

Who Cares? Scotland

Education and Culture Committee

Education (Scotland) Bill



Introduction

1. Who Cares? Scotland (WC?S) is a national voluntary organisation - established in 1978 - which supports young people who have care experience up to 26 years of age, by providing independent advocacy and opportunities to influence policy and practice. We strive to utilise the voice of the care experienced population of Scotland to inform everything we do as an organisation.

2. Many believe care leavers get the same chances as all other young people to get a job, go to college, work towards their dreams. The truth is, the opportunities may be there, but young people can't always sustain them as they are still dealing with a lot of the emotional impact of being brought up in care. Unfortunately this group of young people feature heavily in various social policy statistics such as homelessness, offending, mental ill health, amongst others. It is unsurprising that after these experiences, their outcomes in life can be much poorer than their non-care peers.

3. With 85% of looked after young people leaving school before the age of 16 and only 4% entering into further or higher education¹, we must ensure that the Education (Scotland) Bill does all it can to improve the educational chances of this group. Any new legislative provisions must work to change the overly outcomes driven culture that currently exists in our education system, while at the same time supporting our young people to become well rounded citizens with as many opportunities to achieve as possible. All staff in our schools must be empowered to look out for and support our looked after population.

Reducing inequality and closing the attainment gap

4. WC?S welcomes the focus on reducing inequality and closing the attainment gap within the Bill. This specific legislative focus is necessary in ensuring that Scotland continues to work hard to eradicate experiences of inequality and prepares our children and young people to thrive in adulthood. In order to do this however, the Bill must ensure it protects all those who experience inequality.

5. The Bill as currently stands, it places emphasis on socioeconomic disadvantage. While we welcome this, we are concerned that by focussing so closely on this, the Bill could unintentionally exclude young people in care. Generally, socioeconomic

¹ Scottish Government. 2014. Educational outcomes: looked after children 2012-13. <http://scotland.gov.uk/Topics/Statistics/Browse/Children/EducOutcomesLAC>. Edinburgh.

disadvantage aligns itself to a family's social, economic standing and any attempts to tackle this inequality often refer to the Scottish Index of Multiple Deprivation². For those living in care placements such as foster care or residential care, the analysis of their socioeconomic position is not as clear and is not necessarily as relevant to their education attainment as other factors in their lives. To focus too closely on socioeconomic disadvantage, would have the potential to fail this often marginalised group of young people.

What improvements in attainment, in achievement and in reducing inequalities of outcome do you consider the Bill could deliver? What would be a desirable level of improvement?

7. We would suggest that there is greater focus given to what is meant by attainment, achievement and inequalities. We would agree with the suggestion that attainment associates closely with academic progression and support the idea that achievement suggests a more flexible strength based assessment.

How should 'inequalities of outcome' be interpreted and should this phrase be defined in the Bill?

8. A definition of inequalities of outcome would be welcomed; however it must not prescribe what these outcomes could be in a limiting fashion. Any definition must ensure it leaves interpretation open for education authorities to take a holistic approach to assessing its own locality and community experiences of inequality.

The Bill's Policy Memorandum uses a range of terms that do not appear in the Bill, for example: "promote equity of attainment for disadvantaged children", "narrowing the attainment gap", the correlation between a child's "social deprivation/ affluence and their educational attainment".

Do you consider that such terms are clearly defined and widely understood? Could the different terms used in the Policy Memorandum and in the Bill create any problems in delivering the policy objectives?

9. As mentioned above, we are concerned about the over emphasis of 'socioeconomic disadvantage' throughout the Bill and Policy Memorandum. We believe that in connecting disadvantage to affluence, this Bill could unintentionally exclude other groups such as looked after children from its protection. We welcome the use of terms such as 'social deprivation' which indicates a more flexible interpretation of an individual's disadvantage. We would suggest that the above terms continue to be used, but could be explored further in any associated guidance.

² Fischbacher, C. 2014. Identifying "deprived individuals": are there better alternatives to the Scottish Index of Multiple Deprivation (SIMD) for socioeconomic targeting in individually based programmes addressing health inequalities in Scotland?. IDS Scotland/ ScotPHO.

Should the Bill contain sanctions in the event that the Scottish Government or local authorities fail to achieve the policy intention of reducing inequalities of outcome?

10. No. Sanctions on local authorities could have the undesired effect of impacting on the children we are seeking to protect. Instead, we would suggest that any local authority failing to achieve should be adequately assessed and supported to improve. The reporting duties, if defined well, should allow simple identification of the areas in which the local authority is failing.

Do you have any views on the consultation and reporting requirements set out in this part of the Bill?

11. It is proposed within the Education (Scotland) Bill that local authorities will be required to report every 2 years on their progress on reducing inequality of outcome. In order to ensure consistency and to avoid duplication of duties, we would suggest that this requirement links with existing legislation.

12. Under Part 9 (Corporate Parenting) of the Children and Young People (Scotland) Act 2014, corporate parents now must report on how they are carrying out their duties once every 3 years³. We would suggest that the Bill mirrors this time frame or at the very least, provides clear guidance on how corporate parents can fulfil both reporting duties together. A joint report which identifies how local authorities are supporting their looked after children, as well as reducing inequality of outcome in education would efficient method of linking reporting and delivery of duties.

Amending Education (Additional Support for Learning) Act

13. WC?S supports the Bill in its aim to extend rights under the Education (Additional Support for Learning) (Scotland) Act 2004 and we address this below. However, we believe the Bill has an opportunity to go further and improve the current provision of support to the looked after population.

14. Currently, under the 2004 Act, revised in 2009, all looked after children are considered to have additional support needs unless an assessment undertaken by the education authority determines that there is no need. We are of the opinion that this legislation has the power to deliver integral support which would have the chance of significantly improving the outcomes of the looked after population. By determining that a looked after child has additional support needs, they will be subject to a Coordinated Support Plan (CSP) which would seek to strengthen and support their educational experience. Considering the poor educational outcomes of the looked after population, we would consider this plan to be an essential part of the looked after child's education.

³ Scottish Government. 2015. Draft Statutory Guidance on Part 9 (Corporate Parenting) of the Children and Young People (Scotland) Act 2014. <http://www.gov.scot/Publications/2014/12/2912/12>. Edinburgh.

15. Yet the alarming reality is that not enough looked after children and young people have a CSP, nor do they know their rights and entitlements under this legislation. Earlier this year, we spoke to a group of care experienced young people about their right to be assessed for additional support under the 2009 Act. Not a single young person was aware of this right, nor were they aware of ever having been assessed. We are extremely concerned by this and believe that the positive intention of this legislation is currently not being fulfilled.

16. In 2014, Who Cares? Scotland published a report⁴ which contains the views of care experienced young people on their rights. This report highlights the connection between young people knowing their rights and feeling positive about their care journey. A child or young person who understands their rights and is empowered to stand up for them is much more likely to feel an included part of society. In ensuring young people understand what their rights are, what the legislation can do for them and how it could improve their educational experience, we are helping this marginalised group to overcome the existing barriers to educational attainment.

17. With this in mind, we would encourage the Scottish Government to use this opportunity within the Education (Scotland) Bill to strengthen the provisions for looked after children under the Education (Additional Support for Learning) Act based on the following suggestions:

- Looked after children and young people must be made aware of their rights and entitlements under the ASL Act.
- Education authorities must be guided appropriately in the assessment of the looked after population and what this extra support could combat against.
- More looked after young people should have a CSP which should be a central component of the Child's Plan.
- Where looked after children are assessed as not having additional support needs, these children should be reassessed regularly to account for issues such as potential placement disruption.

What will be the outcomes of extending rights under the Education (Additional Support for Learning) (Scotland) Act 2004 to children aged 12 and over with capacity?

18. We fully support the intention to extend rights to children aged 12 and over. This decision mirrors provisions under the existing Age of Legal Capacity (Scotland) Act 1991. However we are concerned at the use of the term 'capacity' throughout the Bill and Bill Schedule. The process around assessment of capacity is very unclear in regards to who will make this assessment, how the assessment will be carried out and how the young person and their parent/carer will be involved in this process.

⁴ Who Cares? Scotland. 2014. Interpreting the Children and Young People Act: the views of care experienced young people. <http://www.whocaresScotland.org/professionals/publications-briefings-research/>

19. Further, under the Education (Additional Support for Learning) (Scotland) Act 2004, the definition of 'lacking capacity' causes concern. This legislation identifies criteria which may determine a young person to lack capacity, including such issues as 'mental illness' and 'developmental disorder'. We are concerned over the lack of guidance surrounding this and the opportunity it may present for an adult to decide a young person lacks capacity due to the above reasons. For many looked after children, due to the trauma and lack of stability experienced in their early lives, mental ill health and developmental issues can be something widely experienced. We would urge the Scottish Government to work with young people and the sector to better define what 'capacity' refers to and how this assessment would be carried out.

What are your views on the statutory children's support service proposed by the Scottish Government?

20. We are encouraged to see recognition given to the need for children to have dedicated support in exercising their rights under Section 17 of the Bill. As a provider of independent advocacy for looked after children, WC?S believes that any young person presented with an opportunity to challenge a decision made through complex and formal structures, must be supported in any way possible to ensure that their voice is heard and taken account of. For this reason we fully support the decision to establish a statutory children's support service. There are, however, a number of issues we feel must be taken account of:

- The advocacy service must exist independently from the education authority to avoid conflict of interest and ensure the child or young person is confident in their right to appeal any decisions made.
- The Scottish Independent Advocacy Alliance states that true advocacy must only act to convey the opinions of the person in receipt of the service⁵. This means that while the advocacy service can support an individual to understand their options and the consequences of their decisions, the service must not direct the individual to a decision based on what they believe is in the best interests for that person.
- The advocacy service on offer must act only for the child. While the parent or carer may require advocacy support, or be involved in the process, the purpose of the service must be to support the child or young person to articulate their views.

21. In addition to this, we are concerned as to how this service will operate alongside the services already working with many young people. In particular, looked-after children and young people are exposed to many organisations and workers throughout their young lives. At any one time they can be expected to work with multiple people and contend with many formal processes such as LAC reviews and Children's Hearings. We know that most looked after young people dislike the fact that they are forced to meet and get to know many different people while they are in

⁵ SIAA. What is Independent Advocacy. <http://www.siaa.org.uk/independent-advocacy/>

care⁶. We are concerned that for looked after children, this new support service will place an added burden on those who already receive support from many organisations, and in fact may discourage looked after young people from exercising their rights.

22. WC?S would suggest that the new service only acts to complement current support and advocacy provision. For example, where a looked after child seeks to appeal a decision made through the ASNTS, but said child is already in receipt of independent advocacy support from WC?S or another advocacy provider, the new service agrees to provide support to the existing advocacy provider. This method would reduce the number of people that the looked after child would have to get to know and would avoid duplication of roles.

23. WC?S would welcome any opportunity to support the Scottish Government in understanding how this new service will operate amongst existing supports.

Who Cares? Scotland would welcome the opportunity to discuss how the Education (Scotland) Bill can work for looked after children and young people.

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⁶ Who Cares? Scotland. 2014. Interpreting the Children and Young People Act: the views of care experienced young people. <http://www.whocaresscotland.org/professionals/publications-briefings-research/>