

LEARNING DISABILITIES, AUTISM AND NEURODIVERGENCE (LDAN) BILL: CONSULTATION

SOCIAL WORK SCOTLAND RESPONSE

Closes: 21 April 2024

INTRODUCTION

Social Work Scotland is the professional body for social work leaders, working closely with our partners to shape policy and practice, and improve the quality and experience of social services. We welcome this opportunity to share our views on the Learning Disabilities, Autism and Neurodivergence Bill and see it as a chance to consider and contribute to the review of the structures that social work and social care professionals work within to deliver the support and protection that people, families and communities are calling for.

In responding to this consultation, we would take the opportunity to highlight the importance of the rights, assets, and relationship-based practice undertaken by social workers - and the application of theories such as systems theory¹ that make for a robust assessment of individuals circumstances, assets, and needs. The wellbeing of individuals is impacted on by a myriad of factors, including and not limited to their relationships, social and educational connections, income, housing status and personal history. It is good therefore, to see these things referenced explicitly within the consultation. The balance between a health model and social model of disability is essential if the aspirations noted throughout this consultation are to be realised.

KEY POINTS FROM OUR RESPONSE

Workforce Pressures: Our members, who are the leadership in Social Work, have consistently highlighted issues specifically around resources and workforce that will influence the likelihood of successful enactment of the Learning Disabilities, Autism and Neurodivergence Bill. Over the past decade, Social Work Scotland has taken every opportunity available to underline how pressing the need is for investment, paired with reform, across all aspects of social care and social work.

Mandatory Training: linked to the above. To mandate training, Scottish Government and Local Government must first create the conditions that will support the workforce to be freed up to attend learning opportunities. If these conditions do not exist, it is unfair to place the burden of responsibility onto practitioners. We would highlight the recent introduction of the supported year mandatory training for Newly

¹ https://www.sagepub.com/sites/default/files/upm-binaries/32947_Chapter1.pdf

Qualified Social Workers as an example of the need for careful consideration prior to implementation. Early Implementation sites have reported that they have not been resourced to adequately meet these new demands. Many report to having had to seek internal funding from overstretched internal budgets to support implementation. The Workforce are supportive of this work but are concerned about readiness and having adequate resource to allow them to support the required work.

Additionally, the implementation science approach has taught us, through the roll-out of the Scottish Child Interview Training Model, as well as our own self-directed support project, that considering what it will really take to embed and equip people with not only the skills but the resources and confidence to put training into practice and to refine the skill enough to realise change, is a much longer-term and resource-heavy consideration than a one-off session

Finally, and fundamentally, we are not clear on the requirement of legislation to achieve the stated aims of the Bill and remain convinced that these could be achieved in a timelier and cost-effective manner by means of policy development, and a network of shared learning as opposed to the creation of new legislation.

CONSULTATION QUESTIONS

The questions in this document refer to information contained in our main consultation document [here](#). There are also alternative formats you can access.

You need only answer the sections most relevant to you and all answers in the Bill proposal sections should be provided voluntarily. The questions are mostly consistent throughout the sections and space is provided for your response – if you need more space, additional pages can be added.

PART 1: REACH AND DEFINITIONS: WHO SHOULD THE LEARNING DISABILITIES, AUTISM AND NEURODIVERGENCE (LDAN) BILL INCLUDE?

Who Should the Bill include?

A Bill has to set out who it will apply to and in what circumstances. This means our Bill has to say which groups of people it will apply to.

This is important because it sets out who can benefit from the Bill's provisions, and who can rely upon it to uphold their rights or seek redress for their rights being breached.

If the people included are not properly defined, the legislation won't be able to fully benefit the people it is intended for.

What can the LDAN Bill do?

There are 3 different potential approaches for this Bill.

Proposal 1: ‘People who are Neurodiverse’/‘Neurodiverse People’

There are differing schools of thought in academic literature about what ‘neurodiversity’, and ‘neurodiverse’ means.

We understand that it is, however, commonly accepted that ‘neurodiversity’ encompasses all of humanity and does not mean ‘neurological disability’ or ‘otherness’. ‘Neurodiversity’ describes a population, not individuals. A person cannot, therefore, be individually ‘neurodiverse’.

If we use the term neurodiverse in the Bill then it may be too broad. It will cover the whole population including people who are not neurodivergent - ‘neurotypical’ people - so we don’t think it is a good description to use in the Bill.

Proposal 2: ‘People who are Neurodivergent’/‘Neurodivergent People’

We understand that it is commonly accepted that ‘neurodivergent’ means having a mind that functions in different ways to the minds of the majority of people in society.

‘Neurodivergent’ and ‘neurodivergence’ are very broad terms that would allow us to capture a wide range of people within the Bill, including people with learning disabilities, people with learning difficulties such as people with dyslexia, dyspraxia and dyscalculia, autistic people and people with Down’s Syndrome, Attention Deficit Hyperactive Disorder (ADHD), and Fetal Alcohol Spectrum Disorder (FASD). However, the term can also apply to people with acquired brain injuries.

We could also consider how to put some further definitions in the Bill around how we define “neurodivergent” to ensure that it does not become too wide.

Such an approach could allow us to define neurodivergence by reference to common barriers or behaviours faced or expressed by various groups. This would be similar to the approach taken by the Education (Additional Support for Learning) (Scotland) Act 2004, where a child or young person does not require a diagnosis to be able to receive support.

Proposal 3: including specific conditions only in the Bill

We could take an approach that specifically names and defines populations of people in the Bill. This would increase the visibility of these groups and more clearly state who the Bill applies to for the benefit of those people, as well as for practitioners.

For example, we could choose to apply the Bill only to people with a learning disability and autism; add ADHD and FASD; or any combination of neurodivergent conditions. However, if a condition was not specifically listed and defined, then that population would be excluded.

The Bill could include a power that allows future changes to the Bill’s definitions to be made by Regulations, as our understanding of neurodivergence and different conditions evolve. This means that, if certain conditions were left out of the initial Bill, they could potentially be added later, after the Bill has become law.

There is also a question about whether Down’s Syndrome should be specified separately from broader learning disabilities – we understand that some people will support this and some will not.

What Do You Think?

Which of these proposals do you **agree** with (if any), please tell us why?

We agree that the term “neurodivergent” (pertaining to the individual) should be used as opposed to “neurodiversity” (pertaining to broader groups) and support the analysis that has led to that conclusion within the document. Ensuring that the Bill includes definitions is essential, as there is a significant risk that the Bill will become too wide and therefore will not affect any meaningful change.

As we noted in our submission to the Human Rights Bill consultation in October 2023, language, symbols, and culture matter, however in the expansion and improvement of quality public services, financial resources matter as much, if not more. If this legislation helps unlock the resources Scotland needs to bring thresholds (to access services) down, or to create and maintain services in areas where there are none, then it is a worthwhile endeavour. If the legislation is seen as the means through which rights will be realised, without that parallel release of resources, it will be a disappointment. And, potentially, a problematic piece of additional legislative architecture, complicating an already complicated statutory environment, and tying public authorities up in legal processes which pull resources away from the support and services which people need.

In our engagement with people with lived experience, we have heard that is important to people that they feel seen and valued, and therefore wish the Bill to specifically name and define populations of people to whom the Bill applies, however we note that this approach does carry with it a risk of unintentional omission.

A wider neurodivergent approach as noted in the consultation might risk diluting some of the areas of robust social work practice that exist and, further isolate groups of people who do not currently feel supported. There may be some value in a more combined approach, recognising the crossover in the way services and supports are delivered however, this would need to be resourced and funded sufficiently to support this complex and diverse area.

There should also be a clear recognition that neurodivergent people and people with learning disabilities should be treated equally whatever condition or combination of conditions they have.

Which of these proposals do you **not agree** with (if any), please tell us why?

Nil

Is there anything else that we should consider in relation to this topic?

Proposal 2 outlines that (Using a broad term such as neurodivergence, with further definitions in the Bill) “could allow us to define neurodivergence by reference to common barriers or behaviours faced or expressed by various groups”

This is a good example of why we would query what this Bill would seek to achieve that is additional to the Human Rights Act 1998², Equality Act 2010³, the United Nations Convention on

² <https://www.legislation.gov.uk/ukpga/1998/42/contents>

³ <https://www.legislation.gov.uk/ukpga/2010/15/contents>

the Rights of People with Disabilities (2011)⁴, and the Scottish Government's proposed Human Rights Bill, and the Education (Additional Support for Learning) (Scotland) Act 2004 that is referenced in the section.

PART 2: OVERARCHING THEMES

Section 1: Statutory Strategies for Neurodivergence and Learning Disabilities

The Scottish Government has previously produced national strategies on learning disability and separately on autism. Following the COVID pandemic, a joint plan produced in partnership with Convention of Scottish Local Authorities (COSLA) was published covering both learning disabilities and autism – the *Towards Transformation Plan*. The Scottish Government continues to work to this plan pending decisions on the shape and content of the Learning Disabilities, Autism and Neurodivergence (LDAN) Bill.

Scottish Government strategies are scrutinised by the Scottish Parliament and stakeholders. There is currently no formal or legislative requirement for either national or local strategies specifically for neurodivergent conditions or learning disabilities.

What can the LDAN Bill do?

The Scottish Government is proposing to take a broad approach covering neurodivergence and learning disabilities.

We recognise that approaches to previous strategies and policies have been single condition focussed even although many people have more than one condition. Although there will always be a need for some distinct policies according to certain conditions, we think a wider neurodivergent approach is more appropriate in terms of recognising the whole person rather than single conditions and recognising the crossover in the way services and supports are delivered. This includes the workforce delivering them.

There should also be a clear recognition that neurodivergent people and people with learning disabilities should be treated equally whatever condition or combination of conditions they have.

Proposal 1: Introduce a requirement for a national strategy on neurodivergence and learning disabilities to be produced by the Scottish Government.

Proposal 2: Introduce a requirement for local strategies to be produced by some public bodies, for example health and social care partnerships, local authorities, and other public bodies.

Proposal 3: Introduce guidance that could cover a range of topics to be included in national and local strategies.

Proposal 4: Ensure that there is a requirement to review strategies, for example every 5 years for example.

⁴ <https://www.un.org/development/desa/disabilities/convention-on-the-rights-of-persons-with-disabilities/convention-on-the-rights-of-persons-with-disabilities-2.html>

Proposal 5: Ensure that people with lived experience have to be involved in the development of the strategies.

Proposal 6: Consider whether any new accountability mechanism introduced by the Bill should have a duty to review national and/or local strategies and their effectiveness.

What Do You Think?

Which of these proposals do you **agree** with (if any), please tell us why?

We would agree with these proposals in principle, however query whether legislation is required to enact these, or whether a simple policy change could be just as effective.

Which of these proposals do you **not agree** with (if any), please tell us why?

Our members noted that this policy ambition is complicated as people with a learning disability and autism may present very differently to those who have a learning disability, or an autism diagnosis. The positioning of an individual along the autistic spectrum greatly influences their cognitive capacity or physical health. Members then, are not sure that a broad approach will capture the unique needs of all people who may be defined by this overly broad criterion. We would also note that although this term (autistic spectrum) is still used, there is a shift to the term 'constellation' to describe the array of traits and their strength that make up a description of autism.⁵

There should also be a clear recognition that neurodivergent people and people with learning disabilities should be treated equally whatever condition or combination of conditions they have.

Is there anything else that we should consider in relation to strategies?

With respect to adult services, all HSCPs publish a strategic plan and associated delivery plan. Similarly in children's services there is a requirement to develop, publish and report on an Integrated Children's Services Plan. In addition, the Public Bodies (Joint Working) (Scotland) 2014 Act obliges all Partnerships to publish a Performance Report covering performance over the reporting year no later than four months after the end of that reporting year. It is difficult then, to see the benefit of introducing an additional set of reporting requirements, when we know that savings requirements of Local Authorities and Health Boards, which are relayed to HSCPs have meant a significant reduction in the number of people employed in partnerships and local authorities that can carry out the work to prepare and publish these plans.

To take this a step further, we would suggest that it is possible to achieve the stated aims of this section by providing guidance to strategic support staff in HSCPs and local authorities that, e.g. neurodivergent people should be explicitly referenced in the HSCP (Health and Social Care Partnership) strategic plan and integrated Children's Services Plan.

⁵ <https://researchbriefings.files.parliament.uk/documents/POST-PN-0612/POST-PN-0612.pdf>

Section 2: Mandatory Training in the Public Sector

One of the key themes we have heard through our scoping exercise, and from stakeholders and the Lived Experience Advisory Panel (LEAP), is that there needs to be greater awareness, training on, and understanding of neurodivergent people and people with learning disabilities. In particular, there is a need for this when people are trying to access help, support and services and to exercise their rights.

Whilst there can be training options available to public sector professionals to help them to better understand and communicate with neurodivergent people and people with learning disabilities, undertaking this training is voluntary and is not necessarily developed or delivered by people with lived experience. This means that people who work in public services, such as in the National Health Service (NHS) or social care, the police and prisons, can choose to do training or not, if it is available to them. It is not consistent across different public services or delivered to a standard. It can vary in quality and effectiveness.

What can the Learning Disabilities, Autism and Neurodivergence (LDAN) Bill do?

Having access to staff in public services who are informed and able to understand and communicate with people effectively can make a significant difference:

- People are more likely to engage with services
- People are more likely to seek help and support at an early stage meaning crisis can potentially be avoided
- Staff will feel more confident in meeting needs successfully
- Early engagement with health and social care supports will allow a greater focus on prevention and reduce health inequalities

Proposal 1: Mandatory Training for Public Services

We want to consider how we make training mandatory for public facing staff in some public services.

In the first instance, we would like to consider implementing the same approach as in England, by placing a mandatory training requirement on health and social care staff.

However, we could also consider extending this to other public sector areas. For example, the justice system, which could include the police and prison staff, and in the education system for teachers and other educators.

Although the approach in England relates specifically to training on autism and learning disabilities, we could consider a broader approach for training to be inclusive of neurodivergence more generally, as well as learning disabilities.

As part of our approach to mandatory training we want to think about how people with lived experience should be involved.

What Do You Think?

Do you **agree** with this proposal, please tell us why?

Do you **not agree** with this proposal, please tell us why?

Whilst the aspiration of mandatory training is understandable, it is hard to envisage how this could be implemented. The workforce crisis that is being experienced in social work, and echoed in all public services, coupled with the demand on services increasing in both number and complexity means that practitioners in all settings are under extreme pressure. It is hard to see how introducing mandatory training would help this.

There is the additional consideration for registered workers, that the onus for completing any mandatory training could be seen as sitting with them - therefore putting their registration at risk should they be unable to undertake the training within a set period - a particular concern for those people who work part-time, or condensed hours.

However, we agree that any training should be designed in partnership with people with lived experience of a learning disability and/or neurodivergent people, and their significant people (friends and family), and that there should be consistent key messages integrated into local training delivery.

Is there anything else that we should consider in relation to mandatory training?

We would note our support for the fact that Scottish Government funded NES (NHS Education for Scotland) to develop and implement training for health and social care staff, and NAIT (National Autism Implementation Team) to develop and implement materials for schools and early years, however we are disappointed that nothing specific has been developed for social work professionals.

Having consulted with colleagues in our Adult Learning Disabilities & Autism Subgroup, it is our understanding that the NES (NHS Education for Scotland) Framework and associated materials available on TURAS are rarely utilised by social workers. Given the important role of social workers in upholding individuals rights and in providing a holistic assessment of individuals circumstances, and consideration of issues wider than those presented, this lack of consideration of the profession is concerning and we would advocate materials being developed that are specific to social workers working with neurodivergent people, and people with learning disabilities, across all sectors of social work – adults, children, and justice. It is essential that these materials are marketed to social workers, and hosted on a platform that is aimed at social workers. We are aware of planned work to create a shared platform across Health & Social Care that combines TURAS and SSSC (Scottish Social Services Council) resources, and welcome this development, however we are concerned at the length of times such a platform will take to develop and implement and are concerned that this alone will not address the concerns noted above.

Section 3: Inclusive Communications

Inclusive communication means sharing and receiving information in a way that everybody can understand. For public authorities and people who provide support and services, it means making sure that they recognise that people understand and express themselves in different ways. For people who access support systems and services, it means getting information and expressing

themselves in ways that meet their needs. Inclusive communication relates to all modes of communication: written information, online information, telephone, face to face.

Neurodivergent people and people with learning disabilities with communication support needs can face widespread exclusion and disadvantage. The use of inclusive communication is vital in order to allow people to know and exercise their rights, to live independently and to participate fully in life.

What can the Learning Disabilities, Autism and Neurodivergence (LDAN) Bill do?

The Bill could assist by providing a stronger focus on how public authorities' duties around inclusive communication can best be met for neurodivergent people and people with learning disabilities – potentially providing more specificity than the Human Rights Bill (recently consulted upon) and existing public sector duties. The provision of more accessible information links also to our proposals on training. Inclusive communication would inherently be a significant component of that training.

Although we focus on public bodies for the Bill, it will also be important to think about how we extend and promote inclusive communications to other organisations in the future. Some or all of the following could be explored further for possible inclusion in the Bill.

Proposal 1: Alternative means of communication

Provide for neurodivergent people and people with learning disabilities to request access to alternative means of communication where the offered means of communication will not work for them. This could mean being able to request an online or telephone meeting rather than face to face, or a telephone call instead of a letter, or other forms of communication.

It might also be appropriate for neurodivergent people, and people with learning disabilities, to be able to request access to a practitioner with specialist training in certain circumstances. For example, when accessing health care or when navigating the criminal justice system.

Proposal 2: Easy-read

Better access to easy-read versions of all public facing communications and documents made by public authorities. This could include a broad duty to make them available on request and an automatic duty to provide them in certain circumstances, such as:

- a duty on National Health Service (NHS) Boards and Health & Social Care Partnerships (HSCPs) to require appointment letters to automatically be produced in easy read; and
- a duty on the Scottish Police Service, the Scottish Courts and Tribunal Service and the Scottish Prison Service to automatically provide information to people in certain circumstances including when accused or convicted of a crime in an accessible way, including standard bail conditions.

There will be other circumstances too where an automatic duty would be important.

Proposal 3: Neurodivergent and learning disabilities strategies

Local and national strategies are discussed more fully in a previous section. If the Bill were to require local strategies to be produced, this could apply to local authorities, NHS Boards and integration authorities, and potentially other public bodies if appropriate. The Bill could provide the

Scottish Government with power to direct what these strategies should cover and this could include how communication needs are met.

Proposal 4: An enforceable Accessible Information Standard for Scotland

Whilst the Accessible Information Standard made under section 250 of the 2012 Act is not enforceable in Scotland, guidance sets out that it should be considered best practice in NHS Scotland organisations. The Bill could provide for an Accessible Information Standard to be enforceable in Scotland with requirements for its implementation and impact to be reviewed.

What Do You Think?

Which of these proposals do you **agree** with (if any), please tell us why?

In agreement with each of these proposals, although would note that, with the current workforce crisis being experienced across public services, having "access to a practitioner with specialist training in certain circumstances" (P44), may prove difficult, if not impossible, despite local areas best efforts. It is therefore important that expectations around this are managed so as not to raise expectation that cannot be met.

Which of these proposals do you **not agree** with (if any), please tell us why?

Nil

Is there anything else that we should consider in relation to accessible information?

We would note the role of Scottish Government in developing and sharing inclusive communications in respect of information that is not locally dependent, in order to guard against duplication of effort and spend across the country, for example in relation to legal processes such as Adults with Incapacity legislation, or children's processes as part of UNCRC (United Nations Convention on the Rights of the Child) incorporation.

We would also note the intersectionality of ensuring that information is routinely available for non-English speakers who may also be neurodivergent or have a learning disability - it is imperative that when considering this, the needs of people who use visual spatial language such as BSL (British Sign Language) and Makaton are recognised, as well as spoken languages.

Section 4: Data

Better data collection and reporting will enable better understanding of the requirements of people with learning disabilities and neurodivergent people throughout their life and build evidence on whether they are able to realise their rights.

It is important that the population of neurodivergent people and people with learning disabilities are visible in topic specific data collections where these are of particular interest, for example, employment data.

What can the Learning Disabilities, Autism and Neurodivergence (LDAN) Bill do?

In order to achieve the desired outcomes, organisations often need to link different pieces of data to paint a full picture. However, a barrier to being able to do this is that there needs to be a legal basis for some types of data to be collected, including personal data. The Bill could provide an opportunity for data to be collected in particular circumstances if that would be beneficial to neurodivergent people and people with learning disabilities.

Proposal 1: Developing a commission(er) with responsibility for data collation

Within the section entitled “Accountability”, there is discussion on the possible creation of a new Commission or Commissioner, or adding to the remit and powers of an existing body. If a Commission or Commissioner (or other relevant accountability model) is created, their functions could include responsibilities for collecting and analysing data on neurodivergent people, and people with learning disabilities.

Additionally a body could have powers to make recommendations to other organisations collecting data to disaggregate their data to the level of neurodivergent people, and people with learning disabilities.

There are some other options that would need to be developed further, however, to help us with this, we would like to know your views on the following:

Proposal 2: Placing duties on some relevant public bodies to collect data on neurodivergent people and people with learning disabilities where this would be helpful for better understanding of the needs of these groups, their experiences, informing service design and improvement, and to allow for evaluation of measures to improve outcomes for these groups.

Proposal 3: Placing duties on some relevant public bodies to provide returns to the Scottish Government regarding local data on people with learning disabilities and neurodivergent people, where this would be helpful for better understanding of the needs of these groups, their experiences, informing service design and improvement, and to allow for evaluation of measures to improve outcomes for these groups.

Proposal 4: Consideration of the development of a Scottish version of the Learning Disability Mortality Review (LeDeR) programme. This helps reduce inequalities in care for people with a learning disability. It could reduce the number of people dying sooner than they should.

What Do You Think?

Which of these proposals do you **agree** with (if any), please tell us why?

Broadly speaking, we agree with all four proposals.

However, an issue of note is the depleted workforce of HSCPs and local authorities, in all roles and professions - as savings have been made in response to reduced Local Government budgets, often, it is administrative roles that are sacrificed. Our Setting the Bar Report noted the impact of additional administrative burdens on practitioners. This contextual information should be an essential consideration when planning to introduce new reporting requirements.

It is also worth noting that data collection processes for children vary significantly from those of adults and would require coordination and data collection across a range of departments and

agencies. Local authorities would not necessarily hold data on all learning disabled and neurodivergent children.

Which of these proposals do you **not agree** with (if any), please tell us why?

Is there anything else that we should consider in relation to data?

It is essential that any work relating data collection is aligned with Scotland's Data Strategy for Health and Social Care. That strategy has a key aim that we are smarter in our approach to creating insight from data and starting by making the most of the data already available. We need to be moving towards a whole-system approach to creating insight from data that allow us to improve services. This cannot be done in silos, and without connections to the wider health and social care landscape.

A key deliverable in the data strategy is the development of data standards for use across health and social care, making it easier to share information. It is essential that any work relating to data collection is aligned with this work.

We would draw attention to work underway by the Improvement Service to map out existing data asks of Local Authorities, with the ambition of identifying duplication, and those asks that are historical in nature.

We would not want to see the introduction of further requirements to collect additional data without reviewing what is currently collected to ensure we are not placing unnecessary requests on practitioners who are already feeling the impact of additional administrative burdens.

Section 5: Independent Advocacy

Independent advocacy can play a key role in helping people to secure their rights. An independent advocate will help someone's voice be heard. This can help people to make choices about their services and supports. There are different kinds of independent advocacy and this includes collective advocacy when people are supported to come together to talk about their experiences and challenge discrimination.

What can the Learning Disabilities, Autism and Neurodivergence (LDAN) Bill do?

We are looking at how we can improve rights through the availability of independent advocacy through our policies on:

- The creation of a National Care Service (NCS) through the National Care Service (Scotland) Bill (the "NCS Bill"); and,
- Our response to the Scottish Mental Health Law Review.

Proposal 1: Strengthen and improve access to existing advocacy provisions

We want to take time to make sure that there is more consistency around our approach to advocacy and we want to involve people with lived experience in helping us to design this. To do this, we will:

- work with the Scottish Independent Advocacy Alliance, other organisations and people with lived experience to help identify how best to strengthen rights and access to provision; and,
- develop a consistent definition of 'Independent Advocacy'.

This work will take place across the Scottish Government and we will ensure that it includes specific consideration of the rights of neurodivergent people and people with learning disabilities. How we legislate for advocacy for these groups will depend on the proposed changes in the NCS

Bill and to mental health legislation, including whether people with a learning disability or autistic people remain covered by provisions within the 2003 Act.

This means that **we are not currently proposing a broad right in this Bill to independent advocacy for neurodivergent people and people with learning disabilities**. However, we think there are some other things we could explore in the LDAN Bill especially since the right to advocacy under the Mental Health Act only applies the duty to the State Hospital, Health Boards and local authorities (although Health and Social Care Partnerships may in some cases be carrying out this duty) and only applies to a subset of neurodivergent people (as people with a "mental disorder" under the legislation includes people with learning disabilities and autistic people).

Therefore, we could:

- Provide a power in the Bill that allows us to make regulations around the provision of independent advocacy for neurodivergent people and people with learning disabilities whilst further discussions take place about how to improve this.
- Include a provision in the Bill that places a duty on all public bodies to ensure that all neurodivergent people and people with learning disabilities are given information about advocacy and how to appoint their own independent advocate to support them.

Proposal 2: Improve our Understanding of Independent Advocacy

We will also in the meantime identify and gather evidence on specific circumstances where a right to independent advocacy could make a difference.

For example, we know that there are some circumstances where additional support could help, as follows:

- Evidence research published by the Scottish Commission for Learning Disabilities suggests that where women with a learning disability have been subject to gender-based violence they struggle to access support due to discrimination and stereotyping. There can be significant barriers to accessing support and to effective support when people are able to come forward. Professionals may not recognise that someone has learning disabilities and if they do they may not have any relevant training in how to support them.
- The Equalities and Human Rights Commission, in its Inquiry report into housing for disabled people in 2018, recommended that local authorities should ensure that people with learning disabilities have access to good-quality, accessible advice and advocacy when discussing housing options and to help them navigate complex systems.

We could consider whether the Bill could provide some specific legal rights to free independent advocacy in these circumstances, as well as others.

What Do You Think?

Which of these proposals do you **agree** with (if any), please tell us why?

SWS (Social Work Scotland) is committed to the benefits advocacy can have in improving and supporting individuals, both adult and children, to have their voice heard and views considered. We would welcome a clear definition of independent advocacy and the importance of this being 'commissioned' by the individual or their guardian. Also, the recognition of the advocacy role that many professionals and others already play

In the case of Independent Advocacy, we would note that it is not reasonable to place duties onto Local Authorities and HSCPs to deliver additional services without any additional resource. From discussions with local areas, it is our understanding that independent advocacy services in local areas are already at capacity. Therefore, additional funding will be required to ensure sufficient provision of services.

To ensure that the policy and practice intent of improving advocacy provision is met, we also suggest that the unintended consequence of having too many people involved in one situation, all with a duty to speak on behalf of an individual is carefully considered.

Which of these proposals do you **not agree** with (if any), please tell us why?

Is there anything else that we should consider in relation to independent advocacy?

PART 3: SPECIFIC THEMES

This part of the consultation sets out specific themes that arose during our scoping work, and through our work with the LEAP.

Section 1: Health and Wellbeing

Neurodivergent people and people with learning disabilities experience poorer health outcomes than the general population, which can be preventable, resulting in below average life expectancies and death caused by preventable conditions.

It is important that people with learning disabilities and neurodivergent people have good health outcomes in order to access their rights and be able to participate fully in life. Poor health creates an additional barrier for neurodivergent people and people with learning disabilities, potentially

limiting or impacting their ability to be active in their communities, access employment or maintain relationships.

What can the Learning Disabilities, Autism and Neurodivergence (LDAN) Bill do?

The Bill can help to create the right conditions for people with learning disabilities and neurodivergent people to access supports and services successfully when they need them, helping to prevent illness and improving overall health and wellbeing.

Proposal 1: Neurodivergent and Learning Disabilities Strategies

We are proposing legislative requirements for national and local strategies in future and we could set out what the strategies must include. For example, in relation to health care, we could ask Health Boards, Integration Authorities and Local Authorities to set out in their local strategies how their workforce planning and service planning has taken into account the needs of the neurodivergent and learning disability populations.

Proposal 2: Mandatory training for the health and social care workforce

We have set out proposals around mandatory training. In England, the UK Government has introduced a new legal requirement for all health and social care services registered with the Care Quality Commission (CQC) to provide employees with training appropriate to their role on learning disabilities and autism. In England, this is called the Oliver McGowan Training.

We propose to legislate for a similar training requirement for health and social care in Scotland in the LDAN Bill. However, we could take a wider approach so that the mandatory training focusses on learning disabilities and neurodivergence - not just learning disabilities and autism.

Proposal 3: Inclusive communications and Accessibility

We have set out proposals on inclusive communications and this will impact on healthcare. We propose to legislate for neurodivergent people and people with learning disabilities to be able to request access to alternative means of communication where the offered means of communication is not suitable work for them. We also propose better access to easy-read versions of public facing communications and documents. This could include a broad duty to make them available on request as well as an automatic duty to provide them in certain circumstances, such as a duty on National Health Service (NHS) Boards and Health and Social Care Partnerships (HSCPs) to require appointment letters to automatically be produced in easy read.

In addition, we also propose legislating for an Accessible Information Standard for Scotland which would be applicable to NHS Scotland organisations.

We also plan to do more work to look at how far existing complaints systems meet the needs of neurodivergent people and people with learning disabilities.

Proposal 4: Patient Passports

We could place a duty on Health Boards, HSCPs and Local Authorities to ensure that a person's "passport" is able to follow them through whichever care pathways they are accessing, such as a hospital or care home admission, and that these passports include important information about their needs and preferences, including how to communicate with them in an accessible way. This

could be similar to Advance Statements that can be used by people with mental health conditions, or it could be based on Promoting a More Inclusive Society (PAMIS)'s Digital Passports.

Passports like these help medical professionals to know how best to support people, their preferred treatments or communication styles, and can reduce barriers and frustration when people have to repeatedly restate their needs. There is currently no statutory duty placed on patient passports and, although they are encouraged as best practice, implementation is inconsistent.

Proposal 5: Annual Health Checks

We are currently rolling out annual health checks for people with learning disabilities across Scotland. A health check will be offered to everyone who is eligible by end March 2024, backed by £2m of funding per year. Given the really good evidence of significantly poorer health outcomes of people with learning disabilities, annual health checks will make a big difference. We propose to include the delivery of annual health checks as a specific legal duty in the Bill.

Autistic people, people with Fetal Alcohol Syndrome Disorder (FASD) and Attention Deficit Hyperactive Disorder (ADHD) also have poorer physical health outcomes and/ or a lower life expectancy than the general population. There are many possible reasons for this gap, including poor professional understanding among health and care staff, which can result in these groups people having signs of illness or their needs overlooked. Without the right understanding, these groups can miss out on adjustments needed for them to engage in medical appointments which can lead to distressing experiences and avoiding seeking advice. We could include a duty in the Bill which, in effect, extends the current annual health checks for people with learning disabilities to autistic people. We could also consider extending this to people with FASD and ADHD. We would want to first gather more evidence of the need for this.

What Do You Think?

Which of these proposals do you **agree** with (if any), please tell us why?

Proposal 3 – Agree but would note the role of Scottish Government in developing and sharing inclusive communications in respect of information that is not locally dependent, in order to guard against duplication of effort and spend across the country. We would also note the intersectionality of ensuring that information is routinely available for non-English speakers who may also be neurodivergent or have a learning disability - it is imperative that when considering this, the needs of people who use visual spatial language such as BSL (British Sign Language) and Makaton are recognised, as well as spoken languages.

Proposal 5 - Agree that consideration should be given to extending annual health checks but that the evidence base for this needs to first be established.

Again, we would note that it is not reasonable to place duties onto Local Authorities and HSCPs to deliver additional services without any additional resource.

Which of these proposals do you **not agree** with (if any), please tell us why?

Proposal 4 - Do not agree with the terminology of "patient passport" but prefer digital passport. This information would not just be used by medical professionals. Given the emphasis on housing earlier in the document, it is frustrating to see only reference to medical settings here.

Also note that for children this may become confusing if some children with disabilities or additional needs have this and others do not – potentially a UNCRC (United Nations Convention on the Rights of the Child) issue. We wonder also how it would interface with the current child's health record.

Is there anything else that we should consider in relation to health and wellbeing?

Proposal 1 states

"The overarching themes section sets out proposals for statutory strategies.....For example, in relation to health care, we could ask Health Boards, Integration Authorities and Local Authorities to set out in their local strategies how their workforce planning and service planning has taken into account the needs of the neurodivergent and learning disability populations"

– it is disappointing that Local Authorities are noted in a health context, and not housing, social work and community planning.

Proposal 2 – As stated earlier in our response, whilst the aspiration of mandatory training is understandable, it is hard to envisage how this could be implemented. The workforce crisis that is being experienced in social work, and echoed in all public services, coupled with the demand on services increasing in both number and complexity means that practitioners in all settings are under extreme pressure. It is hard to see how introducing mandatory training would help this.

Additionally, we would query which organisation would be responsible for the delivery of training; it will be important in these developments to be cognisant of the developing National Social Work Agency and National Care Service.

Finally, whilst this section is titled "Health and wellbeing" we would note that "wellbeing" spans a much wider frame than just health and is in fact a complex combination of a person's physical, mental, emotional, and social health factors. Therefore, the importance of Local Authority Housing and Communities Strategies, and the important work undertaken in these spaces, should not be overlooked. There is a disappointing lack of emphasis on wellbeing within these proposals.

Section 2: Mental Health and Capacity Law

Current mental health, capacity and adult support and protection legislation in Scotland can, in certain circumstances, apply to autistic people and people with learning disabilities.

The law uses the term ‘mental disorder’, as defined within the Mental Health (Care and Treatment) (Scotland) Act 2003 (the “Mental Health Act”). We accept that this term is seen by many as stigmatising and offensive towards people with lived experience. However, it is used in this document to reflect the language of the legislation, where needed.

What can the Learning Disabilities, Autism and Neurodivergence (LDAN) Bill do?

The proposed purpose of the LDAN Bill is to better protect, respect and champion the rights of neurodivergent people and people with learning disabilities. The LDAN Bill could, therefore, propose to make changes to mental health and capacity legislation in Scotland as it relates to autistic people and people with learning disabilities. Those changes could be to:

- (1) specifically remove learning disability and autism from the scope of mental health and incapacity legislation; or,
- (2) change “mental disorder” to a term that is not stigmatising or offensive.

However, we are not at this time consulting on any proposals for legislative change in this area. This is not because we do not think it is important but because more work needs to be carried out to consider how we balance the different recommendations of the Rome report and the Scottish Mental Health Law Review (SMHLR).

We know that people with learning disabilities and autistic people have been asking for change in this area for a long time. We therefore need to consider what we can do to address these concerns and what this would mean in practice, including any consequences to the rights and protections the Mental Health Act provides to people with learning disabilities and autistic people who are currently treated under this legislation.

We know that people took time to make their views clear to both the Rome review and the SMHLR. We are not asking for those to be reiterated. We now want to develop options and consider whether there is an evidence-base for potentially making changes, ahead of wider reform. We need to more fully understand the consequences and implications of any changes, including any unintended consequences, to ensure that people with learning disabilities and autistic people still have appropriate rights, protections and support where needed.

For example, if we were to remove learning disability and autism from the current definition of mental disorder, we need to understand what this means for some of the people who are currently receiving care and treatment under the Mental Health Act.

A short-term piece of work is being prioritised as one of the first actions under the Mental Health and Capacity Reform Programme. That work will consider the current definition of mental disorder within the Mental Health Act and the approach to compulsory care and treatment and safeguards.

This will include, amongst other aspects, consideration of whether learning disabilities and autism should continue to fall within the definition, along with updating the language of the definition.

The outcome of this work may lead to a change in the law. The LDAN Bill may be an appropriate place to make those changes, however, that will be determined once the work has concluded.

Initial work on this has begun with a scoping workshop held in November this year to help inform the design of the workstream.

What Do You Think?

Do you agree with this approach? Please tell us why?

Having responded to the MHLR consultation in 2022, we agree with the approach outlined above.

Section 3: Social Care

For those people who need it, social care, social work and community health are vital supports that enable people to live fuller lives connected to their local communities.

People with learning disabilities and neurodivergent people are more likely to present with care and support needs compared to some other groups and those needs may be perceived as more complex by the people providing the services. Without the right support from care practitioners, people are much more likely to need hospital care. This applies in particular to those with complex care needs.

What can the Learning Disabilities, Autism and Neurodivergence (LDAN) Bill do?

Proposal 1: Neurodivergent and learning disabilities strategies

We are proposing legislative requirements for these strategies in future. For local strategies, we could ask Integration Authorities and local authorities to set out how they and organisations they commission will take into account the needs of neurodivergent people and people with learning disabilities in their workforce planning and workforce training, including how they are meeting requirements around inclusive communications and accessibility.

Proposal 2: Mandatory training for the health and social care workforce

In England, the Health and Care Act 2022 introduced a new legal requirement for all health and social care service providers registered with the Care Quality Commission (CQC) to provide employees with training appropriate to their role on autism and learning disabilities – the Oliver McGowan Training.

We propose to legislate for a similar training requirement for health and social care staff in the LDAN Bill. However, we could take a wider neurodivergent approach to the training so that it focusses on neurodivergence and learning disabilities, and not just autism and learning disabilities.

Proposal 3: Inclusive communication and Accessibility

We propose to legislate for neurodivergent people and people with learning disabilities to be able to request access to alternative means of communication where the offered means of communication will not work for them. We also propose better access to easy-read versions of public facing communications and documents made by public authorities. This could include a broad duty to make them available on request and an automatic duty to provide them in certain circumstances, such as: a duty on National Health Service (NHS) Boards and Health and Social Care Partnerships (HSCPs) to require appointment letters to automatically be produced in easy read.

We also plan to do more work to look at how far existing complaints systems meet the needs of neurodivergent people and people with learning disabilities.

What Do You Think?

Which of these proposals do you **agree** with (if any), please tell us why?

As with previous responses, we agree with these proposals in principle however note the current issues re workforce and resources across public services including health, social work, and social care services.

Which of these proposals do you **not agree** with (if any), please tell us why?

Is there anything else that we should consider in relation to social care?

Section 4: Housing and Independent Living

Appropriate housing for neurodivergent people and people with learning disabilities is crucial in helping them to live safe and independent lives. Whilst most people live in mainstream housing, for some people accessible or supported housing will be the most appropriate option.

Unsuitable housing can have a negative impact on neurodivergent people, people with learning disabilities, their families and their carers, including impacting on mobility, poorer mental health social isolation and a lack of employment opportunities. Appropriate housing is therefore an essential requirement of independent living.

What can the Learning Disabilities, Autism and Neurodivergence (LDAN) Bill do?

The Bill could provide a stronger focus on how public authorities' duties around housing and independent living can best be met for people with learning disabilities and neurodivergent people. Some or all of the following could be explored further for possible inclusion in the Bill, or other work.

Proposal 1: Advice, advocacy and guidance

Adequate housing advice, support and advocacy were thought to be necessary to enable neurodivergent people and people with learning disabilities to access their rights to housing and independent living. There is already an advice service available, Housing Options Scotland, however this is not an independent advocacy service.

Whilst another section of this consultation deals with independent advocacy, this could include consideration of the introduction of specialist advocacy services for housing support.

Proposal 2: Neurodivergence and learning disabilities strategies

Strategies are discussed in the overarching themes section of this consultation where we propose legislative requirements for national and local strategies in future. We could require strategies produced by local authorities to set out how independent living principles are embedded into assessment and allocations policies, to ensure real choice and control.

Local Authorities must currently produce Local Housing Strategies. We could consider whether these must also set out how the needs of neurodivergent people and people with learning disabilities are met, and to evaluate their progress.

With regard to Integration Authorities, we could consider requiring that their neurodivergent and learning disabilities strategies must: set out how housing, care and health services are integrated; describe the supports available to people to help them live independently; and, evaluate progress against this.

Proposal 3: Mandatory training for housing professionals

As set out in the overarching themes section, we have proposed introducing a statutory requirement for learning disabilities and neurodivergence training for professionals who work in health and social care settings. We could consider extending this requirement to housing service professionals.

Proposal 4: Data

We could consider the following in relation to data collection on housing and independent living:

- Relevant public bodies, such as local authorities, to improve the way data is collected and shared, on the requirements of neurodivergent people, and people with learning disabilities, and their housing needs.
- Collection of data on how many people with learning disabilities are considered not to have access to appropriate housing.

Proposal 5: Inclusive communications

We are making proposals to improve communications. We think there is likely to be a need for some documents in relation to housing to be available in easy read formats.

What Do You Think?

Which of these proposals do you **agree** with (if any), please tell us why?

We agree with these proposals in principle, however as with our previous responses we would note issues in respect of implementation.

Which of these proposals do you **not agree** with (if any), please tell us why?

Is there anything else that we should consider in relation to housing and independent living?

Section 5: Complex Care – Coming Home

We know that some people with learning disabilities who have more complex care needs spend a longer time in hospital than is medically necessary often due to a lack of appropriate community support. This is called delayed discharge. We also know that some people are living away from their home communities and families even though they did not choose to. This is often called living in an inappropriate out-of-area placement.

The Scottish Government knows that this is completely unacceptable and we want to change it. We have been working to improve this for people with learning disabilities and complex care needs and this is often called the *Coming Home* programme.

What can the Learning Disabilities, Autism and Neurodivergence (LDAN) Bill do?

Proposal 1

Dynamic Support Registers are our new way of ensuring we know how many people are in a delayed discharge or inappropriate out of area placement and involve collecting and publishing this data. We want to strengthen the Dynamic Support Registers and the processes around them through the LDAN Bill so that it becomes law for the relevant local public body (Integration Authority, Local Authority, Health Board) to hold these. This would help to ensure that there is visibility for people with learning disabilities and complex care needs on a national level, and that a consistent approach is taken.

Each area would be required to have a Dynamic Support Register, and to report data from it to Public Health Scotland (PHS) for it to be published. It is important to note that personal information about people on Dynamic Support Registers is not published, and none of the data that is published nationally identifies the individuals that it is about.

If we do not make this a law, then Integration Authorities could decide to monitor people in a different way. It could also be more difficult to ensure that sufficient planning and early intervention is being put in place.

Proposal 2

The National Support Panel (“the Panel”) should work with and support the new Dynamic Support Registers and Peer Support Network and we think there are different ways to do this. We want to consider different options, including whether we should make the Panel statutory in the LDAN Bill.

The Coming Home Implementation Report recommended a National Support Panel that could understand and hear from families and individuals about their individual circumstances. One way to do that is to establish a panel that would look at every individual case.

Although we have thought about this, we do not think it would work in practice due to the length of time it would take a panel to consider every case. We would need several panels to make this work and we would need to use our small pool of experts in Scotland to do this. We think this would make the situation worse for people who need quick solutions.

We have set out below the options we think could work under proposal 2.

Option A: Legislative Panel Conducting Individual Reviews within Defined Parameters

This type of Panel would be made up of sector experts and people with legal and clinical knowledge.

This type of Panel would have a function allowing it to conduct investigations into individual cases on a discretionary basis. The Panel could have a list of potential circumstances that may give rise to a review or investigation and where the Panel members might decide that an investigation would provide a good example of what could be done to address complex barriers or issues.

This would mean that not everyone would get an individual review. However, Integration Authorities, Local Authorities and Health Boards would be able to use the findings and learnings from the Panel’s example individual case reviews to improve their practices.

The Panel would be reviewing fewer cases and therefore the demand on the Panel and its members would be reduced to a manageable level.

Option B: Legislative Panel Conducting Peer Reviews of Local Processes

Another option for a legislative Panel would be one that conducts Peer Reviews of Local Processes.

This Panel would consist of a group of experts who could provide checks and balances through a model of peer reviews. It would be made up of a ‘bank’ of expert members, including people with lived experience, who could be brought in to conduct peer reviews of the work and processes of Health Boards, Local Authorities and Integration Authorities in relation to this population.

This process would involve the Panel going to a local area and reviewing the relevant public bodies’ systems and processes in relation to complex care needs, to identify key challenges and issues. The Panel would then provide recommendations or decisions based on the peer review

that the Health Board, Local Authority and Integration Authority would have to implement. The Panel would provide follow up support and would monitor progress.

The Panel might review systems and processes that could be of benefit to everyone – things like:

- Commissioning appropriate accommodation and services
- Securing and financing support packages
- Identifying suitable support providers.

This panel would be legislative, so the relevant public bodies (Health Board, Local Authority, Integration Authority) could be required by law to participate and could also be required by law to implement the recommendations made by the Panel.

Although this type of Panel would not be able to review individual cases as part of their role, their reviews would have a significant impact on those individual people and their outcomes.

Option C: Non-legislative Panel Conducting Peer Reviews of Local Processes

A non-legislative National Support Panel Conducting Peer Reviews of Local Processes would work in the same way as the Panel described in Option 2, however it would not be legislative.

Because this Panel would be non-legislative, it could be set up more quickly than a legislative one. However, it would not be the law for Health Boards, Local Authorities or Integration Authorities to participate in peer reviews. The peer reviews would be voluntary, with the option of local areas being able to request a review.

What Do You Think?

- Should there be a statutory duty upon the relevant public body or bodies (Integration Authority, Health Board, Local Authority) to hold a Dynamic Support Register? (Proposal 1)
 Yes No

Please tell us more?

In line with our previous comments throughout this consultation, the benefit or additionality of legislating existing processes is unclear. Dynamic Support Registers are already in place across Scotland, with local areas undertaking significant work to implement these. Scottish Government has been able to start to analyse the data provided by local areas, although we would note that as this is such a new development, there will be a need to review its application and use by both local areas, and Scottish Government.

- Which of the options for the National Support Panel (Proposal 2) do you think has the most benefits?
 Option A
 Option B
 Option C

Please tell us more?

Option C offers the most collaborative, improvement led approach. Social workers have a vested interest in the quality themes and improvements that provide a structure through which services and support can enable individuals to achieve their best outcomes across the life span and through close working relationships with colleagues in other public services. Our members have noted the absence of the Support Panels in the implementation of the Dynamic Support Register and are keen to have this resolved. We would note though, that an essential component to any Panel would be support to implement recommendations – and for this reason, there will be an absolute necessity for the development of these Panels to be undertaken in partnership with the Care Inspectorate, Health Improvement Scotland and others so that any process developed complements and does not duplicate existing improvement work.

Are there any other options that you think we should consider?

Section 6: Relationships

Children, young people and adults that have a learning disability or are neurodivergent have the right to the same opportunities as anyone else to live satisfying and valued lives and, to be treated with the same dignity and respect. They should be able to develop and maintain relationships and get the support they need. However there are a range of barriers that prevent some neurodivergent people, and people with learning disabilities, from having healthy and fulfilling relationships. This often causes loneliness, social isolation, poor mental health, and trauma.

What can the Learning Disabilities, Autism and Neurodivergence (LDAN) Bill do?

Proposal 1: Access to Independent Advocacy

Another section of this consultation discusses independent advocacy. We would like views on any specific circumstances where a right to independent advocacy could make a difference. With regards to this section on relationships, this could include:

- (a) where a parent with learning disabilities is at risk of their child being taken into care; and,
- (b) where a neurodivergent person or person with learning disabilities have disclosed gender-based violence or abuse. This would aim to enable them access to justice and support (as recommended in Unequal Unheard).

Proposal 2: Data

The overarching section of this consultation sets out some broad proposals on data. With regards to relationships, we could consider data collection on the following:

- (a) Data collection and reporting on gender-based violence affecting women with learning disabilities (as recommended in Unequal Unheard).
- (b) Data collection and reporting on the number of parents with learning disabilities in Scotland, including where their children have been removed from their care. This acknowledges that there is currently a lack of knowledge of this population which may impact on the availability and range of services provided.

Proposal 3: Inclusive communications

We have made some proposals on inclusive communications, and we have asked for views on particular situations where a strengthened right to and focus on inclusive communications would have an impact. With regards to relationships, we could explore the following:

- (a) Where a person with learning disabilities is at risk of having their child removed from their care. This could include information automatically being provided in easy-read, and support provided by professionals who have specialist training in learning disabilities.
- (b) Where a neurodivergent person, or person with learning disabilities, has disclosed gender-based violence or abuse and is interacting with the justice system. This could include information automatically being provided in easy-read, and support provided by professionals who have specialist training in learning disabilities.

Proposal 4: National and Local Strategies

We have set out a proposal for national and local strategies. As part of this, we could explore whether those strategies should include the following with regard to relationships:

- (a) Local authorities to set out how a multi-disciplinary team and Whole Family Approach is being implemented to proactively support neurodivergent parents and parents with learning disabilities, including reporting on and evaluating this approach.
- (b) Police Scotland to set out how people with learning disabilities are provided specialist support to report crimes, including gender-based violence and abuse.
- (c) Local authorities or Education authorities to set out how Relationships, Sexual Health and Parenthood (RSHP) education is provided to all Additional Support Needs learners.
- (d) Local authorities to set out how they provide services to neurodivergent people and people with learning disabilities to enable them to be active and involved in their communities and meeting other people, rather than being isolated at home as is often the case. This could include evaluating the impact of these services.

Proposal 5: Accountability

Another section of the consultation sets out options for increased accountability. This includes proposals for a new Commission/er specifically for neurodivergent people and people with learning disabilities, as well as considering changes to the power and remit of existing Commissions or Commissioners.

If a new or existing body had powers of investigation they may be able to investigate ongoing and historic cases of child removal from parents with learning disabilities, based on their disability.

What Do You Think?

Which of these proposals do you **agree** with (if any), please tell us why?

We agree with each of these proposals. However, we would again note the challenge of workforce and resource pressures on local areas in implementing these proposals and would ask that this is taken into consideration when considering the scale of implementation.

Additionally, we would again note the role of Scottish Government in producing easy read information for example, as detailed in Proposal 3a and 3b.

Which of these proposals do you **not agree** with (if any), please tell us why?

Is there anything else that we should consider in relation to relationships?

It is our position that each of these proposals can be achieved without legislation.

Section 7: Access to Technology

Over recent years digital access has become increasingly important to the way we live our lives. It is important to stay connected with family, friends and our communities, as well as being able to access learning and employment opportunities online. Digital inclusion therefore plays a key role in a person's independence. The pandemic made the importance of digital access even more critical, due to many services moving online.

There are many people with learning disabilities who have difficulties accessing digital devices or using digital services and are at risk of being digitally excluded.

There is a need for security, awareness and training in terms of how to use technology and how to use technology safely.

What can the Learning Disabilities, Autism and Neurodivergence (LDAN) Bill do?

We have made proposals for inclusive communications and we would expect this to have a positive impact on increased digital access.

Proposal 1 - We could also consider how to ensure that training is available to people with learning disabilities in digital skills and online safety.

Proposal 2 - We could gather clear data on the number of people with learning disabilities and neurodivergent people accessing and using technology.

Proposal 3 - We could make more support available to directly help people with learning disabilities and neurodivergent people access and use technology.

What Do You Think?

Which of these proposals do you **agree** with (if any), please tell us why?

We are broadly supportive of these proposals, although would comment that these would require to be developed somewhat prior to any implementation. For example, Proposal 2 "*We could gather clear data on the number of people with learning disabilities and neurodivergent people accessing and using technology*"; from where, and to what end? There needs to be a clear plan for the use of data before adding to the data gathering burden of local authorities/HSCPs and must align with the current aims, vision and output from the Data Strategy for Health and Social Care.

While we are supportive of the idea of further training and support being given to people with learning disabilities and neurodivergent people to develop digital skills and to be able to access and use digital technologies, we would want to question who would be delivering this training, how would it be accessed and funded. Opportunities such as these must be available to all on an ongoing basis, or else they risk further discriminating groups of people who already experience significant discrimination.

Increased access to digital platforms and equipment for those involved in the criminal justice system would be welcome.

Which of these proposals do you **not agree** with (if any), please tell us why?

Is there anything else that we should consider in relation to access to technology?

Again, we would comment that we do not believe legislation is required to implement these proposals, but long-term investment from Scottish Government to local areas is essential.

We believe this section would benefit from widening its scope. Proposals in relation to access to technology for people with learning disabilities and neurodivergent people should be wider than just education. Scottish Government and COSLA are currently progressing a considerable amount of work currently in relation to digital health, social work, and social care. We in Social Work Scotland are involved in this.

This section would benefit from being aligned with Scotland's Digital Health and Care Strategy jointly published by Scottish Government and COSLA. Through this strategy we have seen significant developments in relation to use of digital tools in practice, including: digital telecare-often utilising consumer-based technology that a person already owns, the use of Near Me for video appointments with professionals, the development of a digital front door to enable people access services online, use of artificial intelligence software PainChek to assess levels of pain experienced by people with impaired communication and use of virtual reality to develop staff's knowledge and experience of the impact of autism. These are just a few examples of how digital technology is being used to promote and maintain independence for people, while also providing more proactive and preventative services.

Section 8: Employment

Employment can help people to feel valued and contribute to more independent living. While employment should not be seen as the only option to be a valued member of society, opportunities and choices to work are important for everyone.

The Scottish Government is focused on supporting those furthest from the labour market to progress towards, enter, and sustain employment. We are committed to high quality, fair and inclusive work and employability support. However, we know that many neurodivergent people and people with learning disabilities continue to face barriers to employment.

What can the Learning Disabilities, Autism and Neurodivergence (LDAN) Bill do?

Disabled people face some of the most persistent labour market barriers, which is why we have committed to at least halve the disability employment gap by 2038. We agree that more needs to be done to support people with learning disabilities and neurodivergent people to access fair and

sustainable employment, particularly in light of the available data which suggests these groups achieve some of the poorest labour market outcomes, even compared to wider disability groups.

However, given the work that is currently ongoing, and our limitations on changing the law in this area, we are not currently proposing any legislative changes. Instead, we intend to explore the following in order to promote and encouraging more inclusive approaches:

- Under our Fair Work First approach, the recipients of public sector grants and contracts can be challenged in new ways to work towards meeting the Fair Work First principles. This includes taking action to create a more diverse and inclusive workplace. We can highlight to employers that it is best practice to ensure they undertake disability equality training, including more specialist training for line managers on individual impairments, such as neurodivergence and learning disabilities, where this would enable appropriate support and reasonable adjustments to be provided to staff.
- Training for job coaches on neurodivergence and learning disabilities in the workplace: we are taking forward the Review of Supported Employment within Scotland (2021), which recommended that work continues to support the professionalisation of the supported employment workforce, including ensuring it is well equipped to provide appropriate support to people with learning disabilities and neurodivergent people.
- We will review the language within impairment level (employability) data that the Scottish Government collects on employability to ensure it is consistent with the language individuals and professionals use.

What Do You Think?

Do you agree with this approach? Please tell us why?

N/A

Section 9: Social Security

Social security is a human right and is essential to the realisation of other human rights. None of us know when we might need it. It is a shared investment to help build a fairer society, together. Social security is key for disabled people, including neurodivergent people and people with learning disabilities, to gain independence from families, boost their social participation and support their ability to live with dignity. It can enhance the productivity, employability and economic development of disabled people. And, ultimately, help to tackle inequalities and allow every person in Scotland to live with dignity, fairness and respect.

We know that neurodivergent people and people with learning disabilities are less likely to be in employment and are therefore more likely to need social security support. For those who are in employment, we know that they may also need social security support if they are unable to work full time, or to help with the additional costs of being disabled.

Neurodivergent children and young people, and children and young people with learning disabilities, and their families, may also need support with the additional costs of being disabled.

What can the Learning Disabilities, Autism and Neurodivergence (LDAN) Bill do?

Proposal 1 National and Local Strategies

Requiring Social Security Scotland to report on, and evaluate, how its inclusive communication strategies have taken into consideration the needs of people with learning disabilities and neurodivergent people.

Proposal 2: Mandatory training for social security staff

We have set out proposals for mandatory training for health and social care staff and we invite views on whether there are other public sector areas this should extend to.

With regard to Social Security Scotland, we are aware that there is likely to be a significant proportion of people with learning disabilities and neurodivergent people who are eligible for social security, given the employment rates. We could therefore explore whether there is a need for training on learning disabilities and neurodivergence to be a statutory requirement for some Social Security Scotland staff.

Proposal 3: Data collection

We have set out broad proposals on data in the overarching themes section. To better understand neurodivergent and learning disabilities groups and their needs, including how many people are accessing social security benefits, current data reporting could be disaggregated further. For example, current data reporting on Adult Disability Payment (ADP) in Scotland has a category for “autism and other developmental disorders” but does not report on learning disabilities, Attention Deficit Hyperactive Disorder (ADHD), and Fetal Alcohol Spectrum Disorder (FASD) or other conditions separately.

What Do You Think?

Which of these proposals do you **agree** with (if any), please tell us why?

Which of these proposals do you **not agree** with (if any), please tell us why?

Proposal 1: Social Security Scotland has undertaken a huge amount of work to involve stakeholder in the development of the agency.

Is there anything else that we should consider in relation to social security?

Section 10: Justice

Although there is a lack of robust data, there are indications that people with learning disabilities and neurodivergent people may be over-represented in the criminal justice system and that their needs can be unidentified and unmet. This can be because of inaccessible information, lack of knowledge and lack of a reliable method of identifying people with vulnerabilities.

What can the Learning Disabilities, Autism and Neurodivergence (LDAN) Bill do?

There are many developments happening across the civil and criminal justice system that have the potential to be very positive for neurodivergent people and people with learning disabilities. Some of those changes are broad and not specifically adapted for neurodivergence and learning disabilities but trauma focused work is a key theme that can be built upon for these groups.

We think that there is merit in exploring the extent to which the Bill could seek to improve the position for a neurodivergent person or person with learning disabilities interacting with the justice system in the following ways.

Proposal 1: Strategies and a co-ordinated approach

We could consider bringing together a single national strategy that deals with neurodivergence and learning disabilities in the civil and criminal justice systems. There are many complex interactions between different parts of the justice system that would benefit from this approach and allow a clear set of priorities to be developed reflecting the other proposals below.

Proposal 2: Data and the identification of neurodivergent people and people with learning disabilities in the justice system

It is a critical requirement to ensure that neurodivergent individuals and people with learning disabilities and their needs can be appropriately identified at key points of contact with the justice system. This is to ensure that:

- The right kind of communication is used and it is adapted for neurodivergent people and people with learning disabilities;
- Any additional impact of a situation, for example admittance to custody is understood and appropriate adjustments made such as to the physical custody environment;
- Additional supports are provided, such as an Appropriate Adult in criminal justice and access to independent advocacy;
- Appropriate information is fed into key decision points in the justice system to help provide more accurate future data.

At present the onus in the criminal justice system is often on individual police officers to recognise and flag up any additional needs. We want to consider how best to ensure that neurodivergence and learning disabilities are better identified at relevant points and by relevant staff.

The Bill could potentially place a duty on public bodies such as the Police, Crown Office and Procurator Fiscal Service (COPFS), and the Scottish Prison Service to seek to identify neurodivergence and learning disabilities when people are coming into contact with the criminal justice system. This could apply at key points such as:

- When a victim or witness comes forward
- When someone is arrested and brought into custody
- When someone is sentenced
- When someone is admitted to prison to begin a sentence

This is not about diagnosis - it is about identifying the need for support.

It may also be possible to investigate whether a common screening tool across criminal justice agencies could help.

Proposal 3: inclusive communication

Inclusive communication is critical for neurodivergent people and people with learning disabilities and we have set out broad proposals around this in the overarching themes. Those in contact with the criminal and civil justice systems need to be able to fully understand the information they are being given whether they are a victim, witness, party or potential offender. If information is not accessible this can result in people being either unaware of their rights or unaware that they are at risk of breaching standard or special bail conditions. The approach we have set out earlier in this consultation on inclusive communications proposes:

- Better access to easy-read versions of public facing communications and documents made by public authorities. This could include a broad duty to make them available on request and an automatic duty to provide them in certain circumstances. For example, a duty on the Police, the Scottish Courts and Tribunal Service and the Scottish Prison Service to provide information to people accused or convicted of a crime in an accessible way, including standard bail conditions.

- Provide for neurodivergent people and people with learning disabilities to request access to alternative means of communication where the offered means of communication will not work for them. This could mean being able to ask for an online meeting rather than face to face or a telephone call instead of a letter.

Proposal 4: Mandatory Training

Proposals in relation to mandatory training are set out in the overarching themes section. We propose that the Bill provides for training on neurodivergence and learning disabilities to become mandatory for health and social care staff, and we are seeking views on whether this should be extended to other public bodies.

We could therefore consider extending the requirement for mandatory training to police, prison, COPFS and relevant courts and tribunals staff. We think that mandatory training for staff in the civil and criminal justice systems is a key element to support better identification of needs, better support and improved communications. We know that not all staff will need this but public facing staff would, and we could consider how to define this in the Bill for new and existing staff.

Proposal 5: Advocacy

We have set out our proposals on advocacy in the overarching themes section. There is currently work going on across the Scottish Government to consider a consistent approach to advocacy and this includes neurodivergent people and people with learning disabilities. We do not want to take anything forward separately on advocacy that is not informed by this work. If necessary, and if this work is not concluded, we could consider the Bill conferring a power that would enable the Scottish Ministers to make any necessary regulations on independent advocacy for neurodivergent people and people with learning disabilities, should this be required.

In addition, mandatory training could include information about the role and availability of advocacy in the civil and criminal justice systems as well as information about the Appropriate Adults scheme.

Proposal 6: Diversion from Prosecution (DfP)

As with others, neurodivergent people and people with learning disabilities may benefit from the use of DfP where they are alleged to have committed offences. Better identification within the justice system and training for staff to understand how to do this could help. A requirement to identify needs should allow better information to be provided by the Police to COPFS in the Standard Prosecution Report (SPR). The SPR is the basis on which COPFS can make a decision about DfP. This will also help local authorities when they complete their DfP assessment as they would need to take this into account.

Training and awareness raising provided to professionals working in COPFS on neurodivergence and learning disabilities, how it impacts on people's lives, and how it can have an influence on offending behaviour could help with increasing consistency of decisions around DfP for these groups. This training could include the role of support in reducing the likelihood of re-offending.

What Do You Think?

Which of these proposals do you **agree** with (if any), please tell us why?

Agree broadly with the proposals for those individuals involved in the criminal justice system, where a co-ordinated approach in collaboration community justice partnerships would be beneficial. Scoping the scale of individuals passing through the criminal justice system with LDAN, would allow for better identification of needs at different stages in the criminal justice journey. Reliable data would also help inform the nature of interventions required.

Improved communication would help break down barriers and misunderstanding about decisions which are being made.

Advocacy is often provided by Justice Social Workers in the course of their work with individuals. Independent advocacy would be welcome in order to enhance outcomes for people.

Which of these proposals do you **not agree** with (if any), please tell us why?

In justice social work, training and awareness would be welcome and could form part of the strategic training programme, so would not need to be mandatory. Services including diversion from prosecution, structured deferred sentence, arrest referral, mentoring, through-care etc are all examples of where awareness raising would be beneficial.

Specialist assistance is likely to be needed in certain cases, from trained professionals.

Is there anything else that we should consider in relation to justice?

It is important to note that certain interventions in Justice Social Work require a minimum level of cognitive ability in order to understand the concepts and requirements in order to comply with the programmes. Examples include- the Caledonian System (for perpetrators of domestic abuse), Moving Forward Making Changes (MFMC) (Sexual offending programme which is in the process of being reviewed), as well as the use of certain risk assessment, outcomes and risk management tools. Being aware of neurodiversity issues when considering an individual for the above is critical and the use of terminology and language would require to be tailored also.

Section 11: Restraint and Seclusion

We know that neurodivergent children and young people and those with learning disabilities can have negative experiences at school where restraint or seclusion is used in response to distressed behaviour.

We know that adults in certain settings, including hospital or care settings, may also have negative experiences as a result of restraint or seclusion being used inappropriately.

It is not acceptable for neurodivergent people and people with learning disabilities, or anyone else, to be subject to the misuse of restraint, seclusion or other restrictive practices. This can lead to increased and unnecessary distress and trauma.

What can we do about it?

We have committed to exploring options for legislation in this area that would apply equally to all schools (education authority, independent and grant-aided). This includes the option of statutory guidance.

However, we do not think that the Learning Disabilities, Autism and Neurodivergence (LDAN) Bill would be the right place to do this because it would need to apply to all children and young people, and not just neurodivergent children and young people and children and young people with learning disabilities.

What Do You Think?

Do you agree with this approach? Please tell us why?

We agree that the Learning Disabilities and Neurodiversity Bill is not the mechanism to affect any change or development in this hugely complex area and would note that it is essential that the Mental Welfare Commission, amongst other key stakeholders would need to be involved in this work.

The diversity of need and approach amongst this group will be significant. What training and resources are needed on the ground to enable trauma informed approaches? What resource will be provided to deliver/support and monitor? This is a highly complex area that requires a skilled/enabled staff group, correct tools and resources to keep people safe. Individual's human rights must be upheld.

The Promise(6) made clear that restraint is not acceptable for children and work is already underway on looking at how restraint in education and care situations for children can be utilised only in extreme necessity. Using this bill, which covers certain individual with disabilities would be highly inappropriate and has the potential to create significant confusion and inequality in this area. A consultation on restraint and children is planned we understand for later in 2024.

Section 12: Transport

We know that accessible travel can enable people to enjoy a better quality of life, feel more connected to their community and reduce social isolation. However, we understand that there can still be barriers to transport and travel for neurodivergent people and people with learning disabilities.

Not being able to travel easily, comfortably and safely will impact many areas of life such as employment, education and access to health, social care and day services, and basic needs like getting shopping and socialising.

6 <https://thepromise.scot/>

What can the Learning Disabilities, Autism and Neurodivergence (LDAN) Bill do?

An ambitious and wide ranging programme of work is already underway to make improvements for disabled people when travelling, and this work is being informed and influenced by people with lived experience.

Whilst some aspects of transport are reserved to the UK Parliament and UK Government, there are some areas that we could explore in relation to the LDAN Bill:

Proposal 1: National and Local Strategies

Regional transport Partnership's (RTPs) were established to strengthen the planning and delivery of regional transport so that it better served the needs of people and businesses. They publish regional transport strategies specific to each region, supported by a delivery plan. RTPs bring together local authorities and others to take a strategic approach to transport in each region of Scotland. We could consider requiring RTPs to set out in their transport strategies how the specific needs of neurodivergent people and people with learning disabilities are being considered and met through travel information systems and accessibility initiatives.

We could also consider a requirement to set out in RTP travel strategies how staff across different modes of transport are being trained in disability awareness, how that training incorporates specific training on neurodivergence and learning disabilities, and the uptake of this.

Proposal 2: Mandatory training

Various actions and commitments around disability awareness training for transport staff are in place or are currently being progressed but is not a statutory requirement and is not necessarily consistent.

We have also set out in a previous section proposals for mandatory training for public sector staff on neurodivergence and learning disabilities, primarily in relation to health and social care staff, and have invited views on whether this requirement should be extended to other public sector areas. We could consider extending this requirement to transport staff in Scotland.

What Do You Think?

Which of these proposals do you **agree** with (if any), please tell us why?

N/A

Which of these proposals do you **not agree** with (if any), please tell us why?

Is there anything else that we should consider in relation to transport?

Section 13: Education

This section relates to children and young people in early years, primary and secondary school education settings. Higher and Further Education and University education is considered within the scope of another section of the consultation, called Children and Young People -Transitions to Adulthood.

Neurodivergent children and young people, and children and young people with learning disabilities should be able to reach their full potential and live happy and fulfilling lives. Without the right learning experiences and support, these children and young people are likely to be disadvantaged, their quality of life adversely affected and their aspirations unreachd. This can be particularly felt by children and young people with profound and multiple learning disabilities for whom specialist education is the most appropriate option.

Neurodivergent children and young people, and children and young people with learning disabilities, their families, and organisations that represent them have consistently raised concerns that these groups are not having their right to education fulfilled and are missing out on reaching their full potential, which may contribute to poorer outcomes in adult life.

In Scotland, the education system aims to be fully inclusive. There is a legal presumption that children will be educated in mainstream schools except for in exceptional circumstances.

What can the Learning Disabilities, Autism and Neurodivergence (LDAN) Bill do?

An independent review of additional support for learning legislation found that the legislation is not deficient. However, it found a gap between the policy intention of the legislation and its implementation. Since then, a Additional Support for Learning (ASL) Review Action Plan has, and is currently being, progressed. This work is being done in partnership with Convention of Scottish Local Authorities (COSLA) and the Association of Directors of Education in Scotland (ADES). Whilst there is a comprehensive and robust action plan in place to address the implementation gap, the following proposals could potentially be explored in relation to the Bill:

Proposal 1: Strategies and reporting requirements

The 2000 Act imposes duties on education authorities and schools to plan and report annually on the measures that they are taking to address the key priorities of the National Improvement Framework (NIF). The statutory guidance to support these legislative duties is currently being reviewed. We could consider whether to create a new requirement for education authorities and

schools to include in their plans and reports an articulation of how the specific needs of neurodivergent pupils and pupils with learning disabilities have been considered and are being met.

We could consider whether to require that Children's Services Plans Annual Reports should include specific consideration of neurodivergent children and young people and children and young people with learning disabilities.

Proposal 2: Mandatory training for teachers, practitioners and other educators

We have set out proposals for a mandatory training requirement for health and social care staff, and are seeking views on whether this should be extended to other public sector areas. Therefore, we could explore:

- (a) whether there is a need to set out anything in legislation regarding the training requirements for student teachers, given the recently updated Standard for Provisional Registration;
- (b) whether there is a need to set out anything in legislation regarding the training requirements for student Early Learning and Childcare (ELC) practitioners; and,
- (c) whether there is a need for a mandatory training requirement for teachers, practitioners and other educators on learning disabilities and neurodivergence as part of their Continued Professional Development (CPD).

Proposal 3: Data

The overarching themes section of this consultation sets out broad proposals relating to data and invites views.

Current Additional Support Needs (ASN) data reflects that children and young people have a wide ranging spectrum of learning needs. Within this, there is disaggregated data available on some conditions but not others. For example, there is disaggregated data available on learning disabilities, autism and dyslexia but it isn't available on Attention Deficit Hyperactive Disorder (ADHD), and Fetal Alcohol Spectrum Disorder (FASD), Dyscalculia and other neurodivergent conditions.

To better understand all neurodivergent children and young people and their experiences and outcomes in relation to education this data could be collected and published. This would allow for reporting on the attainment gap of these groups, school leavers and positive destinations, and to understand the size of these populations and any trends. There may also be a need for data on the use of part-time timetables.

What Do You Think?

Which of these proposals do you **agree** with (if any), please tell us why?

There is extensive existing legislation in relation to children with additional needs and their educational entitlement. This is not linked to the specific disability a child may have, and it further includes children who are looked after, young carers and other similar scenarios. As such introducing specific duties around those with autism or neurodiversity would take away from the

fundamental principles of GIRFEC(7) – the right support at the right time regardless of the reason for that need.

However, additional training and understanding is always of benefit, though legislation is not required to make this happen.

We would also note that inclusion in training of all professionals working with children which focuses on understanding learning and needs would be beneficial

Which of these proposals do you **not agree** with (if any), please tell us why?

Noting that “there is a comprehensive and robust action plan in place to address the implementation gap”, we do not agree that further legislation is required or would be beneficial.

Is there anything else that we should consider in relation to education?

Section 14: Children and Young people – Transitions to Adulthood

The term ‘transitions to adulthood’ will mean different things to different young people, and as such will be achieved in many different ways and timescales. In their Principles of Good Transitions, The Association for Real Change (ARC) Scotland refer to this as the period when young people develop from children to young adults. This is not a single event, such as leaving school, but a growing-up process that unfolds over several years and involves significant emotional, physical, intellectual and physiological changes. Transitions also impact on the family of, or those who care for, the child or young person.

What can the Learning Disabilities, Autism and Neurodivergence (LDAN) Bill do?

In their Stage 1 Report on the Disabled Children and Young People (Transitions to Adulthood) (Scotland) Member’s Bill, the Education and Skills Committee noted that many people have described the current legislative landscape as being complex, cluttered, and difficult to navigate for

7 <https://www.gov.scot/policies/girfec/>

young people and their families, and, in some instances, for the professionals working to support them.

The Committee’s report concluded that “... the Committee is not yet convinced that introducing further legislation in an already cluttered and complex legislative and policy landscape will resolve the issues...”. Rather, there was thought to be a “significant implementation gap between the [existing] intended policy and the experiences of children and young people.” In the Stage 1 debate on the general principles of the Bill, on 23 November 2023, the Bill fell and so will not become law.

Transitions is a period of development which can involve changes in every area of life such as housing, employment, social care, education, transport and relationships. We therefore expect some of our overarching and specific consultation proposals, which covers all of these areas and more, to contribute towards improving outcomes for neurodivergent young people and young people with learning disabilities making the transition to adulthood. This also includes our proposals around inclusive communications, mandatory training, independent advocacy, and statutory strategies for learning disabilities and neurodivergence.

Specifically in relation to data, we will consider whether our approach ensures that disaggregated data for neurodivergent young people and young people with learning disabilities is made available to:

- enable us to better understand and measure the extent to which these young people are experiencing a positive and supported transition to young adult life;
- ensure the visibility of these young people;
- help inform the work that will take place under a National Transitions to Adulthood Strategy; and,
- help to inform the development of services to meet the needs of these young people when transitioning to adulthood.

What Do You Think?

Do you **agree** with this proposal, please tell us why?

Do you **not agree** with this proposal, please tell us why?

We do not agree that collecting data for one group of young people would improve transitions. Very few children who receive a social work service are eligible for adult support. The Principles of Good Transitions⁸, developed with young people and carers, tells us what needs to happen, and the recent pilot of putting the principles into practice provided valuable learning on how to do this. Giving attention and funding to this would enable implementation to be rolled out across the country without the need for additional data of legislation.

⁸ <https://scottishtransitions.org.uk/7-principles-of-good-transitions/>

Is there anything else that we should consider in relation to Children and young people – Transitions to adulthood?

Part 4: Accountability

Throughout our early work we have heard many different views on how people think their rights can best be enforced. One thing most people with learning disabilities and other neurodivergent people agree on is that they often have trouble knowing what their rights are and being able to properly access their rights. Most people would like to see more accountability to make sure rights are not ignored.

When thinking about accountability, people like different models – some people want to see a new body to enforce rights and some people want to see greater accountability within existing public bodies or a specific role within an existing human rights body, such as the Scottish Human Rights Commission.

What can the Learning Disabilities, Autism and Neurodivergence (LDAN) Bill do?

The Bill can be used to ensure that there is improved accountability for the delivery of rights. There are different ways to do this and we have set out some options.

Option 1: A new Commission or Commissioner

A Commission or Commissioner could be set up to help people secure their rights. A Commissioner is one person whereas a Commission might have a board with several people on it.

Either of these would be set up to be independent of Government and its powers and duties and appointments process could be set out in the Bill. These could include the following:

- Consult and involve neurodivergent people and people with a learning disability in the appointments process and work programme,
- Promote human rights,
- Conduct research,
- Hold the Government to account,
- Hold public bodies to account by conducting inquiries and formal investigations,
- Power to bring court proceedings,
- Publish an annual Strategic Plan and financial accounts,

- Collate and publish data and report regularly to the Scottish Parliament on key outcomes for neurodivergent people and people with learning disabilities,

Option 2: Better resourcing and additional duties for an existing Commission or Commissioner

Neurodivergent people and people with learning disabilities already come within the remit of the Scottish Human Rights Commission (SHRC), the European Convention on Human Rights (EHRC), the Children and Young People's Commissioner and other more specialist bodies like the Scottish Public Services Ombudsman (for public service complaints) and the Mental Welfare Commission.

However, these bodies cover the needs of a broader range of people than those with neurodivergence or learning disabilities. This means that they have to take decisions on where to spend their resources and time and prioritise some issues over others. We know that the needs of people with learning disabilities and neurodivergent people are often not being met even though these bodies are doing many good things. But there is not a specific focus on these groups.

Rather than setting up a new body we could look to our existing bodies and provide additional resources and potentially powers and duties that would allow them to play a more comprehensive role in upholding the rights of neurodivergent people and people with learning disabilities.

We would need to decide which body could best do this. The Bill could amend the legislation that established the body chosen.

Option 3: Champions and Advocates within Public Bodies

Scotland has many public bodies whose roles are central to the experiences that neurodivergent people and people with learning disabilities have in their daily lives as they have responsibility for administering many key areas of life such as education, health and social care, and justice.

This option could involve having people with lived experience of neurodivergence or learning disabilities, or people selected by people with lived experience of neurodivergence or learning disabilities, raising awareness of rights within public bodies and promoting a culture where the rights of neurodivergent people and people with a learning disabilities are upheld.

Public bodies include local councils, healthcare providers like the National Health Service (NHS), the Police and many other bodies.

We could explore the potential for the Bill to make provision for this role to be appointed within all Scottish public bodies and could clarify the remit and appointments process.

Option 4: Better resourcing for existing Disabled People's Organisations who support neurodivergent people and people with a learning disability

When we refer to Disabled People's Organisations (DPOs), we mean those organisations that are led by disabled people themselves. They are directly connected to the communities that they support.

In Scotland, many DPOs receive funding from local councils or the Scottish Government. DPOs include Autistic People’s Organisations (APOs) in Scotland (there are several) and People First, which is an organisation led by people with learning disabilities.

This option would mean better resourcing of existing DPOs to allow them to support and advocate for the rights of neurodivergent people and people with learning disabilities.

Although the Scottish Government and other organisations already fund DPOs, including some APOs and People First, funding can be limited or directed at particular projects or policies. We know that DPOs work very hard on behalf of the people they represent and have knowledge and understanding of the issues that often come from their own experiences.

Option 5: Supporting good practice through standards, guidance and practical tools and investing in co-production

This could involve us working continuously with people with lived experience (like the Lived Experience Advisory Panel (LEAP)) to produce national standards and guidance to help people understand the needs and wishes of neurodivergent people and people with learning disabilities and uphold their rights.

It could include providing guidance to schools, universities, councils, healthcare providers, the police, and others. However, we already do this kind of work and there are still many serious issues experienced by people with learning disabilities and neurodivergent people. This guidance, and accompanying tools, could help people within these organisations understand how to respect the rights of neurodivergent people and people with learning disabilities.

What Do You Think?

Which of the 5 options set out above do you think would best protect, respect and champion the rights of neurodivergent people and people with learning disabilities? You can select multiple options if you wish.

- Option 1
- Option 2
- Option 3
- Option 4
- Option 5

Please give the reason for your choice(s).

A combination of options 2-5 would provide the most robust, realistic, and meaningful change to the current system

Are there any other options we should consider? Please give details

