

**Submission to the Equalities and Human Rights Committee in consideration of
Human Rights and the Scottish Parliament**

made by

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Submission

Responses to questions on

- **Participation and engagement**
- **Parliamentary procedure and process**
- **Accountability**

plus

Case Study: closure of the Outlook Project for people supported by mental health services and the issues raised with the City of Edinburgh Council regarding Human Rights and Equalities

Participation and engagement

How can the Scottish Parliament empower people to make them more aware of their rights under domestic and international human rights law and to help build a strong human rights culture in Scotland?

Response: the people who most need information about their rights are those with the least opportunity and/or capacity to hear about / learn about / defend their rights. The most poor and vulnerable in our society are often socially excluded from the forums of engagement about rights...including the ubiquitous “online” information pages/discussions as many people within vulnerable cohorts do not have Internet access as standard.

I am paid to work 18 hours per week as a community collective advocacy development worker in Edinburgh.¹ My work inevitably means supporting and enabling the people who participate in collective advocacy to understand that they *have* rights - that those who hold the power and the purse-strings should be observing and upholding those rights and should also be educating them about their rights. The reality for the majority of people in vulnerable social cohorts, however, is that their rights are ignored, suppressed and abused; as a result I regularly find myself defending the rights of people who do not have enough information and/or the capacity to defend their right for themselves.

Over the last year, City of Edinburgh Council have made a number of decisions that have had a hugely detrimental impact on the lives of people who are – or have been, prior to cuts made - supported by mental health services (see Case Study below). Collective advocacy has been particularly involved in supporting two groups of people supported by mental health services who have challenged decisions using rights and equalities legislation – yet we have been met with ignorance and obstruction from people holding the power. The time demands of this work mean that I have accrued 575 hours due to me in TOIL in 12 months.

There is no allowance in the budget of the advocacy provider for “overtime” or to pay for “emergency” collective advocacy because each time the contract is up for renewal, the provider is required to take a 10% funding cut while providing an improved service. The result is that employees work overtime for free (and in doing so accrue TOIL hours that they will never be able to get back) and are, in effect, required to comparative salary cuts as the cost of living rises and the salaries remain static (or paid hours are cut).

This situation means that the very people who are defending the rights of the most vulnerable in Scottish society are, themselves, in financially precarious situations with their own rights being undermined.

If the Scottish Parliament is serious about empowering people to make them more aware of their rights under domestic and international human rights law and to help build a strong human rights culture in Scotland, there needs to be

- a significant increase in access to advocacy for cohorts of vulnerable people
- an associated significant increase in funding for advocacy for cohorts of vulnerable people
- a recognition of the need socio-economic/cultural change to ensure that third sector workers are paid proper professional salaries at all levels (while also working to curb the culture of six figure salaries for heads of third sector organisations)
- a clear cross-party agreement on Human Rights and equality legislation in Scotland (and a clear cross-party condemnation of the “Daily Mail” attitude to Human Rights)
- the utilising of mainstream television: social media comprises sound-bites and self-expression. Story telling through television shows – particularly soap operas/serial dramas and social debates (hugely popular during the Scottish Independence Referendum) – can reach people in a more impactful way.

¹ Although much of this submission is related to my job/the work that I do, please note that I have completed this submission in my own time and as a Human Rights activist citizen rather than an employee of an organisation.

Parliamentary procedure and process

What further steps could the Scottish Parliament take to ensure that people's human rights are being taken into consideration when the Scottish Government and public authorities are creating policies?

Response: there are two key areas to be addressed

- the inclusion of individuals/small groups from the cohorts of vulnerable that are most likely to have their rights denied/abused people (and/or their advocacy workers) in the discussions at *every stage and every level* on an ongoing basis – which should include inviting people from those cohorts to sit on Parliamentary committees. These people are experts by experience; they also provide a key route to championing the cause and disseminating information about rights through their networks (NB: the current Experience Panels research being undertaken in the creation of the new Scottish system of Social Security is exemplary in terms of inclusive participation)
- the education of all staff working in all levels of Local Authorities and other bodies that receive public funding about the importance of the Public Sector Equality Duty. I was appalled to discover that the vast majority of City of Edinburgh Council employees resist any conversation about Human Rights – the position taken is that there is nothing the average person can do to ensure that their Human Rights are upheld (with or without advocacy); the need for the Council to meet the financial targets set is paramount and, as a result, the whole issue of Human Rights is considered to be risible at Local Authority level.

Accountability

What more could the Scottish Parliament do to ensure that international treaties, for example, the United Nations Convention on the Rights of the Child (UNCRC) and other international human rights obligations are being followed in Scotland?

There are two significant problems in many Local Authorities in relation to Human Rights and Equalities legislation

- lack of funding
- lack of both will and accountability at Management and Senior Management level (who need to model exemplary practice for the workers they manage).

Public Sector Management and workers not understand and/or appreciate that they have a duty to uphold Human Rights, Equalities legislation and the Public Sector Equality Duty (again, I have been both witness and subjected to ignorance about and derision in relation to the PSED at the City of Edinburgh Council at Senior Management level of some departments)

In addition, cuts to public sector staff and services mean that those at the top – to whom complaints are made – adopt a Teflon attitude about Human Rights and Equalities because they know there is very little that an ordinary person can do about the failure of a local authority to uphold the rights of citizens, particularly those from a cohort of vulnerable people. Until there is a Scotland-wide mechanism for reporting and addressing breaches of the PSED and the Human Rights legislation, this will continue to happen.

The UN Convention on the Rights of the Child gets some sympathy – but the Convention on the Rights of Persons with Disabilities (CRPD) is literally laughed at by Senior Management of some Departments of CEC – and that just perpetuates stigma and discrimination.

One idea that has been discussed at collective advocacy meetings include the introduction of Citizens Panels, made up of volunteers (or co-opted like a jury) who would consider local cases at an initial level; any cases not easily addressed and rectified could be passed on to law students as case studies, with selected cases ultimately going all the way to court. This would demonstrate to public sector bodies that they might find themselves paying legal fees to defend the choices that they make – and thus make it a more reasonable proposition to uphold the rights of people in the first place.

Case Study: people supported by mental health services challenge closure of service

The Outlook Project: until 2017, for 23 years, adult education classes for people supported by mental health services were provided by the highly respected, award-winning Outlook Project. At the end of 2016, there were around 200 students in the Outlook database.

The funding: until 2015, funding for the Outlook Project came from the City of Edinburgh Council Health & Social Care budget with a contribution from NHS Lothian.

In 2015 (exact date unknown), a decision was taken by senior management to transfer the funding from the Health and Social Care budget to the CEC Education Department Community Learning and Development budget.

Management duties were transferred accordingly. This decision was taken in anticipation of the move to locality partnership working.

Senior members of the Health & Social Care team understood that the project would continue to run – in accordance with their interpretation of the Mental Health Act (Code of Practice Volume 1: Chapter 5: Sections 25 and 26).

Senior members of the Health & Social Care team also understood that the Education Department would both ring- fence an appropriate level of funding for future provision for people supported by mental health services.

When it became apparent to senior members of the Health & Social Care team, a request was made to Senior Management in the Education Department for repatriation of the funding to the Health & Social Care budget. This request was denied.

Context of the complaint: Senior members of the Health & Social Care team also believed that the Education Department would have a broad understanding of the specific needs of people supported by mental health services; under the Equality Act 2010 and related Public Sector Equality Duty (PSED; see Appendix B - attached document) people with enduring mental health issues are categorised as having a disability. As such, they are understood to have protected characteristics and as people for whom reasonable adjustment should be made.

The PSED states that there is a requirement, where a provision, criterion or practice of the local authority puts a disabled person at a substantial disadvantage in relation to a relevant matter in comparison with persons who are not disabled, to take such steps as it is reasonable to have to take to avoid the disadvantage.

Despite a number of meetings with Senior Management at the Education Department and members of his staff under his management to raise the issues (above), the education department has, to date, failed to ensure that this department complies with the Public Sector Equality Duty.

Adult education classes open to the general population resumed again in September 2017. No provision was made specifically for people supported by mental health services. This failure to provide adult education classes that are both accessible to and appropriate for people supported by mental health services clearly discriminates against disabled people with mental health conditions under the various legislation cited throughout this submission.

Senior Management at the Education Department have clearly and consistently failed to appreciate and address the concerns that have (repeatedly) been raised regarding the PSED requirement to make reasonable adjustment to meet the needs of people supported by mental health services; this would include identifying the needs of this group of people supported by mental health services in consultation with the group – and then agreeing on how those needs could be met.

An appropriate course of action would have been an initial delay to all changes to this particular service – perhaps for one year or until all the issues arising from the move the localities partnership model of working had been identified and resolved – as the processes of change to service provision puts this group of disabled people at a substantial disadvantage in relation persons who are not disabled.

As a result of these listed failures on behalf of senior management to meet the requirements of the PSED, a number of Outlook students/advocacy partners have reported significant levels of distress, acute anxiety and other exacerbation of symptoms relating to their disability/ies. This impact on their lives could have been avoided had the necessary steps been taken.

Senior management at the Education Department at City of Edinburgh Council have, by failing to consider and respond effectively to the needs of our advocacy partners, breached the requirements of the PSED and highlights the stigma around mental health as a "hidden disability".

The worker issued a complaint to this effect to CEC, stating that senior management at the Education Department at City of Edinburgh Council have also have breached the UN Convention of the Rights of People with Disabilities and the European Convention on Human Rights. The worker cited the failure to provide appropriate provide adult education service/s according to the requirements of the Mental Health Act (2003) and the Public Sector Equality Duty including

- (i) the failure to uphold the rights of this particular cohort of disabled people as set out in the Equality Act (2010)
- (i) the failure to observe the human rights of this particular cohort of disabled people as set out in the Human Rights Act (1998)

What the worker and the advocacy partners believe should have been done?

Regardless of changes to working locations, funding and methodologies, senior management at the Education department should have paid due attention to their legal responsibility to the Public Sector Equality Duty (PSED).

There is an understanding and appreciation that changes needs to happen and that there will be an impact on all services - however, the PSED is clearly stated that there is a requirement, where a provision, criterion or practice of the local authority puts a disabled person at a substantial disadvantage in relation to a relevant matter in comparison with persons who are not disabled, to take such steps as it is reasonable to have to take to avoid the disadvantage.

The duty to provide appropriate and accessible adult education classes for people supported by mental health services remains with Education Department at City of Edinburgh Council. Both communication about the changes to service and consideration of the needs of people supported by mental health services and the design and delivery of future adult education classes for people supported by mental health services must, necessarily, be undertaken in a way that meets the every criteria stated in the PSED for people with a mental health disability.

The PSED requirements in relation to people with mental health conditions include

- (i) to have due regard to the need to remove or minimise disadvantage suffered by people due to their protected characteristics*
- (ii) to take steps to meet the needs of people with protected characteristics, as people supported by mental health services, where these are different from the needs of other people*
- (iii) to encourage people with protected characteristics, as people supported by mental health services, to participate in public life or in other activities where their participation is disproportionately low*
- (iv) to meet different needs including (among other things) taking steps to take account of disabled people's disabilities*
- (v) To tackle prejudice and promoting understanding between people*
- (vi) to meet the general equality duty even when this may involve treating some people with protected characteristics) more favourably than others*

Senior Management in the Education Department at City of Edinburgh Council declined to acknowledge the existence of this legislation and declined to abide by it. The complaint was not upheld.

There is an entire file of evidence to substantiate all elements of this Case Study and I would be happy to expand on this case study (at some length) if required.