

# Response ID ANON-7XD8-J1S7-G

Submitted to Disability Commissioner (Scotland) Bill  
Submitted on 2024-05-17 16:37:05

## About you

1 Please read the privacy notice below and tick the box below to show that you understand how the data you provide will be used as set out in the policy.

I have read and understood how the personal data I provide will be used.

2 How your response will be published

I would like my response to be published in its entirety

3 What is your name?

Name:  
Rebecca Scarlett

4 What is your email address?

Email:  
rscarlett@lead.org.uk

5 Are you responding as an individual or on behalf of an organisation?

Organisation

## Organisation details

6 Name of organisation

Name of organisation:  
Lead Scotland

7 Information about your organisation

Please add information about your organisation in the box below:

Lead Scotland is a charity supporting disabled people and carers by providing personalised learning, befriending, advice and information services. We have projects across Scotland and a national helpline and information service.

Our local services are community and home based, one to one or in small groups so that people have the right support to learn and participate. We support people with ambitions of personal development, learning, volunteering and work. At a national level, we provide information and advice on the full range of post-school learning and training opportunities, as well as influencing and informing policy.

Lead Scotland Vision: Our vision is of a fair society where disabled people and carers have an equal opportunity to learn, participate and achieve their potential.

Lead Scotland Mission: To influence change and provide personalised learning, befriending, advice and information services.

## Question page 1

8 What are your views on the main proposal of the Bill, to establish a Disability Commissioner for Scotland?

Please provide your response in the box provided.:

Lead Scotland is broadly supportive of the main proposal of the Bill, to establish a Disability Commissioner in Scotland.

We run Scotland's only national disabled students' helpline and routinely take calls from parents, carers and disabled people looking for support, information, advice, advocacy, representation and redress, related to discrimination at college and university. Currently, the system in place is not fit for purpose to ensure disabled people can fully access their legal rights and entitlements under the Equality Act. At school, children and young people with additional support needs who are in dispute with their local authority have guaranteed and funded access to the following:

- Professional mediation
- Legal advice and representation from Govan Law Centre and other legal services
- An additional support needs tribunal

- A Children and young person's Commissioner
- My Rights, My Say

At college and university, disabled students in dispute over accessing reasonable adjustments and appropriate support can access:

- A representative from their Students' Association – often a student volunteer
- The Scottish Public Services Ombudsman after the internal complaint handling procedure has been completed.

In addition to support from a students' association representative, students may be eligible for Scottish Legal Aid, but there are almost no solicitors taking on these cases using legal aid. Of the two that are available, Legal Services Agency and Just Right Scotland (both Scottish Government funded social justice projects), the waiting lists and criteria for support are generally prohibitive to accessing advice, assistance and representation.

There are voluntary advocacy services in some local authority areas, but eligibility criteria and waiting lists are again prohibitive to accessing support.

We believe the Equality and Humans Rights Commission does not effectively fulfil its purpose to protect disabled people from discrimination at college and university. They are restricted by how many cases they can provide assistance on and cases need to have a clear link to their current strategic plan. After eight years in my role of engaging with the EHRC as well as signposting callers to them, they have never been in a position to provide assistance on any of our cases.

Our callers require a simple, more accessible system, that removes the stress and burden they face in trying to fight for access, justice and the equal right to learn in an environment that provides suitable opportunities, adequate funded support and staff trained to promote equality and avoid discrimination. Disabled students' and their families get stuck in a system where appropriate support is not being provided on their course, they are then asked to engage in a drawn out overly bureaucratic complaint system, without guaranteed and funded representation. Callers tell us they can be left waiting up to six months for a college or university to investigate their complaint, and in the meantime the correct reasonable adjustments are being held back. Callers tell us their mental health and wellbeing is impacted significantly as a result of the process of engaging in these complaint processes, with reports of suicidal ideation. Some of them cannot cope with the stress and withdraw from their course early. This system serves to further entrench the deep and persistent inequality disabled people experience in every facet of public life.

Callers inform us that when they cannot or do not want to attempt to take legal proceedings, they continue to face barriers in trying to raise awareness of these systematic inequalities with the appropriate public bodies. Disabled people are passed from one agency to another, repeatedly receiving the same answer – they do not have the power or authority or remit to investigate accusations of systemic and persistent inequality and discrimination.

Therefore, disabled people need earlier access to a system that can address these inequalities. Work is desperately needed to investigate the mechanisms, policies, practices and culture that are serving to prevent disabled people from accessing a tertiary education system that is inclusive and accessible.

We therefore support this proposal due to the seismic potential it can have on addressing the societal barriers that continue to disable people in Scotland.

#### 9 What is your awareness of other commissions or bodies that exist to promote and protect your rights?

Please provide your response in the box provided.:

We are most familiar with the Equality and Human Rights Commission, as referenced in our previous answer. We have attended excellent training, guidance and best practice sharing events with them in the past. We have accessed their advisor helpline on a number of occasions and we have engaged with them to make referrals for legal assistance on behalf of our callers. We have raised our concerns repeatedly with them over the persistent issues reflected on our national disabled students' helpline. We believe there is a flaw in the Equality Act legislation and in the powers that exist to enforce that legislation, as we continue to hear about the same issues year after year. We are deeply concerned about the imbalance of power between public bodies and disabled people and the lack of effective, early and accessible routes of redress.

#### 10 What are your views on the proposal to use the definition of disability set out in the Equality Act 2010 – a physical or mental impairment which has a substantial and long-term adverse effect on that person's ability to carry out normal day-to-day activities.

Please provide your response in the box provided.:

We are neutral about the proposal to use the definition of disability set out in the Equality Act. On the one hand, the Equality Act is a reserved matter, and the definition is considered by some disabled people to rely too heavily on the medical model. Lead Scotland use, promote and advocate for the social model definition of 'disability'. However conversely, the Equality Act definition is the legal definition that is used by the public sector organisations and services that will be subject to potential investigation under the work of the Disability Commissioner. There could therefore be conflict if someone identified as disabled under the commissioner definition, but an organisation does not deem them to be disabled under the Equality Act.

We would always advocate for the definition that does not rely heavily on administrative burden and bureaucracy for disabled people and provides for the widest group of people possible with extra protection and rights. We would support any definition that refers to the impact of an impairment though rather than a diagnosis.

### Question page 2

#### 11 What are your views on the proposal for the Commissioner to have regard to the United Nations Convention on the Rights of Persons with Disabilities (UNCRPD) and to encourage and observe equal opportunities requirements.

Please provide your response in the box provided.:

We would support this proposal as the UNCRPD is being enshrined into Scots law and it provides for a rights-based approach to equal opportunities in areas like health, housing, employment and education. We believe taking a rights based approach is essential to addressing inequality and discrimination.

12 What do you think about the Commissioner's powers as set out in the Bill?

Please provide your response in the box provided.:

We think all of these powers are desperately needed to address the persistent inequality disabled people face when accessing services in Scotland. We would question however, how the Commissioner intends to review laws that are reserved to the UK. We would welcome research where there is clear evidence of need but would like to see investment and proactive actions taken to address any gaps and issues identified in research.

13 What do you think of the proposed power to undertake investigations of service providers to ask how they have given effect to the rights, views and interests of disabled people in general or an individual disabled person. This power to investigate will be limited to devolved matters.

Please provide your response in the box provided.:

We would completely endorse this proposal as disabled people are currently being failed at every level in every aspect of society and community life, with very little access to advocacy and redress processes. Disabled people and carers have to fight and challenge so many decisions that are made about them. Our helpline callers tell us they are exhausted from having to manage the constant burden of applications, meetings, emails, phone calls and complaints, just to have the same and simple rights and opportunities as non-disabled people.

### Question page 3

14 What do you think of the proposals to encourage the involvement of disabled people in the Commissioner's work, and use inclusive communication to enable the fullest involvement?

Please provide your response in the box provided.:

We would advocate the proposal goes further than this and ensures disabled people are employed to support the work of the Commissioner rather than just being involved. It is imperative disabled people are properly compensated for their time and experience as experts in their respective areas. We think it should be non-negotiable that inclusive communication is used to ensure disabled people can work for and be involved in the work of the Commissioner without unnecessary barriers.

15 Do you think there might be any unintended consequences as a result of the Bill's proposals?

Please provide your response in the box provided.:

16 Do you have any other comments you have on the Bill.

Please provide your response in the box provided.: