

Kaukab Stewart MSP
Convener
Equalities, Human Rights & Civil Justice Committee

15 June 2023

SCOTTISH HUMAN RIGHTS COMMISSION

Dear Convener,

I will shortly demit from office as Chair of the Scottish Human Rights Commission (SHRC). Therefore I wanted to set out some personal reflections from my time as Chair and also highlight opportunities for the months ahead.

The SHRC is Scotland's National Human Rights Institution (NHRI), accredited by the United Nations and with a broad mandate to cover the full range of human rights issues devolved to the Scottish Government.

We were established in 2008, following an Act of the Scottish Parliament in 2006. Our legislation provides for a Chair and up to four Commissioners. We currently have three part-time Commissioners who work one day a week and a full-time Chair. Our legal powers as a Commission are set out in our founding legislation and are quite limited compared to (a) the other NHRIs in the UK and (b) some regulatory bodies in Scotland. The SHRC is also a relatively small organisation and not resourced to cover the full range of human rights issues.

The SHRC continues to follow closely the development of a new **Human Rights Bill**, which seeks to incorporate a number of international human rights treaties into Scots Law. The Commission has called for this Bill for over a decade and employed significant internal resource to help make the Bill a reality. In the last two years, we have provided guidance and technical advice to the Scottish Government to ensure the Bill can truly make a difference to people's lives. The SHRC strongly supports the full

Bridgeside House, 99 McDonald Road, Edinburgh, EH7 4NS
0131 297 5750

hello@scottishhumanrights.com
www.scottishhumanrights.com

incorporation of these international treaties, which should strengthen human rights protection in Scotland.

The Bill also provides an opportunity to reconsider and update the legal powers and mandate of the SHRC, which have remained unchanged since our creation in 2006. While we await publication of the draft Bill, I thought it would be helpful to outline some of our early thinking on potential **new legal powers** for the SHRC.

Annex A sets out our initial thinking. You will see that it includes some significant changes, for example, the ability to provide legal advice to individuals, greater investigatory and inquiry powers, the ability to raise legal proceedings in our own name, and to compel public authorities in Scotland to provide information on human rights issues.

We would want to frame any additions as ‘enabling powers’ rather than explicit duties, as our ability to act would depend on an uplift in our resources. The proposals listed in Annex A are not a definitive position, but reflect our initial thinking and also some of the demands from civil society. We will of course need to await formal publication of the Bill to give a more considered response.

The Commission has also launched an independent **Governance Review** to assess the Commission’s structure, decision making and leadership, and also whether Commissioners exercise the right balance between strategic and operational control. My own personal view is that as an organisation we have not got this right, which means that we are not as nimble and effective as we could be. The Review will conclude at the end of June and should provide some recommendations on how the Commission governs itself over the long-term. However, it is Parliament’s responsibility to ultimately decide on whether to change the Commission’s structure and mandate.

On **resources**, the Commission is small and not always able to cover the full range of issues. We have a staff team of 13.8 (full-time equivalent), much smaller than the other UK NHRIs and several public bodies in Scotland. I have noted the proliferation of requests to **create new Commissions**. Some of these calls include proposals for new public bodies (e.g. Victims Commission) with greater legal powers than

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the SHRC. While the push for new Commissions and regulators is understandable, in my judgement the driver behind some of these calls is because of a lack of access to justice and accountability for some marginalised and minority groups in Scotland. Nor does the SHRC's current resource allow it to deliver the full breadth of work that rights holders demand.

I hope that a strengthened SHRC might offer rights holders in Scotland greater protection and confidence that their concerns can be addressed. A proliferation of new Commissions risks duplication, additional expense, and creating a confusing landscape for rights holders.

The Human Rights Bill is a once-in-a-generation opportunity to strengthen human rights protections in Scotland and ensure that the SHRC - as Scotland's NHRI - can play its part in ensuring that the Bill really delivers for the people of Scotland.

The SHRC remains committed to working closely with you. In the interim, while my successor is recruited, please do contact Jan Savage, the SHRC's Executive Director, for any follow-up.

I would like to thank you and the Committee for your commitment to promoting human rights in Scotland.

Yours sincerely,

Ian Duddy

Chair, Scottish Human Rights Commission

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ANNEX A – POTENTIAL NEW LEGAL POWERS

Powers that other UK NHRIs have:

- To provide legal advice to individuals (the SHRC is currently precluded from doing this).
- The ability to make Inquiries into a single public authority (when an Inquiry is carried out, the SHRC is currently required to investigate all public authorities of a similar nature, which makes the power unfeasible to use).
- To raise legal proceedings in its own name.
- To financially support individuals to raise legal proceedings.
- To issue binding guidance.

Powers that other Scottish public bodies have (such as the Mental Welfare Commission):

- To make unaccompanied and announced visits to any Scottish public authority, to inspect the conditions of a place, individual or community to assess the implementation of human rights.
- To require information from Scottish duty bearers and compel them to respond.

Powers that other NHRIs in the world have:

- To hold public hearings and require duty-bearers to be present.
- To present reports to Parliament and trigger a debate in the relevant parliamentary committee to review the NHRI's findings and recommendations.
- To create indicators of compliance and require authorities to report on their human rights implementation.

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