

# **Mental Health, Sensory Loss and Human Rights**

**– A Transition Report calling for  
Sensory Literate Services**

**deafscotland, Deafblind Scotland, RNID,  
Sight Scotland and the ALLIANCE**

**10th February 2021**



## Foreword

10th February 2021

Dear Colleague,

deafscotland, Deafblind Scotland, RNID (Royal National Institute for the Deaf), Sight Scotland and the ALLIANCE have collaborated to produce this report. Through our practice and experience, we have identified a pattern of failings in policy, funding and services for those with sensory loss. We have collectively concluded that Scotland needs universal, sensory literate services to prevent as well as address the prevalence of poor mental health in people with sensory loss. We now need your help to raise the issues and secure change. Therefore, we encourage you to circulate, discuss and act on this report to achieve prompt and significant impact.

In defining the way forward, we want to acknowledge the Independent Review of Adult Social Care in Scotland, which has just been published on 3rd February 2021. We are pleased that it puts a human rights approach at the centre, presents opportunities to work collaboratively and to deliver change through the establishment of a national body for social care staff training and development. The potential to make a positive impact on people's lives is huge as so much of mental health services sit in social care and not in health.

This report invites consideration from government, public authorities and trade unions, all of which have an important role to play in delivering the pace and detail of the change required. We dedicate this report to our members and stakeholders with whom we will share this report widely. We welcome feedback and commit to working collaboratively to deliver reform.

We record our thanks to Carole Ewart, the public policy and human rights consultant, who assisted us in this task.

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## About Us

### **deafscotland**

Is the lead national specialist organisation promoting equality, access and citizenship for those affected by deafness. We support the social model of disability and promote a rights based, person-centred approach.

Membership is drawn from all sectors and we are an enabling, lived experience led organisation. We describe a spectrum of deafness and four key pillars: Deaf; Deafblind; Deafened; and Hard of Hearing, promote Communication For All; BSL For All; and Connect Us Too. Visit our website for more information: [deafscotland – the lead organisation for deaf issues in Scotland \(deafscotland.org\)](http://deafscotland.org)

### **Deafblind Scotland**

Deafblind Scotland is the national leading authority on acquired deafblindness working to enable deafblind people to live as rightful members of their own communities. Deafblind Scotland offers a variety of services such as communication and linguistic access advice, advice navigating self-directed support, information and formatting services, welfare rights support, accredited training and a guide/communicator service. Visit our website for more information: [Deafblind Scotland – Deafblind Scotland \(dbscotland.org.uk\)](http://dbscotland.org.uk)

### **RNID (Royal National Institute for the Deaf)**

We are the charity working to make life fully inclusive for deaf people and those with hearing loss or tinnitus. We campaign for an inclusive society, connect people to practical advice, and pioneer new treatments for hearing loss and tinnitus. Visit our website for more information: [RNID in Scotland - RNID \(rnid.org.uk\)](http://rnid.org.uk)

### **Sight Scotland**

We are the leading organisation for sight loss in Scotland. We are also one of Scotland's oldest charities (formerly Royal Blind) and have been dedicated to meeting the challenges of visual impairment for over two centuries. We are a diverse charity with an expanding range of services, from the Royal Blind School and educational outreach, care, community support and the transcription of documents into alternative formats. Visit our website for more information: [Sight Scotland – Educating & Supporting People With Vision Loss \(sightscotland.org.uk\)](http://sightscotland.org.uk)

## **The ALLIANCE**

The Health and Social Care Alliance Scotland (the ALLIANCE) is the national third sector intermediary for a range of health and social care organisations. We have nearly 3,000 members. The ALLIANCE is a strategic partner of the Scottish Government and has close working relationships, with many national NHS Boards, academic institutions and key organisations spanning health, social care, housing and digital technology. Visit our website for more information: [The ALLIANCE – Health and Social Care Alliance Scotland \(alliance-scotland.org.uk\)](http://alliance-scotland.org.uk)

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## Inclusive Format

This publication is designed to be read by a wide audience, from members to key decision makers in the public, Third and private sectors. Therefore, the format is designed to be inclusive and accessible. We have avoided bullet points as trying to format the document into Braille and Moon, results in the system (software) assuming the bullet point is a 'dot'. Instead, we have used the alphabet or the numbering library. We comply with the recommendation that font should be size 14 (fourteen) minimum with titles usually two steps larger, for example at size 18 (eighteen). We have also avoided using Italics and use bold instead to ensure accessibility for people with sight loss.

## Terminology

Sign languages are fully functional and expressive languages. They are quite different from spoken languages. British Sign Language (BSL) is a visual-gestural language with a distinctive grammar using handshapes, facial expressions, gestures and body language to convey meaning. There is no agreed definition of Sign Supported English (SSE) which is understood to describe people speaking and signing at the same time.

Sensory Loss describes people who have a sensory disability and whose lives are impaired by society's inability to address their needs and rights. In this report, we refer to Sensory Loss (SL) as we are promoting the asset based, social model of disability.



## Mental Health, Sensory Loss and Human Rights

Mental health problems can affect anyone. Environmental factors such as poverty, adverse childhood experiences (ACEs), trauma, toxic relationships, social isolation and, too often, disability are key predictors of mental ill health.<sup>3</sup> Our stakeholders are some of the most vulnerable and high-risk groups in our society due to the intersectionality of all these factors. For example, two thirds of working-age people who are registered as blind and partially sighted in Scotland, are not in paid employment, which can lead to financial problems, stress and isolation. The impact of the current national lockdown disease containment policy, is more acutely felt by disabled people because of their higher existing rates of mental health disorders, and because they are more likely to be socially isolated and digitally excluded.

To enable and promote good mental health, our 1,310,533 stakeholders need change across all human transactions so that they are explicitly visible in policy, in service design and delivery.

We approach this issue with a legacy of challenges facing our sector and the people we work with and represent. Historically, organisational culture, service practice and funding priorities have not met our needs. However, the current appetite to 'Build Back Better through a Resilient Recovery from the COVID-19 pandemic'<sup>4</sup>, creates opportunities. This report is designed to influence how those opportunities are seized generally and explicitly in the 'Coronavirus (COVID-19): mental health - transition and recovery plan', and we will work collaboratively to 'ensure mental health and wellbeing remains at the heart of the Scottish Government's response to coronavirus (COVID-19)'.<sup>5</sup>

We provide evidence-based policy, service and funding recommendations to transition publicly funded services to be 'sensory just'. We believe Scotland should aim to provide 'Sensory Literate Services'. The key is to provide inclusive communication across society and all services so people will be less isolated, more included and their human rights better respected, protected and fulfilled. Introducing and sustaining mainstream involvement of people with sensory loss in designing recovery policy and practice will help Scotland 'build back fairer'.

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<sup>3</sup> See 'Emotional Support for Sight Loss' Research by Royal Blind and Scottish War Blinded with the Mental Health Foundation into the mental health impacts of visual impairment pg. 5 at [Royal Blind Emotional Support and Sight Loss report\[6877\].pdf](#)

<sup>4</sup> Theme of UN's International Human Rights Day on 10<sup>th</sup> December 2020

<sup>5</sup> At [Coronavirus \(COVID-19\): mental health - transition and recovery plan - gov.scot \(www.gov.scot\)](#)

## 2. Understanding Sensory Loss and Poor Mental Health

Society's response to COVID-19 has heightened general understanding about the importance of personal relationships and the benefits of human contact in sustaining us, helping us to thrive and key to building our resilience. By wearing masks, we have realised how often we depend on non-verbal communication, such as smiling to acknowledge assistance. Physical distancing stops us attracting someone's attention by touching an arm or a shoulder. Communication using thumbs up is now standard everyday practice as well as a facility on Zoom. Our reliance on technology to work and communicate during lockdowns has created inclusion because facilities such as real time subtitling and audio translation ensures broader participation.

We should have known this anyway through ordinary life and everyday routines. Communication comes before language develops. Babies communicate successfully with parents and carers without language, animals can let you know what they are thinking through their actions, and mime can help the ordering process in noisy, busy environments.

1310,533 individuals are directly affected by permanent sensory loss, which is over 25% of Scotland's population of 5.46 Million people<sup>6</sup>:

- a. 178,000 people living with Sight loss.
- b. 34,000 people who are Deaf and Blind.
- c. 12,533 Deaf (including BSL users).
- d. 4,000 Deafblind people.
- e. 355,000 Deafened people.
- f. 27,000 with dual sensory loss.
- g. and 700,000 Hard of Hearing people.<sup>7</sup>

Sensory Loss is common, not exceptional, yet its centrality in policy is consistently overlooked. The social model of disability assists our understanding that it is society that impairs people's ability to live equally. In this report we have adopted the term Sensory Loss (SL) throughout as it best describes the social model we promote across our work.

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<sup>6</sup> Scotland's population is at a 'record high at 5.46 million' according to the ONS, published 6<sup>th</sup> October 2020 at [Scotland's Population | National Records of Scotland \(nrscotland.gov.uk\)](https://www.nrscotland.gov.uk/)

<sup>7</sup> Understanding the four pillars of deafness: <https://deafscotland.org/> and <https://dbscotland.org.uk/resources/publications/>

## Mental Health, Sensory Loss and Human Rights

Scotland needs to change as a matter of principle, but also due to the number of people whose experiences, needs and rights are being failed by 'the system'. An informed approach is also needed as within each of the above 'communities', there is huge diversity and we all need to be more sensory aware. Knowledge assists planning. For example, more than 40% of people over the age of age 40, 60% over the age of 60, 70% over the age of 70 and 90% over the age of 75 have hearing loss and that impairment defines their lives and opportunities. A 'BSL user' is not a deaf person or hearing loss person, it is a person using a defined and recognised language. Not all 'Deaf' people sign/use BSL (British Sign Language).

The majority of profoundly deaf people are born to hearing parents and do not sign BSL. They learn, read and speak English, then for some of them, they learn BSL / SSE (Sign Supported English). Some do identify as 'Deaf'. Some BSL users are 'Deafblind', 'Deafened' and 'Hard of Hearing' but do not identify themselves as 'Deaf' as the term is associated with disability and they consider themselves as able and it is society that disables them.

Diversity in SL is also evident from life circumstances. People born with SL are likely to learn to communicate in a different way from those who acquired it in later life. For some people, their SL causes poor mental health: traumatised by sudden sight loss and/or hearing loss, people's loss of independence and growing reliance on others to function, as well as poverty of human contact, leads to loneliness; lack of access to information to make informed choices sparks feelings of vulnerability; poverty of social and economic opportunity breeds hardship; exclusion and discrimination from 'mainstream' events causes unhappiness.

People can experience layers of inequality and cumulative discrimination based on multiple identities, for example discrimination based on disability, gender, ethnicity and class. It is necessary to accept and consider the interdependence and complexity of identities to effectively combat omissions in mental health policy and services.

## Mental Health, Sensory Loss and Human Rights

People with SL get little recognition and their needs and rights are often subsumed into wider disability. The term 'diagnostic overshadowing', is used to describe this exclusive approach whereby health professionals see the person and not just their 'disability', and assumes that explains their behaviour without exploring other factors. The reasons are various: too often, the training undertaken by clinical staff has not prepared them for working with SL people; too often general healthcare has very limited knowledge about SL; there is a lack of awareness of the legislative framework on rights and duties; and there is a common misunderstanding about delivering the right to equal treatment - it does not mean treatment should be the same, rather it should be adapted to meet needs and achieve equal outcomes.

Scotland needs to move to a situation where the whole society response is commonplace. Currently, strategies to include are exceptional. Whilst there is, overwhelmingly, no intent to cause harm, the impact is the same. Whether exclusion happens directly or indirectly, the impact is the same. There is a mound of statistical evidence, gathered before the pandemic, to evidence the extent of the problems including:

- a. 23% of disabled people say they are quite or very lonely on a typical day.
- b. 46.7% of disabled people are employed compared to 80.3% of non-disabled people.
- c. 25% of disabled adults have never used the internet, compared to 10.2% of the entire UK population.<sup>8</sup>

Any strategy cannot be based on a "one size fits all" approach. In mental health strategic planning, awareness of the diversity in SL is critical to mapping out a system that is responsive and accessible from diagnosis to service delivery and follow up. That awareness needs to apply to all services. For example, when people are diagnosed with initial and deteriorating sight loss, there needs to be standard procedures in place for optometrists, nurses and doctors to put people in contact with specialist services that can provide and advise on independent living, communication aids and other matters which makes life okay. The same applies for people with hearing loss and dual sensory loss.

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<sup>8</sup> 'Doing Digital Inclusion: disability handbook' pub by The Good Things Foundation  
[https://www.goodthingsfoundation.org/sites/default/files/research-publications/disability\\_handbook-with\\_links-final.pdf](https://www.goodthingsfoundation.org/sites/default/files/research-publications/disability_handbook-with_links-final.pdf)

## Mental Health, Sensory Loss and Human Rights

People with SL have developed all sorts of skills and tactics to compensate, and public services can learn from them and enable them to share that learning with their peers. There is also a need to deliver more Augmentative and Alternative Communication (AAC). Sometimes local authorities or the NHS do not, or try not, to provide assistive equipment and attempt to get the individual to cover the cost. Many deaf people do not receive assistive equipment as standard such as safety equipment for an individual's home may not be provided their home even though they should have smoke alarm alerts with a flashing light. Consequently, people worry they are not safe living at home and cannot relax especially through the night if living alone. The result is often cumulative stress which affects their mental health and wellbeing. Having assistive technology support can improve their confidence and independence, as well as improving their mental health and wellbeing. The problem can be acute for groups of people such as first-time deaf parents, who are often forced to buy specialist equipment so they know their baby is safe.

### **Conclusion**

Sensory literate services are needed in Scotland. The focus should be on building the language of communication not on trying to 'fix' the SL. Services that practice inclusive communication approaches are better able to respect, protect and fulfil people's human rights covering economic, social, cultural, civil, political and environmental matters. Communication needs to be viewed as a right not a privilege, and duty bearers need to equip staff with the knowledge, skills and awareness to make it happen across society. Inclusive communication can prevent and reduce poor mental health and is an essential driver of good mental health.

### 3. Mental Health and Inclusive Communication

#### Mental Health Law

Mental Health law in Scotland is set to be reformed.<sup>9</sup> Reform has already been delivered in England.<sup>10</sup>

It is important to understand which of the current positive elements could be comprehensively deployed to have a fairer impact. For example, Section 25 of the Mental Health (Care and Treatment) (Scotland) Act 2003, requires local authorities to 'provide, for persons who are not in hospital and who have or have had a mental disorder, services which provide care and support, or secure the provision of such services for such persons'. The purpose of the duty is included in law and is 'designed to minimise the effect of the mental disorder on such persons; and give such persons the opportunity to lead lives which are as normal as possible.'<sup>11</sup> Section 26 of the Act also requires local authorities to provide services that promote 'wellbeing and social development', including 'social, cultural and recreational activities, training for such of those persons as are over school age and assistance for them in obtaining and undertaking employment.'<sup>12</sup>

How the 'Principles of the Mental Health (Care and Treatment) (Scotland) Act 2003' are delivered in practice for people with SL should also inform reform. Compliance depends on communication, but there is evidence that people are not being provided with inclusive information. This is despite the duty to obtain 'the present and past wishes and feelings of the patient which are relevant to the discharge of the function' along with various key people who may also have SL such as the patient's named person or carer(s). Inclusive communication, the two-way process, is necessary so 'the patient participates as fully as possible'. For example: there are no purple booklets of information in BSL despite initial work having been done in 2002; there are still Mental Health Officers (MHOs) not booking BSL/English Interpreters or Electronic Notetakers for the person or their named person/carer/guardians to make sure this happens. People with SL need communication support so they understand and can make informed decisions about their care and treatment options. This includes the extent to which they may wish to manage these options themselves.

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<sup>9</sup> Scottish Mental Health Law Review at [Homepage | Scottish Mental Health Law Review](#)

<sup>10</sup> At [Landmark reform of mental health laws - GOV.UK \(www.gov.uk\)](#)

<sup>11</sup> Mental Health (Care and Treatment) (Scotland) Act 2003 at [Mental Health \(Care and Treatment\) \(Scotland\) Act 2003 \(legislation.gov.uk\)](#)

<sup>12</sup> IBID

## Mental Health, Sensory Loss and Human Rights

Our individual and collective experience is that people with SL have not had the support and services which the law requires. This needs to change. The failure to provide inclusive communication negatively impacts on the patient experience and health outcomes. The right to equally enjoy the protections offered by mental health law and to access services, will only be realised if those with the responsibility to deliver are held to account for delivery. This is a human rights matter.

### **Re-Defining Mental Health Strategy**

The catalyst for this report is publication of 'The 'Coronavirus (COVID-19): mental health - transition and recovery plan' which is the Scottish Government's response to the mental health impacts of COVID-19. It is designed to 'address the challenges that the pandemic has had, and will continue to have, on the population's mental health.' However, the rights of SL people are not explicitly covered by the strategy and they need to be included to meet its purpose. Publicly funded services need to adopt a common understanding of the impact of SL on people's lives and on their mental health, to design and implement policy and services that achieve equal outcomes. We are also clear that mental health issues can arise across all age groups, can be short and long, temporary, transient and for some prolonged therefore strategic decisions need to meet a range of challenges.

The premise is that lockdown and its effects have adversely affected people's mental health. We agree, but what is not acknowledged is that those same conditions were a constant in the lives of people with SL pre-COVID and they are not going to go away. The report points out that those with pre-COVID mental health issues will have faced a deterioration and that is amplified for people with SL, as management of the pandemic has aggravated the feelings of isolation and disempowerment that are proven causes of poor mental health. For example, worrying about what is happening and what restrictions are in force because of communication poverty.

## Mental Health, Sensory Loss and Human Rights

We believe that poor mental health is just one of many issues that are caused by the failure to communicate inclusively. It is a problem that unites all our stakeholders and from experience, we know that delivery of the Scottish Government's mental health strategy needs to be re-calibrated to be sensory aware and take account of the following:

- a. Inclusive communication needs to be embedded in all mental health services.
- b. Negative mental health outcomes are mainly preventable or can be ameliorated through targeted action on early diagnosis, intervention and anticipatory care planning. This is key.
- c. Inclusive communication needs to be mainstreamed across society to prevent situations being created that prompt poor mental health.
- d. People need access to a full range of mental health services and improvement opportunities, from social support and helplines to crisis/assessment hubs and inclusive forensic services. Whilst more specialist, discreet services are needed, equal access to diagnostic and therapeutic services is a priority.
- e. Mental health literacy, particularly psychological first aid, distress and brief intervention approaches need to be embedded not just in a few specialists third sector organisations, but across the social care workforce. The issues are too prevalent. There needs to be a 'make every contact count' approach.
- f. Invest more on the third sector meeting mental health needs which adds to wider community support. Impact will be greater and better outcomes for people sustained. The strategic plan should not be limited to formal 'services'.
- g. Strategy needs to include upskilling the mental health workforce in SL, and all health and social care workforce in mental health support.
- h. Place a strong focus on individual health literacy, to better support people to self-care. Children to learn to self soothe, families to positively parent, and adults to adopt healthy lifestyle choices, adaptive coping strategies etc.
- i. Implement programmes focused on strengthening the resilience of people with SL particularly in managing transitions. This is key for people with acquired dual sensory loss where transitions can be traumatic.

## Mental Health, Sensory Loss and Human Rights

- j. Services generally need to have a 'full mind body focus'. Interaction between physical and mental health is key, - this feed into the growing understanding of the importance of environmental and societal factors, such as discrimination, in defining people's health outcomes. Applying a 'human being ecology model' opens understanding of the variety of issues impacting on the mental health of people with SL. You also get to identify some of the solutions.
- k. The mental health strategy should be framed by human rights and given effect to through a 'mental health in all policies approach'. Human rights are non-hierarchical and interdependent, and someone's ability to communicate and to enjoy the highest attainable standard of physical and mental health, requires a variety of rights to be in place covering economic, social, cultural, civil, political and environmental rights.<sup>13</sup>
- l. Although assistive technology can be a game changer, this is not true for everyone. So, policy and services therefore need to provide options that meet individual abilities and potential. For those that can use technology, there needs to be a significant increase in support and investment to build understanding, skills and access, including on digital connectivity which in some parts of Scotland is weak and unreliable.<sup>14</sup>
- m. Policies and services need to be tailored to needs. Specifically, this requires staff training to recognise and provide services when and of the right type. For Deafblind people there are solutions such as 'Guide Communicators', but all too often communication is not seen as a central mediator/broker to other outcomes.
- n. Trauma around acquiring a sensory loss or second sensory loss should be recognised and emotional support services should be available from diagnosis and through care and treatment. Suicide remains a critical area of concern in Scotland. Sharp end services like forensic and crisis need to get it right by having the right communication supports in place.

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<sup>13</sup> See UN's International Covenant on Economic, Social and Cultural Rights, such as Articles 1 and 12, at [OHCHR | International Covenant on Economic, Social and Cultural Rights](#)

<sup>14</sup> Scottish Affairs Committee's Inquiry report on 'Digital Connectivity in Scotland', published in July 2018 Parar1 pg. 40 at <https://publications.parliament.uk/pa/cm201719/cmselect/cmsscota/654/654.pdf>

## **Social Care Reform**

The recommendations from the social care inquiry, informed by service users as well as by ourselves, are welcome as the improvements are targeted at improving outcomes by respecting rights and delivering on duties.<sup>15</sup> The social care system will be redesigned. There will be a national body for social care staff training and development, which could facilitate the development of a social care workforce equipped to take a 'make every contact count' approach. Explicitly, communication support, and by implication SL, is acknowledged as an area of complex needs that are often not addressed. SL is overlooked in the medicalised NHS and the situation is often not much better in social care. Therefore, awareness raising, skill development and advice on inclusive communication must be key elements of the new training programme.

We support the proposed reforms particularly in respect of 'Fair Work' and recognise the body of evidence already published by the Fair Work Commission on Social Care.<sup>16</sup> As so much of community based mental health services sit in social care, and not in health, training and rewarding the 200,000 staff will yield direct and indirect benefits on inclusive communication and better mental and physical health outcomes.

As a large proportion of community based mental health services are located within the third sector, and heavily influenced by this new social care report, the future is looking rich in opportunities.

## **Conclusion**

During lockdown we are repeatedly reminded that getting out is good for mind and body, but if you have SL getting exercise can be problematic such as running and cycling. Getting outside is, and remains, a challenge. Two metre and one metre social distancing has been difficult or impossible for blind and partially sighted people, who are unable to observe and manage, resulting in many not feeling confident about going back out into the community even when restrictions have eased.

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<sup>15</sup> At <https://www.gov.scot/binaries/content/documents/govscot/publications/independent-report/2021/02/independent-review-adult-social-care-scotland/documents/independent-review-adult-care-scotland/independent-review-adult-care-scotland/govscot%3Adocument/independent-review-adult-care-scotland.pdf?forceDownload=true>

<sup>16</sup> 'Fair Work in Scotland's Social Care Sector 2019', pub. 26th February 2019 at [Fair Work in Scotland's Social Care Sector 2019 - The Fair Work Convention](#)

## Mental Health, Sensory Loss and Human Rights

Despite specific initiatives to encourage more activity and access, there are legacy issues caused by decades of exclusion. Also, unless there are deliberate and positive steps to combat the reasons for people's isolation, exclusion and disempowerment, COVID-19 will continue to have a disproportionate impact on the mental health of people with SL.

Strategy needs to make action explicit. Public Health Scotland (PHS) - has placed mental health as one of its six strategic priorities and the Scottish Government's 'See Hear' strategy promotes better signposting to mental health support for people accessing sensory services. However, more joined up and targeted action is needed underpinned by an 'all services' approach to inclusive communication.

## 4. Human Rights and Sensory Loss

Communication is a basic human right. Human beings of all ages connect and interact through listening and exchanging information and ideas. Communication sustains and feeds each of us as social beings, something which we have all realised and experienced during the COVID-19 lockdown when many were isolated from usual 'communication networks'. Relationships are built and maintained through communication. Education and work depend on communication. Participation in justice systems and in political and civic life, are all navigated through communication. Communication is therefore a gateway to rights including: the right to respect for family life; the right to an adequate standard of living; the right to form an opinion; and the right to consent to marry. Everyone has the potential to communicate but whether they can often depend on awareness as well as access to the services and funding they need to achieve their communication potential.

As exclusive communication limits the effectiveness of any strategy and service, communication must be designed to be inclusive. Inclusive Communication also needs to be correctly understood as it is often confused with Accessible Information. Accessible Information is a product such as a report translated into 'easy read', whereas inclusion is achieved through a continuous, enabling and empowering process.<sup>17</sup> Inclusive Communication enables rights to be respected, protected and fulfilled.

The first challenge is for a common understanding of how human rights are respected, protected and fulfilled. Human rights are interdependent which means that you cannot enjoy one without the other. That premise is clear for people with SL as the enjoyment of rights is dependent on their right to communicate with family, friends and with services delivered by the public, Third and private sectors. Communication may be through language as well as through touch by using Braille and Moon for example. The pivot to all rights is Inclusive Communication.

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<sup>17</sup> For example, see <https://www.easyreaduk.co.uk/> as opposed to <https://www.gov.scot/binaries/content/documents/govscot/publications/advice-and-guidance/2011/09/principles-inclusive-communication-information-self-assessment-tool-public-authorities/documents/0120931-pdf/0120931-pdf/govscot%3Adocument/0120931.pdf>

## Mental Health, Sensory Loss and Human Rights

We expect that as the new national social care service, recommended in the February 2021 review report, along with a human rights-based approach first, will become the routine benchmark for all publicly funded services.

The second challenge is understanding what rights mean and require from duty bearers in law. There is an extensive body of law which our domestic rights are framed by and to which we in Scotland aspire to including:

- a. Article 2 of the 1948 Universal Declaration of Human Rights ‘Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status’.<sup>18</sup>
- b. Article 27 of the International Covenant on Civil and Political Rights ‘In those States in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community with the other members of their group, to enjoy their own culture, to profess and practise their own religion, or to use their own language’.<sup>19</sup>
- c. Article 17 of the UN Convention on the Rights of the Child (UNCRC) recognises ‘the important function performed by the mass media and shall ensure that the child has access to information and material from a diversity of national and international sources, especially those aimed at the promotion of his or her social, spiritual and moral well-being and physical and mental health’.<sup>20</sup>
- d. Article 10 of the European Convention on Human Rights (ECHR) is ‘the right to form an opinion by receiving and imparting information’.<sup>21</sup>
- e. Article 9 of the UN Convention on the Rights of Persons with Disabilities (UNCRPD) is the right of ‘accessibility’ to ‘enable persons with disabilities to live independently and participate fully in all aspects of life’. Specifically, communication is covered and defined.<sup>22</sup>

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<sup>18</sup> [Universal Declaration of Human Rights](#)

<sup>19</sup> [International Covenant on Civil and Political Rights](#)

<sup>20</sup> [Convention on the Rights of the Child](#) and see also Articles 29, 30 and 40

<sup>21</sup> [European Convention on Human Rights](#) and see also Articles 5, 6 and 14

<sup>22</sup> At

<https://www.ohchr.org/EN/HRBodies/CRPD/Pages/ConventionRightsPersonsWithDisabilities.aspx#33>

## Mental Health, Sensory Loss and Human Rights

In mapping the way forward, we must accept and plan for the intersectionality of rights. The right to Inclusive Communication is an established human right and is a gateway to all rights. However, you cannot communicate or correspond if there is no Inclusive Communication. The duties on States to deliver are clearly set out and are underpinned by the requirement to progressively realise rights to the maximum extent of available resources. For example, in the UNCRPD:

- a. Article 8 requires awareness raising so that the public, generally, and staff, specifically, are trained to deliver.
- b. Article 25 requires governments to ‘take all appropriate measures to ensure access for persons with disabilities to the same range, quality and standard of health care and programmes as provided to other persons’ as well as ‘provide those health services needed by persons with disabilities specifically because of their disabilities, including early identification and intervention as appropriate, and services designed to minimise and prevent further disabilities’.<sup>23</sup>

Civil society organisations have a track-record documenting the disproportionate impact of damaged mental health on people with SL. Importantly, but importantly we also set out proven improvement measures:

‘It’s clear that if we tackle the risk factors that damage our mental health, and promote the protective factors that enhance it, we can achieve this critical mission of reducing the level and severity of mental health problems. We can also improve resilience to difficult life events that aren’t readily preventable.’<sup>24</sup>

Reports published by human rights bodies also evidence the impact on human rights such as: the Equalities and Human Rights Commission (EHRC) report ‘How coronavirus has affected equality and human rights’<sup>25</sup>; and the Scottish Human Rights Commission (SHRC) impact reports including ‘COVID-19, Social Care and Human Rights: Impact Monitoring Report’.<sup>26</sup>

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<sup>23</sup> [OHCHR | Convention on the Rights of Persons with Disabilities](#)

<sup>24</sup> Lee Knifton Director of Scotland and Northern Ireland, Mental Health Foundation

<sup>25</sup> Published 20<sup>th</sup> October 2020 at [How coronavirus has affected equality and human rights | Equality and Human Rights Commission \(equalityhumanrights.com\)](#)

<sup>26</sup> October 2020 at [COVID-19, Social Care and Human Rights Monitoring Report \(scottishhumanrights.com\)](#)

## Mental Health, Sensory Loss and Human Rights

Human rights law in Scotland is not static and change is underway to make compliance with rights and duties more explicit and central to all that we do. For example, the Taskforce on Human Rights Leadership is currently drafting a new law<sup>27</sup> and the UNCRC is being given domestic effect through a Bill at the Scottish Parliament. Over successive years, the Scottish Government's Annual Programme for Government has committed to incorporation of other UN treaties specifically referring to the UNCRPD, the Convention on the Elimination of Discrimination Against Women (CEDAW) and the International Covenant on Economic, Social and Cultural Rights (ICESCR). The drive is on at policy and services level too. Human rights are being incorporated into the National Performance Framework<sup>28</sup> and the Equalities and Human Rights Committee recommended in its 2018 report that each Committee at the Scottish Parliament mainstream human rights across its work.<sup>29</sup>

Human rights must be equally enjoyed and that has led, internationally, to the drafting of specific Treaties for issues and for groups of people who are discriminated against. People with SL deserve extra attention by reason of their marginalisation as a group of diverse people and because they jointly face problems in accessing basic rights. Therefore, consideration should be given to positively setting out rights and duties by framing strategy as a 'linguistic minority'. This approach has the advantage of promoting a positive identity using human rights as set out in the Council of Europe's (CoE) 'European Charter for Regional or Minority Languages'.<sup>30</sup> The CoE is made up of 47 states and 27 belong to the European Union. All CoE members have signed up to the ECHR.

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<sup>27</sup> [National Taskforce for Human Rights Leadership - gov.scot \(www.gov.scot\)](https://www.gov.scot)

<sup>28</sup> [Resources | National Performance Framework](#)

<sup>29</sup> Published 28<sup>th</sup> November 2018 at <https://sp-bpr-en-prod-cdnep.azureedge.net/published/EHRiC/2018/11/26/Getting-Rights-Right--Human-Rights-and-the-Scottish-Parliament-3/EHRiCS052018R6Rev.pdf>

<sup>30</sup> Council of Europe at [About the European Charter for Regional or Minority Languages \(coe.int\)](https://www.coe.int)

## **Conclusion**

We have a track record of raising these issues.<sup>31</sup> Now, people face a double whammy: already isolated and with a high incidence of poor mental health, the consequential impacts of COVID-19 and the way the response was, and remains, being managed cause further isolation and anxiety. Established needs and gaps in services delivery fail to be acknowledged by providers both in scale and detail. We are committed to agreeing a workable way forward that will maximise the human and financial capital invested in delivering good mental health for people of all ages in Scotland.

Prior to COVID-19, significant barriers were in place which prevented people from accessing support and these must still be addressed in an enhanced and reconfigured service. A focus is now needed to ensure that promises in policy, and duties and rights in law, are honoured and delivered with equal outcomes for people with SL.

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<sup>31</sup> For example see 'Emotional Support for Sight Loss' Research by Royal Blind and Scottish War Blinded with the Mental Health Foundation into the mental health impacts of visual impairment at [Royal Blind Emotional Support and Sight Loss report\[6877\].pdf](#)

## 5. Human Rights Based Approach (HRBA)

**We will reach our common global goals only if we are able to create equal opportunities for all, address the failures exposed and exploited by COVID-19, and apply human rights standards to tackle entrenched, systematic, and intergenerational inequalities, exclusion and discrimination.<sup>32</sup>** **United Nations'**

In 'Mental Health - Scotland's Transition and Recovery', the Scottish Government states 'We must cherish and protect an environment which promotes the right to good mental health, and we will embed human rights, equality, dignity, and the voice of lived experience at the heart of our approach.'<sup>33</sup> However, the voice and experiences of people with SL have so far been overlooked. They are human beings, born with dignity, worth, rights and reason. Whatever their age, they are equal to everyone else and should derive equal benefits from the mental health strategy and services.

Delivering mental health services from a human rights perspective depends on a better understanding of the consequent obligations on duty bearers not just in health, but across all related publicly funded services such as education, housing and social care. To fulfil duties, there also needs to be a better understanding of the detail of rights and staff need to be trained to plan and deliver them. For example, communicating inclusively is a right, not an act of benevolence. Inclusive Communication empowers and enables people to participate, in turn this builds connectivity and reduces isolation. Inclusive Communication is a gateway to all our rights including our right to enjoy family life and good mental health.

The SHRC has promoted a human rights-based approach (HRBA) since 2013 to make sure that people's rights are put at the very centre of policies and practices. The PANEL principles are one way of breaking down delivery and are: Participation, Accountability, Non-Discrimination, Empowerment and Legality.<sup>34</sup> Each depend on Inclusive Communication and sensory literate services.

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<sup>32</sup> UN website at [Human Rights Day | United Nations](#)

<sup>33</sup> Pg. 2 at [Mental Health – Scotland's Transition and Recovery \(www.gov.scot\)](#)

<sup>34</sup> At [Human Rights Based Approach | Scottish Human Rights Commission](#)

## Mental Health, Sensory Loss and Human Rights

Our human rights are protected by the rule of law so that we achieve equal outcomes. However, there is insufficient understanding of the detail and this inhibits the effectiveness of the PANEL principles as well as a HRBA<sup>35</sup>:

- a. In specific legislation: Human Rights Act 1998 which gives domestic effect to the ECHR; The Scotland Act gives effect to the ECHR and to international human rights law.
- b. Contained in domestic laws which specifically include human rights such as Section 1(b) of the Social Security (Scotland) Act 2018 'social security is itself a human right and essential to the realisation of other human rights'.<sup>36</sup>
- c. Specially provide for our right to Inclusive Communication, as a process or to promote a specific language: Section 6 of the Coronavirus (Scotland) No 2 Act 2020<sup>37</sup>, Section 9 of the Coronavirus (Scotland) Act 2020<sup>38</sup>, Section 6 (7)(b) of the Consumer (Scotland) Act 2020<sup>39</sup>, Section 4(2) of the Social Security (Scotland) Act 2018<sup>40</sup>, British Sign Language (Scotland) Act 2015<sup>41</sup> and the Gaelic Language (Scotland) Act 2005<sup>42</sup>.
- d. Deliver on human rights duties although the language of human rights is not specific such as Section 5 of the Community Empowerment (Scotland) Act 2015 'In carrying out functions conferred by this Part, a community planning partnership must act with a view to reducing inequalities of outcome which result from socio-economic disadvantage unless the partnership considers that it would be inappropriate to do so.'<sup>43</sup>

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<sup>35</sup> See preamble to the [Universal Declaration of Human Rights 1948](#)

<sup>36</sup> Available at [Social Security \(Scotland\) Act 2018 \(legislation.gov.uk\)](#)

<sup>37</sup> At <https://www.legislation.gov.uk/asp/2020/10/contents/enacted>

<sup>38</sup> At <https://www.legislation.gov.uk/asp/2020/7/section/9>

<sup>39</sup> Available at <https://beta.parliament.scot/-/media/files/legislation/bills/current-bills/consumer-scotland-bill/stage-3/bill-as-passed-consumer-scotland-bill.pdf>

<sup>40</sup> Available at <http://www.legislation.gov.uk/asp/2018/9/section/4/enacted>

<sup>41</sup> Available at <http://bslscotlandact2015.scot/>

<sup>42</sup> See <http://www.legislation.gov.uk/asp/2005/7/contents>

<sup>43</sup> [Community Empowerment \(Scotland\) Act 2015 \(legislation.gov.uk\)](#)

## Mental Health, Sensory Loss and Human Rights

A HRBA enables a focus on those who are most marginalised, excluded or discriminated against. Only by understanding different forms of discrimination and power imbalances, can we ensure that policy ambitions and interventions reach the most marginalised. The PANEL principles are a process to plan inclusively and provide that:

- a. People are recognised as key actors in their own development, rather than passive recipients of commodities and services.
- b. Participation is both a means and a goal.
- c. Strategies are empowering, not disempowering.
- d. Both outcomes and processes are monitored and evaluated.
- e. Situation analysis is used to identify immediate, underlying and the root causes of problems.
- f. Analysis includes all stakeholders, including the capacities of the state as the main duty-bearer and the role of other non-state actors.
- g. Human Rights standards guide the formulation of measurable goals, targets and indicators.
- h. National accountability systems are strengthened with a view to ensure independent review of government performance and access to remedies for aggrieved individuals.
- i. Strategic partnerships are developed and sustained.<sup>44</sup>

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<sup>44</sup> See UN Population Fund at [The Human Rights-Based Approach | UNFPA - United Nations Population Fund](#)

## **Conclusion**

The consistent theme is that Scotland wants to put human rights into effect through domestic law and by adopting the minimum standards established by international human rights instruments. However, the challenge remains of barriers to the equal enjoyment of rights. Duty bearers do not understand their obligations and rights holders do not know, and cannot assert, their rights. Outcomes are therefore unequal. A strategic and structural remedy is to adopt a HRBA to delivery of services, especially mental health services. We believe that people can reach their potential and be content if their rights are respected protected and fulfilled - the process is just as important as the outcome. Therefore, we are pleased that the review of social care in Scotland is recommending a HRBA and details the 10 elements to make it happen.<sup>45</sup> We are committed to working collaboratively to share our knowledge and expertise to make that happen.

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<sup>45</sup> Pg. 100 at <https://www.gov.scot/binaries/content/documents/govscot/publications/independent-report/2021/02/independent-review-adult-social-care-scotland/documents/independent-review-adult-care-scotland/independent-review-adult-care-scotland/govscot%3Adocument/independent-review-adult-care-scotland.pdf?forceDownload=true>

## 6. Conclusions and Recommendations

**As we learn to live with the pandemic, we will continue to support good mental health and wellbeing, to help people manage their own mental health, and to build their emotional resilience... We will support mental health recovery in a way that is personal to each individual's journey, and which focuses on their rights.<sup>46</sup>**

**Scottish Government**

### Conclusions

To comply with existing human rights law and specific laws on inclusive communication, there needs to be changes in culture and practice so that outcomes are 'sensory just'. Historically there have been problems with exclusion, but the immediacy of the problems and the opportunity to do better is now. Scotland needs to transition to deliver 'sensory literate services'.

Sensory loss, despite it affecting 1,310,533 people is repeatedly overlooked. Diversity within this one quarter of Scotland's population also needs to be understood. For example, people with hearing loss do not always consider themselves to be disabled, rather it is society that disables them by failing to meet their needs. Many people associate hearing loss with age and consider it inevitable. If the Government acknowledges that hearing loss is commonplace, then strategies to manage its impact would become mainstream.

The status quo is no longer an option as we are all committed to preventing harm and being pro-active to enable people to enjoy good mental health. However, the new strategy on mental health illustrates a systemic issue: that the needs and rights of people with SL are overlooked and that this causes harm. As the Social Renewal Advisory Board Report points out 'We may all be in the same storm, but we are all in different boats... and even then, too many of us are with no boat at all.'<sup>47</sup>

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<sup>46</sup> 'Mental Health – Scotland's Transition and Recovery' pg. 1

<sup>47</sup> 'If Not Now Then When', Social Renewal Advisory Board Report published January 2021 at [If not now, when? - Social Renewal Advisory Board report: January 2021 - gov.scot \(www.gov.scot\)](https://www.gov.scot/resources/consultation-papers/collections/documents/If-Not-Now-Then-When.pdf)

## Mental Health, Sensory Loss and Human Rights

The Scottish Government has acknowledged that ‘The pandemic has tested everyone’s emotional resilience’, and SL is also a constant test of a person’s emotional resilience. This fact needs to be specifically acknowledged and acted upon using a HRBA whereby the duties to deliver a service are tuned to individuals’ needs, and that their rights to services are respected and delivered. We welcome the offer from the Scottish Government to work with stakeholders and people with lived experience in order to further understand these issues and to develop implementation plans where these are needed. We also welcome the offer to agree on milestone dates, who is involved in delivery and how we will measure success.<sup>48</sup>

The Scottish Government’s commitment to overcome the stigma around mental health is welcome and this report is designed to inform conversations about mental health and wellbeing as well as influence decisions on policy, funding and services. Addressing the stigma associated with hearing loss also needs to be acknowledged and addressed. Scotland needs to have the ambition to deliver ‘Sensory Literate Services’ generally as well as in specific mental health services.

Despite general commitments on the needs of disabled people and vulnerable groups, people with SL now need to be acknowledged as a distinct and respected minority, whose rights and needs are explicit in mental health preventative, diagnostic and treatment strategies as:

- a. The intersectionality of disadvantage faced by those with sensory loss creates the conditions for poor mental health.
- b. Mental health problems prompted by sensory loss are commonplace and well documented. Overwhelmingly, these difficulties are avoidable, as well as being treatable if the system delivers early diagnosis, is accessible and communicates inclusively.
- c. The management of COVID-19 has amplified existing problems of exclusion and marginalisation. This has created a disproportionately negative impact on the mental health of people with sensory loss.
- d. Reform is needed across sectors as solutions are not confined to health.

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<sup>48</sup> ‘Coronavirus (COVID-19): mental health - transition and recovery plan’ pub by Scottish Government, 8<sup>th</sup> October 2020 , pgs. 9 -13 at [Coronavirus \(COVID-19\): mental health - transition and recovery plan - gov.scot \(www.gov.scot\)](https://www.gov.scot/Coronavirus-(COVID-19):-mental-health--transition-and-recovery-plan-)

## Recommendations

1. The concept of 'universal design', promoted by the UNCRPD, should be adopted to provide 'Sensory Literate Services'. Universal design 'means the design of products, environments, programmes and services to be usable by all people, to the greatest extent possible, without the need for adaptation or specialised design.' However, it does not exclude assistive devices for people with disabilities where these are needed.<sup>49</sup>
2. The purpose of a 'Fairer Scotland for Disabled People', which runs until 2021, is to give effect to the UNCRPD and the oversight and monitoring duties need to be scaled up across services in Scotland. Article 33 requires national implementation and monitoring of UNCRPD. We agree that should already be happening and also that 'focal points' are required to implement the UNCRPD as well as consider the 'establishment or designation of a coordination mechanism within government to facilitate related action in different sectors and at different levels.' There is also a duty to establish independent mechanism(s) to 'promote, protect and monitor implementation of the present Convention.' Whilst the duties may fall on EHRC Scotland or the SHRC, consideration should also be given to establishing a new body or bodies and that civil society will be participate in the monitoring process.<sup>50</sup> This process can also include compliance with existing UN 'Concluding Observations' on the UK and 'General Comments'.
3. The Gaelic Language (Scotland) Act 2005 brings benefits of having a Board to oversee delivery, a 'Language Plan' to drive change across sectors and is underpinned by finance to ensure impact. It may be useful to replicate this model for mainstreaming Inclusive Communication and to deliver 'communication for all'.
4. "Mental Health - Scotland's Transition and Recovery", needs to include a specific and cross sector workstream to deliver actions and outcomes for people with Sensory Loss.
5. The Scottish Government should embark on training for all staff in publicly funded services so that services are 'sensory just'.

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<sup>49</sup> Given effect through UNCRP such as Article 4(1)(f)

<sup>50</sup> [OHCHR | Convention on the Rights of Persons with Disabilities](#)

## Mental Health, Sensory Loss and Human Rights

6. All future policies and services, whoever establishes them, should undertake a HRBA to the process so that the outcomes are 'sensory just'.
7. Consideration should be given to positively promoting Sensory Loss as a 'linguistic minority' with reference to the Council of Europe Treaty.
8. Set up a joint working group to progress recommendations – underway and led by the five organisations who have authored this report.

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