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Equalities, Human Rights and Civil Justice Committee

Stage 1 Report on the Disability Commissioner (Scotland) Bill



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Contents

Membership changes	1
Introduction	2
Background	3
Structure of the Bill	5
Consideration by the Equalities, Human Rights and Civil Justice Committee	6
Written evidence	6
Oral evidence	7
Consideration by other Committees	9
Consideration by the Finance and Public Administration Committee	9
Key issues in the Committee's consideration of the Bill	11
The need for a Disability Commissioner	11
Duplication and overlap	13
Learning Disabilities, Autism and Neurodivergence (LDAN) Bill	17
Financial and resource implications	19
Intersectionality	22
Disability definition and potential to go beyond devolved powers	23
Powers of the disability commissioner	25
Inclusive communication	27
Involvement of disabled people	29
Scottish Human Rights framework and further powers for existing commissions/ commissioners	30
Conclusions and recommendations	33
Annexe A: Engagement	35
Glasgow Disability Alliance - summary of key points	35
Glasgow Disability Alliance - table 1	36
Glasgow Disability Alliance - table 2	37
Glasgow Disability Alliance - young people	39
The Scottish Parliament	40
Online	43
Annexe B: Extracts from the Minutes of the Equalities, Human Rights and Civil Justice Committee	48
Annexe C: Associated Bill page	51
Bibliography	52

Equalities, Human Rights and Civil Justice Committee

To consider and report on the following (and any additional matter added under Rule 6.1.5A)—

- a. matters relating to equal opportunities, and upon the observance of equal opportunities within the Parliament; and
- b. matters relating to human rights.
- c. matters relating to civil justice within the responsibility of the Cabinet Secretary for Justice and Home Affairs.

2. In these Rules

(a) “equal opportunities” includes the prevention, elimination or regulation of discrimination between persons on grounds of sex or marital status, on racial grounds or on grounds of disability, age, sexual orientation, language or social origin or of other personal attributes, including beliefs or opinions such as religious beliefs or political opinions; and

(b) “human rights” includes Convention rights (within the meaning of section 1 of the Human Rights Act 1998) and other human rights as for example contained in any international convention, treaty or other international instrument ratified by the United Kingdom.

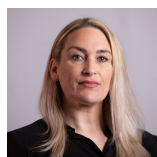


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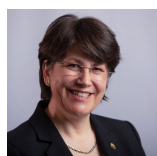
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Membership changes

1. The following changes to Committee membership occurred during the Committee's scrutiny:

- On 10 October 2024, Pam Gosal MSP replaced Annie Wells MSP
- On 10 October 2024, Tess White MSP replaced Meghan Gallacher MSP.

During the inquiry, the following declaration of interests was made:

- Paul O' Kane MSP declared an interest as having previously been employed by Enable until 10 May 2021.

Introduction

2. The [Disability Commissioner \(Scotland\) Bill](#) (“the Bill”) is a Member's Bill introduced by Jeremy Balfour MSP (the Member-in-charge) on 8 February 2024.
3. The Scottish Parliament designated the Equalities, Human Rights and Civil Justice Committee (“the Committee”) as the lead committee on 21 February 2024. Under the Parliament's Standing Orders Rule 9.6.3.(a), it is for the lead committee to report on the general principles of the Bill, as well as accompanying documents such as the Financial Memorandum and Policy Memorandum. In reporting, the lead committee should take account of views submitted to it by any other committee.
4. The Bill and its accompanying documents are available on the [Bill webpage](#) together with a full written [SPICe bill briefing](#).

Background

5. On 11 May 2022, Jeremy Balfour MSP lodged a draft proposal for a Bill to establish a disability commissioner for Scotland. The draft proposal was supported by a [consultation document](#). The consultation closed on 3 August 2022.
6. The Member lodged a final proposal on 6 December 2022 – “A proposal for a Member’s bill to establish an independent commissioner to promote and safeguard the rights and interests of disabled people”. The final proposal was complemented by a [consultation summary](#), which stated that the vast majority (90%) of responses to the consultation were supportive of the proposal of establishing a disability commissioner.
7. The final proposal received cross-party support from 40 MSPs (27 Scottish Conservative and Unionist Party; 11 Scottish Labour; and 2 Scottish Liberal Democrats), thus securing the Member the right to introduce a Bill.
8. Further background information on Mr Balfour’s proposal process is available on the [proposed Bill page](#).
9. There is already an extensive commission/commissioner landscape in Scotland that has been described by some as ‘complex’, ‘cluttered’ and ‘fragmented’. Within this landscape, there are bodies whose remit already focuses on equality and/or human rights matters. These include the:
 - Scottish Human Rights Commission (SHRC), whose role is to promote awareness, understanding and respect for all human rights to everyone, everywhere in Scotland, and to encourage best practice in relation to human rights. It also monitors international treaties, including the United Nations Convention on the Rights of Persons with Disabilities (UNCRPD)
 - Children and Young People’s Commissioner for Scotland (CYPCS), whose role is to promote awareness, understanding and respect for all children and young people in Scotland, and to encourage best practice
 - Equality and Human Rights Commission (EHRC), whose role, across Great Britain, is to promote equality and diversity, enforce equality laws and promote and protect human rights by encouraging good practice and promoting mutual respect
 - Mental Welfare Commission for Scotland (MWCS). Part of its role is to protect and promote the human rights of people with mental illness, learning disabilities, dementia and related conditions.
10. There are also other new commissions/commissioners being established (e.g. a Patient Safety Commissioner) or being proposed (e.g. a Victims and Witnesses Commissioner and a [Commissioner for Older People \(Scotland\) Bill](#)).
11. The specific proposal for a disability commissioner has also been introduced within a wider context, namely:
 - the Scottish Government’s previous proposal for a Learning Disabilities, Autism

and Neurodiversity (LDAN) Commissioner. There are questions over where an LDAN commissioner would sit with a disability commissioner for all disabled people.

12. Additionally, this proposal for a new commissioner (and those of other proposals) comes at a time when the Finance and Public Administration Committee (FPAC) has been holding an inquiry – [Scotland's Commissioner Landscape: A Strategic Approach](#) – into the number and roles of the various commissioners. We return to this issue later in the report.

Structure of the Bill

13. The Bill aims to establish an independent disability commissioner for Scotland whose primary purpose will be to promote and safeguard the rights of disabled people. According to the policy memorandum, the intention is that the commissioner will be a “champion” for disabled people, to help address barriers experienced, such as in education, housing and employment. The commissioner will:
- Advocate for disabled people at a national level, promoting awareness and understanding of the rights of disabled people
 - Review law, policy and practice relating to the rights of disabled people
 - Promote best practice by service providers and may also promote, commission, undertake and publish research on matters relating to the rights of disabled people
 - Have the power to undertake investigations into devolved matters if the issue relates to disabled people.

Consideration by the Equalities, Human Rights and Civil Justice Committee

Written evidence

14. The Committee issued a [Call for Views](#) on 28 March 2024. The Call for Views was issued simultaneously in accessible formats including Easy Read and with the opportunity to respond in British Sign Language via WhatsApp. The Call for Views closed on Friday 17 May 2024. In total, 110 [published responses](#) were received which are available on Citizen Space. Of these responses, 57 were from organisations and 53 from individuals.
15. There was significant support for the proposed establishment of a commissioner in the written responses to the Committee's call for views, as well as in responses to the Member's initial consultation. This support was founded on the vision of having a “champion” who can address the challenges faced by disabled people. Many respondents were also keen that the commissioner would be able to recognise that disabled people are not a homogenous group and would be able to take account of different experiences, including people with ‘hidden’ or ‘fluctuating’ conditions.
16. The more limited opposition to the central proposal in the Bill was more focused on the perceived costs of establishing such a post as well as arguments that more emphasis should be placed on people with a learning disability because they, in the view of those submissions, experience the greatest level of exclusion and discrimination among disabled people.
17. The Cabinet Secretary for Social Justice wrote to the Committee on 16 May 2024 to provide a [memorandum](#) setting out the Scottish Government's initial views on the Bill in response to the Committee's Call for Views.
18. The memorandum raised concerns around the cost of establishing a new commissioner, and ongoing costs, given what the Scottish Government called the “extremely challenging financial climate”. It stated that the Scottish Government would be holding a neutral position on the Bill in order to “provide an opportunity for the following concerns about the feasibility and desirability of a commissioner role as the vehicle to advance disability equality to be explored”. The concerns were listed as:
 - the potential for the commissioner to duplicate functions already undertaken by existing bodies
 - the complex landscape which this additional commissioner would be added into
 - the limitations of the approach proposed in the Bill in terms of value for money and efficiency.

Oral evidence

19. On 28 May 2024, the Committee held an informal briefing with the Scottish Parliament's Non-Government Bills Unit who are supporting the Member-in-charge during the passage of the Bill. This was to enable Committee members to understand the contents of the Bill. The Committee then formally began taking oral evidence on 4 June 2024, and concluded its evidence taking on 17 September 2024.
20. At its meeting on 4 June 2024 ¹, the Committee heard from witnesses representing existing Commissions/Commissioners:
 - Dr Arun Chopra, Executive Director (Medical), Mental Welfare Commission for Scotland (MWCS)
 - Stephanie Griffin, Scotland Policy Manager, Equality and Human Rights Commission (EHRC)
 - Nick Hobbs, Head of Advice and Investigations, Children and Young People's Commissioner Scotland (CYPCS)
 - Jan Savage, Executive Director, Scottish Human Rights Commission (SHRC).
21. At its meeting on 11 June 2024 ², the Committee heard from witnesses representing disability organisations:
 - Lyn Pornaro, Chief Executive Officer, Disability Equality Scotland (DES)
 - Tressa Burke, Chief Executive Officer, and Karen Wylie, Policy and Participation Manager, Glasgow Disability Alliance (GDA)
 - Heather Fiskin, Chief Executive, and Dr Pauline Nolan, Head of Policy and Engagement, Inclusion Scotland
 - Jenny Miller, Chief Executive, PAMIS – promoting a more inclusive society, and then from
 - Jamie Cooke, Head of Policy and Communications, Enable
 - Suzi Martin, External Affairs Manager, National Autistic Society Scotland
 - Alice Struthers, Programme Director, Neurological Alliance of Scotland
 - Eddie McConnell, Chair, Scottish Commission for People with Learning Disabilities (SCLD).
22. At its meeting on 18 June 2024 ³, the Committee heard from:
 - Kirstie Henderson, Policy Officer, RNIB Scotland
 - Amy Dalrymple, Associate Director of Policy and Public Affairs, Marie Curie Scotland
 - Tomas Gerrard, Bid Writer, Deaf Action

- Richard Meade, Director of Carers Scotland and Carers Northern Ireland.
23. At its meeting on 3 September 2024 ⁴, the Committee heard from Kaukab Stewart, Minister for Equalities.
 24. The Committee also held informal engagement sessions with several disabled people on 10 September 2024. The sessions, held in the Scottish Parliament and in Glasgow, gave people the opportunity to relate to Committee members the barriers and challenges they experience. Anonymised notes and a [summary of the key themes](#) from those sessions are provided as annexes to this report and are also available on the [associated webpage](#).
 25. Finally, on 17 September 2024 ⁵, the Committee heard from Jeremy Balfour MSP, the Member-in-charge of the Bill.
 26. As will be reflected within this report, it is important to note from the outset that the majority of oral evidence was heard before the Scottish Government announced its Programme for Government on 4 September 2024. This means that, during these sessions, witnesses and Committee members were unaware that the anticipated Human Rights Bill for Scotland would not be introduced during this parliamentary session and also that there would be a significant delay to the proposed Learning Disabilities, Autism and Neurodivergence (Scotland) Bill.
 27. Similarly, with the exception of the evidence session with the Member-in-charge on 17 September, all evidence, including our engagement sessions, was heard before the Finance and Public Administration Committee published its report on the current commissioner landscape in Scotland.
 28. It is difficult to assess whether or not witnesses would have held different views to what they expressed at the time, had they had the full picture as it is now, but these were significant factors in our consideration and discussion on the content of this report.
 29. The Committee thanks all the witnesses who took the time to contribute to its scrutiny of the Bill and is particularly grateful to those individuals who participated in the engagement sessions and the organisations who assisted in their facilitation.

Consideration by other Committees

Consideration by the Finance and Public Administration Committee

30. The Finance and Public Administration Committee (FPAC) took evidence on the Financial Memorandum to the Bill from the Member-in-charge at its meeting on 25 June 2024 ⁶.
31. The FPAC [wrote to this Committee](#) on 23 July 2024. The letter refers to FPAC's inquiry into [Scotland's Commissioner Landscape: A Strategic Approach](#), which "explores the evolution of the Commissioner landscape in Scotland since devolution and the extent to which a more coherent and strategic approach [...] is needed". The FPAC noted concerns expressed during its evidence-taking regarding the "already cluttered landscape, including the impact of additional costs at a time of significant pressure on public finances, the potential for overlap and duplication, and confusion around who individuals should approach".
32. FPAC noted the Member's view that "memorandums of understanding could be put in place between relevant organisations in order to set out which types of work can be carried out by each organisation and setting out procedures for how potential overlaps of work should be dealt with", although this doesn't appear to directly address the potential confusion for people knowing who they should approach.
33. FPAC further noted the Member's view that "the costs incurred in establishing a disability commissioner [would] be an investment in disabled people that is long overdue", which is a point that came across quite strongly in our own oral evidence sessions.
34. On 16 September 2024, FPAC published its [report on Scotland's Commissioner Landscape: A Strategic Approach](#). It again noted the proliferation of SPCB-supported bodies in more recent years and considered that this trend "is not sustainable, especially at a time of significant pressure on public finances in Scotland". Consequently, the FPAC report concluded as follows:
 - ” The Committee therefore calls for a moratorium on creating any new SPCB supported bodies, or expanding the remit of existing bodies, until a 'root and branch' review of the structure is carried out, drawing on the evidence and conclusions set out in this report.
35. Furthermore, it asked the Parliament to ensure any such review is completed by June 2025 and noted that it would "seek to hold a parliamentary debate" on the commissioner landscape at the earliest opportunity.
36. That debate was held on 31 October 2024 ⁷ with the Parliament agreeing to the principal recommendation of having a moratorium and conducting a root and branch review.
37. The Parliament further agreed to a [Scottish Government amendment](#) which set out that the review should be completed by June 2025, but also recognising that, "for

proposals within bills that have already been introduced, these are now for the Parliament to take a decision on, respecting the lead committees' roles in scrutinising legislation within their remits".

38. The report from FPAC, and the subsequent debate ⁷, reflects many of the issues discussed during our own scrutiny of the Bill at Stage 1 as set out below.

Key issues in the Committee's consideration of the Bill

The need for a Disability Commissioner

39. One of the main issues to emerge during our evidence was whether there is a need in the first place for the establishment of a disability commissioner. Most of the evidence we heard pointed to broad support for the principle of such a post and why, in the view of some, there was a need. This was primarily because of a view that there is a gap between policy intent in terms of meeting the needs of disabled people and the reality for people living with disabilities in Scotland.
40. In the written submissions we received, each of the main Commissions/Commissioners active in related areas (the EHRC, SHRC, MWCS and CYPSC) recognised that there is a strong desire for a disability commissioner and, when giving oral evidence to the Committee, broadly agreed with the policy intent of the Bill.
41. For example, the EHRC pointed to its report, [Is Scotland Fairer](#), published in November 2023, which refers to the specific inequalities faced by disabled people in Scotland.
42. The SHRC referred to this matter in its report, [At a Crossroads: Which way now for the human rights system in Scotland?](#), published in June 2023, and recognises that people often seek a 'champion' to represent them and are dissatisfied with current accountability mechanisms.
43. In its evidence, the CYPSC referred to an 'implementation gap', which it described as a reaction to ineffective legal and policy implementation, and that there are barriers to access to justice for disabled people.
44. Similarly, in oral evidence, the MWCS gave two examples of gaps in service provision for people with learning disabilities. The first is the delay for people with learning disabilities being discharged from hospital, compared with non-disabled people. The second issue is around restraint and seclusion, where there is no legislative requirement to measure how many people are secluded or restrained.
45. In oral evidence on 11² and 18³ June 2024, representatives of several disability organisations and disabled people's organisations indicated their broad support for the proposal to establish a commissioner. The common themes they expressed were:
 - Broad support for a disability commissioner who can be a champion for all disabled people
 - That the disability commissioner must have 'teeth'/'clout'
 - That the financial and staffing resources set out in the Financial Memorandum do not seem adequate to allow full meaningful participation with disabled people

- That there would need to be Memorandums of Understanding with other commissions/commissioners
 - That there is a potential duplication with the proposed LDAN Commissioner.
46. Amy Dalrymple from Marie Curie argued that the support for a commissioner among disabled people and disabled people's organisations stems from a "frustration that the existing framework has not led to change and improvement". She said if a disability commissioner does not happen, then "something else needs to happen in order to realise the intent that is behind the proposal".
47. Heather Fiskin from Inclusion Scotland said:
- ” One of the reasons why there is so much support for the bill is that there is such great need and there has been so little change or positive movement in respect of disabled people's rights.
48. Tressa Burke from Glasgow Disability Alliance summarised the support among disabled people's organisations as being because disabled people have been dehumanised and deprioritised. She said:
- ” Our members have extremely strong feelings. They are not fools – they know there is a cluttered landscape and that there are financial constraints, but they are desperate, given dehumanisation, deprioritisation and the lack of political leadership in allocating resources that would change disabled people's lives. We are left asking this question: if we do not have a disability commissioner, what are we going to do and who will do that work?”
49. These views were reflected strongly during the Committee's engagement sessions with members of disabled people's organisations where several participants said that disabled people "don't want more false hope" and something needs to happen to bring about positive change.
50. Richard Meade from Carers Scotland presented another view relating to unpaid carers, noting that their lives are often closely linked to disabled people. He said:
- ” In order to support the cared-for person, it is crucial to ensure that unpaid carers are also supported. By extension, a proposed disability commissioner should have a remit that considers unpaid carers and how to promote and safeguard their rights, as, if unmet, they often have a direct consequence on the person whom they care for and on people with disabilities.
51. In oral evidence to the Committee, the Minister for Equalities acknowledged the strength of feeling and said that she was sympathetic to the proposal in the Bill. She did, however, maintain the Scottish Government's neutral position on the Bill, asking whether it was the "right vehicle" to achieve its policy intent.
52. In his opening remarks to the Committee, Jeremy Balfour acknowledged the important and wide-ranging work of other current SPCB-supported bodies but noted that "those organisations' remits are split between multiple protected characteristics" which could potentially dilute their impact. He argued that "only a disability commissioner would be able to be laser focused on disabled people" and that such a commissioner would complement existing bodies.

53. Mr Balfour also acknowledged the call by the Finance and Public Administration Committee for a moratorium on the creation of any new SPCB-supported bodies, or expansion of current remits, but set out his belief that this should not be “until disabled people have been given the same chance as other groups to benefit from a champion who speaks on their behalf”. He added:

” We know that disabled people need action now. They cannot wait any longer. The bill seeks to make positive changes for disabled people and is in front of the Parliament now. No viable alternative is currently on the table to ensure that disabled people have a champion who will ensure that their rights are respected and enforced.

Duplication and overlap

54. A key concern expressed in written and oral evidence from the various Commissions/Commissioners was the potential for duplication and overlap between their remits and that of the disability commissioner, in what is already a “cluttered landscape”. In oral evidence, the Commissions/Commissioners repeated points made in their responses to the call for views.

55. The CYPSC said that the remit of the disability commissioner has the potential to include many overlapping functions with its own remit, “...leading to duplication of work and exacerbating an already complicated and fragmented landscape which is hard for both rights holders and duty bearers to navigate”.

56. In oral evidence, the CYPSC said that people can overestimate what a commissioner can achieve by looking at the CYPSC. For example, the CYPSC had previously made strong recommendations about restraint, but only got action from the Scottish Government when it worked with the EHRC to threaten legal action, as Nick Hobbs explained:

” The first investigation that our office carried out was on restraint. Although we made really strong recommendations, we were unable to get the Scottish Government to take any action on them until we worked with the Equality and Human Rights Commission to bring legal proceedings against it, which resulted in a commitment to produce guidance.

57. He did, however, express a degree of doubt, adding “[I]t would be nice to think that one additional voice would tip the balance and get the Scottish Government to act, but, to be honest, I think that that is very unlikely”.

58. The EHRC said it is essential there is no duplication with the existing roles and functions of other bodies. It stated there is potential for confusion when their remit is related to protected characteristics as defined in the Equality Act 2010.

59. It described the investigatory powers in the Bill as overlapping with the EHRC’s powers, while at the same time being significantly weaker, and added “There is a risk that this proposed power strays into consideration of conduct prohibited by the Equality Act 2010 and therefore outwith devolved competence”.

60. The EHRC also said that it is not clear which of the powers or functions proposed

for the disability commissioner are not already held or covered by one or more existing organisations.

61. Further to its concerns expressed about powers or functions proposed for the disability commissioner and where these might already be held by an existing body, the EHRC referred to the Scottish Government's proposal for a new 'Learning Disability, Autism and Neurodivergence Commissioner', saying:
 - ” If introduced, there must be consideration about how these remits will overlap and interact with each other and the value each add to disabled people's lives more widely.
62. Stephanie Griffin from the EHRC expanded on this in oral evidence, saying:
 - ” The complication is that, with regard to remits and duplication, the situation will become even more tangled and difficult to navigate if another two commissioners are created on top of the commissions that are represented here and in civil society, given the powers and actions that are currently being taken.
63. Dr Arun Chopra of the MWCS agreed with this viewpoint, saying there would be a “real risk of duplication”. He added:
 - ” If you were someone with a learning disability who also had a mental illness, or even if you had a learning disability alone, where would you go if you felt that your rights were not being upheld? First, you would contact the service. You could go down the route of contacting the Scottish Public Services Ombudsman, or you could speak to the Mental Welfare Commission, but you could also end up speaking to any of the other commissioners, including an LDAN commissioner. As a result, there would be the potential for duplication, which would make things more difficult for people.
64. The SHRC expressed concern that the disability commissioner would have a power to undertake general and individual investigations, powers which it [the SHRC] does not have. It cautioned that the effect of the Bill would be to “create stronger accountability mechanisms for the rights of disabled people than those that currently exist for everyone in Scotland”. Instead, the SHRC said it would be “preferable for the mandate of the SHRC to be amended to include these enabling powers for all, including disabled people”.
65. Disabled people's organisations were aware of the existing framework of public bodies that can support disabled people. While they acknowledged the potential for overlap and duplication, they considered the existing public bodies that have a role to promote and safeguard human rights are not doing enough to support disabled people. These views were repeated in oral evidence to the Committee.
66. The Glasgow Disability Alliance (GDA) said their members did question whether the human rights landscape in Scotland is becoming too crowded but suggested that the risk of duplication:
 - ” ...would need to be mitigated by having a clear agreements and MOUs between the different Commission(er)s as to which would be best placed to take on a complaint or advocate for someone.

67. Inclusion Scotland expanded on the view that while other commissions work to promote and protect disabled children's and adults' rights, they all have wider priorities. In their view, this sometimes means "that disabled people's rights are not their first priority".
68. In a similar vein, Disability Equality Scotland set out a view raised by many of its members:
- ” Whilst human rights commissions do work for our member's benefits, they felt strongly that DPOs share true reality as they are member led.
69. This was supported by PAMIS [promoting a more inclusive society] who asked, "what have [existing commissions] actually achieved for people with profound learning and multiple disabilities?", while Enable said:
- ” ...it remains the case that although there are a number of existing organisations with responsibilities to promote and protect rights for people with learning disabilities, they face persistent social inequalities.
70. However, the Neurological Alliance of Scotland said it is concerned that the duties of any new bodies may restrict the work of existing commissions/commissioners.
71. The Scottish Commission for People with Learning Disabilities (SCLD) said it will be important for the disability commissioner to collaborate with other commissioners to avoid duplication and overlap, including a potential LDAN Commissioner.
72. The Committee also heard from SCLD that, in their view, people with learning disabilities are used to navigating complex systems, but that a disability commissioner could further help to cut through that complexity. They considered that a disability commissioner could focus on the needs of disabled people, although people with learning disabilities are concerned that with a 'pan-disability' approach they would be at the "back of the queue again". Eddie McConnell of SCLD said:
- ” That has often been the experience of people with learning disabilities. We often find ourselves at the back of the queue. Therefore, there is more to be done in this bill to articulate how that would be avoided and how people with learning disabilities would be seen as equal to all disabled people and advance, probably, at a faster rate, because they are undoubtedly the group, within a pan-disability environment, whose rights are most at risk.
73. Suzi Martin, from the National Autistic Society Scotland considered the idea of people being confused by the addition of someone to specifically represent them as "bizarre". She argued that if, for example, a commissioner was set up for autistic people and people with learning disabilities, "there would be no duplication, because the existing bodies [...] are not really doing any focused work on this community. She added:
- ” I would hope it would not be beyond the wit of our existing commissioner landscape to make a referral happen behind the scenes and for that person to then be given the appropriate advice and guidance, for action to be taken quickly and for them to be put in touch with the right commissioner or the right body.

74. Deaf Action offered its perspective on the current commissioner landscape, saying, "...it is cluttered because there is a systemic issue. The disability commissioner will go a long way towards starting to unravel that for the disability landscape".
75. In correspondence, FPAC said it heard concerns about the already cluttered landscape, impact of additional costs, potential for overlap and duplication, and confusion around who individuals should approach, stating:
- ” While it is not for this Committee to consider the merits or otherwise of an individual Commissioner, I would draw your attention to the evidence we have received as part of our wider inquiry into Scotland's Commissioner Landscape, and the views expressed by stakeholders of the need to consider alternative ways of addressing systemic failures in public policy delivery.
76. During his evidence to FPAC, Jeremy Balfour shared some concerns that the timing of the FPAC inquiry might impact on the Bill. He said:
- ” I am slightly concerned that, due to timing, we are now saying, ‘Let’s pull up the drawbridge and stop at this point’.
77. In its correspondence to the Committee on 16 May, the Scottish Government said that there are existing commissions that protect the rights of disabled people. While their remits are focused on a wide range of people “they focus on specific groups from time to time”; an EHRC Scotland report on disabled people and transport in 2019/20 was given as one example.
78. In oral evidence, the Minister for Equalities said the most significant concern for the Scottish Government was:
- ” ...the potential for the bill to simply duplicate functions that are already undertaken by existing bodies. As well as possibly being inefficient use of public money, that risks causing a lack of legal certainty and making it less clear to disabled people whom they can turn to for help.
79. The Minister also indicated a concern about the potential for a ‘hierarchy of rights’. She said:
- ” I am concerned that if we start to separate out all the various protected characteristics, it is possible that there would be a call on behalf of other protected characteristics for there to be commissioners for those groups.
80. She raised the idea of a rapporteur model as an alternative approach, whereby the SHRC, for example, could have rapporteurs for different groups of people.
81. Speaking before the FPAC published its report on the commissioner landscape, the Minister suggested allowing time to consider the Committee's report before bringing in a new commissioner, saying:
- ” Whatever that committee's recommendations will be, its report will surely require significant consideration by the Parliament and further dialogue with Government and other stakeholders. Given that context, it seems to be inadvisable to bring a new commissioner into an already complex environment at this time.

82. When asked in oral evidence about the concerns previously expressed about duplication and overlap, Mr Balfour responded “if it is so easy to do this work, why have we not done it already?”. He continued:

” The work that the various commissions have done on disability is minimal. Around 20 to 25 per cent of the population in Scotland has a disability. I am absolutely willing to guarantee that that does not represent the percentage of work that any of the commissioners has done on the issue.

83. He considered there would not be much of an overlap and that bodies would instead find ways of “dividing the work up where appropriate”, adding that “at the moment, the disabled voice is simply not being heard or investigated in that way”.

84. Mr Balfour did, however, agree that a lot more needs to be done on back-office sharing among commissioners, stating:

” We do not need human resources or accountancy functions for each commissioner. There is a real argument that commissioners should be sharing those functions. We need to look at office premises. It would be good to have all the commissioners under one roof, where possible, so that they can share best practice.

Learning Disabilities, Autism and Neurodivergence (LDAN) Bill

85. During the course of our evidence-taking, further concerns around the potential for duplication and overlap were raised, with regular reference to the Scottish Government's proposal for a Learning Disabilities, Autism and Neurodivergence Bill, which included the proposal for the establishment of a separate commissioner for LDAN.

86. Enable said it supported “the specific proposals for a new system of accountability, including a Commissioner role, to protect and promote the rights of people with learning disabilities”, although PAMIS asked whether that might be jeopardised subject to the Disability Commissioner Bill. Jenny Miller from PAMIS discussed the potential for further fragmentation within the wider disability sphere. She said:

” I am concerned. I think that there is a real risk, particularly if we are setting up commissioners to compete with one another. [...]. The issue is about how, collectively, we work together to make sure that the landscape does not become fragmented. [...]. By working collaboratively, we will all be able to make a difference.

87. There was a view expressed by some that if both commissioners were established, they would be required to work together, but the Neurological Alliance of Scotland said that this comes with a “strong risk of additional complexity and fragmentation amongst the groups”.

88. In oral evidence, the Committee heard strong support for the proposal for a LDAN Commissioner and it was suggested that this commissioner could work with other commissioners. The National Autistic Society Scotland (NASS) said, for example,

that autism is barely mentioned in other commissioner strategies. They said:

” Given the systemic nature of challenges facing autistic people and families, and the lack of progress in tackling these injustices, it is right that autistic people have a dedicated Commissioner to protect their interests.

89. In oral evidence, Suzi Martin from NASS considered that “it is important that there is collaboration as opposed to duplication” and that there also needs to be an understanding that “having a commissioner does not equal immediate change”, rather that they are there to “leverage change and ... will always be a few steps back from the change that happens”.

90. The SCLD said that the idea of adopting a homogenous approach, as suggested by the SHRC, puts people with learning disabilities at risk because you have to put in “unequal effort” for this group.

91. Eddie McConnell expanded on SCLD’s concerns that the Bill does not, in its current form, address “the issue of how people with learning disabilities would be particularly protected and prioritised”. He said:

” In that sense, in the absence of that specificity and clarity in the bill, the SCLD would share the concerns that a pan-disability approach might result in people with learning disabilities finding themselves once again at the back of the queue. We would argue, strongly and robustly, that all of the evidence, over many years, and the lived experience of people with learning disabilities, is that they are the people – the particularly marginalised group – whose rights are most at risk.

92. Regarding the possible LDAN Commissioner, Marie Curie said there would need to be clarity of scope for both commissioners, and that any potential overlap would be navigable.

93. The Scottish Government said, in its initial correspondence on 16 May, that its concerns were not about new commissioners in general, but the one in this particular Bill. It referred to its proposal for a LDAN Commissioner and stressed the differences in rationale for its proposal compared to a disability commissioner. In its view:

” People with learning disabilities, who have autism, or who are neurodivergent experience poorer outcomes than disabled people in general, for example, in educational attainment, suicide rates, life expectancy and employment rates. The LDAN Bill is positioned in a still developing area, with widespread public misunderstanding, and a need for leadership capable of bringing about cultural change. It is also worth noting that many autistic or neurodivergent people do not consider themselves disabled, and not all conditions under the umbrella term neurodivergent meet the definition of ‘disability’ within the Equality Act 2010. The Scottish Government is of the view that there is a much stronger rationale for a Commissioner representing the needs of this specific group than there is in relation to disabled people in general.

94. In oral evidence, the Minister for Equalities said there were “advantages and disadvantages” to having both a disability commissioner and an LDAN Commissioner and noted that “there is no shared viewpoint on the disability commissioner bill among disabled people”. She went on to say:

” I know that some autism and learning disability groups have concerns about the disability commissioner bill, because they see it as potentially diluting the focus on their concerns, which they believe have been marginalised. Should two separate commissioners be established, there is likely to be some overlap as well as greater potential with regard to functions.

95. The following day, however, in [correspondence to the Health, Social Care and Sport Committee on 4 September](#) the Minister for Social Care, Mental Wellbeing and Sport advised that the LDAN Bill had been delayed, with the intention now to publish a draft bill for further consultation.
96. In oral evidence, Jeremy Balfour indicated he would look at ways in which he might be able to incorporate an LDAN commission/er within his Bill, saying he would be “very willing” to talk to groups including Enable Scotland and the National Autistic Society Scotland about how his Bill might be amended to ensure that learning disability, autism and neurodivergence is covered.

Financial and resource implications

97. The cost of establishing a new disability commissioner and ongoing costs was an area of concern raised by several respondents to the Member’s consultation.
98. As noted earlier in the Cabinet Secretary’s memorandum of 16 May, the Scottish Government also raised concerns given what it described as the “extremely challenging financial climate” and the “limitations of the approach proposed in the Bill in terms of value for money and efficiency”.
99. While the Scottish Government considered the majority of costs within the Financial Memorandum to have been reasonably estimated, it queried the sum of £16,000 to £31,000 allocated for investigations annually, “with no details provided as to the number or extent of the investigations this would facilitate”. It said:
- ” Given the fairly extensive investigatory powers the Bill enables the Commissioner to undertake into service providers, both in relation to disabled people in general and particular disabled people, this appears to be a very limited budget.
100. The Scottish Government also queried the “minimal additional costs” that the Member-in-charge had attributed to local authorities and other public bodies who might act on any recommendation(s) made following a commissioner’s investigation saying, “it seems reasonable to acknowledge the potential for Local Authorities etc. to incur not insignificant additional costs if they decide to act on a Commissioner’s advice”.
101. The Scottish Government considers that, in the context of disability equality, the £1 million proposed as a cost by the Member-in-charge for the first year (including set up costs) is “a significant sum which could be better directed towards more strategic approaches to achieving the Bill’s aims”.
102. The CYPSC said there are significant financial implications for both new and existing commissioners. It was critical of the estimates made in the Financial

Memorandum, particularly in relation to staffing resources that would be required to engage and consult with disabled people. It suggested that such work involves specialist skills with the capacity to offer support and engagement in a range of different ways:

” From our experience in the operation of our investigation function, staff with specialist skills are required to fulfil this remit and investigations can be complex and resource intensive.

103. The CYPCS also identified a potential risk with the creation of new officeholders, including the creation of a disability commissioner, that “scarce public finances are diverted into establishing new bodies, rather than improving the effectiveness of existing bodies by adequately resourcing their powers”.

104. In its oral evidence, the CYPCS raised a concern about the number of staff estimated, and that there were no ‘participation staff’, which is a big part of what the CYPCS does. Nick Hobbs expanded on this concern:

” The first thing that jumps out in comparison to our office is that there are no participation staff. [...] There is a significant resourcing need in having someone in the office who is able to provide that level of expertise to the rest of the staff group so that we can really ensure that participation is at the heart of everything that we do, and that is an acute necessity for the disability commissioner as well.

105. Nick Hobbs also referenced the lack of provision for legal or investigation staff, explaining that an investigation “needs to be understood as a legal process”. He added:

” It is not simply a piece of research with some additional powers attached to it. You are potentially at risk of being challenged around acting beyond your legal powers if you are not careful to construct those things properly. There is therefore a question about the extent to which the commission will be able to exercise those powers.

106. Further to these points, he also noted that there are elements of work that are not visible, such as a whole range of compliance duties under other legislation. This again raised the concern of whether the commission would be able to use its powers.

107. In oral evidence, Jan Savage from the SHRC referred to the costs associated with setting up, running and managing a public body, ensuring efficient and effective use of public funds. She said:

” That is an issue in the context of setting up new public bodies to look after and uphold people's rights because, ultimately, the more public bodies we set up to do that, the more public money is diverted to the running and administration costs of public bodies, rather than being spent on the work of upholding people's human rights through policy work, legal work and, importantly, participation work.

108. The issue of staffing resources, particularly around participation, engagement and being fully visible and accessible, was also raised by several disability organisations in oral evidence. They questioned whether enough financial and staffing resources

had been estimated for the disability commissioner. For example, PAMIS and SCLD said that people with a breadth of skills are required to engage with people who have learning disabilities, and that this takes time. Inclusion Scotland said that a disability commissioner would need to consider the cost of going into remote rural places. Marie Curie said there is a concern that money might be directed away from other services. Carers Scotland suggested that the economic benefit of having a disability commissioner might outweigh the cost.

109. Tressa Burke, from GDA, stated in evidence to the Committee:

” I suggest that the amounts of money and staff that are proposed in the financial memorandum would not be enough. If the commissioner is to have real weight, it will need people to work on participation, legal people and people who investigate.

110. Dr Pauline Nolan, from Inclusion Scotland, expanded on the issue of costs associated with the commissioner being fully accessible, stating:

” There are costs to ensuring accessibility. Scotland has a communications accessibility standard, which absolutely must be kept to, so there is no question but that you have to cost and budget for it. However, there is insufficient funding in the financial memorandum for the engagement support that people will require.

111. Jeremy Balfour told FPAC that he would be concerned if the Scottish Government directed money away from other services as a result of establishing a disability commissioner, and that, to do so, would be a political choice on the part of government. Mr Balfour also said that funding for children's charities, for example, has not been changed because of the creation of a Children's Commissioner.

112. On cost estimates in the Financial Memorandum, the Non-Government Bills Unit (NGBU) told FPAC that these were based on discussions with SPCB officials and examples from other officeholders. They said that the number of staff needed had been discussed with Mr Balfour, as well as considering the staff base of other Commissioners. NGBU also said it would be possible for the disability commissioner to consult with the SPCB if it wanted to employ more staff.

113. In its correspondence to the Committee, FPAC said that its scrutiny of the Financial Memorandum highlighted potential costs to the Scottish Courts and Tribunals Service in relation to the creation of a new offence and penalty, as well as additional costs for local authorities arising from investigations carried out by the disability commissioner.

114. The Scottish Government noted that, in addition to the existing seven SPCB supported bodies, a further six commissioners have been proposed or are currently being considered, stating: “The total budget for [the existing] commissioners directly responsible to Parliament in 2023/24 was £16.6m million, with individual costs ranging from £0.3m to £6.7m”.

115. Further, it referred to its work on the soon to be published first phase of a Disability Equality Strategy, aimed at tackling systemic barriers. It said:

- ” Setting up a Disability Commissioner would divert resources from this valuable work without the evidence base to suggest it would be an effective way of achieving change.
116. In oral evidence, the Minister for Equalities remained cautious about the costs of a new commissioner, especially given concerns about duplication of work and the number of staff required to give the commissioner ‘teeth’. The Minister repeated the concern that money might be diverted from other strategic aims.
117. In response to this concern, Mr Balfour noted that similar arguments about diversion of funding from activities and on-the-ground resources were made during scrutiny and consideration of the Bill to establish the Children’s Commissioner. He said:
- ” I do not see the proposal moving money away from disabled people – I think that it is a both situation and that we will continue to fund disabled charities and organisations.
118. Mr Balfour also noted that there had been “quite a lot of criticism” of the Scottish Government’s Disability Equality Strategy, arguing:
- ” [...] when Inclusion Scotland and the Glasgow Disability Alliance are saying that the strategy will not make any difference to disabled lives, we have to hear that. Actually, is it not better to invest the money in a commissioner, along with all that is being funded at the moment?

Intersectionality

119. Intersectionality is a sociological framework that describes how a person’s social and political identities can result in unique experiences of discrimination and privilege. It recognises that people are shaped by their membership in multiple social categories, such as race, class, gender, sexual orientation, and disability, and that these categories can overlap and create systems of disadvantage.
120. There was a shared view running throughout our evidence sessions of the importance of a disability commissioner taking an intersectional approach to their work although, much like concerns expressed about duplication, some witnesses did identify areas of potential tension as to how they carry out their functions.
121. For example, the CYPSC suggested that establishing a disability commissioner would impact on the intersectional approach it takes to children’s rights, stating:
- ” Children’s human rights are indivisible and interdependent. An intersectional approach to upholding children’s rights which takes account of all relevant identities enables more effective rights protection, rather than a system which artificially separates the different issues. ... Subdividing a person’s characteristics across the mandates of numerous new public bodies will require bodies, rights holders and duty bearers to work together in ways which may not be possible, effective or efficient. Existing bodies are unlikely to receive any additional resources to enable them to work in this way.
122. Similarly, SHRC said it would be important to avoid prioritising the rights of one

group over another.

123. In oral evidence, MWCS said that understanding intersectionality is important, and gave the example of how people with mental illnesses can be treated differently based on their ethnicity.
124. The GDA said that the various Commissions/Commissioners must work closely together to effectively address intersectional issues.
125. In their responses to the call for views, both Carers Scotland and RNIB suggested it was important that a disability commissioner considers the wider equality impact across groups including ethnicity and gender.
126. Karen Wylie of Glasgow Disability Alliance explained this in oral evidence in the context of addressing the barriers that disabled people face, saying:
- ” We have black, Asian and minority ethnic disabled people, LGBT disabled people and disabled people of all ages and so on, so it is perhaps more a case of looking more at the barriers that are faced by people, rather than at individual conditions or impairments.
127. In oral evidence, the Minister for Equalities, said that mainstreaming “is the way forward” and suggested that it is simpler for individuals if there is one organisation they can approach for support. The Minister acknowledged there is a complexity that exists within disability, even before looking at issues around race or gender, for example. She said:
- ” My broad reflection on that is that we need to take a holistic approach and see people with disabilities as people first and foremost, who have a range of needs, which could be in health and social care, in housing or in education—it could be that one of those things comes to the fore at a particular time and others at other times.
128. When asked for his views on how a disability commissioner would be accountable and deal with every aspect of a disabled person's life including intersectional factors, the Member-in-charge said it would be important for the commissioner to have the right team around them and to “go out and listen to the disability community”. He believed that, whatever the context, “some very obvious themes would come quickly to that individual [the commissioner], and they would have to set out their work programme to deal with them”.

Disability definition and potential to go beyond devolved powers

129. There were mixed views expressed in the evidence we took about the proposal within the Bill to use the definition of disability set out in the Equality Act 2010, which deals primarily with reserved matters.
130. The Law Society of Scotland suggested it might be better to use the definition of disability in the UN Convention on the Rights of People with Disabilities (UNCRPD). In its view, this definition is broader and is more focused on societal barriers.

131. In its response to the Committee's call for views, the EHRC said:
- ” The investigatory power in the legislation also appears both to overlap with our powers and at the same time be significantly weaker. There is a risk that this proposed power strays into consideration of conduct prohibited by the Equality Act 2010 and therefore outwith devolved competence.
132. Regarding the Public Sector Equality Duty (PSED) under the Equality Act, the EHRC says that if the disability commissioner is established, they would expect it to be listed for the purposes of the PSED, which they enforce.
133. In its [letter to the Committee](#) (16 May 2024), written before its decision to publish a draft LDAN Bill for further consultation, the Scottish Government highlighted the concerns expressed by the EHRC and Law Society of Scotland regarding legislative competence, given that the Bill uses the disability definition in the Equality Act 2010, particularly in the context it provided of noting that many autistic or neurodivergent people do not consider themselves disabled. In her evidence to the Committee, the Minister for Equalities said:
- ” Mr Balfour's bill also refers to the Equality Act 2010 definition of “disability” and “disabled person”, so there are potential issues around the Parliament’s legislative competence in the area, as well.
134. Some of the responses to the Member-in-charge’s consultation held different views on the definition of disability that should be used. The Equality Act definition is often viewed by some as the 'medical model' (which suggests people are disabled due to their condition or impairments), whereas a 'social model' (which suggests people are disabled by social, attitudinal and physical barriers), like the UNCRPD is seen by others to be more inclusive.
135. There were a similar range of views on using the Equality Act definition of disability in response to the call for views. The Neurological Alliance of Scotland and Inclusion Scotland support using this definition. Disability Equality Scotland said it is important to align with the definition in the Equality Act, although it also said that the Equality Act is failing disabled people.
136. PAMIS supports the use of the definition, but caution that it is very broad ranging and that “people with PMLD [profound and multiple learning disability] would become lost amongst this.”
137. Enable said they recognise the need to use this definition, but that:
- ” ...it is also important to recognise that the language of ‘impairment’ does not align with the social model of disability. People with learning disabilities would not recognise the term of ‘mental impairment’ as an appropriate description. Such language in itself is unhelpful in terms of how people who have learning disabilities and autistic people are perceived by general society.
138. The GDA and SCLD do not support using the definition of disability contained in the Equality Act. This is because it is based on the medical model of disability that focuses on conditions or impairments. Instead, they both suggest the Bill should use the definition in the UNCRPD because it aligns with the social model of disability where people face societal barriers.

139. Enable, SCLD, the National Autistic Society, and the Neurological Society each favoured a more inclusive approach to the definition of disability, although some felt more strongly than others. Enable said they are not comfortable with the language of ‘impairments’ that is in the Equality Act definition but accepted the use of that definition. SCLD are very uncomfortable with the Equality Act definition and would advocate for a more inclusive one that follows the UNCRPD.
140. In their response to the call for views, Carers Scotland and Marie Curie supported the Equality Act definition of disability. In oral evidence, Amy Dalrymple from Marie Curie felt the definition was “comprehensive” and that “there is value in using a definition that already exists in legislation” which can then be complemented by guidance about what that means for different organisations’ responsibilities. She said:
- ” There can be a definition in the legislation, but that can be clarified and expanded upon when needed. It is important to think about how a definition would be operationalised.
141. Mr Balfour acknowledged the differing views on the definition of disability and indicated this is a matter he would be willing to explore further, potentially at stage 2. He said:
- ” I was interested in some of the comments that were made about how you define disability, so I have come up with a definition. I would probably want to pursue that definition with others to ensure that it is as inclusive as possible and that people feel that it is so. Ultimately, we will have to come to a decision on that, but I am interested to hear what other voices have to say. The issue came up a wee bit in my initial consultation. It was probably not highlighted as much then as it has been to you since, so it would be interesting to explore that further.

Powers of the disability commissioner

142. The Bill provides for a range of general powers for the disability commissioner. In summary, these are to:
- Promote awareness and understanding
 - Keep law, policy and practice under review
 - Promote best practice
 - Promote and publish research.
143. A further requirement is for the disability commissioner to have regard to the UNCRPD and a power to conduct investigations. As stated above, there is broad support for all these powers from several of the disability organisations.
144. The requirement to have regard to the UNCRPD was seen as important by the disability organisations, especially given that the Scottish Government proposes to incorporate the treaty into Scots law.

145. For example, in response to the call for views, Marie Curie supported this proposal, however they said that:
- ” ...palliative care is not given sufficient mention within existing international human rights framework. We would draw the Committee's attention to the fact that palliative care is defined by the World Health Organisation as one of the components of a right to health. Ensuring disabled people are able to access all of their rights, including palliative care should be a priority for the Disability Commissioner.
146. There is some concern that the power to undertake investigations does not come with any power to make changes. Disability Equality Scotland said they would like the disability commissioner to be able to take action to improve situations where necessary. The GDA said that the investigation function is crucial, but it “must have full legal force to be effective”.
147. Inclusion Scotland said that some of their members were sceptical of the investigation powers, stating:
- ” ... there was a feeling that investigative powers alone will not lead to the policy and legislative changes necessary to protect and promote disabled people's rights, as even when existing organisations such as the EHRC have investigative powers, as well as legal and enforcement powers using the court and tribunal systems, this has not resulted in the necessary policy and legal changes for disabled people.
148. Regarding the recommendations from investigations, Jeremy Balfour told FPAC, “The idea would be to highlight to us as politicians and to the Parliament that this is an issue and ask what we are going to do with it”. When asked about measuring outcomes and whether there should be a mechanism for that within the Bill, he said he would reflect on this in advance of Stage 2.
149. In oral evidence, the Minister for Equalities said she was “closely considering” how the investigation and reporting powers might be enforced. She said:
- ” with any investigation powers, you can investigate and report, but the issue is then about the enforcement of the recommendations that come out of that report. That is the bit that I am closely considering.
150. As with the discussion on the definition of disability, Mr Balfour recognised the views that had been put across during our evidence sessions, particularly in relation to comments about the bill lacking ‘clout’ or ‘teeth’, and that, in that sense, there is a need to “look at what powers a commissioner can choose to enforce”. He added:
- ” Many people who are better legally qualified than I am will tell you that there are restrictions in that regard, even on the powers of commissioners. However, we can probably go further and I am certainly willing to work with the Glasgow Disability Alliance, other charities and MSPs to see how far we can go and still keep on the right side of legality. I have put forward some powers for the commissioner, and we will just need to make sure that they are legal. If they are, I am certainly happy to have discussions with you and others about that.

Inclusive communication

151. The EHRC referred to the Bill's provision on inclusive communication, which it suggests could overlap with the duty to make reasonable adjustments in the Equality Act. It also said:
- ” We are aware the Scottish Government intends to introduce a new Scottish specific duty on inclusive communication, and it may be helpful to await the associated legislation and guidance to inform this Bill.
152. In oral evidence, Stephanie Griffin noted that the term ‘inclusive communication’ “is in other pieces of legislation, but a definition of the term is missing”. She added:
- ” I am not clear on what inclusive communication means in that context that is any different from what the reasonable adjustments duty is under section 20 of the Equality Act 2010.
153. The Committee heard a range of views among disability organisations on this provision.
154. Heather Fisken, from Inclusion Scotland, said that inclusive communication is incredibly important and that it must be “not one way but two way” so that it is “not just the physical act of making yourself understood but people's understanding of the issue in hand”. She went on to highlight some areas where there might be room for improvement, saying:
- ” Another thing to say is that there is an absolute dearth of supply...of communication support of particular types. Potentially, that, too, needs to be addressed. The will may be there to supply communication support, but it is not available to provide. Another thing – which is an experience of all our DPOs – is that, sometimes, when the Scottish Government issues a consultation or a paper, we have to go back and say, hold on, we need this in EasyRead at the same time. Otherwise, it is not inclusive.
155. Lyn Pornaro, of Disability Equality Scotland, had a similar view, particularly with regard to two-way communication, saying that “we can be really good at putting out inclusive communication in order to include people, but we are not so good when we get it back in again”. She also identified areas for improvement, saying:
- ” When reports are done, that is great and wonderful, but they are not inclusive, because of the way in which they are written – often in a research manner. That is not necessarily what disabled people want. A lot of people are excluded if they are told that they have to go online to do something and they are uncomfortable doing that or do not have the facility to do it.
156. Enable said that for people with learning disabilities, it is vital all information is available in Easy Read and other inclusive formats.
157. PAMIS, the SCLD and the Neurological Society of Scotland were each supportive of the provision but said there had to be recognition of the wide scope of accessible formats that will need to be available to suit different needs.
158. For example, SCLD said:

- ” It is important to note that easy-read is not a panacea in terms of inclusive communication, rather easy read is just one way of making information more accessible to people with learning disabilities. Other formats, such as Talking Mats, video or voice notes, will also help some people. For many people with learning disabilities, Zoom is more accessible than Teams and will be their preferred form of communication. Furthermore, while easy read will suit some people with learning disabilities, it will be inaccessible to others.
159. In response to the call for views, RNIB stressed the importance of inclusive communication, stating:
- ” The harmful impact of not receiving information in a preferred and accessible reading format should not be underestimated. For instance, patient confidentiality can be compromised when health information is not provided in an accessible format and many people with sight loss feel they are unable to take control of their own health needs.
160. In oral evidence, Richard Meade from Carers Scotland talked about the importance of reach, saying:
- ” We need to make sure that the commissioner has sufficient reach so that everybody who might benefit from them does so and that, when people get in contact with the commissioner, there is a process of inclusive communication that allows them to articulate their challenges, concerns and issues, and to navigate the system and understand what the process is and how their complaint, investigation or whatever will be progressed.
161. Although not referenced in the Scottish Government's correspondence to the Committee, it does have [plans to introduce a duty on inclusive communication](#) when it revises the Scottish public sector equality duty. The plan is to implement changes by end of April 2025.
162. In oral evidence, the Minister for Equalities said that, while there are some really good examples of inclusive communication within the public sector, provision is inconsistent, and it would be good to address that. She said:
- ” The principle of inclusive communication is important because it goes to the heart of the dignity and agency of those who have communication barriers. Perhaps they do not have the barriers; perhaps it is us who are creating those barriers, so it is on us to deal with them. We need to ensure that provision is consistent.
163. Comments made by disabled people at the engagement sessions included that it would be essential that a commissioner comes out and speaks in person to disabled people and that the use of different formats of communication is fundamental. A point was also made about closing the feedback loop, as there is lots of consultation but then those doing the consulting “never come back and tell you what they did with what you said”.
164. In oral evidence, the Member-in-charge referred to the provision with the Bill, that a commissioner must consult with and include disabled people, and offered an example of how this might be done through inclusive communication, saying:

- ” The commissioner must ensure that those who have difficulty in making their views known or in accessing information have the means to do so when engaging with the commissioner. That could be done through the provision of information in different formats, such as Braille and easy read.

Involvement of disabled people

165. A provision to involve disabled people in the disability commissioner's work is set out in section 5 of the Bill. This includes the commissioner taking reasonable steps to ensure that disabled people are made aware of the commissioner's functions and how disabled people may communicate with them, as well as consulting with disabled people and any organisations who may support disabled people (e.g. disabled people's organisations).
166. The EHRC suggested that there is the potential for 'consultation fatigue' and, in oral evidence, the SHRC said that disabled people are a diverse community and that it will be a challenge for the disability commissioner to encourage participation.
167. The CYPSC referred to their experience of travelling around Scotland to engage with children and young people, and the resources this takes. The MWCS suggested that another way to involve disabled people is to have them on the Board. Several of the disability organisations indicated strong support for the involvement of disabled people in their responses to the call for views. For example, Disability Equality Scotland highlighted the importance of involving people with lived experience.
168. PAMIS said that disabled people should be an integral part of the commissioner's team, although the ability to ensure all voices are represented will be a challenge. The GDA said that disabled people must be involved, "...otherwise its whole raison d'être is undermined".
169. The SCLD said that leadership and co-production are also critical. In accordance with the UNCRPD, people with learning disabilities and other disabled people should take the lead in shaping the work of the Commissioner.
170. In their response to the call for views the RNIB said:
- ” ...a Disability Commissioner who ensures participation routes for disabled people in Scotland are accessible, whether that is via consultations, engagement work, or co-production and co-design would be crucial to gain trust and respect of those it serves to protect.
171. Carers Scotland said:
- ” Disabled individuals and their unpaid carers should have the training and support to participate. Individuals should be recompensed for involvement.
172. In oral evidence, Tomas Gerrard of Deaf Action said:

” I will say point blank that the bill will not work without the involvement of disabled people. It is absolutely crucial that disabled people are involved in the process from the get-go.... We have the lived experience, so we are aware of the impact that policies have on our everyday lives. If a policy has any impact, we know where the resources should be redirected in order to make the greatest impact.

173. Amy Dalrymple of RNIB Scotland supported this view, saying:

” The establishment of a disability commissioner is a commitment to doing things differently—or, at least, it should be. There is no point in setting up a disability commissioner if that is not the case. Therefore, as Tomas described, it is hugely important that disabled people are fully involved in the process. That brings us back to the question of resource. In order that the process is done properly, it needs to be properly resourced.

174. The Minister for Equalities supports the involvement of disabled people and said “nothing about us without us”. However, she also noted that the practical reality is that it will be a challenge to ensure the commissioner is truly inclusive, adding:

” We need to consider how the consultation will take place – will it be done online? That will have various implications relating to travel, health and social care, and carers, for example. All of those things will come into it. That feeds back into the financial area. We need to consider whether those things have been taken into account to make the bill truly meaningful. I would look for transparency regarding the additional costs that would arise from those things and at where costs would be accounted for, to ensure that those things happen.

175. During the engagement session in Glasgow, participants shared the view that it would be important to involve disabled people in the commissioner's work, as this is a matter of “inclusion, not exclusion”. They considered that the commissioner should get “out and about” and hold regular events and activities using diverse and accessible methods.

176. In oral evidence, the Member-in-charge explained that he had specifically included this provision as the views of disabled people would be central to the commissioner's work, to achieve the overarching purpose of promoting and safeguarding the rights of disabled people so that they have “a champion who will give them the prioritisation that they need and deserve.

Scottish Human Rights framework and further powers for existing commissions/commissioners

177. Notwithstanding the FPAC report on the current commissioner landscape, and its recommendation of a moratorium of any expansion of the remit of existing bodies, this was an issue that came up during the course of our scrutiny at Stage 1.

178. For example, the CYPSCS says that while it has investigation powers, it lacks any enforcement power. This is similar to the proposal for the disability commissioner.

The CYPCS states:

” ...experience has led us to conclude that a power to make binding recommendations could be an important addition to the office's ability to hold public bodies accountable, particularly now the UNCRRC (Incorporation) (Scotland) Act 2024 has been passed.

179. The SHRC referred to the previously anticipated Scottish Human Rights Bill which aims to incorporate four international treaties into Scots law, including the UNCRPD. It suggests that, with the Disability Commissioner Bill, there is potential for the rights of certain groups to be prioritised over others, stating:

” Indeed this could be a consequence of the proposed powers for the Disability Commissioner, which include the power to do general and individual investigations, neither of which the Commission has through the SCHR Act 2006. The effect of the proposed Bill would be to create stronger accountability mechanisms for the rights of disabled people than those that currently exist for everyone in Scotland. It would be preferable for the mandate of the SHRC to be amended to include these enabling powers for all, including disabled people.

180. The SHRC says it would also be possible to deliver stronger accountability for the human rights of groups of people who have their rights protected by international human rights instruments. This would be through the establishment of specific monitoring teams focused on CRPD, CEDAW, CERD, ICESCR, among others, led by a greater number of members of the Commission to bring more diversity.

181. However, in oral evidence, the GDA said the Bill is about addressing a “hierarchy of oppression” rather than a “hierarchy of rights”, adding:

” I have heard the argument about hierarchies of rights, but the proposal that we are discussing is about addressing a hierarchy of oppression and the fact that disabled people are the furthest removed from having the most basic human rights. We have members who did not have a shower for more than two years during the pandemic, and who have been told that they need to have only so many showers a year, once a month.

182. In their response to the call for views, RNIB said:

” Consideration should be given as to how the Disability Commissioner for Scotland would complement and enhance the role of potential future legislation within the Scottish Parliament such as the Human Rights (Scotland) Bill.

183. Jeremy Balfour recognised the instinct to have a moratorium whilst a review was undertaken, particularly in the context of any expansion of remits for existing bodies, but argued:

” We are being asked to trust existing institutions to provide a voice for disabled people when they previously have not provided that voice, even though they already have that mandate. The reality is that they will never be able to prioritise disabled people because they have such broad remits. Only a disability commissioner will be able to focus their full attention on disabled people.

184. He went on to express his concern about the impact of a moratorium, saying:

- ” If the bill falls, we risk this parliamentary session ending without our having passed any meaningful legislation to improve disabled people's rights, which would be shameful.

Conclusions and recommendations

185. The Committee is clear that disabled people have not been able to realise their rights. Concerted action is required to ensure that they are able to do so. We commend the Member-in-charge on bringing forward this Bill.

186. The strength of feeling among disabled people has been palpable and this was brought into even starker focus recently following the Scottish Government's decisions to delay introduction of the Learning Disabilities, Autism and Neurodivergence Bill and not to bring forward the proposed Human Rights Bill during this parliamentary session.

187. The Committee supports the premise of the Bill to improve the lives of disabled people. We have heard the frustrations of disabled people over the course of our evidence session and particularly in our engagement sessions.

188. The Committee heard strong and compelling support from many organisations for the principle of establishing a disability commissioner. However, we also heard concerns expressed about the potential for duplication and overlap with the work of other bodies, the lack of investigatory or enforcement powers and restrictive mandates of existing organisations. Concerns were also expressed about the financial costs of establishing a new body and that potentially money could be better spent in supporting existing structures.

189. The Committee acknowledges the publication of the Finance and Public Administration Committee's report on the current commissioner landscape. We also note the Parliament's agreed position on the motion as amended on 31 October 2024:

That the Parliament welcomes the Finance and Public Administration Committee's 7th Report, 2024 (Session 6), *Scotland's Commissioner Landscape: A Strategic Approach* (SP Paper 642); agrees with the recommendation that a dedicated committee should be established to carry out a "root and branch" review, with the purpose of creating a clear strategic framework to underpin and provide more coherence and structure to the Scottish Parliamentary Corporate Body (SPCB) supported body landscape, which should complete its work by June 2025, and further agrees that, while this review is undertaken, there should be a moratorium on creating any new SPCB supported bodies, or expanding the remit of existing bodies, while recognising that, for proposals within bills that have already been introduced, these are now for the Parliament to take a decision on, respecting the lead committees' roles in scrutinising legislation within their remits.

190. Consequently, the Committee makes no recommendation on the general principles of the Bill and instead invites the Parliament to have a full and focused debate on this issue, to enable it to take a decision on the proposal which, alongside this report, should inform the root and branch review.

191. Regardless of the outcome of the Stage 1 debate, the Committee recommends that the dedicated committee conducting the root and branch review be established by the Parliament at the earliest opportunity to ensure it is able to conclude its work by June 2025.

192. The Committee strongly recommends that the dedicated committee takes full account of this report, and the evidence that has informed it, as well as the Stage 1 debate. In particular, it is essential that the review pays close attention to the identified failings that have contributed to the current, wholly unsatisfactory situation.

193. The Committee further recommends that, regardless of the outcome of the Stage 1 debate and the root and branch review, the Scottish Government takes strong and positive action to address the barriers that disabled people continue to face in realising their rights. The Committee suggests that this is carried out in partnership with disabled people and organisations who represent them to help to rebuild trust. The Committee will seek a progress report in September 2025.

Annexe A: Engagement

Informal engagement sessions held on 10 September 2024 at Glasgow Disability Alliance, the Scottish Parliament and online.

Glasgow Disability Alliance - summary of key points

There was strong support for a Disability Commissioner to represent all disabled people in Scotland. Set out below is a list of key themes that were raised during the session and reflected in the separate anonymised notes:

- The word ‘trust’ came up a lot, i.e. that the Disability Commissioner would have to work to build trust with disabled people, and the role Disabled People’s Organisations (DPOs) could have in this relationship building. For this to happen, the Commissioner needs to be willing to engage, listen and learn from disabled people sharing their experiences.
- The support for a single-minded champion for disabled people, but a concern that it could become tokenistic.
- The need for proper resourcing in order for the Commissioner and their office to be able to meaningfully engage with disabled people, given the additional access costs that incurs.
- The relationship between the Commissioner and DPOs to be a two-way street: DPOs to work with the Commissioner to engage with their members and as bodies amplifying their members’ voices, but also for the Commissioner to be a champion for DPOs, particularly in facilitating access to decision-makers.
- The Commissioner must have real power to get redress for disabled people where their rights have been breached e.g. sanctioning service providers with fines/removal of contracts. However, this was caveated with concern those being penalised would divert resources earmarked to provide services to disabled people to pay fines.
- Acknowledge that the need for a single-focussed Disability Commissioner comes, at least in part, from the lack of urgency/absence of action across government at all levels towards tackling disabled people’s poverty and inequality. Participants wanted “no more false hope”.

Key requirements of a Disability Commissioner:

- needs to have ‘teeth’, such as powers to enforce action or to request reports from public bodies.
- must have an awareness of issues across urban/rural areas and the islands.
- must communicate in a range of accessible ways.
- must engage with and include disabled people in its work.

- must raise awareness of issues, e.g., through social media.
- should provide a central space to raise complaints and achieve remedy.

Glasgow Disability Alliance - table 1

Barriers

- One of the biggest barriers faced by disabled people is getting people to listen to them in the first place.
- People are able to engage with the committee today because GDA have supported them to do so otherwise it would be a tick box exercise.
- Not all barriers relate to health and accessibility. There are housing and transport issues as well as many other barriers.
- People have confidence in DPO's but less so in Government.
- DPO's are great at championing the rights of disabled people but lack the teeth to make real change.
- People just want the right information and the right help at the right time.

On a Disability Commissioner

- They must understand disabilities.
- If they are to be a champion for disabled people, they must be a champion who can actually achieve and deliver.
- They would need to be a central body for information and complaints and for holding public bodies to account.
- DPO's are able to champion people's rights but a commissioner should have power to actually affect change.
- A Commissioner could help to provide long term support rather than the short-term support currently available from services like advocacy.
- A commissioner should be seen as cost effective for government by providing long term support rather than crisis intervention.
- Important that the commissioner has an understanding and experience of disability and has a team around them with different "specialist" knowledge.
- A commissioner needs to be able to demand information of services other than health and social care such as holding housing to account on accessible housing targets etc.
- It is important that the commissioner can champion the social needs of disabled people and not just the health and care requirements.
- A commissioner should advocate on behalf of disabled people and then provide

feedback on the result.

- A commissioner should be able to get local authorities working together to prevent a post code lottery on available services.

On Communication

- Essential that a future commissioner comes out and speaks in person to disabled people.
- Different formats of communication is fundamental.
- Online is not enough, not everyone has digital access.
- Continuity is important. People currently fall between the gaps when moving between services and end up repeating themselves.
- We hear a lot about population wide issues like waiting times etc but very little about disabled specific issues. A commissioner should be able to shine more of a light on these issues publicly.
- They must be visible and known to the community.
- Disabled people don't get enough information from the likes of GP's, Social work, resource centres etc. A Commissioner should put pressure on those services to deliver better information and advice.

The Commissioner would need to be a voice for everyone but able to adapt to the needs of individuals.

Glasgow Disability Alliance - table 2

Poverty – cost of living

Choosing between heating and eating. Taxis for appointments – higher needs, higher costs. Diet affected by poverty and lack of social care – no support to cook proper meals.

If you are poor you can only afford the cheapest service/items. This costs you in long term as things need replaced all the time and you have to budget for e.g fixing glasses or buying food.

Lived experience

Commissioner should have lived experience and awareness of issues that disabled people face. Also, where would they work? Does it have to be Edinburgh? There are more disabled people in Glasgow.

They need understanding and empathy as life can be very hard – lots of things you can't do and also living with pain. Understanding the daily struggles is important.

Communication

Listening to disabled people is crucial. Don't put words in their mouth. Giving different

options to communicate – not everything online. Take the time to be visible and meet in person.

Close the feedback loop – people in power always come and ask for opinions, lots of “consultation” but then they never come back and tell you what they did with what you said. Commissioner needs to report to DPOs at least once a year to say what they did. It needs to be a two-way conversation. “We’re employing them”.

Additional barriers

Some people have multiple barriers – e.g. asylum seeker who is disabled has language barriers as well as financial barriers due to both disability and no recourse to public funds (depends on Home Office for support). Then asked to pay £50 for a medical report – impossible.

Physical barriers – can’t get into certain buildings (steps). Still too common. Accessible toilets are not always accessible (i.e. space to turn a wheelchair around). These are basic requirements but huge barriers if they are not available.

Is it a good idea?

As long as it’s independent and has power – not a talking shop. They need to do something, something, have power to get things done and clout so that there’s consequences if bodies/organisations do not protect/respect disabled people’s rights. Accountability.

Scepticism as to whether it will come to anything because there was a lot of work and consultation done on Human Rights Bill but then it was dumped. So it was for nothing. What will happen if the Bill is not through before the end of this Parliament?

The Right to Food was supposed to be enshrined in Scot Law through Human Rights Bill but didn’t happen so waste of time and money.

Different commissioners?

Different commissioners for different disabilities (e.g. Learning disabilities) would dilute the power and meaning – it should be about the social model of disability and the barriers that ALL disabled people face, not individual impairments. At the other end of the Spectrum EHRC/SHRC are not focusing enough on disability.

For people who have additional barriers, or face discrimination due to other characteristics such as gender, age or race, the commissioner needs a team of people who are all knowledgeable about disability as well as other issues – specialists.

Get to know people – it’s about individuals, issues depend person to person. Not all disabled people are the same.

Complaints

If the Commissioner is not doing their job, then disabled people should be able to complain. There needs to be a way to make them accountable.

Glasgow Disability Alliance - young people

The idea of a Disability Commissioner

- Young disabled people support the idea, but with a degree of scepticism as they don't want more false hope or empty promises.
- Other commissions/ers have not been effective enough. The Disability Commissioner must have actual powers to bring about change.
- Important that a Commissioner is politically neutral; they should be there to represent disabled people without an agenda.
- They should at least have an insight into working with disabled people. Maybe it would be good for the Commissioner to be disabled.
- Important to represent ALL disabled people and understand the diversity of disabled people across the whole country. This includes "hidden disabilities".
- Will need a support team/specialists to be able to respond to queries and act quickly to deliver what disabled people need when they need it.
- Don't presume the location of their office. Why not Glasgow instead of Edinburgh? But important to have other 'branches' across Scotland.
- Don't want any appointment process to be rushed. Need to take time to identify suitable contact. Maybe DPOs and disabled people should be involved in that process. Important that they have a track record of getting things done.

Communication

- The individual should make the time to be visible.
- Important that they communicate with disabled people on a regular basis (perhaps monthly) and that they use fully inclusive and accessible methods of communicating.
- Must be easily contactable and demonstrate that they care about our views and concerns.
- Funding and budget will be important.

Involvement of disabled people

- Important to involve disabled people in Commissioner's work.
- Inclusion, not exclusion.
- Could keep disabled people involved and up-to-date with regular newsletters/emails/texts.
- Should get "out and about" too. Hold regular events and activities, using diverse and accessible methods. Make sure attendees have an outline of the theme for events in advance.
- Will need proper budget to involve disabled people, to factor in travel, accessibility,

venue, PAs, taxis. Should meet everyone's needs, not one size fits all.

- As mentioned earlier, would be good to involve disabled people in the selection process.

Barriers

- Difficult to get any helpful action from anyone who should, for example, local authorities.
- Getting to and from places, like for appointments, can be expensive.
- Young disabled people have additional barriers particularly when it comes to the transition from school to college/further education.
- Accessibility and appropriateness of provision for young disabled people is bad, preventing them from furthering their education.
- Any adjustments often have to be taken on and pushed by the individual, costing time, energy and money. Very demoralising.
- There needs to be much better allocation of funding to support young disabled people through this transition.

The Scottish Parliament

Supported by external stakeholders: Inclusion Scotland and Disability Equality Scotland

- 9 participants
- 3 Committee Members

Suggested areas of discussion

- What barriers do you experience as a disabled person?
- What do you think of the idea of a Disability Commissioner to act as a champion for disabled people?
- What experience do you think the Commissioner should have of disability?
- How do you think the Commissioner should communicate with disabled people?
- And do you think the Commissioner should involve disabled people in their work?

General discussion throughout the session in order for people to share their views in a less structured manner. Main points from the session are noted below:

- A Disability Commissioner (DC) should have knowledge of disabled rights and know the law, including the Equalities Act. This is critical.
- They should represent all disabled people. We need a specific DC. The Human Rights Commissioner isn't representing us.

- It would be more meaningful/helpful if the DC was themselves a disabled person with lived experience, or at least have experience from a third sector organisation.
- The DC should be independent and have a team made up of, or including, others with different disabilities.
- The DC should work with the other commissioners.
- Concerns now re announcements in monetary cuts from the Scottish Government. Accessible resources and facilities are usually the first to go when costs are cut.
- A lack of carers/personal assistants has resulted in costly and inappropriate solutions.
- If a DC appointment goes ahead, it must be done properly.
- A DC needs to have the correct powers, more “teeth” to the role to be effective. In some ways, for example, the Scottish Human Rights Commissioner does not have enough powers.
- People make assumptions about disabilities. They see the disabilities first. Those with hidden disabilities are also judged or misunderstood.
- We are excluded from society as a culture in all aspects: building planning; housing planning; transport; Hospitals; social care; attendance at events or meetings; accessible toilets often do not have the required accessibility (i.e. interchangeable hoists). Accessibility is always an add-on but should be embedded in society.
- Every single aspect of life needs considered – it is huge.
- We need a DC. We need to be seen and represented.
- The Equality Act does not work for us.
- Do not put us in to boxes – advocate for us – we have lives to live. Advocacy desperately needs kept, we are losing that and yet they are a lifeline.
- DC role should cover as wide a range of disabilities as possible and help us on where to go for help. You do not always know where to go for help. Where are the pathways?
- We are always fighting for something. It is disheartening having to fight all the time. Even family don't understand sometimes. You've got to know the system, shout the loudest, but that is difficult when you don't know who to ask or turn to.
- It is tiring and exhausting having to fight all the time. We often don't know where to turn and are gaslit by GPs and social services. Sometimes we do not have the strength/energy to fight. It wears you down consistently. You accept the isolation.
- We want to live as independently as possible. Why can't it be equal for everybody? If some people get help, why can't others!?
- The system seems flawed and unfair. We aren't counted. Nobody wants to know.
- For a DC to work, we need the financial resources. It is a dire picture. Lack of support and resources means people are not getting the help they need.

- On a positive note, self-directed support is fantastic and it is really important this is available to people. It is life-changing, allowing independent living after a long, long wait. Having to move from Local Authority areas though to get support/recognised.*
- Advocacy services are amazing but they sometimes lack the legal knowledge which is required.
- DC needs to be a “one-stop shop”: where to go for help; signposting; advocacy; investigations. They must hold social work and social services accountable. One participant hasn't seen their social worker in person since 2018 – they are 154 miles apart.
- We are disproportionately negatively affected by social issues e.g. COVID and the cost of living crisis.
- The Government cuts and crisis will badly impact those with protected characteristics – we will be disproportionately affected.
- We need education on disabilities and inclusion in the early years so people understand the barriers we face. Public relations training on needs of disabled people.
- Where are the pathways? Where are the advocates? We are held back because we are “a hassle”. A DC would represent us; speak up for us; advocate for us and have the status to be listened to.
- It may take years but lets start the process. We need a Parliament and Government who is leading the way on the needs of disabled people.
- The DC must have the power to influence the Government and have powers to investigate breaches in human rights.
- The DC must have an accessible place for us to go in person; an appointment system to at least speak to an adviser on the correct pathway; be approachable and accessible for all disable people.
- The DC must take the time to travel and meet people across Scotland to find out how they want to be represented. The cost of engaging with the DC should not fall on us.
- The DC should be accessible to every disabled person. Channels of communication should be inclusive and there should be multiple channels of communication available.
- If the DC's role doesn't encompass all aspects of our lives, it is not worthwhile and is a waste of money.
- If a DC is not established, the money should not be given to local authorities instead.

* One participant elaborated on this in writing following the meeting. They said:

” “I moved to a different area, to be closer to specialist medical centre, and to live in a residential unit which had good facilities on site. I was for the first time living in my own flat beside MY peer group.

Problems arose when I left the establishment as I was not classed as an ordinary resident and five years later the [new] council are still not taking over my care package, even although I am renting a council house! That means my social worker and occupational therapist are 150 miles away.

Another problem is that when living in a care home environment, the local council does not accept you as needing council housing, as you have accommodation so you are not homeless and stay on the register for years. Also, disabled people cannot easily move home to a different local authority (LA) as this LA is simply not cooperating with my old LA – a typical example of “guidance” being ignored.”

Online

5 participants including support organisations, Maggie Chapman MSP

Participant 1

Disparity between those living in the central belt and those living with a disability in rural area. Glasgow and Edinburgh and central belt services are much better.

Participant 2

Came to Oban in 1997 and there was a lot of support from the Scottish Government for disabled people. That was a positive and wanted to highlight that. At the moment one of the things that we want to drive forward is Braille labelling on food. It is simple to put in place but incredibly difficult to achieve. We need more proactive activity to achieve this.

We have Braille labelling on pharmaceuticals, and it has made a huge difference. The coop has done it and we would like to see it elsewhere.

We have a parliamentary petition that is going to be reviewed on the 25th of this month. We have had positivity from the committee and are moving forward with it. Hoping that there will be positivity from the committee.

Everyone's needs are different.

Maggie – what are the experiences for disabled people?

Participant 3

I have worked with people with cerebral palsy and learning disabilities on the education side. We have made progress as time went on. We realised that people can be educated and have talked about empowerment and being able to be independent in the 80s and 90s. I was working with Scope in South Wales in a sheltered housing system which took couples as well as single people. They all had their own flats and there was a communal area. We helped people get out into the community and it was great to see that. I went on in Scotland but one part of it was people who have gone out in the community were coming from one stay hospitals - those with learning disabilities coming into the community

for the first time. They were able to live in the community with support, making food and environment choices and about their living situation. They were able to get out. Social inclusion was improving. Am very sad now that some of this seems to have reversed. I am disabled and have had cerebral palsy all my life. I need support and still see some of the young people that I used to work with and I am sad that they are no longer supported the way they were before. They are just wandering around on the streets on their own. This is where we have backlogs in hospitals because of lack of resources and lack of understanding. When I started needing support it was great, they put a stairlift in my house and when this broke down after 11 years it could not be replaced, and social services decided that I could not use the upstairs and to come downstairs and only use the living room because I had a toilet downstairs. One social worker said "that is good enough for you, you don't need any more than that". There are other people who are suffering in this way. I don't believe it's all lack of finance. It's about attitude and that feels like things have fallen off a cliff.

Maggie- Why has this happened? What about geographical equalities?

Participant 1

I'm from Lochaber and Fort William is the second biggest town and we have one daycare centre for an area of over 3000 square miles. Getting to a day care centre is impossible. We are suffering because we don't have social care providers, but transport is also an issue. We have gone backwards in the last 15 years in terms of transport. It's the worst I've ever seen it. There is too much dependency on charities. Tomorrow I'll be spending a day in the highlands. There are problems with mental health provision too.

On proposals for a commissioner – They were talking about introducing a czar. Is this all going to be based in the central belt? Are they going to experience travelling the country like a disabled person does? You have to be careful when employing a disabled person if that is what is going to happen as they would invariably focus on their own disability. Would they be independent or a shield for the MSPs? I think it could be another potential barrier.

Maggie – Do others have the same concerns?

Participant 2

One thing that I value about the access panel is it stabilises things as you have to be involved in things that affect a whole cross section of disabled people. I hope the Scottish Government will continue to support Inclusion Scotland and other groups as they can support work that needs to be done. Transport in a rural area is difficult. Some of the situations are almost unavoidable as it can be difficult to support them as we don't have the people there. Bodies who work for disability and have contact with the Scottish Government. I hope the Scottish Government will sustain funding. We need the groups to fly the flag.

Participant 3

I don't think that it is always the case that the people who take these positions realise what disability is. We could put it into one as it is the way in which we are affected in society. We are all under the same umbrella in that sense. A good commissioner needs first to understand disability and go right back to disability awareness. We need good communication. Different local authorities do things differently. They interpret SDS legislation (self-directed support) differently. We need consistency. The money they get to

use for disabled people should be ring-fenced. There would need to be good communication between the commissioner and the local authorities. Let's have someone and maybe someone who is disabled but that is not the most important thing. We need someone on our side. We feel like we are at the bottom, and we feel we get the crumbs at the bottom once all the other spending takes place. People can get £15 an hour working for Tesco and get much less working as a carer so they may be good people but the cost of living crisis means they are going to take those better paid jobs.

Participant 1

It is harder now getting SDS. Social work is a mess with SDS. It is a postcode lottery if you have a speech and language problem in the Highlands. Too many of these things are box ticking. It would have taken me two days to come to Edinburgh to attend this live. You are speaking to volunteers here.

Participant 2

Communication is a major problem. Good communication is the basis for any success and is key. It is very difficult. This is where Disability Equality Scotland, Glasgow Alliance, Inclusion Scotland and others do provide assistance as they are communicators and that's what we need.

Participant 1

There must be practical action taken too. All we do is speak.

Maggie – I hear your frustration and anger and that we can't just keep doing this we need practical action

Participant 4

Our members' view on our research encapsulates the challenges. "We need a voice to tell the government about all the problems we face and we are not second class citizens. We cannot be impulsive. We have to plan our days." It is not just transport and bullying. The scope of disability is huge. The original consultation that was issued by the Member was only available in word so it almost failed at the first hurdle by not being accessible.

Participant 1

On Scottish Adult Disability Payment – none of the detail needed that is included in the form relates to mental health and invisible disabilities. It asks the wrong questions. There are lots of issues there. The system is highly flawed.

Maggie - Would having a disability commissioner unpick that?

Participant 1

It depends on the remit and what powers he/she is given. It's like having commissions - the remit can be broad and cost a lot of money but it doesn't change anything.

Maggie – Is there something that we could do to support disabled people -social care, transport, housing. You've all talked about the need for understanding of the different needs of disabled people.

Participant 3

I'm not sure we do need to be hear more from people. We have done this for a long time and it doesn't really help. Instead of a commissioner, we need 3 or 4 people working with that person and could network out from that. Instead of having a commissioner sitting in a computer. The 3 or 4 people around him could link in with the reps from each service user. That would bring people with disability a better voice and bring better disability awareness. Representing different groups – e.g. people with dementia and those in hospital who are there for too long. That would be more effective than just one commissioner.

Participant 2

For something to work there has to be a robust structure or it quickly disintegrates. What that needs to look like would require some thought. We shouldn't ignore that we need a structure. I think that various bodies giving support is a good structural start. We have dozens of charities and I'm often not sure if we wouldn't be better if there were fewer as there is some overlap. If somehow we could have clarity about what each section and then if you had a problem you could go to a particular place. For example, there is a lot of overlap with charities supporting the blind – I am totally blind. With a bit of thought, they could do this better. In Australia, they have one charity for sight loss and they have different areas within that. I don't know if that works or not, but we should look at all the options.

Participant 4

LDAN bill - do we need a separate commissioner for every disability or can these things be brought together under one banner?

Participant 1

That bill had good intentions but was never going to work. A person with autism going to school can be the most disruptive person in the class due to no-one picking up the trigger points being displayed. How can you have autism pupil not be considered to have a learning disability as you are not able to learn. Parents and carers are fobbed off. Sometimes they only get support when a charity representative comes to the meetings with them. There should be a cradle to grave policy introduced. Nurseries should have programme for autistic children which follows the individual throughout their education and beyond. The current transition process is a farce. The parents are not being listened to even though they know their child the best. Disabled groups are also often all fighting for the same fund.

Participant 2

We need coordinators. This used to be the role of the GP. A lot of problems occur as we are too far down the line before someone is referred or on track to where they need to go. GPs were ideally positioned for this. The lack of coordination is a big issue.

Participant 3

We need to sort out the barriers. Some well-meaning social workers are visiting people are communicating people's needs and they can't get approval for what is needed from higher up – from COSLA. I wish we could turn it around and mend it. I would like to change the attitude in hospitals I have angina and a bad heart and had to go into acute assessment day centre and had to sit there for 7 hours. People with a disability are not treated very well not just in hospitals but in other places as well.

Participant 1

Previously, I told my clients to go to their GP for a letter of support for applying for a blue badge, PIP, and attendance allowance but GPs are now refusing to do it. People are sending away a form without medical evidence. The council then need to get in touch with the GP with a 10 page form when a simple GP letter would do. This causes problems for clients' claims.

Instead of a disability commissioner we should have a disability minister with powers (other participants were in agreement). We need more sessions like these where we can openly discuss things and know it will go back to where it needs to. This meeting has felt prominent and like it going somewhere. We are grateful for the opportunity to participate. Every disabled person is an individual and we must remember that.

We would be happy to join any future meetings.

Annexe B: Extracts from the Minutes of the Equalities, Human Rights and Civil Justice Committee

Should you wish to access meeting details and navigate to Official Reports, the links below will take you to the relevant meeting page.

[7th Meeting, 2024 \(Session 6\), 5 March 2024](#)

2. Disability Commissioner (Scotland) Bill (In Private): The Committee considered and agreed its approach to the scrutiny of the Bill at Stage 1.

[12th Meeting, 2024 \(Session 6\), 21 May 2024](#)

7. Disability Commissioner (Scotland) Bill (In Private): The Committee considered and agreed its approach to the scrutiny of the Bill at Stage 1.

[14th Meeting, 2024 \(Session 6\), 4 June 2024](#)

1. Disability Commissioner (Scotland) Bill:

The Committee took evidence on the Bill at Stage 1 from—

- Dr Arun Chopra, Executive Medical Director, Mental Welfare Commission for Scotland
- Stephanie Griffin, Scotland Policy Manager, Equality and Human Rights Commission
- Nick Hobbs, Head of Advice and Investigations, Children and Young People's Commissioner Scotland
- Jan Savage, Executive Director, Scottish Human Rights Commission.

2. Disability Commissioner (Scotland) Bill (In Private): The Committee considered the evidence it heard under agenda item 1.

[15th Meeting, 2024 \(Session 6\), 11 June 2024](#)

1. Disability Commissioner (Scotland) Bill:

The Committee took evidence on the Bill at Stage 1 from—

- Lyn Pornaro, Chief Executive Officer, Disability Equality Scotland
- Tressa Burke, Chief Executive Officer and Karen Wylie, Policy and Participation Manager, Glasgow Disability Alliance
- Heather Fiskin, Chief Executive and Dr Pauline Nolan, Head of Policy and Engagement, Inclusion Scotland
- Jenny Miller, Chief Executive, PAMIS - Promoting a more inclusive society.

and then from —

- Suzi Martin, External Affairs Manager, National Autistic Society Scotland
- Alice Struthers, Programme Director, Neurological Alliance of Scotland
- Eddie McConnell, Chair, Scottish Commission for People with Learning Disabilities (SCLD)
- Jamie Cooke, Head of Policy and Communications, Enable.

Paul O'Kane declared an interest as being employed as a Policy and Participation Manager at ENABLE Scotland (now Enable) up until 10 May 2021.

2. Disability Commissioner (Scotland) Bill (In Private): The Committee considered the evidence it heard under agenda item 1.

[16th Meeting, 2024 \(Session 6\), 18 June 2024](#)

1. Disability Commissioner (Scotland) Bill:

The Committee took evidence on the Bill at Stage 1 from—

- Kirstie Henderson, Policy Officer, RNIB Scotland
- Amy Dalrymple, Associate Director of Policy and Public Affairs, Marie Curie Scotland
- Tomas Gerrard, Bid Writer, Deaf Action
- Richard Meade, Director, Carers Scotland and Carers Northern Ireland.

2. Disability Commissioner (Scotland) Bill (In Private): The Committee considered the evidence it heard under agenda item 1.

[17th Meeting, 2024 \(Session 6\), 3 September 2024](#)

1. Disability Commissioner (Scotland) Bill:

The Committee took evidence on the Bill at Stage 1 from—

- Kaukab Stewart, Minister for Equalities, Scottish Government.

2. Disability Commissioner (Scotland) Bill (In Private): The Committee considered the evidence it heard under agenda item 1.

[18th Meeting, 2024 \(Session 6\), 17 September 2024](#)

2. Disability Commissioner (Scotland) Bill:

The Committee took evidence on the Bill at Stage 1 from—

- Jeremy Balfour MSP, Member in Charge of the Bill.

3. Disability Commissioner (Scotland) Bill (In Private): The Committee considered the evidence it heard under agenda item 2.

[23rd Meeting, 2024 \(Session 6\), 5 November 2024](#)

4. Disability Commissioner (Scotland) Bill (In Private):

The Committee considered a draft Stage 1 report and agreed to continue consideration at its meeting on 12 November 2024.

[24th Meeting, 2024 \(Session 6\), 12 November 2024](#)

4. Disability Commissioner (Scotland) Bill (In Private):

The Committee considered a draft Stage 1 report and agreed to continue consideration at its meeting on 19 November 2024.

[25th Meeting, 2024 \(Session 6\), 19 November 2024](#)

5. Disability Commissioner (Scotland) Bill (In Private):

The Committee agreed a draft Stage 1 report.

Annexe C: Associated Bill page

All Committee engagement, correspondence and evidence can also be found by navigating to the [Stage 1: general principles section of the Disability Commissioner \(Scotland\) Bill page](#).

- [1] Scottish Parliament. (2024, June 4). Official Report of the Equalities, Human Rights and Civil Justice Committee. Retrieved from <https://www.parliament.scot/chamber-and-committees/official-report/search-what-was-said-in-parliament/EHRCJ-04-06-2024?meeting=15910>
- [2] Scottish Parliament. (2024, June 11). Official Report of the Equalities, Human Rights and Civil Justice Committee. Retrieved from <https://www.parliament.scot/chamber-and-committees/official-report/search-what-was-said-in-parliament/EHRCJ-11-06-2024?meeting=15926>
- [3] Scottish Parliament. (2024, June 18). Official Report of the Equalities, Human Rights and Civil Justice Committee. Retrieved from <https://www.parliament.scot/chamber-and-committees/official-report/search-what-was-said-in-parliament/EHRCJ-18-06-2024?meeting=15944>
- [4] Scottish Parliament. (2024, September 3). Official Report of the Equalities, Human Rights and Civil Justice Committee. Retrieved from <https://www.parliament.scot/chamber-and-committees/official-report/search-what-was-said-in-parliament/EHRCJ-03-09-2024?meeting=15968>
- [5] Scottish Parliament. (2024, September 17). Official Report of the Equalities, Human Rights and Civil Justice Committee. Retrieved from <https://www.parliament.scot/chamber-and-committees/official-report/search-what-was-said-in-parliament/EHRCJ-17-09-2024?meeting=16008>
- [6] Scottish Parliament. (2024, June 25). Official Report of the Finance and Public Administration Committee. Retrieved from <https://www.parliament.scot/chamber-and-committees/official-report/search-what-was-said-in-parliament/FPA-25-06-2024?meeting=15957>
- [7] Scottish Parliament. (2024, October 31). Official Report of the Meeting of the Parliament. Retrieved from <https://www.parliament.scot/chamber-and-committees/official-report/search-what-was-said-in-parliament/meeting-of-parliament-31-10-2024?meeting=16063>

