



A Human Rights Bill for Scotland

Consultation Response



A Human Rights Bill for Scotland Consultation

Submitted 01/10/2023

Part 4: Incorporating the Treaty Rights

1. What are your views on our proposal to allow for dignity to be considered by courts in interpreting the rights in the Bill?

We are in support of the proposal to allow for dignity to be considered by courts in interpreting the rights of the Bill. Human dignity and the understanding that all individuals hold inherent worth and value due to their humanity alone, is a fundamental value which is deep-rooted within civil society. Interpretations of dignity and human dignity of course differ; our community members (LGBT+ individuals who access our services at LGBT Health and Wellbeing) have told us that dignity for them means *“to be respected, as I am”* *“to be treated equally, in-line with human rights”* and *“to be treated with compassion”*¹. In order for the interpretation of ‘human dignity’ by courts to be workable in protecting the rights of LGBT+ people, it should include recognition of *‘sexual orientation and gender identity as integral to every person’s dignity and humanity’* - following the Yogyakarta Principles (2007) application of human rights law in relation to Sexual Orientation and Gender Identity. As Dr Elaine Webster highlighted², dignity means different things to different people, thus there will be differing expectations of how underpinning ideas of human dignity should support instances of interpretation of rights in the statute. Taking this into account, we support the call for clarity around the legal definition of ‘dignity’ in this Bill.

¹ Quotes from LGBT+ Refugee and Asylum Seekers from LGBT Health and Wellbeing’s consultation on housing, homelessness and impact.

² Webster, E (2020) The Underpinning Concept of ‘Human Dignity’.



Additionally, we are in support of The Human Rights Consortium Scotland (HRC Scotland)'s view that notes the importance of promoting shared understanding of human rights principles within the Bill and the *'inclusion of a purpose clause that explicitly mentions dignity along with other key human rights principles such as universality, participation and other relevant principles'*.

2. What are your views on our proposal to allow for dignity to be a key threshold for defining the content of minimum core obligations (MCOs)?

We are in support of the proposal to allow for dignity to be a key threshold for defining the content of minimum core obligations (MCOs) within the Bill. Again, we would stress that thought is given to specific MCOs for LGBT+ people. For example, LGBT+ refugee and asylum seekers experience indignity in housing here in Scotland. Our recent Community Consultation Report *'Experiences of LGBTQ+ asylum seekers and Refugees in Scotland'*³ highlighted thematic experiences of homophobia, a lack of access to the right to healthcare, lack of access to basic amenities (such as shelter, heated homes and hot water) amongst the LGBT+ asylum seeking community whilst living in shared Home Office asylum accommodation. Our LGBT+ refugee and asylum-seeking community members shared:

"This is my experience. I have my own housing [provided by the Home Office]; my heater hasn't been working for three months over winter. When you call the housing, they tell you to call Migrant Help. Ten hours later you are still on the phone and no answer. If it is cold and things do not work you cannot eat, sleep. This is a crime. It is against Human Rights. This shouldn't be happening."

"We are missing Doctors appointments. [accommodation provider] won't arrange these for us when someone is unwell. It isn't just this, there is an attitude when I was in the hotel. I was having a mental breakdown and a relapse, I didn't know where to go. I didn't know any support. I am suicidal. They told me 'chin up' and left. The way I was treated, they are doing a lot of things that are inhumane."

³ LGBT Health and Wellbeing (2023) *Experiences of LGBTQ+ asylum seekers and refugees in Scotland: Housing, houselessness, hotel detention and impact.* <https://www.lgbthealth.org.uk/wp-content/uploads/2023/07/Refugee-Report-Final-E-Copy.pdf>



“With [accommodation provider] we are not treated the way they are supposed to treat us. It feels like no one listens or cares about this mistreatment. Where are our rights?”

Older LGBT+ people also experience indignity in housing and social care. Our Age Action Group (a collective of older LGBT+ people sharing their experiences to influence policy and enact change) recently released their first Report ‘*Fit For Purpose: Housing and Social Care for LGBT+ Older People*’⁴ which highlighted experiences of discrimination due to sexual orientation and/or gender identity in social care. The personal account of one participant notes:

“Charles described a visit from a care worker who he’d not seen before. She was pleasant at first, but as she realised she was looking at photographs of his gay wedding and drawings of him drawn by his partner in intimate settings, she felt unable to stay in the house and left.”

Another notes:

“Andrew, who was living in a residential care home run by a charity in a large city, reported being subjected to anti-gay messages stuck on his door or put through his letterbox. He felt that his sense of wellbeing had taken a huge knock. As a long-term LGBT+ activist he hadn’t wanted to hide, or indeed been able to hide his sexuality from others when living in the care home by going back into the closet. Andrew also told how he felt that the care he needed due to his HIV status was being made more difficult as he was sometimes treated by infectious disease doctors, and on other visits to the hospital by gerontologists.”

It’s important that MCOs related to dignity for LGBT+ people include equal treatment with regards to sexual orientation and gender identity to ensure protection of vulnerable individuals, and to ensure there is equal access to the rights within the Bill for LGBT+ people. We recognise there will have to be consideration with regards to reserved powers retained by the UK Government related to Immigration and asylum, but stress that the strengthening of LGBT+ refugee and asylum seekers rights here in Scotland should not be cast aside, but thoughtfully considered and strengthened as much as possible in line with the Scotland Act 1998. The incorporation of ICESCR rights should (and can) include the rights of refugee and asylum-seeking people, Article 2 of ICESCR

⁴ LGBT Age Action Group / LGBT Health and Wellbeing (2023) *Fit For Purpose: Housing and Social Care for LGBT+ Older People*.
<https://www.lgbthealth.org.uk/resource/fit-for-purpose/>



states that within Developed nations discrimination towards “*non-nationals (including migrant workers, refugees, asylum seekers and stateless persons)*” is prohibited, thus the aforementioned groups are rights holders. This is further emphasised within General Comment 20 (ICESCR) where it is stated “*the ground of nationality should not bar access to covenant rights*”. We strongly support the highest possible level of ICESCR integration, including the named protection of refugee and asylum seekers, within the measures of devolution.

3. What are your views on the types of international law, materials and mechanisms to be included within the proposed interpretive provision?

For the rights of LGBT+ people to be fully realised here in Scotland, it is essential that additional types of international law, materials and mechanisms are included within the proposed interpretive provision.

We note the importance of the Yogyakarta Principles to the interpretation and protection of LGBT+ people’s human rights, and would support the inclusion of the Principles in guidance related to HRC legislation to increase the accessibility and undeniability of LGBT+ people’s human rights here in Scotland post-Bill.

4. What are your views on the proposed model of incorporation?

Alongside others in the equalities (and more specifically LGBT+) sector we have some reservations around direct incorporation. As Professor Nicole Busby highlighted⁵ there is a need to ensure that the proposed new equalities framework is within legislative competence of the Scottish Parliament. This will include considering how the legislation will work alongside the Equality Act 2010, and Equal Opportunities under the Scotland Act.

Additionally, language used in existing Equalities Treaties/Legislation is oftentimes outdated with regards to the LGBT+ community. For example, it is exclusionary of non-binary people and does not reflect the reality of the LGBT+ community and our circumstances in 2023 (See Equality Network’s Response for additional information on this point). We support the view of the Equality

⁵ Busby, N (2020) The essential features of an equality clause and the potential incorporation of CEDAW.



Network and echo their concerns around ICESCR Article 10 and its reference to the family as the “natural and fundamental unit of society”. LGBT+ people often have ‘families of choice’ as opposed to ‘families of origin’. Reasons for this (shared by our community) include; ostracisation, experiences of discrimination and rejection from one’s family of origin. In 2018 LGBT Health and Wellbeing ran a Dementia Project - a two-year pilot that uncovered LGBT+ people living with dementia’s needs in later life, the pilot highlighted discrimination (and the fear of discrimination) experienced by non-traditional familial networks including the denial of entry into spaces and LGBT+ specific discrimination. It also highlighted experiences where LGBT+ people living with dementia were not cared for by their ‘families of origin’ but by their ‘chosen families’ due to historic familial rejection. LGBT+ people tell us that they felt that their family structures and kinship networks often felt ‘invisible’ and ‘invalidated’ by current systems and services. We feel it is extremely important (for all LGBT+ people) that non-traditional familial structures are not excluded from the protections within this Bill. You can see more on LGBT Health and Wellbeing’s Dementia Project [here](#).

5. Are there any rights in the equality treaties which you think should be treated differently?

We are in support of HRC Scotland's call to incorporate “all equalities treaties to the greatest extent possible” within devolved competence and believe the inclusion of the duty to comply on special protection treaties (where within devolved competence) is essential to ensure adequate protections of the rights of LGBT+ people.

Part 5: Recognising the Right to a Healthy Environment

6. Do you agree or disagree with our proposed basis for defining the environment?

For LGBT+ people, we are of the view that the right to a healthy environment should include freedom from discrimination, harassment and abuse based on one’s sexual orientation or gender identity. As highlighted above in relation to LGBT+ Older People and LGBT+ refugees and asylum seekers, both of these communities often live in / occupy housing where they feel physically and emotionally unsafe due to experiences of LGBT+phobia. These experiences of LGBT+phobia often leave individuals in acute distress, and impact their mental



health and wellbeing in the long-term. LGBT+ community members who access our refugee project have told us that they can feel “*too scared or unsafe to sleep*” in shared (Home Office no-choice basis) housing due to experiences of homophobia and threats of violence from those they are sharing accommodation with.

Additionally, data from our 2022 Service Evaluation highlighted the impact of the cost of living on LGBT+ people. Our findings (214 responses) highlighted:

- 14% ‘rarely’ or ‘occasionally’ had enough money to cover their accommodation costs
- 15% ‘rarely’ or ‘occasionally’ had enough money to cover their household bills
- 16% ‘rarely’ or ‘occasionally’ had enough money to cover the cost of food
- 29% ‘rarely’ or ‘occasionally’ had enough money to cover the cost of travel
- 15% ‘rarely’ or ‘occasionally’ had enough money to cover the cost of childcare
- 21% ‘rarely’ or ‘occasionally’ had enough money to cover the cost of caring responsibilities
- 45% ‘rarely’ or ‘occasionally’ had enough money to cover the cost of leisure or social activities

It is important to consider all areas which impact one’s ability to live well and maintain ‘healthy wellbeing’ within our environment. Including one’s access to adequate housing, public space, food, water.

9. Do you agree or disagree with our proposed approach to the protection of healthy and sustainable food as part of the incorporation of the right to adequate food in ICESCR, rather than inclusion as a substantive aspect of the right to a healthy environment? Please give reasons for your answer.

We disagree with the proposed approach to exclude the right to food as an aspect of the right to a healthy environment. We know, from a joint-event held in April 2023 by LGBT Health and Wellbeing and The Equality Network (“*LGBTI+ and the cost of living crisis*”) that LGBT+ people are struggling to make ends meet due to the rise in the cost of living. Individuals shared experiences of being unable to engage in cultural or social life, as well as expressing difficulty in finding and sustaining work (both due to the cost of living, and also due to experiences of discrimination, mental ill-health and fears of violence /



LGBT+phobia). LGBT Health's internal data from our 2022 Service Evaluation showed that 20% of respondents who access our services access Foodbanks (percentage based on 214 responses to question). Additionally, we hear via our LGBT+ Telefriending service that our older LGBT+ community are increasingly experiencing financial difficulty, pension poverty and food poverty, and are worried about winter and the choice between 'heating or eating'.

Similarly, our LGBT+ refugee and asylum-seeking community often tell us about how the lack of food (both quality and quantity) they receive whilst in Home Office accommodation has a detrimental impact on both their physical and mental wellbeing. Our "*LGBT+ Asylum Seekers and Refugee Experiences in Scotland*" Report highlighted the lack of food dignity afforded to asylum seekers whilst living in Home Office accommodation. This includes the food they receive lacking nutritional value, as well as not being 'enough' for a person to eat daily and maintain a healthy diet. Our community said:

"I am living in a hotel currently, it is horrible. We don't get breakfast. It is a sandwich every single day. Never a hot meal. We have nothing to cook with at all. For dinner they give us chips, sometimes chicken. I am allergic to the sandwiches, I get hives and spots. I have told them but nothing happens... The lack of nutrition impacts my life. I cannot eat or sleep properly. It impacts my health. I want to say please, don't give me the sandwich. But it is the sandwich or nothing. I cannot afford anything else."

"The nutrition is not there. We are fed out of plastic containers. This impacts your health over a period of time."

Due to the experiences of our LGBT+ community members, we are in full support of HRC Scotland's call to incorporate both the economic and social right to food concerning aspects such as nutrition, access, affordability, adequacy, and culture, and the right to healthily and sustainably produced food.

11. Are there any other substantive or procedural elements you think should be understood as aspects of the rights?

For LGBT+ people to be able to live fully and thrive as individuals and a community it is essential that the Right to a Healthy Environment within Scots law includes all areas of the environment that we live in that can impact one's ability to live a healthy life. This should include, as mentioned previously, housing and public spaces (such as care homes, hospitals, schools) etc.



Part 6: Incorporating Further Rights and Embedding Equality

13. How can we best embed participation in the framework?

We are of the view that the Scottish government can best embed participation in the framework by engaging with organisations, human rights experts, community activists and those who are marginalised or multiply marginalised and are not having their human rights realised. For example, we'd encourage the Scottish government to engage with LGBT+ refugee and asylum seekers, LGBT+ Older People, trans people, Black and people of colour, disabled people and others from marginalised groups (and organisations who represent them) who are frequently (and often systemically) denied access to their human rights. We'd highlight points made by other organisations working within the third sector, it is critical that engagement is accessible to all, including financially, geographically, physically etc.

We support HRC Scotland's view that the Human Rights Scheme should include a requirement for Scottish ministers to consult with groups who are most at risk, and that they should be heard and considered with regards to MCOs.

14. What are your views on the proposed approach to including an equality provision to ensure everyone is able to access rights?

We are in support of an equality provision within this Bill and would welcome the recognition from the government of the need to protect the rights of LGBT+ people here in Scotland. The inclusion of an equality provision would mean that duty bearers have an obligation to uphold the rights of LGBT+ people, and would contribute to the strengthening of access to our human rights.

We'd highlight that, alongside the rest of the LGBT+ sector, we believe an equality provision will only offer protection to LGBT+ people if we are explicitly named on the face of the Bill. Naming LGBT+ people on the face of the Bill, instead of grouping realisation of rights within "other" status is essential to the core tenets of human rights as universal, indivisible, interdependent and interrelated. Anything less would result in a hierarchy of rights for minority groups here in Scotland.



16. Do you agree or disagree that the use of the other status in the equality provision would sufficiently protect the rights of LGBTI+ and Older People?

We strongly disagree. We strongly believe it is within the best interests of both LGBT+ people and Older People to be named on the face of the Bill. There is currently no international legislation (bar the Yogyakarta Principles which offers *interpretation* of human rights as they apply to LGBT+ people) which protects the economic, social and cultural rights of LGBT+ people here in Scotland.

As an organisation that works directly supporting LGBT+ Older People, we know that they exist at the intersection of two (and often more!) protected characteristics. From our work we know that there are additional barriers which prevent LGBT+ Older People from maintaining good health and wellbeing. These include: lack of access to safe and affirmative housing, lack of access to social care support packages, lack of access to dignified care due to experiences of LGBT+phobia, lack of access to dignity in later life due to experiences of maltreatment aggravated by LGBT+phobia whilst in shared living facilities and care homes etc. Again, more information related to LGBT+ Older People's experiences in Housing and Health and Social Care can be found in the "Fit for Purpose" Report linked above.

18. Do you think the Bill framework needs to do anything additionally for LGBTI+ or Older People?

Yes, the Bill framework needs to do more for LGBT+ people and Older people. LGBT+ and Older People need to be explicitly named on the face of the Bill to ensure that the rights of both groups are explicitly protected and those who are duty bearers have a duty to comply. Additionally, we are of the view that naming LGBT+ people and Older People on the face of the Bill will demonstrate the Scottish government's commitment to realising the rights of LGBT+ people and Older People here in Scotland, demonstrating to both groups that their rights do indeed matter.



19. What is your view on who the duties in the Bill should apply to?

We support HRC Scotland's call that the duties in the Bill should apply to as many public bodies as possible within devolved competence.

Part 9: Implementing the New Scottish Human Rights Act

39. What are your thoughts on our proposals to establish Minimum Core Obligations through a participatory process?

We are in full support of MCOs being established through a participatory process. It is essential that the Scottish government consult and engage with individuals and groups who are at risk of not having their human rights adhered to in the process of creating MCOs. As highlighted previously, our LGBT+ refugee and asylum-seeking community often tell us that they feel they have no access to their human rights. They are repeatedly stripped of dignity in housing and health, and experience acute mental health and physical health inequalities due to the denial of access to their rights. For example, our 2022 Service Evaluation found that self-harm was an issue for 95% of LGBT+ asylum seekers accessing our services. Additionally, suicidal ideation was an issue which impacted 93%. We know from both working directly with our community (LGBT+ asylum seekers), and consulting with them directly, that the denial of their rights, the ways they are treated in housing, healthcare and public life directly contributes towards worsening their mental health and wellbeing. It is crucial that the Scottish government engage with vulnerable groups, who have no access to their rights, and are frequently denied education around / knowledge of their rights systemically. By developing MCOs via a participatory process, the Bill will best meet the direct need of those most vulnerable within our society with regards to protecting human rights.

40. What are your views on our proposal for a Human Rights Scheme?



We are in full support of the proposals regarding a Human Rights Scheme. We'd note our enthusiasm for proposals which state Ministers will engage/consult with specific groups as part of their reporting duty. We stress the importance of engaging with groups who are marginalised and most at risk of not having their rights adhered to, such as LGBT+ people, Black and People of Colour, refugees and asylum seekers, Older People, Disabled people and other groups who are most at risk of being denied access to human rights.

Additional Comments

With regards to ICESCR and the Right to Health (Article 12)

LGBT+ people face significant health inequalities here in Scotland. In part, these health inequalities are worsened by the impacts of minority stress, and the external environment that LGBT+ people live in. Our internal data from our 2022 Service Evaluation shows:

- 72% of all LGBT+ respondents reported having a long term health condition or disability. This figure was 86% for trans people and 86% for non-binary people.
- 56% of LGBT+ respondents reported experiencing mental health issues/problems
- 24% of respondents reported having a physical disability
- 24% of respondents reported having a chronic illness

Due to the intersectional nature of the LGBT+ community and those who access our services, and the acute health inequalities experienced by LGBT+ people the incorporation of the Right to Health within ICESCR is critical to aiding LGBT+ people in realising and gaining access to their rights related to both physical and mental health and wellbeing.

Inadequate access to healthcare for LGBT+ people (and more specifically trans and non-binary people) here in Scotland has a detrimental impact on health and wellbeing.

One young trans woman from Glasgow told us:



“I’ve been 3.5 years on a 4.5 year waiting list for a first appointment with Sandyford Gender Identity Clinic. I’ve had zero check-ins, service updates or emails that have not been initiated by me for 3.5 years. My advice on where to go for support was, go to LGBT Health. I’ve experienced refusal by my GP practice to prescribe me hormones, I’m considering DIY hormone therapy just to be me. I’m considering suicide if I can’t be me. I have experienced my ‘name change’ with the NHS bounce back 4 times, because there’s no clear information on how to change it in a centralised way. I’ve received 4 letters for cervical screenings, despite not having a cervix. I’ve paid thousands for laser hair removal before running out of money and being unable to continue. I face dysphoria every day in the shower or in front of a mirror because I can’t afford body hair removal. I’ve experienced sleepless nights, struggle, mental-ill health, discussing suicidal thoughts anecdotally - trans people are just that used to having to live with them - this isn’t normal.”

Our internal data from our 2022 Service Evaluation found that 60% of trans and non-binary respondents experience suicidal ideation / reported that suicide was an issue for them. 58% reported that self-harm is an issue which impacts them. The experience shared above (a young trans woman from Glasgow) is not isolated - these experiences are thematic across our community. Our support services for trans people are oversubscribed, with almost all trans and non-binary people we support reporting that lack of access to gender affirming healthcare has (or has had) a detrimental impact on wellbeing.

LGBT+ refugee and asylum seekers who use our services have shared with us that they are often denied access to healthcare when living in Home Office accommodation, and are unable to register with General Practitioner Practices due to not having a home address. As mentioned above, our community members have reported instances to us where they have been denied access to healthcare via Home Office accommodation providers - a direct violation of their rights under the Refugee Convention. As mentioned above, LGBT+ refugee and asylum seekers also experience acute mental health inequality here in Scotland.

With regards to CEDAW, CRPD and CERD

LGBT+ people are not a monolithic group. At LGBT Health we support LGBT+ people who are Black and People of Colour, Disabled, Women, and members of minority faith communities. It is important for LGBT+ people that they have the ability to realise all of their rights, including rights afforded to them under CEDAW, CRPD and CERD. It is essential that the incorporation of CEDAW, CRPD



and CERD can apply to the intersectional experiences of marginalised people. We stress the importance of naming LGBT+ people and Older People within the Equality Clause to ensure correct interpretation of treaties as applying to LGBT+ people, and ensuring the realisation of the rights of LGBT+ people.



Respondent Information Form

1. What is your name?

Rebecca Hoffman

2. What is your email address?

Rebecca@lgbthealth.org.uk

3. Are you responding as an individual or an organisation?

Individual

Organisation

4. What is your organisation?

LGBT Health and Wellbeing

5. The Scottish Government would like your permission to publish your consultation response. Please indicate your publishing preference:

Publish response with name

Publish response only (without name)

Do not publish response



lgbthealth.org.uk

Scotland's health and wellbeing charity for LGBTQ+ adults (16+)

We welcome the entire diversity of the lesbian, gay, bisexual and transgender (LGBT) community, including non-binary, queer, intersex, asexual people and all identities under the LGBTQIA+ community - this includes those questioning their sexuality or gender identity, or who do not use labels for either.

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