

## Human Rights Consortium Scotland response to Scotland's Commissioner Landscape: A strategic approach

### About HRCS

Human Rights Consortium Scotland is the civil society network to defend and promote human rights for all in Scotland. We work with our 210+ network members from every part of Scotland to be a strong, collective voice for human rights.

We are a leading human rights voice in Scotland. And we have a strong track record on achieving change – whether bringing lived experience voices to directly shape new policy, getting change to law so NGOs can take test cases, shifting the funding landscape to strengthen human rights defenders, or successfully resisting repeal of human rights law at Westminster - we work tirelessly and effectively to make human rights a reality for all.

We welcome this Inquiry to consider the development of multiple Commissioners in Scotland. We emphasise that it is important to also consider where the powers and resources of current Commissioners fall short and so make them less effective than they could, and Scotland needs them, to be. We highlight below the need for additional powers and resource for SHRC and CYPSCS.

### **Question 1: Why is the Commissioner model chosen over other approaches, such as a public body or government department, and why do you consider there has been such a growth in Commissioners in recent years?**

We regularly hold events and discussions with our network members from organisations and community groups across Scotland around their experience of human rights being protected and fulfilled. There are several recurring, very significant themes from these discussions that are very relevant to the increase in Commissioners in Scotland:

- There is a lack of action to address structural injustices and systemic problems, with organisations frustrated that the same inequalities, disadvantages and violations of their human rights exist today, as have existed for years. Despite multiple policies, strategies, laws and consultations, little has been done or achieved which tackles the underlying and embedded injustices in our systems and structures.
- Many individuals and groups who face daily violations of their human rights simply do not feel heard. Many have been calling for change including being clear about the change that is needed, but this is all too often ignored or not acted upon by decision-makers. We note that this relates directly to the call for many Commissioners to be a 'champion' as a way to make sure that the views and experiences of particular groups are given proper attention and lead to action.
- There is a very significant accountability gap in Scotland. It is very difficult for organisations and groups to hold Government and public bodies to account when they fail to protect their human rights, sometimes even failing to adhere

to what is in law. Commissioners for particular groups are often seen as an effective tool to hold those with power accountable for their actions or inaction to address ongoing violations of human rights.

- The lack of a rights-based approach to government policies, including gendered policy-making and human rights budgeting, can also be seen to have fuelled the need for Commissioners.

**Question 3: Currently, there is a mix of regulatory, investigatory, rights-based, and policy-focused Commissioners in Scotland.**

**What should the role of Commissioners be and which should report directly to Parliament (and why)?**

**Looking across the entire model of Commissioners, do you consider it to be a coherent approach? What, if any, improvements could be made to the Commissioner landscape in the future to ensure a coherent and strategic approach?**

The SHRC as Scotland's NHRI must adhere to the [Paris Principles](#) and core to these is their independence from Government so that they are free, and perceived to be free, to be able to hold Government accountable on human rights. We note in particular that these Principles state:

*'2. The national institution shall have an infrastructure which is suited to the smooth conduct of its activities, in particular adequate funding. The purpose of this funding should be to enable it to have its own staff and premises, in order to be independent of the Government and not be subject to financial control which might affect its independence.*

*3. In order to ensure a stable mandate for the members of the national institution, without which there can be no real independence, their appointment shall be affected by an official act which shall establish the specific duration of the mandate. This mandate may be renewable, provided that the pluralism of the institution's membership is ensured.<sup>1</sup>*

The Children and Young People's Commissioner (CYPCS) is a key human rights institution in Scotland, and similarly plays a crucial role in holding government accountable and so its independence is foundational.

We strongly agree with the SHRC's mission statement: "The Commission has a general duty to promote awareness, understanding and respect for all human rights – economic, social, cultural, civil and political – to everyone, everywhere in Scotland, and to encourage best practice in relation to human rights". We equally support the CYPCS mission to is to promote and safeguard the rights of children and young people. The CYPCS' role involves advocating for the best interests of children, ensuring that their voices are heard, and promoting awareness and understanding of their rights. With increased power and capacity the SHRC and CYPCS, could

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<sup>1</sup> [Principles relating to the status of national institutions \(Paris Principles\)](#)

assume an even more pivotal role in addressing structural injustices and systemic problems.

As champions for rights-holders, the SHRC and CYPCS are crucial advocates for individuals and communities experiencing human rights violations, addressing frustrations and providing a voice for those often forgotten or ignored. These human rights institutions uniquely contribute to advancing human rights and their role is essential in bridging the accountability gap, ensuring human rights principles are not only articulated in law but also embedded in practice. Emphasising the importance of lived experience, these Commissions' duty to promote human rights awareness aligns with recommendations to incorporate the voices of those most at risk in reporting and scrutiny processes, fostering a more inclusive and effective human rights framework.

However, the SHRC does not currently have sufficient powers or resources to hold Government and public authorities accountable on their human rights obligations. Scotland needs its National Human Rights Institution to be authoritative and fit for purpose.

The UNCRC (Incorporation) (Scotland) Act includes a very welcome enhancement of the powers of SHRC and CYPCS to bring proceedings or intervene in proceedings related to the UNCRC rights. However, the Scottish Human Rights Commission (SHRC), Scotland's National Human Rights Institution (NHRI), stands as the sole NHRI within the United Kingdom lacking the authority to initiate legal proceedings under its own name across all human rights. This unique constraint, means that,

*'In effect, this means that people in other parts of the UK have greater access to justice routes than people in Scotland through their NHRI'<sup>2</sup>.*

It means that individuals have to carry the burden of pursuing human rights issues in court, even where these relate to systemic issues affecting many people.

The SHRC also cannot provide any advice or services to individuals, but NHRIs elsewhere in the UK can do so. Given the dearth of human rights advice in Scotland, this restriction is regrettable.

We consider that additional SHRC powers should also include:

1. Providing advice to individuals
2. Conducting investigations into specific human rights issues.
3. Holding inquiries into the practices of individual public bodies.
4. Monitoring and scrutinising public body reports on the implementation of rights outlined in the Bill and requiring public bodies to implement its recommendations.
5. Compelling public bodies to provide necessary information for inquiries or investigations.
6. Issuing binding guidance

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<sup>2</sup> SHRC (2023), Exploring the experience of human rights protection for people in Scotland

Furthermore, we note that CYPSCS must encourage the involvement of children and young people in their work, including communicating and consulting with children and young people, and with organisations who work with them. There is no corresponding requirement on the SHRC to engage with or consult with people whose rights are most at risk in their work.

The upcoming Human Rights Bill, to be introduced to Parliament by June this year, provides a vital opportunity to enhance the SHRC's powers. This is particularly important because, if the Bill is passed to make economic, social, cultural, environmental and group rights enforceable in order to embed them across government decision-making, it is crucial that the SHRC has the corresponding powers that it needs to hold government to account on fulfilling these rights. The consultation on this Bill found majority support for the Bill to include increasing powers for the SHRC<sup>3</sup>.

**Question 7: To what extent is the current model of Parliamentary committee scrutiny of the performance and effectiveness of how Commissioners exercise their functions appropriate?**

The current model of Parliamentary committee scrutiny of Commissioner performance is considered appropriate, given the critical role of the SHRC and the imperative for its strength and resources. However, the inquiry should explore opportunities to enhance the scrutiny process to ensure Commissioners can effectively address human rights issues, bridging the accountability gap between rhetoric and experiences.

It is crucial to consider a more inclusive and comprehensive approach to the parliamentary committee scrutiny of our human rights institutions. Beyond the involvement of Members of the Scottish Parliament (MSPs) and the relevant Commission, there should be broader engagement with individual rights holders, and civil society groups and organisations. We understand there is ongoing work within the parliamentary and engagement (PACT) team to address some of these issues, and we look forward to seeing the impact of this work. Extending this principle to committee scrutiny of Commissioners can ensure that the perspective of lived experience takes a central role throughout the reporting and scrutiny processes.

Furthermore, parliamentary scrutiny should extend beyond committee boundaries. To foster a more comprehensive understanding of human rights issues, it is essential for the entire Scottish Parliament to actively engage in ongoing discussions around human rights. We recommend that the Parliament consider scheduling time for committee-led debates subsequent to the conclusion of committee scrutiny. This approach allows all MSPs the opportunity to scrutinise reports from Commissioners, contributions from various stakeholders, and stay informed about the state of human rights in Scotland.

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<sup>3</sup> Scottish Government (2024), [A Human Rights Bill for Scotland – consultation analysis](#), Q31

The ‘Getting Rights Right’ report<sup>4</sup> from the Scottish Parliament in 2018 highlights key recommendations to enhance the relationship between the Scottish Human Rights Commission (SHRC) and the Parliament. These recommendations include strengthening SHRC’s powers, fostering collaboration in human rights scrutiny, and building capacity through tailored training. Recommendations stress the importance of a human rights-based approach to scrutiny, strengthening relationships between key human rights institutions, and establishing collaborative efforts with the government for international treaty monitoring. Additionally, the report calls for a Parliamentary engagement plan for Scotland’s National Action Plan, emphasising joint leadership with the Equalities and Human Rights Committee. We recommend that as part of this Inquiry, the Committee asks for information and clarity around the extent to which the ‘Getting Rights Right’ recommendations relating to the relationship between the SHRC and Parliament have been implemented.

### **Question 9: Are the processes for setting and scrutinising the budgets of each Commissioner adequate?**

We emphasise that this Inquiry is taking place in the midst of a very tight budget and one where, in particular, resources for frontline services and the third sector to uphold human rights are under significant pressure. Despite commitments to Fair Funding, the 2024/25 Budget falls short of addressing the challenges faced by the third sector, as highlighted by the Scottish Council for Voluntary Organisations (SCVO). The budget lacks specificity on funding for voluntary organisations and charities, reflecting a missed opportunity to tackle the sector’s pressing issues amid the cost-of-living and running costs crises. We further note the significant concerns about the lack of resource for basic services that are needed to fulfil people’s fundamental human rights. For example, funding for social housing has been cut for the second year in a row whilst record numbers of people in Scotland are stuck in poor and temporary housing<sup>5</sup>; the Poverty Alliance states that the ‘Scottish Budget will make it harder for us to reach our [child poverty] targets in 2030.’; cuts to social care budgets are eroding disabled people’s human rights ‘leaving many with no supports to wash, dress, eat or go to the toilet’<sup>6</sup>, let alone participate in communities and employment; the low rates of remuneration for legal aid is a key reason for the lack of solicitors registered to take legal aid cases, leaving many in deprived communities without access to affordable justice<sup>78</sup>.

We further note that the budget for current Commissioners, notably SHRC and the CYPCS, is insufficient despite recent increases in their powers. Both Commissioners require augmented resources to effectively fulfil their crucial role in holding the government accountable. This will be more important than ever as local authorities implement the UNCRC (Incorporation) (Scotland) Act and prepare for forthcoming

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<sup>4</sup> The Scottish Parliament (2018), [Getting Rights Right](#)

<sup>5</sup> Shelter Scotland: [Scottish Government gaslighting public on progress to end homelessness - Shelter Scotland](#)

<sup>6</sup> Glasgow Disability Alliance, [Stop Cuts to Social Care Budget!](#)

<sup>7</sup> Human Rights Consortium Scotland et al, [Make Human Rights Justice a Reality – Human Rights Consortium Scotland](#)

<sup>8</sup> Law Society of Scotland (2022), [Legal aid crisis hitting Scotland’s most deprived families](#)

legislation with the Scottish Human Rights Bill. The SHRC, CYPCS and Scottish civil society will be a key part of capacity building and awareness around this legislation, but they are constrained from having maximum impact because of their limited budget allocation. We note that “the SHRC is among the smallest public bodies in Scotland tasked with promoting and protecting people’s rights”<sup>9</sup>. Given the very important role that the SHRC and CYPCS should rightly have in holding Government and public authorities to account on delivering and progressing rights under this Bill, their resource needs to be significantly increased.

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<sup>9</sup> SHRC (2023), Exploring the experience of human rights protection for people in Scotland