



5 June 2018

Christina McKelvie MSP
Convenor, Equalities and Human Rights Committee

Dear Ms. McKelvie

I would like to congratulate the Equalities and Human Rights Committee for taking on such a comprehensive inquiry into how the Scottish Parliament can adopt the best possible approach to considering human rights. I would also like to thank the Committee for the opportunity to give oral evidence on April 26th 2018 and to follow up with this letter.

Our CEO, Gerry McLaughlin, recently gave evidence to the Health and Sport Committee on the National Performance Framework (NPF). Since the NPF and some other matters here are subjects of common interest, I am also copying this letter to the Health and Sports Committee.

Specifically, to follow up on NHS Health Scotland's written and oral evidence to the Equalities and Human Rights Committee to date, I would like to highlight the following:

- Our support, shared by others, for the incorporation of human rights, particularly Economic, Cultural and Social Rights (ECSR), into domestic law in Scotland and our hope that the Committee may have a key role in championing this development.
- The role the Committee could have in promoting the use of the new human rights outcome within the revised NPF as a tool to support parliamentary committees in holding public service providers to account for the progressive realisation of human rights within the communities they serve.
- Learning from our work that sought to promote Human Rights Based Budgeting in health and social care, and observations on what this means generally for the ongoing challenge of the practical implementation of human rights based approaches.

1.



Incorporation of Economic, Cultural and Social Rights (ECSR)

The Committee will be aware of the First Minister's Advisory Group, chaired by Professor Allan Miller, to develop recommendations on further embedding human rights in Scotland, and also of the work that the SHRC are leading to foster international learning on incorporation. The persistence of health inequalities in Scotland is, we believe, a strong indication that the right to the highest attainable standard of health is not yet being realised in this country. This is why we support incorporation of ECSR. Every area of Government, nationally and locally, has the potential to help to tackle inequalities, specifically health inequalities, and to promote social justice. We recognise the efforts being made. However, we believe that a stronger legal basis in Scotland for the right to health could only strengthen shared accountability for moving on from a strengthening policy base to improved outcomes for some of the most vulnerable people in our society.

We therefore want to add our voice to others to encourage the Committee to put its collective weight towards enabling the incorporation of ECSR.

Human Rights within the National Performance Framework (NPF)

Participation and Empowerment (the 'P' and 'E' of the Human Rights PANEL approach) have, quite rightly, been a strong theme of the Committee's inquiry. Speaking from the perspective of a duty-bearing public sector organisation and one whose success relies heavily on influence and on collaboration, we see the Accountability (the 'A' of PANEL) as just as important as the 'P' and 'E'. Whilst we believe that the incorporation of ECSR has a part to play, there are also existing frameworks which could be used to more powerful effect in holding all agencies involved in planning and providing services to account for human rights.

The revised NPF is an example. It contains an explicit outcome on human rights: "We respect, protect and fulfil human rights and live free from discrimination". This outcome and the indicators to be developed under it may provide a useful starting point for the scrutiny role of parliament on human rights. There are several practical human rights frameworks that could be deployed to assist with that scrutiny role. In the health context, the AAAQ (Accessibility, Availability, Affordability and Quality) Framework is one such framework. Using it would allow the committee, and others, to assess the human rights impact of a given policy or intervention. For example, how will 'x' policy impact on access to/availability/affordability/quality of healthcare and/or the wider things that impact on health; or; what could be done in 'y' policy area to increase access to/availability/affordability/quality of better health for all.

2.



We therefore encourage the Committee to champion the use of the NPF to promote accountability for human rights.

Learning from Human Rights Based Budgeting (HRBB)

The SHRC and others have demonstrated the power of HRBB, particularly at government level where fundamental decisions about the distribution of the country's resources are taken. As a general point, we would join others in commending to the Committee the further exploration of HRBB approaches.

Through our partnership work under the Scottish National Action Plan on human rights in health and social care, our intent has always been to demonstrate the value of human rights based approaches at a local level. While we have made progress, there have also been significant challenges. We believe it is useful to highlight some of our learning to the Committee as we very much share the Committee's view that human rights approaches can only be said to add real value once we can show they are making a difference to people's lives.

Based on working closely with personally committed, senior health and social care integration staff in two areas, we found that the language of rights is reasonably accepted at a principled and broad decision-making level. We also found that terms like 'the right to health' and 'inclusion health' were a useful focus for change and helped local areas think about service access and redesign in ways which are more acceptable to people with complex life histories.

However, despite an aim for fair and equitable allocation, there are several existing commitments or precedents which have been made in response to national directives, ring-fenced allocations or pragmatic decisions relating to past service pressures, that are difficult to undo locally without conflict.

While the *theory* of human rights would be HRBB would help to explore these tensions and to reach balanced and defensible decisions, the reality is that service eligibility criteria are traditionally based on risk, not rights. The language of human rights therefore overall presents as a potential barrier because it is perceived as an organisational risk for service providers.

We suggest that the more the Committee can promote and normalise the language and understanding of rights within parliament and through its constituents, the more progress can be made at local level.

3.



In closing, NHS Health Scotland has a lot of experience in trying out approaches across our strategies, plans and projects. We believe firmly that Scotland's approach to promoting human rights – across civic society, government and public service providers – is the right one. We believe that there is much within the gift of parliament, through this Committee, to strengthen this approach and we offer our support in any way that is helpful.

Yours sincerely



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