

## All our Rights in Law Consultation Response

### Scottish Association of Social Work

25th January 2021

The Scottish Association of Social Work (SASW) welcomes this opportunity to share our views on the introduction of a new human rights law in Scotland. The views profiled within this response are garnered from engagement with our members who bring significant experience in supporting people who are vulnerable, disadvantaged and whose human rights may need to be balanced against those of others.

(SASW) is part of the British Association of Social Workers, the largest professional body for social workers in the UK. BASW UK has 21,000 members employed in frontline, management, academic and research positions in all care settings. There are over 10,000 registered social workers in Scotland around 1,500 of whom are SASW members. This comprises staff working in local government and the independent sector, across health and social care, education, children and families, justice services, as well as a growing number of independent practitioners.

SASW's key aims are:

- Improved professional support, recognition, and rights at work for social workers,
- Better social work for the benefit of people who need our services, and
- A fairer society

#### Key points in our submission

- 1) SASW warmly welcomes discussion around the introduction of a new Human Rights Law in Scotland. We believe a new law is necessary to support and protect the most vulnerable.
- 2) The Covid-19 pandemic alongside the impact of a decade of austerity has served to exacerbate existing inequalities for certain groups and communities, demonstrating a need for progress on incorporating wider human rights protection into Scots Law.
- 3) Social workers face inherent tensions within their practice when protecting people's human rights. Implementation guidance needs to recognise that rights may conflict. Employees must be empowered to highlight 'breaches' and should not face repercussions for doing so, or for whistleblowing on employers.
- 4) To access rights and make any future legislation meaningful, citizens need information, advocacy, and practical support. We support the suggestion of developing a service to support citizens to access their rights and entitlements by providing advocacy and access to advice and information.
- 5) Any implementation programme will need to address information, skills, organisational capacities, leadership, and processes amongst other change areas -

and clearly define the role of different professions within it. This will require realistic resource.

## **Social work and human rights**

Social work is defined internationally as “a practice-based profession and an academic discipline that promotes social change and development, social cohesion, and the empowerment and liberation of people. Principles of social justice, human rights, collective responsibility, and respect for diversities are central to social work” (IFSW; 2014).

Social work practitioners are bound by Codes that underpin their work, ensuring they remain accountable, with the principles of human rights and social justice central to all they do. All registered social workers in Scotland are bound by the Codes<sup>1</sup> published by the Scottish Social Services Council (SSSC). In addition, members of SASW sign up to the BASW Code<sup>2</sup> which includes principles such as:

**Upholding and promoting human dignity and well-being:** Social workers should respect, uphold and defend each person’s physical, psychological, emotional and spiritual integrity and well-being. They should work towards promoting the best interests of individuals and groups in society and the avoidance of harm.

**Respecting the right to self-determination:** Social workers should respect, promote and support people’s dignity and right to make their own choices and decisions, irrespective of their values and life choices, provided this does not threaten the rights, safety and legitimate interests of others.

**Challenging discrimination:** Social workers have a responsibility to challenge discrimination based on characteristics such as ability, age, culture, gender or sex, marital status, socio-economic status, political opinions, skin colour, racial or other physical characteristics, sexual orientation or spiritual beliefs.

**Challenging unjust policies and practices:** Social workers have a duty to bring to the attention of their employers, policy makers, politicians, and the general public situations where resources are inadequate or where distribution of resources, policies and practice are oppressive, unfair, harmful or illegal.

Poverty and disadvantage are the major factors bringing people into contact with social work services. Whilst the pandemic has exposed a variety of specific social deficits such as food insecurity and digital exclusion, these experiences are all rooted within the overarching poverty in which individuals and families are pressured to make unreasonable choices about what to spend their clearly insufficient resource on.

## **What rights should be included within a new human rights law?**

SASW believes that Scottish citizens are currently inadequately served by the several international human rights treaties to which the UK has long been committed. This can be evidenced in the tens of thousands of families every year who do not have enough food to

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<sup>1</sup> [SSSC Codes of Practice - Scottish Social Services Council](#)

<sup>2</sup> [BASW : The Code of Ethics for Social Work | www.basw.co.uk](#)

live on, the numbers of homeless people<sup>3</sup> and the lack of affordable housing and the levels of physical and mental ill health, drug deaths<sup>4</sup> and suicide rates.<sup>5</sup>

Enshrining additional rights in legislation would align with our professional principles. It would deliver a foundation of security for people in Scotland, marking a welcome shift towards building a fairer Scotland. SASW believes the following rights should form the basis of the legislative proposal:

### **The right to accessible and affordable food**

We should all be able to have good quality, tasty and nutritious food that meets our personal dietary requirements. The factors involved in improving food security are many, cutting across the barriers of access to, availability of, as well as food quality. The food supply chain is complex and so if this were to become a right, the corresponding duties need to be thought through and carefully communicated.

### **The right to adequate and affordable housing**

People who do not have homes are often unable to take part in employment, education, sustain relationships or a family life as well as suffering significant physical and mental ill-health both as a precursor and a result of their homelessness.

### **The right to a social security safety net**

Scotland has already taken some different decisions from the rest of the UK regarding some social security payments such as those for children from very low-income families and carers. SASW has been glad to see this approach, based in human rights, is a start to treating all our citizens (including children) fairly. The impact of universal credit is well-known and the stigma of being on benefits leads to both shame and blame. A citizens' basic income paid to all and reclaimed through the tax system would help reduce stigma. If it is to work, it must be enough and a simple approach avoiding layers of bureaucratic barriers and complexity.

### **The right to digital and information inclusion**

SASW believes this should be in the list of citizen rights for the future. Much of modern life is not possible with the knowledge, hardware, and access to data to be able to digitally connect.

### **The right to the highest possible standard of physical and mental health**

The link between food, housing and health is clear. The impact of our high population levels of physical and mental ill-health on public resources and economic productivity means that we spend large amounts of public money rectifying issues of systemic poverty. This right is complex due to lifestyle factors and the "choices" that individuals appear to make about, for example, smoking, alcohol, drug use and obesity.

### **The right to cultural life**

SASW's view is that whilst elements mentioned above are important, they are not enough for our citizens to enjoy a good life. As Article 27 of the Universal Declaration of Human Rights states, "everyone has the right freely to participate in the cultural life of the community, to enjoy the arts and to share in scientific advancement and its benefits."<sup>6</sup> In this view, cultural rights are inseparable from human rights, enabling individuals and communities to know, understand, visit, make use of, maintain, exchange, and develop cultural heritage and

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<sup>3</sup> [Homelessness in Scotland: 2019 to 2020 - gov.scot \(www.gov.scot\)](https://www.gov.scot/publications/homelessness-in-scotland-2019-to-2020/pages/10_to_12.aspx)

<sup>4</sup> [Drug-related deaths increase | National Records of Scotland \(nrscotland.gov.uk\)](https://www.nrscotland.gov.uk/news/2020/04/20/drug-related-deaths-increase)

<sup>5</sup> [Scottish trends - ScotPHO](https://www.scotpho.gov.uk/scottish-trends)

<sup>6</sup> [http://www.unesco.org/culture/culture-sector-knowledge-management-tools/10\\_Info%20Sheet\\_Right%20to%20Culture.pdf](http://www.unesco.org/culture/culture-sector-knowledge-management-tools/10_Info%20Sheet_Right%20to%20Culture.pdf)

cultural expressions, as well as to benefit from the cultural heritage and cultural expressions of others. Culture enables expression, exploration, relationships, joy and connection about what it is to be human. Culture supports the development or maintenance of identity for individuals and groups. Any right to culture must be inclusive and encourage and support diversity. Accessing and enjoying culture is an important part of being a citizen, a member of a community and, more widely, a member of society. Whilst this is significant, it is important that any legislative proposal finds the right balance of rights, for example, the right to dress in a particular way as opposed to cultural insensitivity. SASW suggest considerable analysis of the potential meaning of any right and wide engagement is essential in relation to this issue.

### Who is most affected?

Human rights are seen by social work as universal entitlements around choices, our expectations of our institutions, and our legal and social standing<sup>7</sup>. They are a lever to reduce the inequality that remains rife across Scotland and has been further exacerbated by the Covid-19 virus itself and the measures taken to curb its spread. Individuals whose rights were more vulnerable before the pandemic, due to such factors as **age, disability, gender, sexuality, socio-economic status, race and ethnicity, immigration status, housing security or mental health problems** are particularly affected. For example, as has been widely reported, economic inequalities have been significantly worsened for women, who, for the most part, remain the primary caregivers of children and are more likely to be at risk of increased job insecurity, and poverty. Disabled people are also facing greater risks of poverty, as well as barriers in accessing healthcare services and education. The impact of a decade of austerity has also been significant. Reduced funding to the services of local authorities has impacted on their ability - and that of their social workers - to be active agents of human rights. As services are reduced, entitlement thresholds raised and access to help obstructed, the realisation of rights becomes seriously compromised.<sup>8</sup>

The inequalities and breaches to human rights this pandemic, coupled with austerity, has served to emphasise demonstrates a need for progress on incorporating wider human rights protections into Scots Law. SASW believes the particular vulnerabilities of; **older people, black and minority ethnic people, those from the LGBTQI community, refugees and migrants and those with insecure immigration status, women, those facing homelessness, disabled people, those living in poverty and those suffering from mental health problems** must be explored and addressed in any legislative proposal, to ensure additional protections are put in place to empower and protect them. The Scottish Government must work alongside and engage robustly with these groups to better understand the hardships they face, to bridge the gap between reality, policy, and legislation, and to ensure the proposals make a difference. Equally, any legislative proposal must be backed up by ample resource, or risk failing those who need it most. Clear plans for implementation, and how this will look practically on the ground, built in collaboration with and open to extensive comment from relevant professional groups and agencies, is also essential.

### Where will social workers fit?

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<sup>7</sup> <https://www.basw.co.uk/resources/social-work-and-human-rights-practice-guide>

<sup>8</sup> <https://www.basw.co.uk/resources/social-work-and-human-rights-practice-guide>

Social workers across specialisms face many inherent tensions around human rights within their practice. We operate and support people in crisis, high-risk situations, managing tensions within families and within communities. In children and families social work practice, for example, the challenge for statutory authorities, at a local level, is to achieve a balance in investing sufficiently in child protection mechanisms (e.g. ECHR Article 3 makes provision for 'the protection of children from torture, inhuman and degrading treatment') whilst investing sufficient resources in supporting families 'to maintain the integrity of the family unit and uphold the right to family life' (ECHR Article 870). As such, work with children and families is often at the crossroads of competing rights, especially in considerations of risk, harm, safeguarding and removal from parents<sup>9</sup>.

People who find themselves in the realm of justice social work, have usually come before the Courts due to impeding someone else's rights. Court mandated interventions curb some human rights, but we work to establish positive person-centred and respectful relationships that will lead to positive futures away from offending.

Tensions such as these are found across the full spectrum of social work specialisms and so the profession is naturally deeply invested in the outcome of this rights taskforce.

SASW believes any legislative proposal should serve as a positive mechanism for allowing social workers to hold relevant agencies, such as councils and other public authorities, to account, meaning they are held to the same standards as practitioners in remaining compliant with their Codes of Ethics. The role and duty of social workers must be clear, and any additional statutory responsibility must be adequately resourced, with clear and accessible guidance and appropriate protection if they, for example, report a human rights breach against their employer in relation to a person they are working with.

### **What kind of practical information, support or resources will be required?**

SASW would support the development of a service like that provided by the Citizens Advice Bureau - or extending its existing remit and funding - to support citizens to access their rights and entitlements by providing advocacy and access to legal advice/information. This must be accessible to people from all backgrounds and areas of society and will require significant resource.

The SSSC Codes of Practice for social services workers and employers should reflect existing and any additional human rights in our laws. In the social services sector, this would help to share the responsibilities for upholding rights between individuals using services, workers, and employers.

As outlined above, clear guidance, information and training must be provided to social workers as key workers in enabling people to access their rights. Social workers must feel comfortable and informed, and able to support citizens or refer onwards for specialist legal advice if they encounter a breach.

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<sup>9</sup> <https://www.basw.co.uk/resources/social-work-and-human-rights-practice-guide>