to information and processes vital for realising their rights.

In other words, provisions around routes to remedy should **include core accessibility standards placed on public authorities and other duty-bearers in terms of the information and processes involved in delivery of their services – including with regard to digital exclusion**. Public services are increasingly seeking greater efficiency by digitising their services, creating barriers for those who are digitally excluded – whether through lack of a device, connectivity, or the skills and confidence to safely navigate the online world. The following Citizens Alerts exemplify such barriers:

<sup>13</sup> HRCS Guide to responding to the Human Rights Bill for Scotland Consultation (August 2023), p. 38.



"A West of Scotland CAB was approached by a client for assistance in setting up a direct debit for his council tax payments. The client is homeless and digitally excluded and therefore found it difficult to set up a direct debit online. The council's move to digital by default included the cessation of the live enquiry phone line and change to an automated payment line only. The only route to set up a direct debit or contact the council tax department is through their digital services, thereby, excluding those who cannot set up a payment plan online."

"An East of Scotland CAB reports of a 19-year-old client with wide spectrum autism and anxiety disorder who attended the bureau for assistance to start a new claim for ADP. It took the adviser and client one and half hours to get to the stage of submitting proof of ID online, largely due to having to create a new email address (the client's email address had already been used to request a Young Scot card). The client and her support worker advised that they felt pressured by a SSS call handler into using an app called Yoti and use it to take identification photos. The client expressed real concern about digital intrusion, how their data would be stored, and which other agencies might have access to it."

Accessibility standards should also cover information being held by duty-bearers about rights holders; examples from across the network highlight, for example, unduly long timescales to access medical files required for a complaint against the health service; or failures to provide such personal information even when requested via a Subject Access Request, as the following Citizens Alerts illustrate.

"A South of Scotland CAB reports the case of a client who is being assisted by the bureau with a DWP appeal. The appeal relies on the client proving that they were incarcerated during a specific time period and therefore not in receipt of benefits. The Scottish Prison Service was contacted with a request for this information but 8 months later, neither the client nor the CAB have received it. The standard time limit for response to a Subject Access Request is one month. This excessive delay is causing considerable stress and additional financial hardship for the client."

"A West of Scotland CAB highlights the case of a client who feels he is being discriminated against as a prisoner: he has not been given the dental treatment he requires as per his treatment plan drawn up by a prison dentist; he often does not receive the medication he requests as per his medical notes; he has to have regular blood tests as he is due a quadruple heart bypass operation but rarely get these blood tests done and is not told the full results when he asks. He has raised four official complaints with the Health Board using their official form but has had no acknowledgement or contact from them."

Simpler, more accessible processes would enable more rights holders to self-serve, when provided with accurate and clear information about processes for redress and accessing their rights – and would also maximise the capacity of the advice and advocacy sector to support more people.

The **updating of complaints protocols** should involve participation of rights holders as well as the advice sector.

Additionally, we agree with the recommendations of the Lived Experience Board that adequate resourcing is needed to train and upskill staff to improve front line responses, as a commonly shared concern across our network involves public sector staff not fully understanding people's rights, which can be a major barrier for the realisation of rights in the Bill in the first place.

CAS supports proposals to **improve accessibility of SPSO processes**, for example through enabling oral complaints. We agree that the SPSO's remit should be extended to deal with complaints relating to rights under the Bill, even without the complainer specifying human rights as such. While we support the principle of the SPSO being given new powers to conduct investigations into recurrent issues it sees, resourcing must be a key consideration - bureaux across the network regularly express concerns that the SPSO and other complaints bodies are already overstretched and seem to lack capacity to respond to the current volume of complaints being raised.

We strongly support measures to allow SPSO recommendations to include apology or review / change to processes. However, **we would challenge the proposal to retain the non-binding nature of SPSO recommendations**, as we repeatedly see instances of continued detriment faced by clients where SPSO recommendations are not being adhered to.

"A West of Scotland CAB highlighted the case of a client who has been dealing with housing issue for the past two years; her council house has a host of issues such as missing roof slates, a hole in the roof, black mould in all rooms, doors that are not sealed properly, no gutters on side of building. Client has spoken to Environmental Health, and – supported by the bureau - has already exhausted the council complaints procedure and been to the SPSO who confirmed the house is not meeting the tolerable standard. SPSO upheld her complaint and recommended client and her partner to be decanted for major repair works to be carried out. Three months later, the local council has still not implemented SPSO recommendations which has led to breakdown in client's relationship and deterioration in ex-partner's health who has remained in the property."

"A South of Scotland CAB reports that a client had complained to SPSO about social work failing to provide a kinship care assessment when taking on the care of her grandchildren following the death of her daughter, their mother. Social work staff appear to be ignoring recommendations of the SPSO. The client was advised to approach the SPSO to tell them that their recommendations have not been carried out and ask them if there is anything that they can do. Cautioned the client, however, that with another client SPSO have been unwilling to go further to ensure that Social Work act properly. Client was advised that if the SPSO is unable to help further, then we can refer her to Adoption UK Scotland for further kinship support. Also suggested that she could return to her MSP for further representation."

We agree that human rights should be added to the remit of all Scottish scrutiny bodies such as the Scottish Housing Regulator and Care Inspectorate.

### **Scottish Human Rights Commission (SHRC) / Children and Young People's Commissioner for Scotland (CYPCS) / Standing / Reasonableness (Qs31-34)**

CAS strongly supports proposals to extend the powers, responsibilities and associated resources of the Scottish Human Rights Commission, and the Children and Young People's Commissioner in parallel. From the perspective of the Citizens Advice network in Scotland, it would be incredibly useful to be able to refer clients or seek 2<sup>nd</sup> tier advice on cases that engage the rights in the Bill, and to be able to share insights from across the network around recurrent human rights concerns, to support any potential investigations these bodies might undertake.

In this context, CAS supports the proposals around **standing** that would allow parties with sufficient interest to bring cases – and would envisage a role for SHRC / CYPCS in advising or supporting the formulation of such actions. This would be especially beneficial where it would be too burdensome and/or involve great financial risk for directly affected individuals to take a case to court. In general, to give effect to this wider provision around standing, capacity-building will be required across the third sector and advice sector – as part of a wider programme of reforms and support for public interest litigation. Strategic litigation, though underdeveloped in the proposals, could be a crucial mechanism for driving change.

CAS supports moves to improve routes to remedy by **lowering the threshold for decisions of duty-bearers to be considered as unlawful**. We particularly welcome proposals to include consideration of other factors such as whether a consultation has been carried out, as this might help to establish a more robust set of requirements around depth and quality of consultation and involvement of those affected by such policies and decisions, for example, specific protected groups. Current standards in EQIA, for example, do not allow for challenge on the basis of quality or relevance of EQIA content to the specific groups affected.

### **Remedies (35-37)**

CAS agrees that a wide range of remedies should be available to deliver justice in effective ways for different people and different kinds of rights violations - this could include remedies such as public apology, restitution, compensation, guarantees of non-repetition and/or rehabilitation, where human rights violations have caused medical or psychological harm. We would also support proposals to include Structural Interdict as part of available remedies for human rights violations. Involving complainants in determining appropriate remedies in their case would be in line with an empowering human rights-based approach.

CAS is aware of recurrent challenges rights holders face in enforcing remedies, for example various cases where clients, despite winning claims at employment tribunal, could not enforce these as enforcement would require them to pay further cost to escalate enforcement action to a sheriff, with yet again no guarantee they would then

receive their award. We are also aware of the low uptake of compensation at the housing tribunal due to a lack of awareness, the complexity of the process, and a lack of enforceability.

More clarity is needed to understand how effective justice would be achieved **when private actors such as for-profit companies** are involved in delivering public functions and those connected to the delivery of rights in the Bill. Provision must be made in the Bill to ensure that remedies are available and not curtailed when taking a case against a contracted services provider. We also seek clarity as to whether, in cases taken against private actors rather than public bodies, courts would have a duty, as a public body, to ensure the remedy is delivered / enforced.

We agree that for the human rights in this Bill to have full effect, courts should be able to strike down laws or issue declarators of incompatibility for any part of legislation passed by the Scottish Parliament that is incompatible with rights protected in the Bill. Further clarification is needed as to whether this would equally apply if the incompatibility related to substantive provisions in the Special Protection treaties in case, under the final model of incorporation, these were only covered by a procedural duty rather than a duty to comply.

## Implementation (part 9)

### Commencement / Minimum Core Obligations (Qs 38-39)

CAS understands the need for staggered commencement, to allow for robust guidance to come into force and for resource requirements to be addressed working towards full realisation of the rights in the Bill. Evidence from across the Citizens Advice network points to escalating needs in relation to basic economic, social and cultural rights in Scotland; due to the scale of transformative change required to realise the rights in the Bill, we support calls for the period of commencement of the **procedural duty to be no longer than 6 months**, in order to accelerate the pace of change.

CAS also supports calls for the commencement of the **duty to comply to be within no more than two years** (similar to the commencement period for the rights in the Human Rights Act), and for these timescales to be specified within the Bill to ensure accountability.

We strongly agree with the proposals to **define Minimum Core Obligations for Scotland through a participatory process**. We require clarification whether this process would be led by the SHRC or the Scottish Government. Meaningful engagement to co-define MCOs should begin as soon as possible; given the rights themselves are well established in international law, there is no reason to delay the beginning of a participatory dialogue with rights holders, particularly those afforded special protection, and those whose rights are most at risk, their community groups and other civil society organisations, to establish what these should look like, as a minimum, in Scotland. Indeed, much engagement exists already, such as in the Social Renewal Advisory Board and Social Security Scotland engagement.

A number of Scottish Government initiatives and reforms in recent years provide positive examples where the principles of human dignity, empowerment and participation have been used to drive and implement change. For example, the Scottish Government's 'Cash-First' strategy published earlier this year recognises that emergency food provision through food banks is not an adequate or dignified long term solution to the rising tide of food insecurity facing those on low incomes in Scotland.

CAS has received funding from the Scottish Government to continue testing alternative approaches to food banks following the success of the [Shopping Card Pilot](#). Citizens advice bureaux across 11 locations are delivering the Food Insecurity Pilot which seeks to maximise dignity for clients experiencing hardship by giving them the option of a shopping card or cash grant alongside a food bank referral. During the first half of the pilot, 4,137 cards and cash grants were distributed, equating to £109,275 in client financial gain. We believe that measures which enable people to choose their own food can restore dignity in emergency food provision, enabling people to buy food that is culturally appropriate or adequate for their health needs and to choose the items that will make the most difference to themselves and their families. Similarly, the establishment of Social Security Scotland has been a positive step towards realising the human right to social security for people in Scotland.

It would be helpful to consider and include in the Bill a clear timeframe for the development and regular reviews of the MCOs via further rounds of participatory engagement; given the pace of technological and climate change, these intervals should ideally be shorter than 10 years.

### **Human Rights Scheme (Qs 26 & 40)**

CAS agrees that the Human Rights Scheme will provide a crucial tool for rights holders, organisations and Scottish Parliament to hold the Scottish Government accountable for fulfilling their duties and progressing the realisation of human rights.

The Human Rights Scheme should include a requirement to meaningfully consult with the information, advice and advocacy sector as well as rights holders, especially those whose rights are at risk, both when developing the Scheme and when reporting against it every year.

### **Capacity-building / Information and awareness raising (Qs 42-43)**

CAS supports wider calls to establish, co-design and resource an Access to Justice / Human Rights Advice Hub for Scotland, that could facilitate understanding, access and capacity-building for rights holders, third sector advice providers and public and relevant private sectors. From our experience as an advice and support network, we would urge the Scottish Government to ensure that information, advice and advocacy will be available via multiple channels, locally in communities as well as nationally.

CAS agrees that information and awareness raising campaigns will be vital to the successful implementation of the Bill. These programmes should be co-designed with



communities and advice services, and distinct programmes will be needed to target rights holders and community organisations as well as local level duty-bearers.

CAS runs several campaigns on a yearly basis, designed in collaboration with citizens advice bureaux, which are targeted towards raising awareness of widespread detrimental issues in order to support clients and people in Scotland. Our three most recent campaigns were significant in ensuring rights holders could access support and potential financial gain:

- > **Debt Happens:** This campaign sought to encourage rights holders who were experiencing debt to visit their local CAB and receive support and advice. The amount of debt presented increased during the post-campaign period by 16%, and the number of clients seeking help with debt by 26%. Our total number of clients over the campaign period was 4,699. In total, £11,656,403 was secured as client financial gain.
- > **Big Energy Saving Winter:** This campaign sought to encourage rights holders to seek advice and information on energy issues during the winter period. 7,988 clients received 25,624 pieces of energy-related advice and within the campaign period, bureaux achieved £1,167,509.10 energy-related financial gain for 2,748 clients: an average gain of £424.86.
- > **Our Advice Adds Up:** This campaign sought to encourage rights holders to seek advice and information relating to money issues. This campaign resulted in the Citizens Advice network in Scotland supporting 12,993 people with money issues and client financial gains of £14.4 million.

Co-designing and delivering campaigns like these requires dedicated time and resource across the network, with bureaux running focus groups in their local communities and feeding into the development of messaging to ensure materials produced resonate with their local audiences. To give maximum effect to the rights in the Bill, implementation and delivery plans should engage and work with the extensive experience, expertise and infrastructure that exists across the Citizens Advice network as well as the wider advice sector, around the development and delivery of successful Scotland-wide information and awareness campaigns.

For any inquiries, please contact:

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