

## **Meeting of SILC to discuss the 2016 CRPD Inquiry – 30 May 2023**

### **Report for Scottish Human Rights Commission**

#### **About Scottish Independent Living Coalition (SILC)**

SILC is a coalition of Scottish Disabled People's Organisations (DPOs). We unite across a common goal: disabled people's equal enjoyment of our rights to independent living including our full human rights to equal and active participation and involvement in our communities.

SILC supports strategic programme and decision-makers by meeting with them to share disabled people's lived experience and solutions for change, and their priorities and principles for enacting such change.

SILC is co-convened by Inclusion Scotland and its Independent Chair, Dr Jim Elder-Woodward OBE.

#### **SILC Members**

SILC members are Disabled People's Organisations (DPOs). These are organisations **of**, rather than **for**, disabled people. The marker for this is that over 50% of the Boards of these organisations are disabled people, however the reality is that more commonly that over 90% are disabled people, plus many of the staff. DPOs are membership organisations where the voices of disabled people's own lived experience steers the work of the executive. They are generally 'pan-impairment' and always follow the [social model of disability](#) which has a clear focus on removing societal barriers, as opposed to a 'medicalised' focus on specific impairments and the treatment of them.

The United Nations Committee on the Rights of Disabled People [General Comment 7](#) emphasises the central role of disabled people and DPOs in implementing and monitoring the UN Convention on the Rights of Disabled People. It says that states and public authorities should

prioritise disabled people's views, through their DPOs, and that they should support the capacity and empowerment of DPOs.

## **Background**

The last UN CRPD Committee review of the UK took place in 2017 ([the Concluding Observations report can be viewed here](#)).

In 2022 Inclusion Scotland prepared Scotland's [civil society shadow report](#) for the UK's second periodic review under the CRPD, due to take place this year (2023). The report was produced with SILC members and included further input and reports from Scottish disability and human rights organisations.

Unfortunately, due to backlogs with the UN CRPD Committee, the review due this year has been delayed. The UN Committee has decided instead to do a short follow-up review of the 2016 Inquiry to find out what progress has been made in addressing its recommendations.

The 2016 Inquiry was an investigation by the UN CRPD Committee into the impact of austerity measures on disabled people in the UK under the Optional Protocol. The Inquiry found that there had been 'grave or systematic violations' of disabled people's rights to Employment (Article 27), Independent Living (Article 19) and Adequate Standard of Living and Social Protection (Article 28).

Indications are that the Committee will review the 2016 Inquiry in August 2023.

Inclusion Scotland is working as part of a UK DPO coalition to draft a report for the Committee to provide updates.

The Scottish Human Rights Commission (SHRC) is also preparing a report to feed into the review as part of UKIM (UK Independent Mechanism). The SHRC approached Inclusion Scotland and requested input from SILC to inform the UKIM's report to the UN Committee. An online meeting of SILC was held on 30 May 2023. The following organisations were in attendance:

- Glasgow Disability Alliance
- Lothian Centre for Inclusive Living
- Glasgow Centre for Inclusive Living

- People First (Scotland)
- Inclusion Scotland

Collectively, these organisations have a membership and/or service user group spanning the whole of Scotland and over 10,000 disabled people.

This is a report of the discussion at that meeting, and communications that took place via email before and after the meeting.

## Recommendations

### **Progress on realising disabled people’s human rights in Scotland**

Disabled people have experienced unrelenting attacks on their human rights and it is SILC’s view that the situation for disabled people overall in Scotland has not got any better since the 2016 Inquiry.

Decades of austerity, a pandemic which disproportionately impacted disabled people and now a cost of living crisis that has caused undue hardship have all contributed to reversing progress on disabled people’s realisation of their rights.

Disabled people are still less likely to leave school with qualifications and less likely to have a job than their non-disabled peers. Although we have seen small progress in the narrowing of the disability employment gap, it remains significant at 31.9 percentage points.<sup>1</sup> Poverty rates have worsened for disabled people with half (51%) of all people in poverty living in a household with at least one disabled member.<sup>2</sup> Six in ten people who died with Covid-19 in Scotland were disabled people.<sup>3</sup> These are just some of the outcomes for disabled people in Scotland.

The root cause of all of these outcomes is lack of meaningful consideration of, or deliberate disregard for disabled people’s rights not only by government, but by services and society in general. Despite the Scottish Government’s commitment to realising human rights, this is not reality for disabled people on a day-to-day basis. SILC believes the

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<sup>1</sup> [Labour Market Statistics for Scotland by Disability: January to December 2022 - gov.scot \(www.gov.scot\)](https://www.gov.scot/publications/labour-market-statistics-for-scotland-by-disability-january-to-december-2022/pages/1-1-introduction.aspx)

<sup>2</sup> Scottish Government (2023), [Poverty and Income Inequality in Scotland 2019-22](https://www.gov.scot/publications/poverty-and-income-inequality-in-scotland-2019-22/pages/1-1-introduction.aspx)

<sup>3</sup> <https://www.nrscotland.gov.uk/files/statistics/covid19/covid-deaths-21-report-week-11.pdf>

incorporation of the CRPD into Scots law provides a real opportunity to change this and requests that the Committee explicitly encourages the Scottish Government to pursue full and effective incorporation.

## **Recommendation (a)**

Conduct a cumulative impact assessment of the measures adopted since 2010, which are referred to in the present report, on the rights to independent living and to be included in the community, to social protection and to employment of persons with disabilities. The State party should ensure that such an assessment is rights-based and meaningfully involves persons with disabilities and their representative organizations;

### **SILC response:**

SILC believes that government, in all its forms (including local authorities), still does not take account of the interlinking barriers that disabled people face and the cumulative impact of these. In addition, their focus on working in silos is a major barrier to addressing the complex and multi-faceted barriers and makes the landscape very difficult for disabled people and DPOs to navigate.

SILC acknowledges the Scottish Government's efforts to impact assess its policies including producing a qualitative impact assessment of budget decisions against all protected characteristics and certain issues such as the employment gap. However, we are not aware of how the Scottish Government assesses the **cumulative** impact of different policies on disabled people.

Disability competence in policy and practice is persistently lacking at Scottish Government, NHS and local authority levels – “they don't know what they don't know” and the profound impact of the financial climate for disabled people means that there is no time for them to stand back and learn. Repeated evidence tells us disabled fare worst in every area of life and have been hit especially hard by the pandemic and cost of living crisis. Yet repeated policies fail to address the poverty and inequality faced.

## **What SILC would like the Committee to recommend**

That the Scottish Government:

- Recognise the unrelenting crisis that disabled people have been facing for decades and the interlinking and intersectional barriers and the cumulative impact on disabled people. They should act to fully implement the recommendations of the 2016 CRPD Committee Inquiry and plan action around this. To do this, they first need to identify the best way to measure cumulative impact including through experiential research, and the data gaps that exist and how to address them.
- Develop a guidance pack on disability competence and cumulative impact measurement and action setting for policy leads across government and explore the opportunities for widening this out to local authorities, health boards, and other public bodies.

### **Recommendation (b)**

Ensure that any intended measure of the welfare reform is rights-based, upholds the human rights model of disability and does not disproportionately and/or adversely affect the rights of persons with disabilities to independent living, to an adequate standard of living and to employment. To prevent adverse consequences, the State party should carry out human rights-based cumulative impact assessments of the whole range of intended measures that would have an impact on the rights of persons with disabilities;

#### **SILC response:**

As noted above, SILC is not aware of how or if the Scottish Government meaningfully assesses the cumulative impact of different policies on the rights of disabled people. Nor how the impact of different policies is measured across the life course.

SILC believes there is a lack of understanding of the cumulative and interrelated barriers that disabled people face. In our view, in Scotland at present there is a tendency to focus on specific issues without considering how this interacts with other matters and how the lack of

intersectional focus fundamentally impacts the barriers disabled people face. For example, the Scottish Government's focus on child poverty has had the unintended consequence of diverting money away from tackling disabled people's poverty, despite the fact that 43% of children living in poverty live in a household with at least one disabled member.<sup>4</sup>

### **Welfare reform - Implementation of disability benefits**

SILC welcomes the Scottish Government and Social Security Scotland's commitment to human rights and the principles of fairness, dignity and respect in the devolved social security system. However, we are concerned that this can be entrenched in the rhetoric and is not always implemented in practice. For example, we are aware that Social Security Scotland has declined to accept applications via letter, despite committing to accept applications in any format accessible to the individual. We are also aware of issues with Social Security Scotland refusing to deal with disabled people's representatives despite mandates being provided for this.

The time taken to process Adult Disability Payment and Child Disability Payment has increased and processing times vary from a few weeks to over six months in more complex cases. Social Security Scotland has said that it is working to speed up processing times.<sup>5</sup> However, these delays are causing undue hardship for disabled people.<sup>6</sup>

Disabled people and DPOs have raised concerns about the mobility component of Adult Disability Payment - it does not uphold the human rights model of disability.<sup>7</sup> It is based on an arbitrary points based system about how far someone can walk adopted from the original UK system. Current systems and processes are set up to grade our disability or make us prove how bad things are. Social Security should be about supporting people to live full, healthy lives where we can contribute and be part of society. But it often feels that if disabled people are living full, healthy lives then their social security would be taken away. We can't

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<sup>4</sup> Scottish Government (2023), [Poverty and Income Inequality in Scotland 2019-22](#)

<sup>5</sup> Scottish Parliament Information Centre (2023), [Scottish Social Security: Application Processing Times](#)

<sup>6</sup> ['Significant delays' to new disability benefits - BBC News](#)

<sup>7</sup> [Adult Disability Payment \(Mobility Component\) GDA Consultation Response • Glasgow Disability Alliance; Inclusion Scotland ADP Consultation Response](#)

win. SILC welcomes the Independent review of Adult Disability Payment which the Scottish Government has said will begin after Summer 2023.

### **What SILC would like the Committee to recommend**

That the Scottish Government:

- Continue its commitment to human rights in social security, but ensure this translates into practice by, for example, improving the decision-making processes that have the effect of reducing delays and reducing the number of enquiries, complaints, redeterminations and appeals.
- Ensures the forthcoming independent review of Adult Disability Payment is coproduced with disabled people, sufficiently resourced and has appropriate terms of reference to enable a thorough and effective investigation, and planning for improvements that progress disabled people's human rights to social protections.

### **Recommendation (c)**

Ensure that any intended legislation and/or policy measure respects the core elements of the rights analysed in the present report, that persons with disabilities retain their autonomy, choice and control over their place of residence and with whom they live, that they receive appropriate and individualized support, including through personal assistance, and have access to community-based services on an equal basis with others, that they have access to security social schemes that ensure income protection, including in relation to the extra cost of disability, compatible with an adequate standard of living and ensure their full inclusion and participation in society, and that they have access to and are supported in gaining employment in the open labour market on an equal basis with others;

### **SILC response:**

#### **Social care support**

Social care support is in crisis but there is no recognition of this by the Scottish Government. Disabled people are not able to live independently because of the crisis and Article 19 is not being realised in Scotland.

SILC members have countless examples of disabled people trapped in their homes and generally prevented from living a life of their choosing. One example of this is a disabled woman fleeing domestic violence who was forced to live in a care home for a year because of lack of social care support in the community.

Cuts to social care during the pandemic were devastating for disabled people.<sup>8</sup> Despite being three years on from the start of the pandemic not everyone's social care package has been returned to pre-pandemic levels, and changes in circumstances have not been assessed or addressed.

Budget cuts are further devastating social care support.<sup>9</sup> £22 million of cuts were made to the social care budget in Glasgow City Council alone.<sup>10</sup>

Recruitment and retention of staff in the social care support sector has become more difficult with key reasons for this being low pay and wage competition, a competitive job market and the UK's EU Exit.<sup>11</sup>

Budget cuts and staff shortages are driving a culture which lacks empathy and fails to value lived experience and rights to fully and equal participation in society. This makes working together, coproduction and codesign more challenging than ever.

SILC is disappointed by the lack of progress made on the proposed Scottish National Care Service. Push back against the legislative Bill for this from various groups and disagreement means it is unlikely to have the weight it needs to change the system or deliver the transformational change that disabled people had hoped for and which would help to progress our human rights.

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<sup>8</sup> [Rights-At-Risk-Main-Report.pdf \(inclusionScotland.org\)](#); [Supercharged: A Human Catastrophe Inequalities, Participation and Human Rights before, during and beyond COVID1 \(gda.scot\)](#)

<sup>9</sup> <https://ifs.org.uk/news/scottish-budget-2023-24-confirms-big-cuts-many-public-services>

<sup>10</sup> [Glasgow cuts £22m from health and social care services - BBC News](#)

<sup>11</sup> Scottish Government (2022), [The Contribution Of EU Workers In The Social Care Workforce In Scotland 2022](#)



In addition, the Scottish Government's commitment to scrap social care charges has not happened.<sup>12</sup> Care charges are going up and are completely unaffordable for many disabled people. In some cases, people's social care charges are going up by £200 a month. In Glasgow, the Council can now take up to 75% of a person's available income after housing costs. This is especially untenable during a cost of living crisis.

## **Covid-19**

Social isolation continues to be an issue for disabled people left behind as Covid-19 protections have been lifted, with some disabled people and their immediate carers effectively still shielding, without the support that was previously available such as universal testing, and community based support. This has been exacerbated by confusion over vaccinations and treatments with those eligible for treatments not always eligible for additional vaccinations and vice versa. In addition, those receiving vaccinations did not always benefit from protections due to being immuno-suppressed.

On 16 May 2023, guidance to wear face masks in healthcare settings was withdrawn in Scotland. This was met by outcry from disabled people at high risk and was done with apparently little/no consultation.

## **Remedial steps towards deinstitutionalisation**

Many people with a learning disability still do not have choice and control over where they live and who they live with. They are often told that if their support needs are too high then they need to live with other people - people that they do not know or have not chosen to live with.

The Scottish Government's commitment to reducing the number of people living in hospitals is too vague and will not be achieved by March 2024 – much of the implementation work has been around putting more policies and processes in place. We are concerned that the focus is on the wrong things and not the person themselves and their rights. We are further concerned that Scottish Government funding may be being used to develop plans for 'core and cluster' housing for people being moved out of hospital. Moving people into such housing still amounts to institutionalisation by ghetto-isation.

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<sup>12</sup> [Nicola Sturgeon pledges to scrap non-residential social care charges | The National](#)

## **Cost of living crisis and independent living**

The cost of living crisis is also having consequences for disabled people's right to live in a home of their choosing. Increasing costs for using medical equipment and assistive technology is forcing some disabled people to make stark choices about whether and how often they use such equipment.<sup>13</sup> In some cases disabled people are being forced to choose between 'eating or breathing',<sup>14</sup> putting their health at risk with the inevitable consequence of being forced to go into hospital or residential care.

## **Social security**

Poverty rates remain higher for disabled people in Scotland - half (51%) of all people in poverty are living in a household where someone is disabled – despite making up around 20% of the population.<sup>15</sup>

Reserved and devolved benefits including Adult Disability Payment are inadequate and need to be urgently updated to address the rising cost of living which disproportionately impacts upon disabled people who face additional impairment related costs.<sup>16</sup> In particular, energy costs for powering essential equipment that some disabled people need such as hoists, beds, breathing equipment, dialysis machines, powered chairs and monitors were already expensive. Now some households including a disabled person are having to make choices about using this essential equipment, heating their home, or eating properly.<sup>17</sup> And face hospitalisation if their health deteriorates.

The current cost of living crisis comes after a decade of austerity that has eroded the safety net for disabled people, a pandemic response that did not prioritise our human rights, and an approach to economic recovery that does not value us.

## **Work/employment**

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<sup>13</sup> [Thousands of disabled people tell MPs: Cost-of-living crisis is affecting our health – Disability News Service](#); [Cost of living crisis hits disabled people hard- New Report Published. - Inclusion Scotland](#)

<sup>14</sup> ['Eating or breathing': energy costs force stark choices on disabled people | UK cost of living crisis | The Guardian](#)

<sup>15</sup> Scottish Government (2023), [Poverty and Income Inequality in Scotland 2019-22](#)

<sup>16</sup> [Disability Price Tag 2023: the extra cost of disability | Disability charity Scope UK](#)

<sup>17</sup> [Inclusion-Scotland-Briefing-Disabled-People-Poverty-and-the-Cost-of-Living-Crisis-Version-1-November-22nd.pdf \(inclusionScotland.org\)](#)

The disability employment gap in Scotland remains high – in 2022, it was 31.9 percentage points with 82.5% of non-disabled in employment compared to 50.7% of disabled people.<sup>18</sup> The number of disabled people in employment varies significantly between impairment type and people with a learning disability, autism and mental health conditions are even less likely to be in work.<sup>19</sup> SILC considers that the Scottish Government’s commitment to halving disability employment gap by 2038 (set in 2016) is unambitious, and progress made to date has been negligible.<sup>20</sup>

SILC would like to see the public sector do more to implement the Public Sector Equality Duty by being proactive in its use of positive action to recruit and support disabled people

Access to Work, the UK wide disability employment scheme to support employers to make reasonable adjustments for disabled employees, has become increasingly difficult to access. There are backlogs and long waiting times which is making it more difficult for disabled people to get the adjustments they need to stay in work. Disabled people who are recruited to time-limited training and internship opportunities find themselves unable to participate and benefit from such schemes as the reasonable adjustments they need do not materialise in time.

Fair Start Scotland is Scotland’s devolved employment support service, which aims to help people to prepare for and enter sustainable employment. However, only 32% of disabled people who joined the programme started work and just 23% stayed in work for 3 months, 19% for 6 months and 14% for 12 months.<sup>21</sup> The service does not address the specific challenges faced by people with learning disabilities and the take up amongst this group has been low.<sup>22</sup>

SILC would like to see No One Left Behind (Scotland’s employability strategy) funding used for national and local co-design of new accessible employability support that is specifically targeted at disabled job seekers.

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<sup>18</sup> [Labour Market Statistics for Scotland by Disability: January to December 2022 - gov.scot \(www.gov.scot\)](https://www.gov.scot/publications/labour-market-statistics-for-scotland-by-disability-january-to-december-2022/)

<sup>19</sup> [Labour Market Statistics for Scotland by Disability: January to December 2022 - gov.scot \(www.gov.scot\)](https://www.gov.scot/publications/labour-market-statistics-for-scotland-by-disability-january-to-december-2022/)

<sup>20</sup> <https://www.gov.scot/publications/fairer-scotland-disabled-people-delivery-plan-2021-united-nations-convention/>

<sup>21</sup> [Scotland’s Devolved Employment Services: Statistical Summary \(www.gov.scot\)](https://www.gov.scot/publications/scotland-devolved-employment-services-statistical-summary/)

<sup>22</sup> [Learning-disabilities-employment-report-final.pdf \(fraserofallander.org\)](https://www.fraserofallander.org/learning-disabilities-employment-report-final.pdf)

## **What SILC would like the Committee to recommend**

That the Scottish Government:

- Recognise the crisis in social care and the detrimental impact of this on disabled people's right to independent living including their physical, mental and financial wellbeing and their rights to choice and control and their right to play a full and equal part in their communities.
- Act on its commitment to end care charging which is a tax paid only by disabled people.
- Progress the National Care Service Bill without delay, putting disabled people at the centre of discussions and retaining the original vision and aims.
- Acknowledge that some disabled people are still at high risk of Covid-19 and put in place protections including providing information about risk levels, mask wearing in health and social care settings and ensuring access to booster vaccinations and other treatments and support to help alleviate against loss of income, and isolation.
- Set and deliver clear targets for moving people out of hospitals and institutions into independent living accommodations, and ensure transparency in the use of funds for housing people in the community.
- Work with DPOs to create a disability poverty reduction plan which has clear and measurable actions.
- Commit to and urgently rollout an energy subsidy for health equipment at home, including life-saving and equipment for independent living.
- Fund the design and implementation of new accessible employability support that is specifically targeted at disabled job seekers. Ensure coproduction and codelivery with disabled people and their DPOs – who have a greater track record of delivering employment outcomes for and with disabled people.
- Work with the UK Government to improve the Access to Work scheme and implement mitigations to ensure disabled people have the support they need to work.

## **Recommendation (d)**

Ensure that public budgets take into account the rights of persons with disabilities, that sufficient budget allocations are made available to cover the extra costs associated with living with a disability and that appropriate mitigation measures, with appropriate budget allocations, are in place for persons with disabilities affected by austerity measures;

### **SILC response:**

#### **Budgeting**

SILC acknowledges the Scottish Government's efforts to impact assess its budget policies including producing a qualitative impact assessment of budget decisions against all protected characteristics.<sup>23</sup>

SILC is concerned that disabled people are losing out on funding because of lack of consideration of the interrelatedness of different issues. For example, the Scottish Government's focus on child poverty has had the unintended consequence of money being diverted away from tackling disabled people's poverty, despite the fact that 43% of children living in poverty living in a household with a disabled member. This suggests entrenched siloed working and a lack of understanding or appreciation of the way that barriers are interlinked and compounded.

#### **DPO funding**

DPOs are representative organisations of disabled people. The UNCRPD requires our involvement in implementing and monitoring the Convention. States and public authorities should prioritise disabled people's views, through their DPOs, and they should support the capacity and empowerment of DPOs. This means that DPOs, representing the collective and must be adequately supported and funded.

SILC believes that DPOs do not get sufficient budgets to cover the extra costs we incur, such as for reasonable adjustments for disabled

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<sup>23</sup> <https://www.gov.scot/binaries/content/documents/govscot/publications/impact-assessment/2022/12/equality-fairer-scotland-budget-statement-2023-24/documents/annex-d-detailed-analysis-equalities-fairer-scotland-issues-portfolio/annex-d-detailed-analysis-equ>

members, especially at a time when DPO operational costs are rising steeply due to inflation. Funders also do not take account of the fact that many DPOs are working holistically across all policy areas because of the magnitude and range of barriers disabled people face and are working with disabled people in crisis to support them. Conditionality of some funding programmes includes restrictions on spending on adjustments and minimum income thresholds which exclude DPOs from applying

### **Independent Living Fund**

The Independent Review of Adult Social Care recommended that the Independent Living Fund Scotland (ILFS) be reopened to new applicants.<sup>24</sup> A re-opened ILFS would provide welcome and early progress pending the longer-term development of a National Care Service. However, SILC is disappointed that despite apparent support from the Scottish Government, no progress has been made.

### **What SILC would like the Committee to recommend**

That the Scottish Government:

- Resource DPOs to provide training on disability competence across Scottish Government and other areas (local authority, funders, CAS)
- Involve DPOs in successor funding to Equality and Human Rights Fund funding and work towards ensuring that there is a DPO in every (local authority) area.
- Re-open the [Independent Living Fund Scotland](#) to new applicants.

### **Recommendation (e)**

Introduce the adjustments necessary to make all information, communications, administrative and legal procedures in relation to social security entitlements, independent living schemes and

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<sup>24</sup> Scottish Government (2021), Independent Review of Adult Social Care in Scotland

employment/unemployment-related support services fully accessible to all persons with disabilities;

### **SILC response:**

There is a widespread lack of consistency in the making of adjustments to ensure all information, communications, administrative and legal procedures in relation to social security entitlements, independent living schemes and employment/unemployment-related support services is fully accessible to all disabled people. One SILC member described obtaining accessible information, communications and procedures as a 'constant battle'.

In relation to the Scottish Government, SILC feels that when progress is made with government departments or civil servants this can be lost when specific staff members move on and there is a lack of succession planning and communication around this. Accessible communications needs to be a centralised function within Scottish Government to ensure that it is done consistently and across the board.

### **Welfare rights advice**

Disabled People must be considered and involved in anti-poverty initiatives and approaches, in particular income maximisation. Disabled people are not served well by inaccessible advice services and are therefore excluded from vital support that could lift them out of poverty. This lack of accessibility is not restricted to lack of accessible information and communication and built environment but also extends to 'disability competency' (awareness of the cumulative impact of the barriers disabled people face) that many advice services lack. Disabled people need accessible, targeted welfare rights advice and representation to be able to achieve successful outcomes.

### **What SILC would like the Committee to recommend**

That the Scottish Government:

- Create a centralised accessible communications function within the Scottish Government that provides guidance and support to all

departments to ensure consistency in the provision of accessible government information.

- Carry out a scoping exercise of income maximisation to identify what is available and accessible to disabled people. Bring together providers to address issues identified.
- Advice and support services, funded by central or local government should be required to instigate full disability inclusion and competence in their services.

## **Recommendation (f)**

Ensure access to justice by providing appropriate legal advice and support, including through reasonable and procedural accommodation for persons with disabilities seeking redress and reparation for the alleged violation of their rights, as covered in the present report;

### **SILC response:**

#### **Criminal justice**

SILC is concerned about the lack of support for disabled people in the criminal justice system. When information is known about an accused person's impairment, this is not always passed to others in the system, meaning adjustments are made inconsistently.

Adjustments for Deaf people are also hard to come by. Deaf BSL users are still not allowed to serve on juries and there is a lack of available high quality BSL/English interpreters in courts and police stations.

Increased adoption of audio-visual technology and remote trials in the criminal justice system acts as a barrier to understanding and communication for disabled people but there has been a lack of consultation with disabled people and DPOs on how to mitigate this.

#### **People with learning disabilities**

There continues to be a dearth of support for people with learning disabilities in the criminal justice system. A significant number of the people with learning disabilities who enter the criminal justice system would not be entitled to support by local authorities due to the increasingly narrow needs assessment criteria of 'critical' and



‘substantial’ need. This needs to be considered and addressed if we hope to intervene at an early stage to prevent people with learning disabilities entering the criminal justice system and to prevent re-offending once people have completed their sentence.<sup>25</sup>

People First (Scotland) has worked with the Scottish Government to produce a Letter of Rights in Easy Read<sup>26</sup> for people who come into contact with the criminal justice system, however it is unclear whether this is consistently made available to people.

SILC remains concerned that people with learning disabilities are more likely to be diverted into the forensic system, meaning that they are detained for longer periods or subject to greater restrictions.

### **Civil justice**

Disabled people are more likely to say they have experienced a civil law problem, but there are still barriers to getting advice, for example, lack of availability, inaccessible information and buildings, not being listened to, costs, lack of legal aid and discriminatory attitudes. Costs associated with reasonable adjustments are not met by legal aid. For example, BSL users requiring the use of interpreters when dealing with lawyers.

### **What SILC would like the Committee to recommend**

That the Scottish Government:

- Commit to changing the law so that Deaf BSL users are able to serve on juries.
- Work with criminal justice partners to ensure the Easy Read Letter of Rights is widely accessible and made available to individuals as a matter of course.

### **Recommendation (g)**

Actively consult and engage with persons with disabilities through their representative organizations and give due consideration to their views in

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<sup>25</sup> [Conference-Report-wish-I-could-be-back-in-prison-1.pdf \(soldnetwork.org.uk\)](#)

<sup>26</sup> [Your Rights when you are at the Police Station - Easy Read Version \(soldnetwork.org.uk\)](#)

the design, implementation, monitoring and evaluation of any legislation, policy or programme related to the rights addressed in the present report;

### **SILC response:**

SILC welcomes the Scottish Government's endeavours to consult and engage with disabled people but we would like to see this to be more meaningful with transparency and accountability. SILC is aware of 'consultation fatigue' amongst disabled people who are regularly asked for their views on issues but feel that it rarely leads to any real change in their day-to-day lives. This is another example of the disconnect between rhetoric and reality.

There is inconsistency in the extent to which the Scottish Government actively consults and engages with disabled people and DPOs. For example there was no consultation prior to the decision to remove the requirement for face masks health and social care settings. SILC is concerned that 'due consideration' is not given to the views of disabled people in the Scottish Government's consultation processes. A DPO involving hundreds of disabled people in formulating a consultation response is not given more weighting than a response from an individual. The collective voice of disabled people, and our human rights which the Scottish Government has widely declared support for, must be given more prominence.

### **Learning Disability, Autism and Neurodiversity Bill**

SILC is concerned that the consultation process for the learning disability bill is not accessible for people with a learning disability. Members of People First do not feel listened to in the process so far and have been unable to sit on the lived experience panel. Members of the panel must be individuals, excluding those from membership organisations being represented on the panel.<sup>27</sup>

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<sup>27</sup> [Who can apply? - Learning Disability, Autism and Neurodiversity Bill - Lived Experience Advisory Panel: recruitment information - gov.scot \(www.gov.scot\)](#) - "You will be representing yourself on the panel as an individual expert by experience, rather than representing the views of a specific organisation."

SILC is further concerned about the grouping of learning disability, autism and neurodiversity in the same Bill. These are different impairment groups and as such require different approaches and targeted funding. DPOs are concerned should this Bill be passed it will lead, in future, to further combined legislation and work and a subsequent lack of effect focus for individual groups and their experiences. For example, there is now a strategy for all 3 groups. DPOs and other charities have persistently expressed this view to the Scottish Government, however no consideration appears to have been given to these concerns.

### **What SILC would like the Committee to recommend**

That the Scottish Government:

- Produce and implement lived experience guidance which sets out the principles and steps for meaningful participation and which recognises the value of the collective and individual voice.
- Address the imbalance in the weight given to consultation responses which represent a collective voice – set out transparently how due consideration is given to disabled people’s views.

### **Recommendation (h)**

Take appropriate measures to combat any negative and discriminatory stereotypes or prejudice against persons with disabilities in public and the media, including the assertion that dependency on benefits is in itself a disincentive to seeking employment, implement broad mass media campaigns, in consultation with organizations representing persons with disabilities, particularly those affected by the welfare reform, to promote them as full rights holders, in accordance with the Convention, and adopt measures to address complaints of harassment and hate crime by

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*“If you are an office-bearer (paid or unpaid) or paid staff member of an interest group that has a publicly-stated stance on the Bill or Commissioner, then you will not be able to apply for a role on this panel”*

persons with disabilities, promptly investigate those allegations, hold the perpetrators accountable and provide fair and appropriate compensation to victims;

### **SILC response:**

There was a 14% increase in the number of disability hate crime charges between 2019/20 and 2020/21.<sup>28</sup> This is the highest number of charges reported since it came into force in 2010.

Hate incidents which do not have the supporting evidence to meet the threshold for Police Scotland to report to the Crown Office and Procurator Fiscal Service increased significantly during the pandemic. SILC members have also seen an increase in neighbour disputes and anti-social behaviours which disabled people feel are motivated by disability prejudice but cannot be reported as crimes. One significant issue is the lack of data on disability hate crime by impairment type. Police Scotland's operational response to hate incidents and crimes that are reported (e.g. through Third Party Reporting) varies.

SILC is concerned that since the start of the pandemic attitudes towards disabled people have deteriorated further. The rhetoric of politicians and in the media around who was at risk from the virus and who would be prioritised for ventilation made disabled feel expendable and unwilling to go to hospital.<sup>29</sup> Initial Scottish Government guidance for doctors making treatment decisions during the pandemic was based on blanket approaches to age, medical conditions or disability was discriminatory.<sup>30</sup>

The cost of living crisis has also seen a deterioration in attitudes towards disabled people in receipt of benefits, reminiscent of those seen when the Committee conducted its Inquiry in 2016.<sup>31</sup>

### **What SILC would like the Committee to recommend**

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<sup>28</sup> [Hate Crime in Scotland, 2021-22 | COPFS](#)

<sup>29</sup> [Disabled people still fear treatment denial \(healthandcare.scot\); SW2020-21 Covid-19 - Covid-19, disability and the new eugenics: Implications for social work pol \(google.com\)](#)

<sup>30</sup> [Equality watchdog says virus guidance discriminates \(healthandcare.scot\)](#)

<sup>31</sup> [A decade after the Tories demonised disabled people on benefits, it's happening again | Frances Ryan | The Guardian; Broadcaster's silence over 'rabblouser' tweet on disability benefits – Disability News Service; Exactly how much of your salary bankrolls Britain's benefits system \(telegraph.co.uk\); When will the Tories face up to Britain's benefits scandal? | The Spectator](#)

That the Scottish Government:

- Demonstrate active leadership by monitoring and responding to public attitudes towards minority protected characteristic groups and taking steps to challenge prejudicial discourses that emerge.
- Raise awareness of, and encourage respect for human rights amongst the general public through public education campaigns.
- Work with disabled people to co-design an educational programme to be used in schools to teach children and young people about the impact of discrimination on minority groups and to tackle stereotypes.

## **Recommendation (i)**

Ensure that, in the implementation of legislation, policies and programmes, special attention is paid to persons with disabilities living on a low income or in poverty and to persons with disabilities at higher risk of exclusion, such as persons with intellectual, psychosocial or multiple disabilities and women, children and older persons with disabilities. Those measures should be put in place within contributive and non-contributive regimes;

### **SILC response:**

Intersectional discrimination is a major issue and its impact is not always immediately apparent to policy and decision-makers. There is a widespread lack of focus and understanding of intersectional barriers and this is underpinned by a clear lack of intersectional data in Scotland which makes it difficult to set baselines and targets and to monitor outcomes. This includes disabled people generally, but also applies to specific impairment types, in particular for people with a learning disability.<sup>32</sup>

A Scottish Government evidence synthesis found that:

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<sup>32</sup> [The challenges of estimating Scotland's learning disabled population and why it matters | FAI \(fraserofallander.org\)](https://www.fraserofallander.org/)

“Currently in Scotland there is a lack of intersectional data on outcomes, and policymaking rarely takes an intersectional approach” and,

“A "one size fits all" approach to narrowing inequality leaves people behind, especially where multiple inequalities intersect.”<sup>33</sup>

SILC is very concerned that disabled people have been and continue to be left behind exactly because of a failure to recognise and respond to intersecting inequalities and barriers. The complex nature of many disabled people’s lives, including that we are impacted by so many services, means that the risk of being left behind is greater and the consequences more severe.

### **What SILC would like the Committee to recommend**

That the Scottish Government:

- Routinely collect and publish intersectional data, including by impairment type.
- Amend the relevant regulations to require public services, when carrying out Equality Impact Assessments, to consider the impact of policies and services on people with more than one characteristic so that they can identify and deliver appropriate action

### **Recommendation (j)**

Set up a mechanism and a system of human rights-based indicators to permanently monitor the impact of the different policies and programmes relating to the access to and enjoyment by persons with disabilities of the right to social protection and an adequate standard of living, the right to live independently and to be included in the community and the right to work, in close consultation with persons with disabilities and their

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<sup>33</sup> [Using intersectionality to understand structural inequality in Scotland: evidence synthesis - gov.scot \(www.gov.scot\)](https://www.gov.scot/resources/consultations/using-intersectionality-to-understand-structural-inequality-in-scotland-evidence-synthesis)

representative organizations in all regions and countries that constitute the State party;

**SILC response:**

SILC is concerned that the language of human rights is used often by the Scottish Government to set out policy intentions, but that it rarely leads to real change in practice. This implementation gap between policy and reality is identified by DPOs and other services that work directly with disabled people.

A more effective accountability and governance infrastructure for disability equality in Scotland is needed. This includes not only setting up a mechanism and a system of human rights-based indicators to permanently monitor the impact of the different policies and programmes, but also collating and tracking progress on meeting recommendations made via various Scottish Government groups, and action plans. The absence of institutional memory within the current system and structures is frustrating, and disempowering and can be understood as a mechanism by which systemic discrimination occurs.

**What SILC would like the Committee to recommend**

That the Scottish Government:

- In preparation of its forthcoming Disability Equality Strategy clearly define conditions for success will be agreed at the outset, and ensure robust and transparent measurement processes are established and delivered on, and that progress is monitored at quarterly intervals with recourse to DPOs and the lived experience of disabled people
- Set up a mechanism and a system of human rights-based indicators to permanently monitor the impact of policies and programmes
- Collate and track progress on meeting recommendations made via various mainstream Scottish Government groups, and action plans.
- Ensure its forthcoming mainstreaming strategy is adequately resourced including by building dedicated equality and human

rights expertise within each of its directorates, and that its delivery and impact is monitored, evaluated and progressively improved.

## **Recommendation (k)**

Respond to the present report within the time limit prescribed under the Optional Protocol, widely disseminate the Committee's findings and recommendations and provide appropriate follow-up to the recommendations of the present report, including during the consideration of the State party's initial report before the Committee.

### **SILC response:**

As far as SILC is aware, the UK government has provided several follow-up reports to the Committee, with the exception of 2019 and 2020 due to the pandemic. We believe that the Scottish Government fed into these reports to cover devolved issues. SILC is not aware of any further work done to by the Scottish Government to disseminate the Committee's Scotland specific findings and recommendations.

SILC understands that the Scottish Government took measures to mitigate some of the UK Government's welfare reforms criticised by the Committee. However, given that there has since been further devolution and the Scottish Government is now responsible for disability benefits and a wide range of other areas impacting disabled people, it is important that it takes action on the Inquiry findings and recommendation (K).

### **What SILC would like the Committee to recommend**

That the Scottish Government:

- Acknowledge the findings of the Inquiry and the relevance of the recommendations to its work.
- Work with DPOs to address the Committee's recommendations by taking steps to meet the further recommendations made by SILC.