



## STATEMENT UPR Pre-session on the United Kingdom

Geneva, 29<sup>th</sup> of August 2022

Delivered by The Scottish Commission for People with Learning Disabilities.

### 1. Presentation of the Organisation

This Statement is delivered on behalf of The Scottish Commission for People with Learning Disabilities (SCLD). SCLD is a not-for-profit organisation working to defend the human rights of people with learning disabilities in Scotland. SCLD's initial response to the UPR was submitted in partnership with Values into Action Scotland (VIAS). SCLD's vision is a fairer Scotland where people with learning disabilities live safe, loving and equal lives. SCLD, under its former structure as the Scottish Consortium for Learning Disabilities, participated in the UPR in 2012.

### 2- National Consultations for the Drafting of the National Report

In 2019 the Scottish Government produced an update following the 2017 recommendations covering: the domestic human rights framework, violence against women and girls, tackling racial discrimination, access to justice and human trafficking and slavery. Since then, the Scottish Government and the UK Government undertook a series of online consultation events in Scotland in January 2022 in preparation for developing the State party report submitted in Spring 2022. These events were developed with Human Rights Consortium Scotland and included several Scottish organisations. SCLD took part in these sessions.

### 3. Human Rights Issues to be Addressed

This Statement will cover three key issues:

- I) Learning Disability within Scottish Mental Health Legislation in Scotland,
- II) Torture, Cruel, Inhuman, Degrading Treatment or Punishment of People with Learning Disabilities,
- III) Equality and Non-Discrimination.

Issues 1 and 2 will primarily draw from research published in 2018 from *'The Coming Home Report'*<sup>1</sup> on out-of-area placements and delayed discharge for people with learning disabilities and complex needs in Scotland.

### 4. Statement

#### I) Learning Disability within Scottish Mental Health Legislation

##### A. Follow up to the 2017 review

In the 3<sup>rd</sup> cycle, Côte d'Ivoire recommended that the UK "*Strengthen measures to foster access of vulnerable populations to public services and social and health services*"<sup>2</sup>. Since then, *'The Coming Home Report'* in 2018 identified that as a result of a lack of funding, service provision, and suitable accommodation, 705 people with learning disabilities were living in Out of Area Placements, 45% being out-of-area for more than ten years. One hundred and nine of those people had not chosen their placement and were identified as a priority to return. Seventy-nine people were placed outside of Scotland.

In 2021, we saw 20 million pounds of funding allocated to Integration Authorities to fulfil the vision that out-of-area placements and hospital stays are significantly reduced by 2024<sup>3</sup>. This was followed by a report from the working group on complex care and delayed discharge<sup>4</sup>, outlining the implementation framework for this ambition.

To date, 2017's recommendation has not been fully implemented. For people with learning disabilities, a significant barrier to realising this recommendation is their inclusion in the Mental Health Care and Treatment (Scotland) Act (2003)<sup>5</sup> (MHA). This defines a learning disability as a *'mental disorder'* and means that people with learning disabilities face restrictions of their rights based on impairment. This includes being detained and having their liberty restricted for long periods of time. *'The Coming Home report'* highlighted that 67 people with learning disabilities and complex needs were subject to a delayed discharge. Of these, 22% had been in hospital for more than ten years.

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<sup>1</sup> [Scottish Government \(2018\)](#)

<sup>2</sup> [Cycle 3 Recommendation: 134.166 .](#)

<sup>3</sup> [Scottish Government \(2022\)](#)

<sup>4</sup> [Scottish Government \(2022\)](#)

<sup>5</sup> [Mental Health Care and Treatment \(Scotland\) Act \(2003\)](#)

## B. New developments in (Scotland) since the 2017 review

In 2019, the Independent Review of Learning Disability and Autism in the MHA<sup>6</sup> recommended that learning disability and autism are removed from the legal definition of '*mental disorder*'. Instead of being defined in the MHA, the review stated, that there should be a new human rights law for people with learning disabilities, autism and neurodevelopmental differences to ensure their rights are met in line with the United Nations Convention on the Rights of Persons with Disabilities (UNCRPD). In the 2021-22 Programme for The Scottish Government, a commitment was made to carry out scoping work on a Learning Disability, Autism and Neurodiversity Bill and Commissioner<sup>7</sup>.

The ongoing Scottish Mental Health Law Review<sup>8</sup> has, to date, not endorsed the 2019 recommendation and has emphasised making minor tweaks to the language of '*mental disorder*'. Not removing learning disability from the act risks perpetuating the ongoing institutionalisation of people with learning disabilities and risks failing to meet the standards of Article 19 of UNCRPD<sup>9</sup> on living independently and being included in the community.

## C. Recommendations

1) Devolved Nations (Scotland) to amend The Mental Health (Care and Treatment) (Scotland) Act (2003) to remove learning disability from the term '*mental disorder*'.

2) Devolved Nations (Scotland) to develop a UNCRPD compliant national supported decision framework.

## II) Torture, Cruel, Inhuman, Degrading Treatment or Punishment of People with Learning Disabilities.

### A. Follow up to the 2017 review

In the 2017 review, Croatia<sup>10</sup>, Liechtenstein<sup>11</sup>, and Sweden<sup>12</sup> recommended ending corporal punishment and restrictive and harmful practices against children. While we have seen some progress in this area in the form of guidance on restraint and seclusion in Scottish Schools<sup>13</sup>, we are yet to see the same attention given to this issue in relation to adults learning disabilities.

### B. New developments in Scotland since the 2017 review

Data from the '*Coming Home Report*' found that of the 705 people in out-of-area placements:

- 21% were subject to physical restraint,
- 11% to seclusion,
- 36% under environmental restrictions,
- 9% under technological restrictions.

Moreover, the same report found that of the 67 people who experienced delayed discharge, 37% were subject to physical restraint, 10% were subject to seclusion, and 43% were under environmental restrictions.

The report found that antipsychotic medications are used to manage '*challenging behaviour*'; of the same 705 people, 44% received required medication to manage their behaviour, and of the 67 people experiencing delayed discharge, 63% received required medication to manage their behaviour.

Research<sup>14</sup> has also found that adults with learning disabilities are prescribed antipsychotic drugs at higher rates than that of psychosis among people with learning disabilities. There are concerns that these are frequently administered on a compulsory basis, often in the absence of appropriate structures for supported decision-making<sup>15</sup>.

Despite these findings, we have yet to see legislation and legislative guidance in Scotland protecting people with learning disabilities from cruel or degrading punishment or treatment.

## C. Recommendations

3) UK Government, including devolved nations, to embed national human rights-based legislative standards, guidance, and monitoring of restrictive practices across all settings.

<sup>6</sup> Independent Review of Learning Disability and Autism in the Mental Health Act (2019)

<sup>7</sup> Scottish Government (2021) (p.49)

<sup>8</sup> Scottish Mental health Law Review

<sup>9</sup> UNCRPD, Article 19 (2006)

<sup>10</sup> Cycle 3 Recommendation 134.198

<sup>11</sup> Cycle 3 Recommendation 134.194

<sup>12</sup> Cycle 3 Recommendation 134.197

<sup>13</sup> Scottish Government (2022)

<sup>14</sup> Scottish Learning Disabilities Observatory (2020)

<sup>15</sup> Enable Scotland (2019)

4) Devolved nations (Scotland) to establish a body to promote the rights of people with learning disabilities, including monitoring restrictive practices in all relevant settings.

### III. Equality and Non-Discrimination

#### A. Follow up to the 2017 review

During the 2012 and 2017 review cycles, recommendations were made on the equality and non-discrimination of people with learning disabilities. This included both:

- Gender-Based violence (with a focus on prevention from Slovenia<sup>16</sup> and tackling discrimination from Bosnia Herzegovina<sup>17</sup>)
- Hate Crime (with a focus on data collection from the United States<sup>18</sup> awareness raising in the recommendation from Japan<sup>19</sup>).

In Scotland, we have seen developments in both areas in relation to people with learning disabilities. In responding to Gender-Based Violence, there has been a £38 million investment in Scotland's *'Equally Safe Strategy'*<sup>20</sup>, which includes some work on learning disabilities. Regarding hate crime, the passing of the Hate Crime and Public Order (Scotland) Act (2021)<sup>21</sup> (HCPOA) led to a commitment to collate and publish data on the number of people with learning disabilities who have reported hate crimes.

#### B. New developments in Scotland since the 2017 review

There is still a significant data gap regarding the number of women and girls with learning disabilities who have experienced gender-based violence.

Following the passing of the HCPOA, recent data publications have shown that in over half (59%) of disability-aggravated hate crimes in Scotland, the perpetrator showed prejudice towards those with a learning disability<sup>22</sup>. This amounts to 130 incidences of hate crime recorded by the police between 2018 and 2019. This, combined with negative media dialogue<sup>23</sup> about people with learning disabilities that emerged during the pandemic, is a considerable concern.

#### C. Recommendations

5) UK, including devolved nations (Scotland), to implement improved approaches to data collection and publication in line with Article 31 of the UNCRPD. This to include disability disaggregated data on rates of reported Gender-Based Violence.

6) UK Government and devolved nations (Scotland) to develop national guidance for media on reporting on learning disability.

Thank you for your time and for considering these recommendations.

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<sup>16</sup> Cycle 3 Recommendation 134.182

<sup>17</sup> Cycle 3 Recommendation 134.184

<sup>18</sup> Cycle 2

<sup>19</sup> Cycle 3 Recommendation 134.101

<sup>20</sup> Scottish Government (2018)

<sup>21</sup> Hate Crime and Public Order (Scotland) Act 2021

<sup>22</sup> Scottish Government (2021)

<sup>23</sup> SCLD (2020)