



Briefing Participation, **Consultation and Communication**

Janis McDonald
Chief Officer

Participation, Consultation and Communication

The Scottish Government has been resolute in standing up for human rights ... it is vital we are not complacent and continue to push ourselves to do more to ensure human rights are embedded in everything we do. That is why we have established the Advisory Group on Human Rights Leadership. I want this group to provide leadership and to challenge all of our public institutions – including the Scottish Government – to do even more. We need to ensure our work on human rights makes a difference, helping people and communities to live with dignity wherever they are in Scotland, and whatever their circumstances.

The First Minister, Nicola Sturgeon¹

Recommendations for the Scottish Government

1. Acknowledge communication is a human rights issue, and that it has emerged as a significant problem for the 1 million people who are Deaf/Deaf Sign Language users, Deafened, Deafblind and Hard of Hearing people.
2. Implement a strategy, that includes funding, which recognises the importance of language and communication, accessible information standards and the principles of communication within the Scottish Government and all organisations that it funds.
3. Acknowledge that it is important that each individual has a choice about the communication method most appropriate to them and their circumstances. Duty bearers must individualise communication, using standard adjustments and a range of approaches to practically implement the right to communication.
4. Methods and approaches should aim to capacity build and integrate communities rather than isolate and segregate participants because of communication barriers.
5. Building on the principles established by the Social Security (Scotland) Act 2018, Scotland should mainstream inclusive communication across all publicly funded services and services of a public nature and seek to establish itself as the first 'Inclusive Communication Nation'.

The following briefing summarises why we make these requests.

¹ Scottish Government News Release 17th January 2018 at <https://news.gov.scot/news/ambition-on-human-rights>

Participation, Consultation and Communication

The Reality

In Scotland around 1,012,000 people have some degree of hearing loss, of whom approximately 546,000 are over the age of 60. In the 2011 Census 350,492 of the Scottish population aged 3 and over listed deafness or partial hearing loss as a long-term health condition. There are an estimated 57,000 people with severe to profound deafness. Respecting the human right to communicate of Deaf / Deaf Sign Language users, Deafened, Deafblind and Hard of Hearing people remains a significant problem in Scotland. Consequently, the institutional and systemic failures lead to everyday breaches of other human rights of Deaf / Deaf Sign Language users, Deafened, Deafblind and Hard of Hearing people. A 'one size fits all' approach ignores the variety of communication needs of the one million, filtering and translating information ignores the variety of communication needs of the one million. Deaf / Deaf Sign Language users, Deafened, Deafblind and Hard of Hearing people have the right to access information, to access information in a format and manner which makes it accessible and purposeful, and it is received in a timeframe which makes it useful. Compliance with the different communication rights, enables the enjoyment of all other human rights.

Article 8 of the European Convention on Human Rights (ECHR) – right to respect for private and family life, home and correspondence, Protocol 1 Article 1- right to enjoyment of possessions, Article 14 - right to enjoy all ECHR rights, equally.

A 75-year-old woman is admitted to a care home on a permanent basis. She has hearing aids in both ears. Staff increasingly judge her to be withdrawn as she rarely speaks. Meals are chosen for her and her file registers her lack of opinions on key aspects of her care. Her 14-year-old granddaughter is mystified about this change and quickly realises that the batteries in her hearing aids have stopped being replaced weekly. Her relatives complain and commence weekly checks on her ability to hear. Consequently, the woman returns to the communicative and participative person she is happier, healthier and engaged. Staff introduce a policy of weekly checks on all hearing aids.

Article 10 of the ECHR – right to form an opinion by receiving and imparting information.

A public authority holds a participation and engagement event to get people's views on the refurbishment of the local community centre.

Participation, Consultation and Communication

Reasonable adjustments are made under the Equality Act to ensure people with physical impairments access the venue, a summary of the information is produced for people with learning disabilities, so they can participate on the day and the provision is made for those who use BSL (British Sign Language). However, the communication needs of those who are Deaf but not Sign Language users, Deafened and Hard of Hearing are omitted. Whatever the motivation the negative impact is significant: the commentary on the presentations is available only to the small minority who use BSL; only those who use BSL can communicate their opinions; those who are hard of hearing can pick up some of what is being said so are poorly informed about options and missed the opportunity to speak out using their lived and professional experience; those who are Deafblind had practical suggestions for incorporation into the re-configuration of the building but are excluded from the whole process. The organisers realise that the process was not inclusive and failed to obtain informed opinions from older people which is a target group for the centre. The duty bearer recognises that the participation budget is inadequate to cater for 'fully inclusive communication', which is the way to address the needs of all people equally. The duty bearer realises the opinions of a significant proportion of Scotland's population will be repeatedly ignored with the consequent disempowerment of individuals within that community.

The Overview

Despite the Human Rights Act 1998 and the Scotland Act 1998 requiring government, the public sector and those delivering services of a public nature to comply with the European Convention on Human Rights (ECHR) and other international laws, there has been insufficient progress on compliance with duties and enabling people to assert their rights. There have been a variety of specific initiatives such as the 'Scottish Government's Delivery Plan for the UN Convention on the Rights of Persons with Disabilities'² and establishing the Scottish Children's Rights Implementation Monitoring Group (SCRIMG) to map progress and identify actions on the implementation of the UN Convention on the Rights of the Child (UNCRC)³. However now the Scottish Government wants to see much more impact on rights respected, and duties fulfilled. Key to that is communication which is a human right, as well as the gateway to the full enjoyment of human rights.

² 'A Fairer Scotland for Disabled People - Our Delivery Plan to 2021 for the United Nations Convention on the Rights of Persons with Disabilities' at

<http://www.gov.scot/Publications/2016/12/3778/3>

³ See Scottish Government website at <https://beta.gov.scot/policies/human-rights/childrens-rights/>

Participation, Consultation and Communication

Unlike equality laws, human rights law focuses on defining individual rights which must be equally enjoyed by people. Consequently, government, public bodies and those delivering services of a public nature must comply with the individual rights listed in the ECHR which necessitates different actions to enable equality of outcome. When the ECHR was drafted (1950), the definition of discrimination cited some examples but was not restrictive so that all forms of discrimination would be captured by its provisions. Discriminating against people who are Deaf/Deaf Sign Language users, Deafened, Deafblind and Hard of Hearing is a breach of human rights law. A solution is for duty bearers to provide 'fully inclusive communication' so that people can enjoy such basic rights as deaf children being able to speak to a hearing parent/carer which is required under Article 8 of the ECHR the 'right to respect for private and family life, home and correspondence'. Communication is a two-way process so inclusive communication delivers the rights of a hearing parent/carer as well as the deaf child. Communication is the key to people enjoying their human rights and the key to integration in society, so must be fully inclusive⁴.

The impact of failing to enable the right to communicate and depriving people of the opportunity to communicate breaches human rights law. Therefore, the spotlight is increasingly on duty bearers' compliance and understanding of their obligations so that Scotland can fulfil its repeated commitments to comply with domestic and international human rights law and to use human rights to make Scotland fairer. Tools have been developed to avoid breaches: the Scottish Human Rights Commission and the Equality and Human Rights Commission Scotland enable informed decision making via an Equality and Human Rights Impact Assessment⁵; guidance on using the PANEL principles is available, rooted in the existing law⁶. So, there is no shortage of tools, what does seem to be a problem is the failure to use them and that is now increasingly being addressed by politicians requiring action from those in leadership and management roles.⁷

The Social Security (Scotland) Bill which is awaiting Royal Assent has as one of its principles 'social security is itself a human right and

⁴ 'Scotland as an Inclusive Communication Nation' at deafscotland website at http://www.scod.org.uk/scotdeaf/wp-content/uploads/2015/04/Inclusive-Communication-Nation_2015-1.pdf

⁵ See SHRC website at <http://eqhria.scottishhumanrights.com/>

⁶ See SJRC website at <http://www.scottishhumanrights.com/rights-in-practice/human-rights-based-approach/>

⁷ For more information on practice, policy and the law see the Scottish Government website at <https://beta.gov.scot/policies/human-rights/>

Participation, Consultation and Communication

essential to the realisation of other human rights'; that 'Scottish Ministers must have regard to the importance of communicating in an inclusive way'; and 'Scottish Ministers must have regard to the importance of providing information in a way that is accessible for individuals who have a sensory, physical or mental disability'.⁸ Therefore inclusive communication is now rooted in law and the obligation on duty bearers must be recognised as going beyond social security.

The Mainstream Issue

Communication is understood to be a human right as well as the gateway to the equal enjoyment of rights. As duty bearers, the Scottish Government, public bodies and all those that provide services and information, cannot communicate with people who are Deaf / Deaf Sign Language users, Deafened, Deafblind and Hard of Hearing people, then people are excluded from society and our democracy. The problem is huge as there are over a million people affected by hearing loss in Scotland: around 1,012,000 people have some degree of hearing loss, of whom approximately 546,000 are over the age of 60; in the 2011 Census, 350,492 of the Scottish population aged 3 and over listed deafness or partial hearing loss as a long-term health condition; there are an estimated 57,000 people with severe to profound deafness.

Enabling integration through inclusive communication is a mainstream issue, not a marginal issue, but policy, service and funding decisions in Scotland marginalises and discriminates because the human rights dimension is generally ignored. Whilst the British Sign Language (BSL) National Plan is very welcome, it reaches only one group of people within the community of people across the spectrum of deafness.

The Human Rights Law – Domestic, European and International

Communication is the driver and the glue in delivering the human rights principles of fairness, respect, equality, dignity and autonomy across our social, economic, civil, political, cultural and environmental rights.

Human rights compliance is required under the Human Rights Act 1998⁹ and the Scotland Act 1998¹⁰. As the UK has ratified international human rights treaties, all our laws and policies should comply with them and

⁸ See Scottish Parliament website at

[http://www.parliament.scot/Social%20Security%20\(Scotland\)%20Bill/SPBill18BS052018.pdf](http://www.parliament.scot/Social%20Security%20(Scotland)%20Bill/SPBill18BS052018.pdf)

⁹ For example, Section 6 at <https://www.legislation.gov.uk/ukpga/1998/42/contents>

¹⁰ For example see Section 57 at <https://www.legislation.gov.uk/ukpga/1998/46/contents>

Participation, Consultation and Communication

there are at least seven which include the right to communicate in a language which the person understands.

The First Minister, the Scottish Government and the Scottish Parliament have adopted a broad interpretation of what human rights should be complied with and therefore delivered by duty bears and enjoyed by rights holders. This is a longstanding policy and political commitment so the failure to use existing budgets and deliver on existing Action Plans is causing significant concern and there are numerous calls for enforcement action:

- In a speech on 9th December 2015 Nicola Sturgeon said “Human rights are central to our concept of inclusive growth – the concept we have put at the heart of our strategy of building a stronger economy and a fairer society ... the protections offered by the HRA and the ECHR should represent a floor rather than a ceiling. We should be looking to go further... In fact, the key challenge for progressive governments ... is finding ways to embed those responsibilities across different areas of policy. That’s what Scotland’s National Action Plan does.”
- The Scottish Government’s ‘Programme for Government’ 2017 committed to and has established, an expert advisory group ‘to make recommendations on how Scotland can continue to lead by example in human rights, including economic, social, cultural and environmental rights’. The FM stated that its report needs to address impact as ““People are also looking for more effective protection of their internationally recognised rights in such areas as housing, health, social security, education and enjoyment of an adequate standard of living.”¹¹
- The Scottish Human Rights Commission (SHRC) launched Scotland’s National Action Plan on Human Rights (SNAP) in December 2013 and the next stage is now being agreed¹². Duty bearers were required to act but there is growing consensus of insufficient progress on delivery so far.
- The Scottish Parliament has established an Equalities and Human Rights Committee in 2016 and it is currently undertaking an inquiry ‘Human Rights and the Scottish Parliament’ which is expected to report by early July 2018 and to make recommendations on action for rights holders as well as duty bearers. In the evidence so far, concern has been repeatedly expressed about the lack of

¹¹ See Scottish Government website at <https://news.gov.scot/news/ambition-on-human-rights>

¹² See SHRC website at <http://www.scottishhumanrights.com/scotlands-national-action-plan/>

Participation, Consultation and Communication

awareness of human rights and their mainstreaming in decisions of government on policy, services and funding.¹³

- The Scottish Parliament has legislated on several occasions for compliance with international human rights treaties that the UK has ratified. The Scottish Commission for Human Rights Act 2006 requires the Scottish Human Rights Commission to promote understanding of human rights and, in particular, to encourage best practice in relation to human rights which are defined as the ECHR as well as 'other human rights contained in any international convention, treaty or other international instrument ratified by the United Kingdom.'¹⁴ The Children and Young People's Commissioner (Scotland) Act 2003 requires the Commissioner, when exercising functions under this Act to have regard to any relevant provisions of the United Nations Convention on the Rights of the Child.¹⁵

The ECHR

The ECHR lists our human rights which can be enforced in domestic courts through the Human Rights Act 1998 including:

- Right to life – Art 2
- Absolute ban on torture/inhuman and degrading treatment – Art 3
- No slavery, no forced labour – Art 4
- Right to respect for private and family life, home and correspondence – Art 8
- Right to hold opinions and receive and impart information – Art 10
- Right to a fair hearing within a reasonable time by an independent and impartial tribunal eg a hearing about which school a child goes, planning decisions and criminal proceedings - Art 6.
- Right to be treated equally under all the rights listed – Article 14¹⁶

There are three categories of rights:

- **Rights which are absolute**, so that cannot be infringed in any way and for any reason eg Article 3 is an absolute ban on degrading treatment.
- **Limited rights** eg Article 5 the right to liberty can be limited under explicit and finite circumstances.

¹³ For more information see

<http://www.parliament.scot/parliamentarybusiness/CurrentCommittees/106453.aspx>

¹⁴ Section 2 at <https://www.legislation.gov.uk/asp/2006/16/section/2>

¹⁵ Section 5 at <https://www.legislation.gov.uk/asp/2003/17/contents>

¹⁶ The full list of rights contained in the ECHR are available at:
http://www.echr.coe.int/Documents/Convention_ENG.pdf

Participation, Consultation and Communication

- **Qualified rights** which require a balance between the rights of the individual and the needs of the wider community or state interest eg Article 8 the right to respect for private and family life can be infringed by a public authority in the “interests of national security”.

The communication needs of an individual are recognised in the ECHR in Article 6 - everyone charged with a criminal offence must be informed promptly, in a language which s/he understands and in detail, of the nature and cause of the accusation.¹⁷ This has implications for the police, the courts, social work and housing services. Failing to enable that two-way communication is a breach of Article 6 and Article 14.

There are tests commonly used to judge whether an infringement of human rights can be justified:

- Is there a legal basis in the relevant domestic law?
- Is the aim of the policy legitimate in terms of the ECHR/HRA?
- Is the impact of the policy proportionate to the legitimate aim being pursued? and
- Is the interference the minimum necessary to achieve the legitimate aim?

Forgetting or neglecting to provide inclusive communication or choosing to diminish the right by opting to provide a go between to interpret what is being said and what is being answered is not acceptable. Given Scottish public policy is about empowerment and inclusion – inclusive communication is in keeping with existing strategy as well as human rights law. Specifically, inclusive communication is expected in the delivery of the UNCRPD in Scotland: the five ambitions and 93 actions announced in 2016 include ‘support services that meet disabled people’s needs and active participation¹⁸ as:

“The Delivery Plan ... is based unequivocally on the social model of disability as opposed to the medical model, which lays the blame on the impairment, rather than on society's inability to provide for their needs, rights, and aspirations. It is also rooted firmly in the UNCRPD and in the aim of the independent living movement, which is that disabled people can live the life they choose, participating equally alongside other citizens in their families, communities, workplaces and wider society, with the support they need.”¹⁹

¹⁷ Article 6 (3) (a) at https://www.echr.coe.int/Documents/Convention_ENG.pdf

¹⁸ See full document at <http://www.gov.scot/Resource/0051/00510948.pdf>

¹⁹ See Scottish Government website at <http://www.gov.scot/Publications/2016/12/3778/3>

Participation, Consultation and Communication

The United Nations' Treaties

The UN Convention on the Rights of Persons with Disabilities (UNCRPD) is the human rights treaty that people often refer to when considering making reasonable adjustments under the Equality Act 2010 and respecting the human rights of disabled people more generally. However, to identify rights and obligations on communications, a much broader number of human rights treaties are engaged including:

- the International Covenant on Economic, Social and Cultural Rights (ICESCR),
- the International Covenant on Civil and Political Rights (ICCPR),
- the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD),
- the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW),
- the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT) and
- the Convention on the Rights of the Child (UNCRC).

UNCRPD – Article 2 defines communication to include languages, display of text, Braille, tactile communication, large print, accessible multimedia as well as written, audio, plain-language, human-reader and augmentative and alternative modes, means and formats of communication, including accessible information and communication technology. Language is defined as including spoken and signed languages and other forms of non-spoken languages.²⁰

ICCPR – Article 5 prohibits any State, group or person in engaging in any activity or perform any act aimed at the destruction of any of the rights and freedoms recognized in the Covenant.²¹

ICESCR – Article 2 sets out the duties of a State to 'progressively realise to the maximum extent of its available resources, the rights listed and to ensure that they are delivered without discrimination such as language.'²²

UNCRC – Article 12 requires States to enable children who can form his or her own views, the right to express those views freely in all matters affecting the child, the views of the child being given due weight in accordance with the age and maturity of the child.²³

²⁰ Article 2 at <https://www.un.org/development/desa/disabilities/convention-on-the-rights-of-persons-with-disabilities.html>

²¹ At <http://www.ohchr.org/en/professionalinterest/pages/ccpr.aspx>

²² At <http://www.ohchr.org/EN/ProfessionalInterest/Pages/ICESCR.aspx>

²³ At <http://www.ohchr.org/Documents/ProfessionalInterest/crc.pdf>

Participation, Consultation and Communication

The practical implementation of the law

Communication is a right, not a privilege, and the right is about direct communication rather than via an interpreter. This point is important as, for example, under Article 10 of the ECHR, the deaf person has the rights to hear what is being said and to communicate back rather than via an intermediary process that includes someone sifting or summarising the information before conveying it to the deaf or hard of hearing person.

Thus far, the strategy on inclusive communication has not properly addressed the human rights implications and it is now appropriate to re-focus and understand the nature and extent of the obligations under human rights law. The future system needs to consider Language and communication barriers to be effective, efficient and accessible. A defence of omission is no longer acceptable.

The Conclusion

In its delivery plan for the UNCRPD the Scottish Government has committed to:

“... drive transformational change to improve the lives of all deaf and disabled people in Scotland. Working to meet our international obligations under the UNCRPD, it will ensure that we make progress towards the day when all disabled people are able and supported to live their lives with freedom, choice, control and dignity. Throughout the lifetime of this plan, we will ensure that we measure our progress in ways that ensure we are truly accountable to Scotland's disabled people.”²⁴

By acknowledging the law on human rights and treating people differently to achieve equality of outcomes, Scotland can rightly claim to be mainstreaming human rights in the delivery of public services and services of a public nature. **This MUST take account of language and communication barriers and is more than a deaf or disability issue in a multi-national Scotland.** There is an increasing expectation that compliance will be active rather than reactive to avoid the consequences of damage to reputation and confidence in service providers. In addition to the range of current human rights initiatives, the forthcoming report on ‘Human Rights and the Scottish Parliament’ from the Equalities and Human Rights Committee in July 2018 is expected to promote scrutiny of performance as well as action on ensuring Scotland is a ‘rights respecting country’.

²⁴ See Scottish Government website at <http://www.gov.scot/Publications/2016/12/3778/3>

Participation, Consultation and Communication

About Us

deafscotland is the lead for all matters concerning deaf people and their issues in Scotland, representing organisations working with and on behalf of deaf people: Deaf/Deaf Sign Language users, Deafened, Deafblind and Hard of Hearing people. deafscotland works collaboratively and strategically, for example it serves on the Reference Group for the First Minister's Advisory Group on Human Rights.²⁵ Our membership provides an effective working partnership between the Third, Public and Private Sectors and the Scottish Government. For more information visit our website <http://www.scod.org.uk/>

For further information contact:

²⁵ For more information see the Scottish Government website at <https://news.gov.scot/news/ambition-on-human-rights>



Contact

deafscotland
C/o The ALLIANCE, The Venlaw Building,
349 Bath Street,
Glasgow,
G2 4AA

Telephone: 0141 248 2474
Mobilephone/SMS: 07925 417 338

Email: admin@deafscotland.org
Website: www.scod.org.uk

 [deafscotland](https://www.facebook.com/deafscotland)

 [@deafscotMedia](https://twitter.com/deafscotMedia)

 [deafscotland](https://www.youtube.com/deafscotland)