Equality and Human Rights Commission response to the consultation on establishing a statutory appropriate adult service in Scotland

Creating a fairer Britain



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# 25 June 2018

**Contact details:**

John Wilkes

Equality and Human Rights Commission

2nd Floor 151 West George Street

Glasgow

G2 2JJ

0141 228 5910

John.Wilkes@equalityhumanrights.com

# The Equality and Human Rights Commission is the National Equality Body (NEB) for Scotland, England and Wales. We work to eliminate discrimination and promote equality across the nine protected grounds set out in the Equality Act 2010: age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex and sexual orientation.

# We are an “A Status” National Human Rights Institution (NHRI) and share our mandate to promote and protect human rights in Scotland with the Scottish Human Rights Commission (SHRC).

# We do not always respond to every question in consultations and focus on the questions most relevant to our work and remit.

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| **EHRC General comments and overview**  Access to justice and delivering improvements to treatment of people in the justice system is a priority for the Commission as set out in its current 2015 – 2019 Strategic Plan[[1]](#footnote-1). In reviewing fairness in the justice system the 2015 Commission state of the nation equality and human rights report, Is Scotland Fairer[[2]](#footnote-2), noted that disabled people were less likely to feel confident that the Scottish criminal justice system provided an appropriately high standard of service for victims of crime, served all communities equally and fairly or provided an appropriately high standard of service for witnesses.  The issues considered by this consultation should also take into account the framework established in European Convention of Human Rights and in particular around Article 6, the right to a fair trial and Article 14, the prohibition of discrimination.  The EHRC is a member of the UK Independent Mechanism (UKIM) together with the Equality Commission for Northern Ireland (ECNI), the Northern Ireland Human Rights Commission (NIHRC) and the Scottish Human Rights Commission (SHRC). Under Article 33 of the Convention on the Right of Persons with Disabilities (CRPD) UKIM is tasked with promoting, protecting and monitoring implementation of the CRPD across the UK.  In its recent report[[3]](#footnote-3) in August 2017 UKIM provided an update on the implementation in the UK of the CRPD. It noted in general that the Scottish Government should use the new equal opportunities powers to identify changes to promote and protect disabled people’s CRPD rights where it can.  In respect of support and protection in the criminal justice system in Scotland the UKIM report noted that many disabled people experience difficulties with the criminal justice system and they are more likely to report a lack of confidence in the system providing equal access for all. It further noted that too often the criminal justice system does not provide enough support and protection to suspects, victims and witnesses who have learning disabilities and that the Appropriate Adult scheme is under-resourced and inconsistent, and there is no formal system to provide support during the court process.  In view of these observations the Commission welcomes the Scottish Government’s proposals on placing an Appropriate Adult service on a statutory footing.   1. **We propose to use the definition of vulnerable person as set out at section 42 of the Criminal Justice (Scotland) Act 2016, but extended to cover victims and witnesses. Do you agree?**   **Yes**  **No**  **If no, please tell us how you would define vulnerability for this purpose.**  Yes. In principle the Commission agrees with this proposal. We recognise that this is a practical way forward at this time. An important consideration will be to ensure that personnel making judgements on whether an individual meets the criteria set out of a ‘vulnerable person’ are adequately trained and able to make and record these decisions. This process should be done with appropriate oversight.  We note however that the Mental Health (Care and Treatment) (Scotland) Act 2003 definition of ‘mental disorder’ is currently under review and any resulting changes will need to be taken into account.   1. **We propose to use the definition of the type of support to be made available as set out at section 42 of the Criminal Justice (Scotland) Act 2016, Do you agree?**   **Yes**  **No**  **If no, please tell us how you would define the type of support to be made available.**  Yes. The Commission recognises that that is a practical way to meet the legislative requirements.  We believe that developing this service also provides an opportunity to consider whether vulnerable people are supported consistently throughout the whole criminal justice system.   1. **We propose to place the duty on local authorities for ensuring that people are available to provide Appropriate Adult support, do you agree?**   **Yes**  **No**  **If no, who do you think this duty should be placed on?**  Yes. There should be clear guidance set out to establish the general principles of the Appropriate Adult service and ensure that these are consistently applied and the service is appropriately resourced across all local authorities in Scotland.  Local authorities should ensure that in the design and resourcing of these services that appropriate consideration is made to their Equality Act Public Sector Duty[[4]](#footnote-4) legal responsibilities. These should include appropriate data collection and equality monitoring of the service users.     1. **We propose to keep details of the statutory duty at a high level but develop more detailed guidance to sit below this and to which those responsible for delivery must have regard, do you agree with this approach?**   **Yes**  **No**  **If no (i) why do you disagree?**  **(ii) are there any specific details you think should be in legislation?**  Yes. The Commission would suggest that any guidance should ensure reference to the appropriate guidance on public sector equality duties[[5]](#footnote-5) for local authorities and recognition of human rights responsibilities under the Human Rights Act and reference to ECHR[[6]](#footnote-6) provisions under Article 6, right to a fair trial. The guidance should also highlight the requirement and importance of capturing appropriate equality data from those accessing the Appropriate Adult service in a consistent manner nationally.   1. **We propose to place a duty on local authorities to deliver training to Appropriate Adults. Do you agree with this?**   **Yes**  **No**  **If no, who do you think this duty should be placed on?**  Yes. Further consideration should be given to how the proposed national training framework will develop and oversee training on a consistent basis across all local authority areas. We would also encourage more detailed proposals on how the ‘training oversight group’ will be organised, accountable and resourced.  The guidance to local authorities should also include reference to training provision incorporating a strong human rights and equality and unconscious bias approach.   1. **We propose to place a duty on the Care Inspectorate to carry out a quality assessment role in relation to the provision of Appropriate Adult services, do you agree?**   **Yes**  **No**  **If not, who do you think should be responsible?**  Yes. The consultation suggests that the approach to quality assessment will be at a high level and adopt a self-evaluation model by local authorities.  We would propose that the suggested optional approach for thematic inspections is made a mandatory part of the inspection framework to ensure a more robust and consistent approach to monitoring Appropriate Adult services and provide better national data.   1. **How might we best engage with service users to understand their experience?**   The consultation underlines the importance that any quality assessment process should involve the views and experiences of the service users and those who support those service users.  The Commission supports this approach. Active involvement and consultation of disabled people in the development of relevant legislation and policies is a general obligation on state parties under Article 4 of the Convention of Rights of People with Disabilities[[7]](#footnote-7).  This commitment and details of the approach should be made clear in the guidance that supports the implementation of these proposals both in the setting up of services and in the ongoing quality assessment and improvement. Involvement should include people with mental health issues as well as other disabilities.   1. **We propose to place a duty on the Mental Welfare Commission to have oversight of how Appropriate Adults services are provided across Scotland, do you agree?**   **Yes**  **No**  **If no, who do you think should be responsible?**  Yes. However the Mental Welfare Commission should be provided with the relevant powers and resources to ensure this role is carried out effectively.   1. **Do you agree with the proposed functions of oversight role?**   **Yes**  **If yes, are there any other functions you think this role should incorporate?**  **No**  **If no, what functions do you think this role should incorporate?**  Yes. We note the proposed functions outlined in the consultation include;   * Providing a comprehensive definition of what AA services should be delivering * Providing a system-wide overview * Producing good practice guidance * Contribution to policy development   In all these areas of activity the Mental Welfare Commission should ensure that appropriate reference and consideration is given to a strong equality and human rights focus.   1. **Please use this space to provide any additional comments you may have.**   The scope of this consultation sets out the support required for communication between vulnerable people and the police and that it does not extend to in-court support. We note that the reason stated in the consultation for this is so that service can be established timeously.  We believe that the earliest consideration should be given to setting out a clear timeframe for the establishment of an intermediary statutory service or similar provisions for court proceedings. This is to ensure that over time there is a not a disparity in the level of service and protection people receive both in a police setting and other parts of the justice system including courts.  In the absence of a statutory intermediary service in courts it should be made clear in police reports if an Appropriate Adult was present for accused or witness’ interview. This will enable the courts to put into place any appropriate measures required to ensure there safeguards are provided for court proceedings. The court should still have a responsibility to assess whether the person being interviewed was able to participate effectively in the interview and whether the evidence was provided was in any way compromised as a result of them not being able to do so. |

1. <https://www.equalityhumanrights.com/en/publication-download/strategic-plan-2016-19> [↑](#footnote-ref-1)
2. <https://www.equalityhumanrights.com/en/publication-download/scotland-fairer-2015> [↑](#footnote-ref-2)
3. <https://www.equalityhumanrights.com/en/publication-download/disability-rights-uk-updated-submission-un-committee-rights-persons> [↑](#footnote-ref-3)
4. <https://www.equalityhumanrights.com/en/public-sector-equality-duty-scotland/regulations-specific-duties-and-details-which-public> [↑](#footnote-ref-4)
5. <https://www.equalityhumanrights.com/en/advice-and-guidance/guidance-scottish-public-authorities> [↑](#footnote-ref-5)
6. <https://www.echr.coe.int/Documents/Convention_ENG.pdf> [↑](#footnote-ref-6)
7. <https://www.un.org/development/desa/disabilities/convention-on-the-rights-of-persons-with-disabilities.html> [↑](#footnote-ref-7)