

Bold and fearless

Towards an independent human rights funding agenda for Scotland

March 2021



“ For me, the best place to start is to assume change needs to happen. Just accept that rather than resisting it or arguing that things are actually okay or “oh we do a bit of that here” or “this is also difficult” - let’s just assume that we’re a nation in which rights are not fully fulfilled, that we actually have to make change and that’ll be tricky and difficult and challenging, but that actually we’ll get to a place where that’s worth it.”

Joanna McCreadie,
Gannochy Trust

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Forewords

Over the past year it's been clear that, while we're all weathering the same storm, we're certainly not all in the same boat.

Some people have been impacted far more than others by the pandemic, and that's not a matter of good or bad luck. It's a consequence of the inequalities woven into our society over generations; through the decisions we take, how resources are shared, who's voices are heard, and how we act when a crisis hits.

Human rights offer a powerful and compelling challenge to this.

They make it clear that everyone is equal and has the right to a decent standard of living, to housing, to food, and to a say in decisions that affect their lives. In Scotland, we have a crucial opportunity, with the incorporation of the UNCRC (United Nations Convention on the Rights of the Child) and plans to put a wide range of economic, cultural, social and environmental rights into law.

Civil society organisations are responding to this. They are increasingly looking to human rights based approaches as a means to shift power, challenge structures and bring about lasting change.

Funders must also respond, so that how money flows supports this and keeps pace with the communities and organisations we exist to serve. This might mean continuing to support the work of long-standing organisations – for example in the field of children's rights – as well as funding new initiatives that are needed to work alongside communities so they can name and claim their rights.

This report represents an important step in the journey for independent funders as we reflect on our role in supporting the progressive realisation of human rights in Scotland. It calls on us all to keep this conversation going, to continue to develop our thinking and move towards taking action that will help to shape a Scotland in which our aspirations around human rights are reflected in people's daily lives.

Fiona Duncan
CEO of Corra Foundation

This is a crucial time for rights being made a reality for all in Scotland.

As I write, the UNCRC Incorporation Scotland Bill is in its final stages in the Scottish Parliament and it should lead to children's rights being built in to decision-making at every level. Meanwhile, as outlined later in this report, a National Taskforce for Human Rights Leadership, of which I am the Independent Co-Chair, is preparing recommendations for a new human rights framework for Scotland.

The framework under consideration could bring into our law for the first time internationally recognised rights like the right to an adequate standard of living, including to adequate food and housing, and the right to a healthy environment. For these ambitions to be realised it is vital that civil society and community groups are there at the heart of making this new framework strong and effective in bringing change to people's lives.

It is civil society who can challenge government to build a law that is firmly shaped by people's lived experience of rights and it is civil society who will take the law and use it to empower those who are without power. Civil society will themselves take a human rights-based approach to their work and enable others to do the same. But they can't do it without sustainable, adequate and independent investment of funds. That is why the conversations that have been happening amongst funders and human rights organisations during 2020, as outlined in this report, have been so important.

Civil society holds the key to making human rights real in Scotland – I urge all of you with influence in this sphere to read this report with great interest, and then to do all that you can to make sure that they have the funding they need to help change people's lives.

Professor Alan Miller

Independent Co-Chair of National Taskforce for Human Rights Leadership



About this paper

Throughout 2020, there were significant conversations around what the future independent funding of work around human rights in Scotland should look like. These discussions were very much driven by the Baring Foundation-funded scoping project to inform setting up Making Rights Real, a new organisation that will work at grassroots to enable groups to name and claim their rights. The conversations also reflected Corra Foundation's strategy, launched in early 2020, around three themes: voice, power and change, as well as informed by Human Rights Consortium Scotland considerations as it became a standalone organisation and engaged in human rights law reforms. All of this sits in a context of a fast-evolving, progressive policy environment for human rights in Scotland (discussed in more detail below).

This paper summarises some of the major themes of these discussions, drawing key points from:

- speakers and participants in a half-day online event for funders 'Small places close to home: Towards a human rights funding agenda for Scotland' held on 12th November 2020;
- online discussions around human rights for funders held in May and June 2020;
- Corra Foundation podcasts around this theme¹;
- individual conversations with funders.

Of course, funders are diverse, the context and debate around human rights is ever-changing, and this paper in no way claims to be comprehensive or provide concrete answers. Nonetheless we hope that this is a valuable contribution to shaping a funding scenario in Scotland that ensures that human rights are increasingly respected, protected and fulfilled for all.

¹ See Corra Foundation podcasts: David Sampson, Baring Foundation and Judith Robertson, Scottish Human Rights Commission in 'A funder's journey to investing in human rights', available at: <https://www.corra.scot/news/a-funders-journey-to-investing-in-human-rights/>. And, Alan Miller and Dr Jacqui Kingan in 'Building Forward Better: Why funding human rights matters', available at: <https://www.corra.scot/news/build-forward-better-why-funding-human-rights-matters/>



The context around human rights in Scotland

New human rights statutory framework in Scotland

Scotland is on the precipice of significant human rights reform. A Bill to introduce the UN Convention on the Rights of the Child (UNCRC) into Scots law has been introduced to the Scottish Parliament. Taking a maximalist approach within the devolved settlement, this Bill is world-leading, proposing to directly incorporate this treaty into domestic law.

In parallel, a National Taskforce on Human Rights Leadership is developing recommendations for a broader new human rights statutory framework for Scotland. Set to embed a raft of economic, social and cultural rights as well as the right to a healthy environment in Scots law for the first time, the Taskforce is also considering incorporation of the Convention to Eliminate Discrimination Against Women (CEDAW), the Convention on the Rights of Disabled People (UNCRPD) and the Convention to Eliminate Racial Discrimination (CERD).

Taken together, these developments point to a radical and ambitious new human rights landscape in Scotland, one that will mean that human rights law will potentially impact culture, policy and practice for both communities and public authorities in very significant ways.

Threats to human rights protections

The UK Government is currently reviewing the operation of the Human Rights Act and is due to report by June 2021. This comes alongside an already-existing panel looking at judicial review – taken together, both of these could significantly reduce the means by which the Government can be held to account on human rights. Both of these reviews also come in the context of significant negative rhetoric around the Human Rights Act expressed by key politicians and media in recent years, and a Brexit-related reduction in rights protections in law.

Impacts of COVID-19

Without a doubt, there has been increasing recognition during COVID-19 that ‘we might all be in the same storm but that we are not all in the same boat’. COVID laid bare many inequalities in Scottish society and showed clearly the importance of progressing economic and social rights for all. There has been increasing recognition of the importance of putting these rights into law as part of COVID recovery².

² See for example, ‘The Social Renewal Advisory Board report, ‘If not now, when?’, at [If not now, when? – Social Renewal Advisory Board report: January 2021 – gov.scot \(www.gov.scot\)](#)

In addition, the third sector was very much at the forefront of the emergency community response to COVID, providing many direct services to meet the immediate needs of individuals and families. The sector's nimble, effective and community-based responses demonstrated and increased trust in the third sector. There is concern that this level of trust and this effectiveness of community response must remain post-COVID, but there is also concern that the third sector and community groups must also have space to challenge and bring change that addresses systemic inequalities.

“ If there was any debate before Covid about whether we need human rights, Covid means that this is now completely answerable especially after many years of austerity, especially after the disproportionate impact on women and children and so many others. So Scotland is taking a lead – and that needs to be a shared leadership, it cannot be left to politicians and lawyers.”

Professor Alan Miller

Experience of human rights realisation

Far too many individuals and communities in Scotland are experiencing a denial of their human rights every day and in significant ways. Civil society organisations and community groups know from their experience that people too often do not have adequate, affordable and accessible housing; they do not have access to adequate and affordable food; they do not have an equal right to education; they face significant gaps in social protections and social security; they experience discrimination linked to their identity; they are treated with a lack of dignity and their own agency is stripped away, through no fault of their own. Voices of those with lived expertise such as the Edinburgh Poverty Commission have vocalised and emphasised the denial of economic and social rights for too many people in Scotland in everyday life. In some areas, even where there is good law and policy, this has not led to improvements in people's lives.



Growing awareness and understanding of human rights-based approach

After twenty years of the Human Rights Act and growing advocacy for a human rights-based approach by the Scottish Human Rights Commission amongst others, there is much evidence of growing support and awareness of human rights in Scotland. A higher proportion of the public actively support human rights in Scotland compared to elsewhere in the UK³. A wide range of stakeholders were active participants in Scotland's National Action Plan on Human Rights.⁴ Civil society organisations increasingly understand and use human rights law and principles in their work⁵, for example with the establishment of a new grassroots human rights organisation Making Rights Real⁶. More organisations are considering how they can adopt a human rights-based approach to their work with communities and getting

- 3 Scottish Human Rights Commission: Building a Human Rights Culture in Scotland, 2017, available at: [Building_a_human_rights_culture_scotland.pdf](#) ([scottishhumanrights.com](#))
- 4 Scotland's National Action Plan on Human Rights, information pages on SHRC website at: [SNAP | Scottish Human Rights Commission](#)
- 5 See Annex B
- 6 Corra Foundation announcement on funding for Making Rights Real, at: [On International Human Rights Day Corra Foundation invests in Making Rights Real in Scotland – Corra](#)

involved in developments around the new human rights law⁷. The Scottish Government have recently opened a new Equality and Human Rights Fund⁸.

In short, now is a crucial time for human rights in Scotland. It is vital that the new human rights statutory framework is developed in a way that it will not only be in law but will also make rights real in people's everyday lives, and that organisations and communities will be able to use human rights law and principles to advocate effectively for social change.

“ I am excited about the potential in Scotland to see such progress and to see these rights made real in practice, there is work to be done to ensure that people on the ground can access the system and use the law to enforce their rights – with civil society and thoughtful funders, we can seize that opportunity.”

Dr Jacqui Kinghan,
Newcastle University Law School

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- 7 National Taskforce membership, minutes and stakeholder engagement information available at: [National Taskforce for Human Rights Leadership – gov.scot](#) ([www.gov.scot](#))
 - 8 <https://www.gov.scot/news/launch-of-gbp-7-million-equality-and-human-rights-fund/>

Event participant reflections on implications for funders

The event for funders 'Small places close to home: Towards a human rights funding agenda for Scotland' held on 12th November 2020 highlighted significant themes for funding human rights work. Many funders recognise the importance and effectiveness of moving towards funding work that is rooted in human rights. There is also recognition that for many funders, to shift towards supporting rights-based work whether at grassroots or national level, is a significant shift and one that will require further learning, reflection and change.

Participants commented that:

- Human rights play a central role in what good grantmaking should look like in the 2020s – engaging and listening to communities that funders want to serve, and giving them the tools and time to bring change. A rights-based approach is a demonstrable method of managing that process, engaging professional skills and expertise too but importantly putting communities at the heart of the funder's work.
- For many funders, supporting rights-based approaches will mean a move away from meeting immediate needs to an emphasis on more long-term, lasting change, with a recognition that change could be a long-time coming.

“ I think there's a real challenge for funders in terms of integrating a human rights approach into practice. If we're going to attempt to do that, we have to be prepared to shift and change and to challenge ourselves and do things in different ways.”

Joanna McCreadie, Gannochy Trust

- Funders need to consider the mosaic of the make-up of the different types of actions or groups they fund, and the outcomes of these. It may be that when considered as a whole, parts of that mosaic should be clearly directed towards human rights work to make the whole 'mosaic' more effective. It may also mean divesting in other streams and ways of grant funding to embed rights-based approaches.
- The new human rights law will be about the rights that impact on people's everyday lives, and is a significant opportunity that should not be missed for funders to help drive change. In this context, funders can ask what is going to make the difference to make that law implementation real? How can funders help build the muscles of organisations who can ensure that the legislation is used to the best effect?
- **Human rights are often a way of expressing and working towards the change that funders already want to see.** There are potential natural points of connection between what funders

already do and their strategies, with human rights. For example: many funders have a strong focus on ‘relational funding’ which is all about trying to remove the power imbalance between funder/funded and working together on an equal footing. Community development is supported by many funders and strongly reflects a rights-based approach such as starting with engagement, supporting communities to identify what matters to them, getting alongside them to challenge power / hold bodies accountable and ultimately to create change, though it does not necessarily explicitly use human rights principles and law to make this challenge. Many funders have a strong (and growing) interest in developing good practice in working directly with people with lived experience.

“ For us human rights has been both the lens through but also the practical tool to empower communities to really be able to make a difference.”

David Sampson, Baring Foundation

- Many funders emphasise participation, non-discrimination and empowerment, which are all core aspects of a human rights-based approach (see for example, the PANEL principles⁹) but human rights is also about using what is in law. The upfront use of law for change is a relatively new area for many Scottish funders and organisations¹⁰.
- Shifting to funding community rights-based work may require a rethink or reorientation

9 Scottish Human Rights Commission, A human rights-based approach: an introduction, available at: [shrc_hrba_leaflet.pdf](https://shrc.hrba_leaflet.pdf) (scottishhumanrights.com)

10 For more discussion, see HRCS, CLAN Childlaw et al, Overcoming Barriers to Public Interest Litigation, 2018 available at: <https://hrscotland.org/wp-content/uploads/2018/11/final-overcoming-barriers-to-pil-in-scotland-web-version.pdf>

in terms of the outcomes that funders look for and where the outcomes themselves should be defined by the community. Key questions for funders include, what are we measuring anyway? Who decides what we’re measuring? Do we need to find new ways to define success?

“ The challenge for funders is to be a wee bit patient and a wee bit brave about how we exercise our rights to action change.”

Funder event participant

- Black Lives Matter and the challenging voice of #CharitySoWhite have emphasised the significant need for funders, as part of the wider sector, to acknowledge that they are overwhelmingly white, and change is needed to be anti-racist. This most fundamental issue needs to be addressed in order to be rights-based.
- One of the challenges for some independent funders might be to reconcile the origins of their wealth with a human rights-based approach. For example, trusts or foundations with money that has roots in slavery or other oppressive activity, or from businesses who do not have a good human rights record. Some independent funders might need to consider how they understand and acknowledge this part of their own history and foundation¹¹.
- Funders need to consider diversity within their organisations and within the organisations that they fund, with big questions around how to have good representation of the communities,

11 For more discussion, see NPC, Why history should matter to philanthropists and philanthropy professionals, available at: <https://www.thinknpc.org/blog/why-history-should-matter-to-philanthropists-and-philanthropy-professionals/>

the people and the causes that they are seeking to affect change in. Much of this discussion is underway in Scotland, particularly informed by the significant work done by the Association of Charitable Foundations (ACF)¹².

- Some funders have begun to consider the level of understanding of a human rights-based approach within their own organisation, including Trustees, and in what ways this understanding can be increased. Other funders may be able to draw on this initial learning to consider human rights understanding within their own organisations.

“ Human rights aren’t just a good policy choice or something to be applied alongside other approaches such as anti-poverty policies, they should underpin everything. Human rights aren’t an add-on.”

Christina McKelvie MSP,
Minister for Older People and Equalities

- Funders increasingly recognise the implications, not only of investing money into human rights activity, but also of taking a human rights-based approach to the very funding and distribution of money. There are significant interactions and learning from developments around participatory grant making.
- Rights-based work necessarily involves using human rights to challenge those in power and can meet with resistance and negative response. Such challenge can often lead to practical and emotional tensions and difficulties for those

defending human rights, and for those who fund them. Funders need to have explicit policies in place to anticipate and respond to such challenges and tensions. They can also draw on experience within the sector of supporting groups who are working to challenge systems/power such as funding disabled people’s organisations who challenge around social security. For more discussion, see Annex B.

“ What is independent philanthropy for? Doing things that others don’t do, things that are a bit unpopular, that raise questions, help even up the playing field to support participation so that people who need change set the agenda for change, and determine if that has been delivered.”

Martin O’Brien, Social Change Initiative
and formerly Atlantic Philanthropies

- Funders will need to reflect on how they use their funding to support organisations that already work with communities and want to shift the way they do this to use human rights as a tool, as well as new/other organisations that might be needed to inspire and roll out rights-based grassroots or co-ordination work.
- Many funders are rightly focused upon individual or community level impact but there needs to also be a recognition of the potential and necessity of getting the new human rights framework right at a Scotland-wide level. The importance of civil society engagement in influencing this national context at this most critical point should not be minimised. In general, funding for such overarching structural human rights influencing in recent years has come from UK-wide funders. As

¹² For more discussion, see: <https://www.acf.org.uk/policy-practice/diversity-equity-and-inclusion>

the human rights context becomes increasingly different in each part of the UK, there is increasing imperative for Scotland-based funders to recognise the importance of funding such human rights work in Scotland.

- Human rights trajectories and developments are increasingly different in each part of the UK but there remains a huge potential benefit of each part learning from the others. For example, the Human Rights Consortium Scotland and Making Rights Real were both established out of the experience of similar organisations having first existed in Northern Ireland. And Making Rights Real is working with Just Fair in England and Participation and the Practice of Rights in Northern Ireland to share learning around building social rights alliances in the three nations. The four parts of the UK can inspire a 'race to the top' where developments in one positively 'rub off' on the others to encourage progression.
- The Scottish Government as a key funder (albeit not an independent one) of civil society should consider ways to build in rights-based approaches to its many funding streams including explicit stating of the legitimate and important role of civil society to challenge government.

- Funding rights-based work may involve a change in relationship between funder and grantee and applicants, for example will there be a relationship that allows an exchange of feedback between applicants and funders? There are clear links to thinking and developments around power dynamics in funder-grantee relationships¹³.

“ With a modest investment that harnesses the empowering dimension of a human rights-based approach, this can be amplified so directly. Empowering those to begin that and to hold decisionmakers to account, not just in a nice way but as a matter of law so you know what you should be doing....The role that funding plays for participation and collaboration is really important – enabling hesitant organisations to use the law and participate and use human rights-based approaches.”

Professor Alan Miller

¹³ See for example discussion NPC, A Rebalancing Act: How funders can address power dynamics available at: <https://www.thinknpc.org/resource-hub/power-dynamics/>



Funding human rights: what support would funders find helpful?

Several practical steps have been identified as being of value to many funders around investment in human rights work:

- space to share, support and learn from each other around making this shift towards funding human rights work, for example learning from the Baring Foundation's experience as articulated by David Sampson in the funders event (see Annex C) and podcast¹⁴.
- learning from more examples of how human rights can be used as a tool and the impact that this has
- support to feel fully confident in embedding a human rights-based approach within funder strategies, mission and values
- support, development and training opportunities that build understanding/ expertise around human rights within funder organisations, including for trustees and those who assess funding applications
- sharing good practice around ways to ensure that funding is accessible to those who lack power
- exploring collaborative funding models around human rights – see discussion below.

“When you talk to people about their rights, they talk about their economic, social and cultural rights, they talk about education, housing, health and work. That's the opportunity for funders to really engage in that conversation, what is going to make implementation of rights real?**”**

Judith Robertson,
Chair of the Human Rights Commission

¹⁴ Corra Foundation podcast: David Sampson, Baring Foundation and Judith Robertson, Scottish Human Rights Commission in 'A funder's journey to investing in human rights', available at: <https://www.corra.scot/news/a-funders-journey-to-investing-in-human-rights/>.

What needs to be funded?

Participants suggested a range of different types of activity that need to be funded around human rights. There would be benefit in having further discussion around which funder investment is most needed and effective at this particular point in time.

Suggestions included:

- a focus on prevention is required in terms of upstream work to tackle and respond to the prevention agenda as set out by the Christie Commission
- work that enables greater understanding and engagement around rights, particularly of marginalised groups, making rights easily accessible to ordinary people
- build the capacity of the human rights infrastructure including information and advice, so that communities can tap into this to organise and advocate for themselves
- support for expertise, infrastructure and capacity building support around rights-based approaches, including developing and sharing best practice, in order to hasten human rights use and culture shift across Scotland
- civil society collaboration and coordination around human rights in general, recognising the interactions and interrelations across many different groups and issues on this law, and working together to bring national change to progress human rights realisation
- particular support for smaller, local or community groups who are new to human rights altogether, and for those who are new to human rights treaties, to increase understanding around human rights law, engagement at UN level and how to use it;

“...the independent foundation’s role in this space is really important. Without it, there is no additive funding for organisations to be able to take on this work to really be able to think about how they engage with the state and duty-bearers of all kinds.”

David Sampson, Baring Foundation

“Those who have traditionally held power in systems can’t be the ones to bring lasting change. What can funders do? One of most important things is to fund smaller NGOs to take part in networks and collaborations to bring about reform.”

Dr Jacqui Kinghan,
Newcastle University

- direct support to community groups, whether by place or issue, to use human rights as a tool for change, empowering groups to name and claim their rights
- civil society and community group understanding and capacity building around the new human rights framework and how to use it and embed it in their work to get change and empower those that they work with/for

“ In our work with grassroots partners, our job here as funders includes building the capacity and the infrastructure to widen the platform – to enable communities and organisations to organise and advocate for themselves and to throw open the doors as far as we can through influencing powers not just money, to make change happen at a systems level.”

Jim McCormick,
The Robertson Trust

- expert organisations engaged in advocacy and work on the human rights legislation, including drawing on academic expertise, international examples, and in-depth understanding of human rights in order to shape the law and its implementation to be effective for rights-holders
- coordinating human rights work and enabling collaborations and learning from each other across the UK
- work that leads to better practice, culture and understanding amongst duty bearers on human rights
- work to protect and support Human Rights Defenders in Scotland
- work to protect the human rights of particular groups. To note, this should include the human rights of children and young people – children’s rights should not be seen as somehow separate from human rights in general
- human rights work around particular issue areas that underpin human rights across communities, such as human rights in policing and criminal justice – this is currently very under-resourced

- bringing a human rights agenda to organisations who are already working effectively and collaboratively in other ways
- using the law and strategic court litigation to clarify and bring accountability on human rights
- policy influencing around human rights, specifically using varied means to make sure that the voices of those who are seldom-heard are able to shape policy and law making around human rights
- strategic communications around human rights to challenge and change any negative perceptions to build support and ensure that all are encouraged to understand and use their rights
- human rights education, whether in schools or for adults, in a whole variety of settings so that people better know they have rights and how to go about enforcing them.

“ We also have this situation in Scotland where we’ve got legislation coming which is huge and ambitious. It’s hugely complicated, it involves multiple UN treaties, and actually -- where can we apply for that funding which is looking across all human rights treaties, all characteristics, looking at the system of rights protection, not just legal change for one community or one group of rights. But a systemic change across the entire system, incorporating ECSR, but also CEDAW, CRPD, CERD, CAT and others is hugely ambitious and we do need to have a fund that will help us co-ordinate across all of those issues because it’s inherently intersectional.... We have to do it collaboratively, because there’s no way an organisation can cover it all on their own.”

Naomi McAuliffe,
Amnesty International

Examples from funders that are using human rights

Case Study: Baring Foundation

David Sampson from the Baring Foundation commented on the explicit strategic direction taken by Baring to “promote human rights and inclusion in all the work we do”. For Baring this was a conscious choice as a Foundation, “Both because it reflected an ongoing journey of talking and thinking about rights as a key part of the way we do our work but also in the way we choose to operationalise our grant-making in all of our programs.”

Using a human rights lens for the Baring Foundation has been key to its recent strategy development – for example new funding related to mental health in the arts and Foundation-wide initiative on racial justice as well as bringing the advantage of using human rights as a tool.

For the Baring Foundation focussing only on human rights frameworks and international mechanisms meant missing that “there isn’t a big structure in civil society who is picking up using a rights based approach,” which leads to difficulties finding work to fund in this sphere. Scotland is leading the way in this with the example of the Leith housing rights work¹⁵.

For the Baring Foundation there was a need to adjust expectations around outcomes in relation to this work, particularly around how communities participate and define progress themselves as an outcome. There is also a need to be flexible and adaptive, remain connected to community projects and this work requires longer term funding.

The role of independent foundations is really critical, to enable civil society to engage with duty bearers and the State.

The challenge for funders is to acknowledge that embedding human rights is a learning process for funders, “and we have to be willing to take some risks... when we do it’s some of the most exciting work to be involved in.”

Funding human rights approaches does intersect with other issues of funder practice – in particular participation and power – and is even more important now as issues of economic, social and cultural rights become more acute to the communities we seek to serve.

There is further discussion about the Baring Foundation’s journey in a Corra Foundation podcast.¹⁶

15 The Leith Housing Rights in Practice project was a collaboration with the Scottish Human Rights Commission, Participation and the Practice of Rights and Edinburgh Tenants Federation to support residents to tackle inadequate housing conditions. Read about the Lessons Learned from Leith: <https://www.scottishhumanrights.com/media/2029/housin-project-report-final-may-2020.pdf>

16 Corra Foundation podcast: David Sampson, Baring Foundation and Judith Robertson, Scottish Human Rights Commission in ‘A funder’s journey to investing in human rights’, available at: <https://www.corra.scot/news/a-funders-journey-to-investing-in-human-rights/>.

Case Study: Atlantic Philanthropies

Martin O'Brien who was previously Senior Vice President at Atlantic Philanthropies spoke about their approach to funding which was time limited and focused on gaining the biggest long term impact. That funding frame led Atlantic to a focus on human rights which it believed could deliver systemic change and wider and deeper impact¹⁷.

One element of Atlantic's exit sustainability strategy was to set up the Northern Ireland Human Rights Fund (NI HRF), recognising that funding, independent of the State was required to secure a strong human rights advocacy. There is a need to secure an independent infrastructure, and funding that does not depend on the State "can be quite liberating for civil society."

The NI HRF was set up with a significant grant from Atlantic and a challenge element to mobilise additional resources and establish a total fund of £10M to support work over an initial 10 years. The target has been exceeded and the fund is likely to last for more than 10 years. The Fund has initially supported four distinct organisations: the Participation and the Practice of Rights (PPR) – works at grassroots to enable communities to name and claim their human rights; the Public Interest Litigation Support (PILS) project – enables civil society to use the courts to further human rights; the Human

Rights Consortium – a civil society network around protection of human rights; and the Committee for the Administration of Justice – seeks to ensure that the government complies with its responsibilities in international human rights law.

Each of these organisations have distinct but related fields of activism/advocacy. They deliberately collaborate and strengthen each other's work, ensuring that there is diversity for differing tactical approaches but also good cooperation on strategic issues. The organisations are co-located and share some infrastructure systems and costs. The Fund has two main elements

1. Meeting some of the core costs of organisations critical to the human rights infrastructure
2. Small grant making to embed a human rights culture in the community and civil society sector.

There is currently a discussion about broadening beneficiaries from the four original core funded organisations.

The grantmaking has yielded significant impacts, for example the groups have campaigned very effectively to mitigate the worst effects of Brexit on human rights protections and to maintain the strong human rights protections guaranteed by the Good Friday Agreement. There has been significant strategic litigation that has benefited people across NI and indeed in the UK.

Find out more about the NI HRF [here](#).

¹⁷ Discussion on Atlantic Philanthropies funding around use of the law available in Hansen, Atlantic Insights Strategic Litigation, see: [Atlantic_Insights_Strategic-Litigation_11_19.pdf](#) (atlanticphilanthropies.org)

Independent funding and human rights

Many participants spoke about civil society needing a protected space where they can engage with public authorities around accountability, and where they can question government at all levels without fear of the consequences. This was particularly highlighted as a risk for smaller, locally based organisations who speak out loudly on issues, risks ranging from threats such as off-the-record phone calls and tense meetings, to withdrawal of some or all funding.

The Making Rights Real scoping study heard that organisations were often afraid to 'poke the bear' if they were funded by government or local authorities but that independent funding gave people living in disadvantage the space and ability to challenge those in power without fear of further disadvantage. Dessie Donnelly from PPR highlighted that even the perception that there's a conflict of interest for the lead organisation working with campaigning groups can impact the integrity and trust of that relationship.

“ I find in Scotland, it's not even an aggressive thing about threatening to withdraw funding, although that definitely happens. It's also killing you with kindness -- there's a co-option of civil society quite a lot because it's a small place and we know each other, there's a warm chilling effect which is how can we go and criticise our mates in government because actually there's so much coproduction, so much collaboration, so much consultation.... I think it's healthy for us to have that separation. It doesn't have to be all the time, there's obviously ways in which civil society and the State can collaborate. But there also needs to be a line and it's helpful for human rights organisations to maintain that line.”

Naomi McAuliffe,
Amnesty International



However, participants also spoke about some good experiences where organisations funded wholly or partly by government were able to challenge government publicly, sometimes even directly in court. The Government's role and responsibility to fund, and continue to fund, those who challenge them and recognise this as a legitimate role of civil society is very important. Dessie from PPR spoke about ways to potentially protect space from being impacted by a government funder through upfront negotiations, but also spoke about this still being extremely problematic.

There was recognition that many independent funders also manage government funds, and that this potentially creates a tension, or at least some complexities, when it comes to providing 'independent' funding for human rights activity. Independent Trusts and Foundations also clearly all have their own

distinct missions and drivers and so while they may be 'independent', they are not neutral. They are also run by Trustees, who will bring their own perspectives to bear in guiding the work of the funder.

“...one of the key aspects for people in this field is that they need to be independent from government, and the government isn't always going to come along and give money to people who are for example going to litigate against government. Sometimes some governments do, wiser ones I think do, but at the heart of this I think is that you need to secure an independent infrastructure.”

Martin O'Brien, Social Change Initiative
formerly Atlantic Philanthropies



Considering a collaborative fund around human rights in Scotland

In advance of the event for funders held on 12th November 2020, Corra Foundation prepared a discussion paper around what a human rights fund for Scotland might look like. You can read this paper in Annex A.

To add to the discussion set out in that paper, participants also raised a variety of comments and questions around a potential Scottish Human Rights Fund:

- Given the particular challenges and opportunities around human rights now in Scotland, a collaborative fund would give the confidence and immediacy for funders to get involved in enabling human rights work quickly. They can make strategic targeted investments to influence law and policy developments, and build the infrastructure and capacity for long-term change.
- A collaborative fund could enable funders to increase their understanding of a human rights-based approach together, sharing expertise and resource.
- Amnesty International has provided shared office space to human rights organisations including Human Rights Consortium Scotland, Making Rights Real, Open Rights Group, JUSTICE and JustRight Scotland, with tangible impact in examples of collaboration between these organisations. Consideration could be given to a model of funding that enables collaboration between grantees.
- Collaboration is often easier on things we know about but much more difficult when we don't know much about an issue. Setting up the fund will require a particular focus on shared understanding, on all those involved sharing learning, and taking steps on a human rights journey together.
- A collaborative fund must not lead to funders 'outsourcing' human rights to this fund, but should spark and strengthen learning and cooperation that will instigate human rights being embedded across funding streams.
- Consideration is needed as to the most effective focus for a collaborative fund in the current context, for example funding a small number of organisations to learn, develop and use human rights-based approaches to bring change and then they in turn can support others so that together a much broader and stronger base of human rights understanding and practice is developed; a more dispersed funding model where many organisations have additional capacity to learn about and embed a human rights-based approach, possibly sharing learning; a particular focus on organisations working together to shape upcoming human rights framework, its implementation and use; or something else.

- A Scottish human rights fund does not need to be a pot that funders simply ‘throw money into’ – it could be a brokering system where funders that are interested in this, ensure that there is a co-ordinated spread of funding across different areas, that there is a focus on collaborations/networks/coalition, and that funders are “match-made” with the projects that are the right fit.
- A collaborative fund could deliberately enable work across and between those that they fund, for maximum impact. Consideration would need to be given to the risk that, investing in a human rights fund may actually detract funding resources from current human rights funded organisations – widening the pool of recipients presents the challenge of a balance to be struck between continuing current work and investing in new ideas.



Next steps

Across all the discussions, there has been widespread recognition that there is a challenge for many Scottish independent funders around how they consider and embed human rights, and a human rights-based approach to their work. This has been alongside a strong appetite and understanding amongst funders that there is a particular moment in time in Scotland to realise human rights for many more individuals and communities. Drawing on all of the contributions, we suggest the following next steps:

- Early discussion between experts in the human rights sector such as the Scottish Human Rights Commission, with Scottish funders around developing helpful means by which funders can increase their own awareness and understanding of a human rights-based approach within their own organisations. For example, this may look like tailored training opportunities or expert-led discussions.
- Corra Foundation to bring together interested funders and key human rights organisations to explore and drive work around what a Scottish Human Rights Fund could and should look like. It may be helpful for members of this group to jointly commission a short-term development post to scope out options for this Fund, recognising that there is some urgency given the current key developments around human rights in Scotland.
- Funders to consider how they can increase investment in grassroots, community-based organisations that are using human rights for change, such as the new organisation Making Rights Real. This should include consideration of how to protect and value their role of challenging those in power.
- Funders, particularly UK wide funders, should consider in what ways they can facilitate collaboration, learning and support between organisations based in the four parts of the UK around human rights.

In the discussions around independent funding for human rights, many points were also raised about steps that could go some way to protecting an organisation's challenging voice when they are funded by the State. We therefore recommend that the Scottish Government and other public funders should consider clarity of wording in their conditions of grant which reassure and guarantee that challenge from civil society or groups of rights holders is expected and welcomed. This should also be embedded into their grant monitoring and reporting processes.

Annex A

A Human Rights Fund for Scotland? Discussion paper

November 2020

NB: This paper is not intended to set out a concrete 'proposal'. Instead, it is designed to help enable an exploratory conversation as part of the funders' event on 12 November.

1. Context

The idea of a Human Rights Fund for Scotland is being discussed in a context that includes:

- A positive, dynamic **policy and political environment**, with human rights becoming increasingly central. The next major step will be incorporation of a wider set of human rights into Scottish law, along with incorporation of the UN Convention on the Rights of the Child and consideration of incorporation of other specific treaties (e.g. UN Convention on Rights of Persons with Disabilities). This will need to be supported by a range of activity, including capacity building and further development of the Scottish Human Rights Commission's work on Human Rights Budgeting.
- A moment in time that is filled with **threats** to human rights (e.g. Brexit, impact of pandemic, rise of populist movements), but also real **opportunity** in Scotland, created by the different policy/political context as well as an appetite for radical change to 'build better' after the pandemic. Scotland has the potential to be a beacon of positive progress on human rights within the UK.
- A **gap in available independent funding for human rights activity in Scotland**. This is a key finding from the Making Rights Real scoping study.
- A **strong interest among independent funders** who have been participating in an ongoing conversation and exploration of their role. This has so far been marked by an appetite for collaboration and learning as well as a willingness to consider moving towards investing in human rights activity.
- **Rapidly growing capacity and interest among civil society organisations** in Scotland to use human rights approaches to further their goals. This requires independent funders to keep up, otherwise the funding landscape will not meet the needs of those it exists to serve. Independent funding is an essential part of ensuring a more balanced power relationship between communities and those with duties to protect, respect and fulfil human rights.

2. Why a Human Rights Fund for Scotland?

People in Scotland have their human rights respected, protected, and fulfilled and live free from discrimination. (*National Performance Framework Outcome on Human Rights*)

At its heart, a Human Rights Fund for Scotland would exist to help close the gap between human rights policy and what people experience in their daily lives. It would enable independent funders to work more effectively together, and with the human rights sector, to play their part in making rights a practical reality in Scotland.

Creating a funding environment that supports human rights in Scotland

The Fund *could*:

- Enable independent funders to **help close the gap between policy/law and people's day-to-day experiences**. It is widely acknowledged that in Scotland one of the key challenges for human rights is their practical realisation in people's lives[1]. Independent funders, and how they work with and invest in civil society organisations and communities, is a key part of the picture in how to close this gap.
- **Contribute to Scotland's ability to be a leader in human rights**, including influencing within the UK and globally. Secure funding will enable civil society to fully contribute their expertise and innovation to human rights developments, ensuring they are ambitious and effective in pursuing change. Investment will enable Scotland to play its full role in a 'race to the top' on human rights across the four nations of the UK, as well as Europe and the wider world, learning from each other to support progress. This UK and global perspective is particularly important where individuals' lives cross borders, or where there are challenges to human rights that span different countries such as climate-related human rights.

A collaborative model

The Fund *could*:

- **Realise greater impact than independent funders working separately** to fund human rights based activity. By taking a collaborative approach, and working closely with people with human rights expertise, a Human Rights Fund could make better decisions about how to direct resources.
- **Support shared learning, sharing of risks and development of lasting human rights expertise in the independent funding sector**. A significant benefit to funders working together is the ability for learning to be shared, knowledge to be deepened and lasting changes to funding practice brought about. A Human Rights Fund would also help bring together funders and human rights experts; something that recent work in Scotland has shown to be needed and valuable. One of the barriers for independent funders may be a perception that investing in human rights activity carries greater risks or uncertainty. A collaborative approach allows risk to be shared and funders to learn together as they navigate this journey.
- **Attract, and provide a vehicle for, new funding for human rights activity**. For example there may be people or organisations from sectors which have resources and an interest in human rights (e.g. law), who might want to invest in human rights activity without simply donating to a specific organisation(s).

3. How might it work? / governance

A Human Rights Fund could be established in a similar way to other funder collaboratives¹⁸, for example:

- The Listening Fund (<https://www.corra.scot/grants/listening-fund/>). In this instance, funders worked together to develop the programme and a manager was appointed to deliver the work.
- The Northern Ireland Human Rights Fund (<https://www.nihumanrightsfund.org/>) – this was set up as a more distinct entity in its own right, perhaps incubated or nested within an existing organisation.
- The Thomas Paine Initiative (<https://global-dialogue.org/programmes/thomas-paine-initiative/>) – a collaborative programme (2009-19), which combined strategic grant-making and commissioning with convening and networking with the aim of strengthening support for human rights in the UK. It was based within Global Dialogue, and contributors were the Barrow Cadbury Trust, Oak Foundation and Open Society Foundations.

If a Human Rights Fund was to be developed, questions would need to be explored in relation to its structure and governance.

These might include:

- How could the Fund **reflect human rights principles and values** (for example how might people with relevant lived experience be involved in decision making... how could dignity be placed at the heart of its approach... how could the relationship between funder and grantees be equal etc)?

- How could the Fund ensure it **responds to those it exists to serve** (e.g. civil society)?
- How could the Fund be supported by a range of **expertise on both funding and human rights**?
- How could the Fund support **learning and collaboration** within and between funders and grantees?
- What might be the **relationship between the Fund and other key organisations** e.g. the Scottish Government, Scottish Human Rights Commission, Making Rights Real, Human Rights Consortium Scotland and others?

The focus for investment would need to be determined, however there are a number of possibilities of what could be funded (these are not mutually exclusive):

- Human rights infrastructure in Scotland and collaborative networks (similar to Northern Ireland Human Rights Fund).
- Civil society organisations using human rights law, principles and approaches, for example organisations engaging in UN human rights reviews, use of strategic litigation to clarify and enforce human rights law, human rights-based policy or public attitude influencing.
- Community or group-based collective empowerment and advocacy using human rights as a tool for change.
- Individual activists or campaigns on particular human rights concerns/issues.
- Research on key issues or structures affecting human rights.
- Systems change activity.

¹⁸ Other examples include the Baring Foundation Strengthening Civil Society Fund which is a collaboration with the Legal Education Foundation and Esmée Fairbairn, see: www.baringfoundation.org.uk/programme/strengthening-the-voluntary-sector-programme/ And the Justice Together Initiative, see: www.justice-together.org.uk

4. Budget level

The Northern Ireland Human Rights Fund was set up to invest £10m over 10 years, working by supporting four key infrastructure organisations.

The level of investment in a Scottish Human Rights Fund would influence how much it could do, the range of what it could fund and the impact it could have. However, even a relatively modest investment could make a difference, especially if this was being made collaboratively by funders, rather than each working separately.

5. Next steps

An event on 12 November will provide an opportunity to explore in more detail the role of independent funders, including the idea of a Human Rights Fund for Scotland. Individual conversations will also be held, as well as drawing on learning, for example from: The Northern Ireland Human Rights Fund, Making Rights Real scoping study and the Thomas Paine Initiative.

[1] For example the extensive research carried out to inform the first Scottish National Action Plan on Human Rights found this gap to be a key issue, and the report of the First Minister's Advisory Group on Human Rights emphasised the need for action to ensure rights make a difference in people's lives.



Annex B

Civil society using human rights as a tool for change

Human rights law, standards and approach can be a powerful tool for change because:

- **Human rights are in law** – Many of our human rights are part of law in the UK, found particularly in the Human Rights Act 1998 and the Scotland Act 1998, as well as elements scattered throughout other law. All public bodies in the UK have legal duties to act compatibly with the European Convention on Human Rights. Individual victims and the Equality and Human Rights Commission can take legal cases to secure human rights.
- **Human rights are international** – The UK has agreed to international human rights obligations, including civil and political rights such as freedom of expression and freedom from torture, as well as economic, cultural and social rights such as the right to an adequate standard of living. UK progress on human rights is monitored internationally.
- **Human rights are in national policy** – Human rights are an explicit part of many Scottish Government and public body policies and strategies, including the National Performance Framework. The Scottish Parliament Equalities and Human Rights Committee has plans to strengthen its role around human rights scrutiny.
- **There is growing support for human rights** – Strengthening human rights in Scotland is generally supported by the majority of politicians and political parties, and from across civil society, support that

was particularly heightened in the midst of Brexit debate and COVID-19 impacts.

This paper does not claim to be comprehensive or be research-based! However, this paper seeks to summarise, from our experience of working with our members and others, some of the ways that organisations in Scotland regularly use human rights law, standards and approach as a tool for change.

We anticipate that, as human rights law in Scotland is strengthened through incorporation of the UNCRC and the new human rights statutory framework currently being developed by the National Taskforce on Human Rights, civil society's use of human rights to advocate for change will increase significantly. The potential for new and innovative community-based, grassroots use of human rights to shift the power balance, such as the new organisation Making Rights Real, is significant and growing.

Overall, organisations take a rights-based approach to their work for change because this goes beyond best practice, compassionate policy, best use of resources, or pragmatism – although it is also all of those things.

Instead, by asserting and championing a rights-based approach, organisations advocate for a sharing of power between the state that makes decisions, and the rights-holders that are impacted by those decisions.

Specifically, organisations in Scotland currently use human rights law, policy and standards:

To empower individuals to have a say in decision-making that affects their lives

For example:

- The Scottish Independent Advocacy Alliance works with their members to use human rights – see for example, their guide: [Advocating for Human Rights](#)
- Mental health organisations explicitly draw on rights such as to liberty, to freedom from inhumane and degrading treatment, to body autonomy, and to family life to advocate for individuals' to have a say in decision-making. Human rights principles such as proportionality and necessity are very relevant to decisions around mental health treatment.
- [C-Change Scotland](#) supports people that have learning disabilities, mental health issues and other additional support needs to have real positive change in their lives. Their work takes an explicit Human Rights Approach, ensuring the individual has full say over their own life and can be active citizens within their community.

To empower particular groups to campaign for change

For example:

- [Inclusion Scotland](#) is the national disabled people's organisation. Their work is underpinned by the UN Convention on the Rights of People with Disabilities (UNCRPD) – for example during COVID-19 they have highlighted Article 11 of the Convention which states that there must be particular protection for disabled people during national crises. They have measured COVID-19 impacts against disabled people's UNCRPD human rights.

- [Advocard's](#) collective advocacy project for those with experience of the mental health system enables them to call for change based on their lived experiences of the system, drawing on human rights Articles to shape their calls.
- [People First Scotland's Law and Human Rights Group](#) issued a statement on COVID-9 measures, criticising Government guidance for its lack of importance given to securing the human rights of those with learning disabilities, particularly those measures which vastly reduced people's say in decisions about their own lives such as being moved accommodation without notice.

To empower organisations to campaign for change on particular issues

- [Nourish Scotland](#) and the [Scottish Food Coalition](#) campaign for the international right to food to be incorporated into Scots law, with the aim that this would be a step towards adequate, sustainable, healthy and affordable food for all.
- The [Scottish Refugee Council](#) base their advocacy on the Universal Declaration of Human Rights, the Refugee Convention and other international human rights treaties that give a foundation of right to sanctuary for refugees fleeing persecution.
- [Shelter Scotland](#) have a campaign to incorporate the right to housing into Scots law as a way to progressively shift budgets and priorities to improve and increase housing in Scotland. In particular, even those with insecure immigration status would then have a human right to safe, secure and adequate housing.

To advocate for an approach to policy and priority setting that is based on participation of those with lived experience

- [Glasgow Disability Alliance's](#) work is all based on the UN Convention on Rights of People with Disabilities, and 'Drivers for Change' is particularly built on Article 14 – the right to fully participate in all aspects of society. 'Drivers for Change' involves over 150 GDA members in learning facilitation and self-advocacy skills, listening and peer support skills, as well as taking part in briefings and discussions about a whole range of policy and human rights developments, in order to champion disabled people's rights and lived experiences.

To hold Government to account on progress to realise human rights for all

For example:

- [Together](#) (the Scottish Alliance for Children's Rights) annually produces The State of Children's Rights reports which assess progress in Scotland on implementing the UNCRC.
- [Howard League Scotland](#) campaigns for the human rights of prisoners and their families, for example raising the use of solitary confinement during COVID-19 as an infringement of the right to freedom from inhumane and degrading treatment.
- Amnesty International has been a member of [Police Scotland's special advisory group](#) around emergency COVID-19 extra powers, where they have been able to contribute to monitoring of the police actions at this time to ensure that individuals' rights are protected and that there is assurance that the police are going no further than intended.

As a basis for shared understanding and collaborative advocacy across organisations and issues

For example:

- [Human Rights Consortium Scotland](#) facilitates organisations working on different issues to collaborate on structural rights challenges. For example, leaving the EU has decreased rights protections for all. It has been difficult however for organisations to highlight Brexit impacts that may affect some of those they work with/for at some point in the future because of the level of uncertainty and complexity. By taking a pan-human rights approach, organisations have been able to work together to raise the [overarching concern at a policy direction of rights regression](#).

To highlight concerns and priorities for action through UN human rights monitoring and processes

For example:

- When the UN Special Rapporteur on Extreme Poverty and Human Rights, Philip Alston, visited the UK in 2018, many Scottish organisations contributed to [his final report](#) that demanded action to address poverty, stating 'poverty is a political choice'.
- [Article 12 in Scotland](#) undertook research into the views, opinions and recommendations of children and young people aged 11–25 who were looked after young people; young carers experiencing mental ill-health; young people with disabilities; young Gypsy/Travellers; and young offenders. This research was presented to the UN Committee on the Rights of the Child to inform their review of UK process to implement children's rights.

- **Engender** consulted with women and organisations across Scotland around the extent to which the UN Convention to Eliminate Discrimination Against Women (CEDAW) is realised. They then collated findings into a shadow report, put together with reports from elsewhere in the UK, to inform the UN's 2019 review of UK progress.

To challenge poor decision-making for individuals through the law and courts

- **JustRight Scotland** is Scotland's legal centre for justice and human rights. They have three centres of excellence, all using human rights law in different ways: the **Scottish Anti-Trafficking & Exploitation Centre** provides legal advice and representation to child and adult survivors of trafficking and exploitation; the **Scottish Women's Rights Centre** works with women who have been affected by Gender Based Violence; and the **Scottish Refugee and Migrant Centre**, which amongst other things, fights for the rights of unaccompanied child refugees.
- **Govan Law Centre** regularly uses human rights law to protect those in poverty and at risk of destitution. For example, they won a delay in the **eviction of a family of EU citizens**, arguing in court that immediate eviction was a disproportionate interference with the right to respect for private and family life, as safeguarded by Article 8 of the European Convention on Human Rights.

To challenge systemic problems through the law and courts

The use of litigation to bring strategic change in Scotland is increasing, enabling increased clarity on human rights in practice or challenging where human rights have been ignored. For example:

- The **Stop Lock Change Evictions Coalition** was a collaboration that upheld the human rights of asylum seekers threatened with immediate eviction by SERCO, the Home Office-contracted asylum housing provider. Article 8 of the ECHR, the right to private and family life, was central to many of their court arguments and underpinned their approach.
- **CLAN Childlaw** is a unique legal and advocacy service for children and young people. Amongst other issues, **they have used the courts to clarify the rights of siblings** to have a say in Children's Hearings, arguing that this affects their right to family life.

*Human Rights Consortium Scotland
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Corra Foundation exists to make a difference to the lives of people and communities. It works with others to encourage positive change, opportunity, fairness and growth of aspirations which improve quality of life. Corra wants to see a society in which people create positive change and enjoy fulfilling lives. In 2020 Corra launched a ten-year strategy. It is long term because making a difference on the big challenges will take time. At its heart is the strong belief that when people find their voice, they unlock the power to make change happen.

(The) Corra Foundation is a charity registered in Scotland (No SC009481) and is also a company limited by guarantee (No SC096068).



 [@Rights_Real](https://twitter.com/Rights_Real)

Making Rights Real was founded in 2020 as a grassroots organisation to support marginalised people use the power of human rights to make economic and social change for their communities.

Making Rights Real is a charity registered in Scotland: SC050342.



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The Human Rights Consortium Scotland is the Scottish civil society network to protect and promote human rights. With over 100 members from across civil society, we work towards two aims: to enable a strong collective civil society voice to defend human rights, and to facilitate civil society to have all of the resources that it needs to protect human rights through its work.

The Human Rights Consortium Scotland is a charity registered in Scotland: SC050099.

