

**REVIEW OF THE SCOTTISH SOCIAL HOUSING CHARTER 2016**

**SCOTTISH HUMAN RIGHTS COMMISSION**

**August 2016**

The Scottish Human Rights Commission (SHRC) was established by The Scottish Commission for Human Rights Act 2006, and formed in 2008. The Commission is the national human rights institution for Scotland and is independent of the Scottish Government and Parliament in the exercise of its functions. The Commission has a general duty to promote human rights and a series of specific powers to protect human rights for everyone in Scotland.

**Background**

The Scottish Human Rights Commission (the Commission) considers that the right to an adequate standard of housing is a basic human right. It is also essential as a stepping stone to ensure other rights are fulfilled, such as the right to the highest attainable standard of physical and mental health, the right to education and the right to take part in public decision making. One of the Commission’s strategic priorities for 2016-2020 is to influence approaches to tackling poverty, social exclusion and social justice as human rights issues.[[1]](#endnote-1)

The Housing (Scotland) Act 2010 and the Scottish Social Housing Charter (the Charter) are instrumental in the protection and promotion of the right to adequate housing. The Commission would like to see a strong rights based approach embedded in the framework of standards and outcomes, and in how the Charter is applied in practice by tenants and other customers, landlords and the Scottish Housing Regulator.

The Commission is currently engaged in project work supporting residents living in Leith, Edinburgh to monitor their housing conditions using human rights indicators. This involves work to hold public bodies with human rights responsibilities to account, and working with them to identify how best to implement improvements. This work is being carried out in partnership with the Edinburgh Tenants Federation (ETF), drawing on the expertise of the Participation and the Practice of Rights Project (PPR), Northern Ireland.

This project work has illustrated the critical importance of tenant participation in policy and decision making and the allocation and prioritisation of resources if rights are to be realised in practice. The project highlights the cultural shifts that are required from “duty bearer” organisations, as well as the supported empowerment of “rights holder” individuals, to ensure tenant participation and scrutiny is embedded in practice at every level. The Commission believes a human rights based approach and culture within all public services is key to supporting this aim. This means that the rights of the “rights- holders” and their perspectives become central to all decision making . That requires an understanding that people are not passive recipients or beneficiaries of services, but rather that public service organisations exist to support the realisation of people’s rights as enshrined in law. The project has highlighted to the Commission there may be an opportunity to further strengthen tenant participation and scrutiny within the Scottish Housing Charter and framework of monitoring and regulation.

The Commission hopes the following comments provide a helpful basis for enhancing and better fulfilling, in practice, the stated aims of the Charter to provide for the accountability of landlords towards their tenants and other customers.

**A human rights based approach**

Taking a human rights based approach is about using international human rights standards to ensure that people’s human rights are put at the very centre of policies. A human rights based approach will empower people to know and claim their rights and increase the ability of organisations, public bodies and businesses to fulfil their human rights obligations. It creates solid accountability so people can seek remedies when their rights are violated.

The **PANEL** principles are one way of breaking down what a human rights based approach means in practice. **PANEL** stands for **P**articipation, **A**ccountability, **N**on-Discrimination, **E**mpowerment and **L**egality.

In relation to the Scottish Social Housing Charter this means the following:

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| **Participation** | People should be involved in decisions that affect their rights.  | The statutory framework provided by the Housing (Scotland) Act 2001 requires local authorities and registered social landlords to have tenant participation strategies and sets out duties to consult tenants groups on a wide range of issues. The Charter sets out the outcome that should be achieved through tenant participation. The Commission believes tenant participation could be strengthened in practice through a wider awareness and understanding of the Charter amongst tenants, a cultural shift with landlords to embed participation in key decision making and a further embedding of tenant scrutiny, such as tenant led inspections. |
| **Accountability** | There should be monitoring of how people’s rights are being affected, as well as remedies when things go wrong. | Monitoring and reporting under the Charter provides tenants with information on how landlords are performing under the Charter and is a basis for assessing and comparing landlord performance. However, the Annual Return on the Charter (ARC) and Landlord Report are largely provided on the basis of self-assessment by the landlord. Direct tenant scrutiny through tenant led inspection and reporting would further strengthen the accountability framework for the Charter.[[2]](#endnote-2)  |
| **Non-Discrimination** | Nobody should be treated unfairly because of their age, gender, ethnicity, disability, religion or belief, sexual orientation, gender identity or any other personal characteristic . People who face the biggest barriers to realising their rights should be prioritised when it comes to taking action. | The Charter contains an outcome related to equalities. It is suggested that the wording of this outcome changes from “needs” based to “rights” based- recognising that subjective needs are often in fact legal human rights entitlements.  |
| **Empowerment** | Everyone should understand their rights, and be fully supported to take part in developing policy and practices which affect their lives. | As highlighted above the Commission believes a wider awareness and understanding of the Charter and indeed of human rights in general would further support the empowerment of tenants as rights-holders who can hold landlords to account in fulfilling their human rights obligations. The Charter outcomes themselves could be amended to reflect this.  |
| **Legality** | Approaches should be grounded in the domestic legal rights that are set out in domestic and international law. | Both the Charter and the Scottish Housing Quality Standards could be further strengthened to reflect the human rights standards as outlined below.  |

**Human rights law**

The Human Rights Act 1998 (HRA) provides that all legislation must be compatible with European Convention on Human Rights (ECHR) and that all public bodies, or those performing a public functions, must act in compliance with the ECHR rights protected by the HRA. This includes all local authorities and registered social landlords.[[3]](#endnote-3) The standards and outcomes that social landlords should be achieving for tenants and other customers must therefore, at a minimum, meet the human rights standards and obligations set out in the HRA.

Furthermore under the Scotland Act 1998, both the Scottish Government and Parliament must observe and implement all of the UK’s international human rights obligations[[4]](#endnote-4) such as the International Covenant on Economic, Social and Cultural Rights (ICESCR) and the European Social Charter, as well as acting compatibly with the ECHR through the HRA.[[5]](#endnote-5) The First Minister of Scotland has expressly committed to the better implementation of social rights.[[6]](#endnote-6) The Commission therefore believes the Charter should reflect the full range of international human rights treaty obligations such as the obligation to progressively realise the rights to adequate housing.

A few of the most relevant rights to housing are outlined briefly below. (It should be understood however that all human rights are fundamental to a fair and just society and all rights are interdependent – i.e. the exercise of one depends on the fulfilment of the others).

**Human rights and housing**

The most relevant ECHR rights, protected by the HRA, are the following:

* The right to life (including positive duties to protect life where people live in locations or situations which could reasonable be expected to endanger their life) [[7]](#endnote-7)
* The right to freedom from cruel, inhuman and degrading treatment (such as not living in unsanitary or uninhabitable conditions) [[8]](#endnote-8)
* The right to a fair hearing in any proceedings which determines your civil rights (such as an eviction hearing)
* The right to privacy and protection of the home and family life (which includes many aspects of housing rights including the right to have your home protected from environmental pollution,
* Aspects of an individual’s physical and social identity including the right to personal autonomy, personal development and to establish and develop relationships with other human beings and the outside world”.[[9]](#endnote-9) Or more broadly “to conduct one’s life in the manner of one’s choosing”.[[10]](#endnote-10) )
* The right to freedom from discrimination (including the right of persons belonging to minorities, such as gypsies and travellers, to appropriate housing and serviced stopping places)
* The right to adequate housing (described in detail below).

The International Covenant on Economic, Social and Cultural Rights (ICESCR) was ratified by the UK in 1976. It requires the UK to respect, protect and fulfil the rights known as economic, social and cultural rights , such as:

* an adequate standard of living “including adequate food, clothing and housing, and the continuous improvement of living conditions" (Article 11)
* health, specifically "the highest attainable standard of physical and mental health" (Article 12)
* participation in cultural life (Article 15).[[11]](#endnote-11) (amongst other essential rights).

In its authoritative interpretation of the right to adequate housing the United Nations Committee on Economic, Social and Cultural Rights outlined the constituent elements to the right to adequate housing ([UN CESCR, 1991](http://www.scottishhumanrights.com/application/resources/documents/SNAP/3_WhereweLive.doc#_ENREF_121))[[12]](#endnote-12). These are:

1. **Legal security of tenure:** this can take a variety of forms including public and private rental accommodation, cooperative housing, lease, owner-occupation, and informal settlement including occupation of land or property. Notwithstanding the type, everyone should be guaranteed security of tenure at least sufficient to protect against forced or arbitrary evictions or other forms of harassment;

2. **Availability of services:** materials, facilities and infrastructure such as drinking water, energy for cooking, heating and lighting, sanitation and washing facilities, food storage, refuse disposal, site drainage and emergency services;

3. **Affordable housing:** costs associated with housing should not threaten the ability to afford other essential goods and services including protection against unreasonable rent levels or unreasonable rent increases;

4. **Habitable housing:** including adequate space and protection against the cold, damp, heat, rain, wind or other threats to health or structural hazards and ensuring physical safety[[13]](#endnote-13);

5. **Accessible housing:** housing should be accessible to everyone without discrimination. Priority should be given to the most marginalised including homeless people and those who are inadequately housed, and special measures should be taken to ensure adequate housing for people with disabilities, older people, those living in areas vulnerable to natural disasters and others who require them;

6. **Location:** housing should be in a location which allows access to employment options, health-care services, schools, child-care centres and other social facilities. It should not be located on polluted sites nor in the immediate proximity to pollution sources;

7. **Culturally adequacy:** housing policy and practice must appropriately enable the expression of cultural identity.

The principle of “progressive realisation” acknowledges that the full realisation of certain rights will take time to achieve and will be subject to constraints on the state’s resources. Article 2 of the ICESCR creates a duty on all parties to:

 “take steps... to the maximum of its available resources, with a view to achieving progressively the full realization of the rights recognized in the present Covenant by all appropriate means, including particularly the adoption of legislative measures.”

The requirement to "take steps" means there is a continuing obligation to work towards the realisation of the rights contained in ICESCR. The Committee also interprets the principle as establishing minimum core obligations to provide, at the least, minimum essential levels of each of the rights. If the state’s resources are highly constrained, it should include the use of targeted programmes aimed at the vulnerable.[[14]](#endnote-14)

International human rights also require certain procedural obligations related to participation, access to information and effective monitoring. Fundamentally, human rights require that the voices of people whose rights are affected by a decision, are heard throughout the process of making and implementing that decision. The procedural legal obligation of participation of individuals in decision making and, where appropriate, the design of services helps ensure that systems are responsive to the particular needs of disadvantaged groups. A failure to include mechanisms to satisfy these procedural requirements of participation, access to information and transparency and due process in decision making may amount to violations of these international obligations.

Human rights protections therefore give weight to participation, involvement and transparency in the delivery of public service provision and models of co- production being adopted. The Charter and related statutory obligations of tenant participation[[15]](#endnote-15) reflect this and should be built on and strengthened in practice, as well as embedded into monitoring and inspection processes.

**The Charter outcomes and standards**

In light of the above standards and principles the Commission makes the following brief observations and recommendations in relation to the 7 sections and 16 outcomes and standards of the Charter:

**The customer/landlord relationship**

* **Outcome 1: Equalities**

It is recommended this outcome should reflect “rights” as well as “needs” of tenants and customers reflecting they are rights-holders rather than passive recipients of services; their needs will often have an objective basis in law. The reference to access to housing and housing services could also be worded to explicitly reflect access without discrimination to reflect the international accessibility standard referenced above.

* **Outcomes 2 and 3: Communication and Participation**

The Commission welcomes the standards of participation and communication which reflect statutory duties on tenant participation. However, we think the standards could go further than as currently drafted where they reinforce a dynamic where the landlord sets the agenda and priorities for service delivery and tenants are expected to fit with landlord processes. A rights based approach would address power imbalances and ensure that tenants are involved in establishing the participative processes they are then expected to take part in. For example, wording could be included to the effect that social landlords should promote the Charter itself to tenants and other customers, and that tenants have a role in holding the social landlord to account to the Charter through the monitoring and reporting processes.

**Housing quality and maintenance**

* **Outcomes 4: Quality of Housing**

The Scottish Housing Quality Standards should fully reflect the habitability criteria from human rights law. For example, the General Comment states:

*“*Adequate housing must be habitable, in terms of providing the inhabitants with adequate space and protecting them from cold, damp, heat, rain, wind or other threats to health, structural hazards, and disease vectors”

“An adequate house must contain certain facilities essential for health, security, comfort and nutrition. All beneficiaries ofthe right to adequate housing should have sustainable access to

natural and common resources, safe drinking water, energy for cooking, heating and lighting, sanitation and washing facilities, means of food storage, refuse disposal, site drainage and

emergency services” [[16]](#endnote-16)

The Commission has not carried out a detailed review of the Scottish Housing Quality Standards but considers that they should fully reflect the international standards. As part of the principle of progressive realisation of rights there should be both increased compliance with the standards, and higher standards being adopted over time. The Commission recommends a full review of the Standards to ensure detailed compliance with the minimum human rights international standards, and increasing standards over time to meet the obligation of progressive realisation.

* **Outcome 5:** **Repairs, maintenance and improvements**

This standard could better reflect that tenants are given reasonable choice and control about *what* repairs and maintenance are carried out *and when*, rather than simply about when work is being done. Where tenant participation is working effectively and tenants are involved meaningfully in decision making this should be a realisable outcome for landlords. Furthermore it would result in a more cost-efficient and tenant-centred, systematic and coordinated approach to repairs, as opposed to repair work being carried out on an ad hoc and individual basis.

**Access to housing and support**

* **Outcomes 7, 8, 9 and 10 Housing options and Access to social housing**

People looking for housing should get information about the range of housing options available to them, and the basic minimum rights they should expect from social housing as adequate, accessible and appropriate to their needs through the Charter.

* **Outcome 11 Tenancy sustainment**

The wording of this outcome could reflect that information on support services must be fully accessible to those who require it.

This outcome could also further reflect the standard set out by Article 19 of the Convention on the Rights of Persons with Disabilities in that “suitable support” should reflect support to live independently in the community with choices equal to others.

**Getting good value from rents and service charges**

* **Outcomes 14, 15: Rents and service charges**

In setting rents regard should be had to the tenants’ ability to have an “adequate standard of living” as defined by the international standards (including adequate food, clothing and housing, and the continuous improvement of living conditions"(Article 11, ICESCR)). The wording of the standard could reflect this insofar as a balance being struck between the level of service provided, which must meet the standards of the Charter and Scottish Social Housing Standards (which must in turn meet human rights standards), the cost of the service and how far current and prospective tenants can afford them and maintain an adequate standard of living.

**Other customers**

* **Outcome 16: Gypsies/Travellers**

This outcome appears to be comparatively weak in fulfilling the human rights of Gypsy/Traveller communities as it does not reflect the availability, accessibility or adequacy of sites for Gypsy/Travellers through maintenance or management.

It is well established in human rights law that States have positive obligations imposed by Article 8 and the right to a private home and family life to facilitate the Gyspy/Traveller way of life”.[[17]](#endnote-17)

Concerns have been repeatedly expressed by human rights mechanisms such as the Council of Europe Advisory Committee on National Minorities, the European Committee of Social Rights and UN treaty bodies such as the UN Committee on the Elimination of all forms of Racial Discrimination (CERD) [[18]](#endnote-18) and the UN Committee on Economic, Social and Cultural Rights[[19]](#endnote-19)that the right of members of Gypsy/Traveller communities to housing is not effectively guaranteed across the UK.

We recommend this outcome is amended to reflect the local council and landlords responsibilities to ensure the availability, accessibility, habitability, cultural adequacy and adequacy of location of sites in relation to the accessibility of other services for Gypsy/Travellers .

**The Scottish Human Rights Commission
August 2016**

1. SHRC Strategic Plan 2016-2020, <http://www.scottishhumanrights.com/about/strategicplan/SP3> [↑](#endnote-ref-1)
2. We recognise the efforts of the Scottish Housing Regulator to directly involve tenants in their work however the framework of monitoring and report itself should allow for tenant scrutiny at the local level. [↑](#endnote-ref-2)
3. R (Weaver) v London & Quadrant Housing Trust [2009] [↑](#endnote-ref-3)
4. Scotland Act 1998, Schedule 6, para 7(2). [↑](#endnote-ref-4)
5. Scotland Act 1998, s29 (2), s57. [↑](#endnote-ref-5)
6. First Minister Nicola Sturgeon, Dynamic Earth, Edinburgh, 9 December 2015 <http://news.scotland.gov.uk/Speeches-Briefings/SNAP-Human-Rights-Innovation-Forum-2040.aspx> [↑](#endnote-ref-6)
7. Mitchell v Glasgow City Council [2009] UKHL 11; [2009] WLR (D) 65, per Lord Rodger (para 69): “if the Council had allowed their housing stock to fall into disrepair, so that tenants were at risk of suffering life-threatening injuries or of becoming seriously ill, the Council could have been in breach of article 2.” [↑](#endnote-ref-7)
8. *R v Secretary of State for the Home Department ex parte Limbuela* [2005] UKHL 66. [↑](#endnote-ref-8)
9. Evans v UK, Grand Chamber (2007) citing Pretty v UK (2002) [↑](#endnote-ref-9)
10. Pretty v UK (2002) [↑](#endnote-ref-10)
11. An outline of these rights is provided for in Annex A. [↑](#endnote-ref-11)
12. CESCR General Comment 4 1991 [↑](#endnote-ref-12)
13. CESCR General Comment 4 1991: “The Committee encourages States parties to comprehensively apply the Health Principles of Housing 5 prepared by WHO which view housing as the environmental factor most frequently associated with conditions for disease in epidemiological analyses”. This will include for example, management of asbestos hazards [↑](#endnote-ref-13)
14. It is recognised that land is also a vital resource that is capable of being allocated to achieve the core obligations set out ICESCR See the Commission’s Consultation Submission on the Future of Land Reform in Scotland, February 2015. Available at: <http://www.scottishhumanrights.com/news/latestnews/landreformsubmissionfeb15> [↑](#endnote-ref-14)
15. Housing (Scotland) Act 2001 Guidance on Tenant Participation <http://www.gov.scot/Resource/Doc/46737/0028763.pdf> [↑](#endnote-ref-15)
16. UNCtESCR General Comment 4 para 8(d), 8(b) [↑](#endnote-ref-16)
17. Connors v UK, Application no. 66746/01, judgment of 27 May 2004 para 84. [↑](#endnote-ref-17)
18. September 201, UN Doc. CERD/C/GBR/CO/18-20, para 27. [↑](#endnote-ref-18)
19. UN CESCR 2009 and 2016. Concluding Observations of the Committee on Economic, Social and Cultural Rights. UN Doc. E/C.12/GBR/CO/5. Geneva. [↑](#endnote-ref-19)