



## RESPONDENT INFORMATION FORM

**Please Note** this form **must** be completed and returned with your response.

Are you responding as an individual or an organisation?

- Individual  
 Organisation

Full name or organisation's name

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- Yes  
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## Protection of Vulnerable Groups and the Disclosure of Criminal Information

### Who Cares? Scotland Membership Statement

Who Cares? Scotland is a membership organisation, led and informed by Care Experienced children, young people and adults from across Scotland.

The main message themes from our membership in relation to the outlined proposals in this consultation, can be categorised into four areas:

1. Protection from discrimination
2. Special consideration for support and access to it
3. A system which works for Care Experienced people
4. Specific regard to rights, in particular privacy

### Why the review of PVG and disclosure process is important for Care Experienced people:

We are campaigning for ***a lifetime of equality, respect and love***. We know that those who experience care have a higher chance of becoming criminalised and entering the justice system in Scotland. We also know that because of this, the current complex system of disclosure, which exposes criminal convictions, specifically adds to the poor outcomes of Care Experienced children and young people.<sup>1</sup>

Statistics show that Care Experienced young people and adults are overrepresented in the criminal justice system in Scotland and although those who have been in care only make up an estimated 0.5% of the general population, they make up 33% of Scotland's youth offender population and 31% Scottish adult prisons.<sup>2</sup> In 2014, 50% of prisoners in Scotland identified as having been in care at some point in their life.<sup>3</sup> Unfortunately, many people do not recognise that they are Care Experienced or in many cases, they wish to disassociate with their Care Experience. This coupled with the fact that most statistics rely on self-reporting of care status, means that even these statistics may underrepresent the problem.

Children and young people in care are recognised as experiencing a form of 'double jeopardy' as by being placed in care they are often exposed to further risk factors which make them vulnerable to criminalisation.<sup>4</sup> These risk factors include: unnecessary over-involvement with the police; felt and experienced stigmatisation by the Police; increased scrutiny and punitive responses to unmet mental health needs, sometimes expressed through challenging behaviour; and frequent participation in formal processes such as reviews and Children's Hearings.

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<sup>1</sup> House of Commons Justice Committee (October 2017), *Disclosure of youth criminal records, First Report of Session 2017–19HC 416*.

<sup>2</sup> Scottish Prison Service (2016), *Prisoner's Survey 2015 – Young People in Custody*; Scottish Prison Service (2013), *14th Survey Bulletin*.

<sup>3</sup> Broderick. R, McCoard. S & Carnie, J (2014), *Prisoners who have been in care as 'looked after children'*.

<sup>4</sup> CYCJ (2017), *Response to Consultation on the Proposed Draft Police Act 1997 and Protection of Vulnerable Groups (Scotland) Act 2007 Remedial Order 2018*.

### **WC?S Membership statement no.1:**

#### **The current Disclosure process can make us feel discriminated against.**

There is strong evidence of the consequential, destructive effect of childhood and teenage criminal records on the rest of an individual's life.<sup>5</sup> We know from speaking to our Care Experienced members, that a criminal history can often prevent Care Experienced people from moving on from their past and making the most of their potential.

***“Still terrified about having to share about convictions- can still come back to haunt me and causes me issues – experience of care still impacts me in my adult life!”***

**WC?S Alumni Member**

There is extensive evidence which shows conviction disclosure is inherently anxiety-provoking for those who have convictions. The process of disclosure is experienced as traumatic, stigmatising and embarrassing and often results in the avoidance of accessing opportunities such as volunteering, education and employment.<sup>6</sup> Care Experienced people with criminal convictions are therefore forced to deal with the stigma of being labelled as criminals, along with the stigma they already face due to their care identity.

In some instances, corporate parents<sup>7</sup> are faced with recruitment barriers when they attempt to employ adults who have a Care Experience which has resulted in a criminal charge. This can be especially frustrating for Care Experienced adults, who feel that their corporate parents should be able to better support their inclusion in the labour market. There is much more that needs to be done alongside reforming the disclosure process, around the understanding of employers who offer opportunities to those who have a criminal record.

### **WC?S Membership statement no. 2:**

#### **We need help to navigate and understand our rights within the Disclosure process.**

Our members have told us how difficult it is to experience the disclosure process on their own, when they have criminal convictions that they need to declare. Currently, disclosure processes depend on individuals being aware of and using legal processes, for example when having to make representation when under consideration for listing. This places responsibility of being properly informed with the individual, yet Care Experienced people are often deprived of information and control over their own lives in the care system, and these processes add yet another barrier which they must navigate. We would urge Disclosure Scotland to consider how vulnerable people or those who experience disadvantage in Scotland are able to navigate any processes or systems they put in place.

***“A friend who also needed to get PVG done at same time for course just gave up and decided not to go through process as knew that they would have charges on disclosure.”***

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<sup>5</sup>Independent Parliamentarians' Inquiry into the Operation and Effectiveness of the Youth Court, chaired by Lord Carlile of Berriew CBE QC. June 2014 quoted in House of Commons Justice Committee (October 2017), *Disclosure of youth criminal records, First Report of Session 2017–19HC* 416.

<sup>6</sup> CYCJ (2017), *Response to Consultation on the Proposed Draft Police Act 1997 and Protection of Vulnerable Groups (Scotland) Act 2007 Remedial Order 2018*.

<sup>7</sup> Corporate Parents are defined in law, to promote the interests of care experienced people [by Part 9 of the Children and Young People \(Scotland\) Act 2014](#).

## **WC?S Alumni Member**

We welcome the 'Scotland Works for You' project, which we feel is a step in the right direction in educating employers about what a criminal conviction record means in practice and combats the risk-averse culture which creates barriers to those with criminal histories to gain employment. However, the current review of the disclosure system still accepts that individuals going through processes such as PVG, will need to access complex and specific types of information and understand how to make representation.

Our members consistently tell us that removing convictions from a disclosure and making representations to prevent being listed, can be difficult and drawn out processes for those involved. One WC?S Alumni Member quoted in this statement reflected that although they successfully appealed in both cases, their success was due to the support of the professionals they worked and studied with. They commented that they would have found it extremely difficult to go through appeals processes alone. They also reflected that they were in a stable place in their personal life, with a considerable period having passed since they were in crisis when the convictions were accrued. If a young person who is trying to find their first job must go through this process, without a person to support them - it is inconceivable how they are supposed to navigate such a system. If the process itself is to continue placing responsibility on individuals to understand the various processes involved, WC?S calls for resources to be provided that create individualised support for the PVG process.

### **WC?S Membership statement no. 3:**

#### **We need a Disclosure system that works better for everyone.**

The need for support to be provided, to navigate through the PVG process, shows that the system itself is currently not designed to be easy to understand for individuals who have criminal records. We urge Disclosure Scotland to re-think the core approach of key elements of the process. A system must be created which automatically rules out unnecessary information, for example spent convictions should be removed from all disclosure certificates automatically when they become spent. However, this must be alongside highly-trained, independent individuals who can understand what information is relevant on a case-by-case basis, when dealing with more complex or extreme types of criminal convictions.

WC?S members consistently tell us that behaviours which have been criminalised, must be viewed in full context. There can be ongoing cases of trauma and abuse from a person's childhood, which have not been fully understood or discussed until the disclosure process brings it into focus. They may have been too young at the time of the crime to understand what has happened and the implications this has on their criminal record. Especially in a Care Experienced person's life where they may have had little support of this kind.

***"Take the whole situation into consideration when a child commits a crime i.e. family, home conditions."***

## **WC?S Family Member**

Yet the current process does not allow for this context to come to light, in fact there is simply a list of information created to pass to employers with no explanation at all. It is then up to the individual to explain to the employer the circumstances around the convictions – which is could be extremely distressing and uncomfortable for many Care Experienced people.

***“There’s reasons behind a crime, we need to understand that...being arrested, that could make things worse.”***

**WC?S Family Member**

More must be done before information is passed to an employer, for example to identify: the age at which a crime was committed; the reasons behind the crime; whether the conviction was gained via the Children’s Hearing System and if the young person was in a time of crisis. Young people have told us that context around mental health, disability and whether the person had experienced trauma, should also all be considered when judging a criminal conviction. There must also be a way that the PVG process allows for context of care to be identified when information is being reviewed as relevant or not.

***“When I was 16 I thought I knew what I was doing and looking back I thought I didn’t know anything. Alcohol has so much to do with it, you genuinely don’t know what you’re doing, I’ve seen myself and waking up in the polis station and not even knowing why you’re there. I’ve got a load of charges which I genuinely don’t know how I got.”***

**WC?S Family Member**

#### **WC?S Membership statement no. 4:**

**We have a right to privacy which does not feel respected within the current Disclosure process.**

WC?S members have also expressed concern over the need for certain types of information to be passed on in disclosure processes. We suggest that there should be a strong presumption that conviction information should not appear on disclosures for behaviour that took place before the age of 16 or for convictions received at a Children’s Hearing.

That presumption could potentially be overturned, but only in the most serious of cases, where risk to children and young people had been clearly demonstrated. In these cases, an appeal process may be appropriate, however, in the vast majority of cases, an appeal process should not be necessary as decisions taken about under 16s and decisions taken in the Children’s Hearing System should not be disclosed. WC?S are also still concerned about the emphasis still being placed on ‘Other Relevant Information’ (ORI), as another source of information able to document criminalised behaviours in disclosure processes.

#### **Concluding statement**

We must work together to ensure that Scotland's disclosure process is not risk averse to a level that adversely affects some of the most disadvantaged people. Our goal is to ensure that a disclosure system exists which safeguards children and protected adults – yet at the same time allows those trying to move on from a criminalised past to live fulfilled and happy lives. We believe this review has the potential to ensure Care Experienced people who have convictions, are supported to move on and achieve the success and happiness in their lives which they deserve.

***“I was a shop lifter to survive – got caught aged 17 – have convictions which appear on disclosure now. This was one of the most difficult periods in my life and I had no support or care whatsoever from anyone, other than myself.”***

**WC?S Alumni Member**

### Our asks for Disclosure Scotland:

We would recommend some specific areas for consideration at this stage of the review by Disclosure Scotland, on behalf of Care Experienced people in Scotland. These can be summarised as follows:

1. Waive fees for Care Experienced people
2. Afford Care Experienced people special protections in disclosure processes
3. Recognise corporate parenting duties in the outcomes of the review<sup>8</sup>

If you wish to discuss the content of this response, please get in touch:

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### **Question 1: Do you agree that reducing the disclosure products will simplify the system?**

Yes  No

#### Overall System Change:

We do not believe that the complexities will be reduced enough for Care Experienced people. At present, disclosure processes do not give enough specific consideration to the circumstances in which convictions can be accrued. Often, these relate directly to the care and protection arrangements made by the state on behalf of these children and young people. We recommend that special consideration needs to be given to Care Experienced people which aligns better with corporate parenting duties (as legislated for in the Children and Young People (Scotland) Act 2014)<sup>9</sup> as well as the wider policy intentions of the Scottish Government to implement recommendations from the Developing the Young Workforce agenda. Care Experienced people often report difficulties when applying to roles which require disclosure. They often do not feel informed about the role of disclosure or the personal impact which convictions, accrued while 'in care', can have on their adult opportunities.

One member of WC?S has already highlighted these issues at the recent 'Debating Disclosure' event, organised by the Centre for Youth and Criminal Justice.<sup>10</sup> We understand, alongside the organisations represented at the event, that there must be a certain level of complexity in the system. However, as Claire Sands (Consultant Youth Justice Researcher) highlighted in her input, the problem of complexity in disclosure processes is an issue across international systems. The current level of complexity existing in Scotland is fundamentally a rights issue for our Care Experienced members. **This is because there are real and long-lasting**

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<sup>8</sup> Corporate Parenting duties are defined in law, [by Part 9 of the Children and Young People \(Scotland\) Act 2014](#).

<sup>9</sup> *Ibid.*

<sup>10</sup> [Debating Disclosure Improving life chances through awareness and understanding.](#)

## **consequences when there is a lack of understanding of highly complex process such as Disclosure.**

The lack of detailed understanding currently occurs at all levels-for Care Experienced people with convictions, practitioners supporting these individuals, and employers and opportunity providers. As an organisation, we know that this lack of individual and collective understanding has a range of negative implications, particularly for Care Experienced individuals with convictions. These implications are felt in relation to their well-being and include anxiety and psychological impacts as well as in relation to opportunities. Often the impact can be so monumental that Care Experienced people have opportunities removed altogether. This is often despite having the capability and willingness to succeed in them.

**Rather than trying to navigate such complexity, the system needs to be fundamentally overhauled for Care Experienced people, and that this needs to begin with agreeing the basic principles of the disclosure system.<sup>11</sup>**

**Question 1a: If you have answered no, what do you think will simplify the system?**

**There must be specific regard given to Care Experienced people.** This regard must ensure that Disclosure processes which are applicable to the general population, do not have unintended consequences on Care Experienced people in Scotland. It is our view that this specific regard **must better align with the corporate parenting duties applicable to Scottish Ministers and in turn Disclosure Scotland.**<sup>12</sup> In addition, we believe that whilst an equalities impact assessment is not legally required for Care Experienced people, it would be beneficial to do one specifically for the Care Experienced population. It is well recognised that Care Experienced people require specific consideration in current legislative provisions, access to and protection of rights and within the policies which guides care and protection services and practice.

In addition to this specific consideration, the below provides an overview of what specific provisions should exist for Care Experienced people in relation to Disclosure processes.

### Access to Tailored Information and Support:

There must be **individualised, in-person** (either face-to-face or by phone) **information and support** that is available to everyone. For example, a 'one stop shop', which could provide consistent and correct information, peer support and signpost to community support, from individuals with expertise in this area to be important. We would also like to emphasise the need to provide **more widely accessible, understandable generic information, almost a toolkit on the disclosure system, accompanied by authoritative guidance.**

Care Experienced people have told us they want to see these forms of support being provided by Disclosure Scotland, and this has been communicated in corporate parenting training and at the Debating Disclosure event by one of our Care Experienced alumni members. A person who has a criminal record should not be expected to go through these bureaucratic processes alone and we know that

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<sup>11</sup> [Debating Disclosure Improving life chances through awareness and understanding.](#)

<sup>12</sup> Corporate Parenting duties are defined in law, [by Part 9 of the Children and Young People \(Scotland\) Act 2014.](#)

currently the perception of this can have concrete impacts on their ability to succeed in employment and education opportunities.

It is vital that any changes that take place are communicated to everyone online in a format that is regularly updated and includes visual and interactive resources. The Guidance published by Scotland Works For You has sought to achieve this and we feel this must be a starting point for creating further resources.

#### Meaningful Information:

Alongside CYCJ, we want to see processes change to make sure the **information included on disclosure certificates and Subject Access Requests is more meaningful and understandable**. At the Debating Disclosure event it was suggested this could be achieved by documenting (albeit with caveats that this information could change with committal of a further offence and dependent on role/purpose) whether convictions are spent or unspent, when any unspent convictions will become spent, what an individual needs to self-disclose, how long for and any rights regarding the removal of information.<sup>13</sup>

#### Training and Implementation:

WC?S provides opportunities for Care Experienced people to gain work and skills, often when they are gaining their first ever employment role. Some of the issues we have faced as an employer of those with potential criminal convictions, is that the stigma individuals feel can lead to them not wanting to disclose criminal histories in the recruitment process – even if it won't affect whether they get the job. We are concerned that if a different employer is helping these individuals with the PVG process, that failing to disclose their criminal convictions could create an impression that they've lied or deliberately deceived the organisation, which then potentially negatively impacts their chances of employment.

**Therefore, it is not enough to hold this review in isolation and we feel there must be a wide package of training and resources available to build the knowledge and understanding of the workforce.** This strongly correlates with the need for organisations to pro-actively uphold corporate parenting duties to ensure fair access to services and to provide opportunities for Care Experienced people.<sup>14</sup> For example, with the looked after children workforce, social workers, panel members, Reporters, Scottish Prison Service, police, careers advisors, opportunity providers, employers, and counter signatories.

A training requirement/input that could be made consistently available as part of pre-qualifying training and continuous professional development, including on a multi-disciplinary basis, and that builds on existing good training which is out there, would be useful. Such training needs to be accessible, engaging and participatory, and adopt a tiered approach. For more information please see the Debating Disclosure write-up.<sup>15</sup>

**Question 2: As we are trying to simplify the system, do you have any views on what this product should be called?**

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<sup>13</sup> [Debating Disclosure Improving life chances through awareness and understanding.](#)

<sup>14</sup> Corporate Parenting duties are defined in law, [by Part 9 of the Children and Young People \(Scotland\) Act 2014.](#)

<sup>15</sup> [Debating Disclosure Improving life chances through awareness and understanding.](#)

Basic  Level 1  Other (please state)

See answers to questions 1 and 1a.

**Question 3: As an applicant, do you have any concerns with this approach?**

Yes  No

See answers to questions 1 and 1a.

**Question 4: Which fee option do you prefer for the level 1/Basic disclosure? And why?**

No fees for Care Experienced people. The disclosure process should not burden the individual going through the checks with financial cost. This particularly disadvantages vulnerable people with criminal records trying to seek employment and move on from any criminal history they may have.

**Question 5: Do you agree that it is appropriate to regulate registered bodies in relation to B2B applications?**

Yes  No

N/a.

**Question 6: What impacts, if any, do you foresee from moving from a paper based system to a digital system?**

While a digital system would enhance efficiency, and should improve security of personal data, there are still a number of individuals who struggle with online services who would require having a Disclosure product in place. While they can be supported to make the initial application, it becomes harder for support to be provided once the account is set up, unless the individual shares their account details and password with someone else.

Also, we know that Care Experienced people may not have free and private access to internet services if they are still living in care placement when applying through the PVG process. This could continue to impact Care Experienced people when they are living alone, for instance we know that the average age for a Care Experienced person to live independently is much lower than the national average. This can mean they have limited financial resources and access to internet.

Again, we would **emphasise the need for there to be in-person or phone support provided for those going through the process** if they are experiencing any difficulties or worries.

**Questions 7: Do you agree with our proposed fee for the apostille service?**

Yes  No

N/a.

**Question 7a: If not, what do you think the fee should be?**

N/a.

**Question 8: Are there any professions/roles for the Level 2 disclosure that are not included that should be on the list?**

Yes  No

**Question 8a: If you have said yes, please note what these are.**

Has consideration been given to roles within organisations where PVG membership is not required, but where the organisation needs to be certain that the individual does not have convictions relevant to the organisation? From our perspective this would cover for example, a member of staff in an administrative role not working directly with children, but where they may have convictions or be subject to sex offenders registration. While this would not necessarily bar them from taking up post, it is information that the organisation should be aware of to be able to undertake appropriate risk assessment.

**Question 9: Are there any professions/roles you think should be removed from the list?**

Yes  No

**Question 9a: If you have said yes, please note what these are.**

N/a.

**Question 10: Do you agree with the proposal to remove certain kinship carers and all foster carers from a membership scheme?**

Yes  No

N/a.

**Question 11: Do you think that the two types of kinship arrangements should continue to be treated differently under the future arrangements?**

Yes  No

N/a.

**Question 12: Do you agree with this proposal that any member of the fostering/kinship household aged over 16 will require a level 2 check?**

Yes  No

N/a.

**Question 13: Do you agree with the proposal that a level 2 check should be undertaken by anyone in the foster/kinship carers network who supervises the children?**

Yes  No

Care Experienced children are already disproportionately affected due to care and protection interventions. WC?S strongly disagree with checks being extended to anyone in foster/kinship carers networks. This will have a direct effect on children in care as they will be unable to socialise and experience childhood in the same way as those who are not looked after. For example, if this process were to be applied, how would a foster child stay with a neighbour or local friend's house for a sleepover? These are normal rights of passage for children and we should not work to make spontaneous socialising more difficult. It is ultimately up to the carer to build a relationship with the adult who will be supervising the child to make the decision over whether they are a safe and responsible person.

We know from our members that there are already many shared hurdles when in care of not feeling able to enjoy an ordinary childhood. These barriers range from it being difficult to be able to go on holiday, spend time with new friends and to have relationships with certain people outside of their care network.

This proposal would also severely impact a Care Experienced person's childhood by failing to uphold the rights they have enshrined in the United Nations Convention on the Rights of the Child. Particularly: Article 15, (freedom of association) they have the right to meet together and join groups together; Article 16, (right to privacy) they should not be made to share their family situations, background and other personal information with others; Article 31 (leisure, play and culture) they should be free to experience friendships and relationships with others outside of their care network in a way which benefits them. Therefore, this proposal clearly creates an unjustifiable impact on Care Experienced children and young people.

**Question 13a: Do you think that anyone else in the foster/kinship carer's network needs to be checked? If so, who and why?**

No.

**Question 14: It is currently not possible for individuals over the age of 16 residing in a residential school setting (for example, spouses of house parents), but who do not have specific responsibilities, to obtain an enhanced disclosure. We believe that they should be subject to a Level 2 disclosure, do you believe that this is the correct approach going forward?**

Yes  No

N/a.

**Question 15: Which option should be the content of the Level 2 disclosure product be based upon? Please provide the reason for your choice.**

Option 1  Option 2a  Option 2b

Please see answers to question 1 and 1a on overall system change. However, in answer to this specific suggestion, we don't believe that 'Other Relevant Information' (ORI) should be included on any Disclosure product. This is excessive and in breach of Human Rights.

**Question 16: Which price option do you prefer for the Level 2 product?**

Option 1  Option 2

N/a.

**Question 17: Is it proportionate that the free checks should continue for volunteers who obtain Level 2 disclosures?**

Yes  No

**Question 18: What issues, if any, do you foresee with a move to a digital service?**

**Question 19: How should a mandatory PVG Scheme be introduced and how should it work?**

A mandatory PVG scheme is welcomed. However, this requires need for ease of access and for the scheme to be easy to leave if someone is no longer in a role

while requires scheme membership. Those who are already PVG scheme members should be offered the option to transfer to the new Mandatory scheme when this is set up. There should be no cost attached to this.

This could be done on the basis of an individual must opt-in to the transfer by a deadline. If no positive response by the deadline they would be removed and would need to make a new application should they require to have PVG membership in the future. Lists of members could also be shared with organisations/registered bodies where appropriate in order that they can provide any updates/relevant information regarding individuals, and indeed ensure that any individuals they employ have responded to the request to positively confirm their transfer.

It may make sense to manage this on a phased basis for registered bodies, like the process undertaken for retrospective PVG's. Consideration could be given to a short 'grace' period after the deadline where individuals could still transfer rather than reapply.

Once the scheme is running, consideration should be given to whether it is possible to link up with registry offices or DWP in the event of a death of a scheme member and for their membership to be automatically ended through this. PVG membership is not an aspect that relatives or executors are likely to think about at what is already a difficult time.

**Question 20: Do you agree with the proposal to replace the “regulated work” definition with a list of roles/jobs?**

Yes  No

However, we are unsure of how this will work in practice with the huge range of roles which exist in Scotland that may need to be included. There is not enough information on how this will be organised and applied in practice.

**Question 21: Do you foresee any challenges for organisations from this proposed approach?**

Yes  No

Protected roles will allow for regular updates and changes as required.

There is a distinct likelihood that individuals will get caught up in the fact that their specific job title is not listed. It would be impossible to provide an exhaustive list of all job titles that would constitute a protected role. Taking a job function-based approach, along the lines of that taken by the SSSC, would make more sense. The focus would be on the type of duties and activities undertaken in the role rather than the title.

There will need to be clarity regarding the fact that individuals may fall into one or more definitions of job titles or functions. As the list of job titles stand at the moment we would require staff to have PVG membership where they are involved in group work, but not for an advocacy role. Arguably there is a greater inherent potential risk in an advocacy, one on one setting and anyone working in this role should be a PVG scheme member.

Consideration should be given to how someone straddling two or more roles will be dealt with, and what role would be used to determine what information would be considered relevant to disclose. Also, the list of job titles/role functions should be separated into children and adults lists.

Clarity is needed regarding services which are provided to those between the ages of 16/18 and 26 years of age, such as Care Leavers. This is because, as stated in the 2014 Children and Young People Act, Care Experienced people have specific protections up to their 26<sup>th</sup> birthday – rather than up to 18 years old like the rest of the population. This was put in place because Care Experienced individuals remain extremely vulnerable beyond 18 and so anyone working with them must be deemed suitable.

**Question 22: Are there any roles/jobs not within the list in Annex B that you think should be subject to mandatory PVG scheme membership?**

Yes  No

**Question 22a: If so, please provide more detail on why.**

1. Any role which requires registration with SSSC
2. Careers Adviser – what about other welfare advice roles, such as employability roles, employment support etc – particularly when working with children or vulnerable adults.
3. Any counsellor regardless of any area of specialisation
4. Psychiatrist should be added to the Health list
5. Need to be clear that anyone undertaking group work with children and young people should be PVG scheme member, not just when done in a voluntary capacity
6. Any advocacy role with children and young people or vulnerable adults given the level of one-to-one work and potential for this to be exploited
7. A role within Who Cares? Scotland is that of Development Officer. This role involves working closely individually and collectively with young people in the development of Champions Boards in local authority areas. However, this job title is widely used across LA's/the third sector for a variety of roles, many of which would not require PVG membership. Taking more of a job function-based approach rather than relying on job title alone would help to address this.
8. Many roles within Who Cares? Scotland would not require PVG membership based on job title alone – for example, Business Support Officer or Public Affairs Co-ordinator. However, the nature of the duties of these posts involves working with children and young people individually and collectively to ask them to share their Care Experience in a public and private setting. We need to be certain that anyone working in this way is suitable to do so. Again, taking a job function-based approach would help to address this situation.

**Question 23: To avoid inappropriate membership, what criteria do you think should be used to decide if an individual is in a protected role?**

There should be reference to the job function as in the examples noted above. The concept of normal duties and activities is still relevant and should not be completely discarded.

Developing a Q&A style tool that helps with assessment and decision-making will be of use. This should be similar to the 5-step assessment tool that was previously available via the old Disclosure Scotland website. This must focus on understanding

why certain judgements are being made on suitability of those who hold criminal convictions.

**Question 24: Do you think that the decision about whether someone who is in a protected role meets an exception which makes them ineligible for the PVG Scheme should be taken by Scottish Ministers?**

There needs to be a clear mechanism for organisations to explain their reasoning for requesting a PVG based on the duties and activities of the role, rather than just job title alone.

**Question 25: Are there roles that would not be protected roles and therefore ineligible for membership to the new scheme, that should, however, be eligible for a level 2 disclosure?**

Yes, if this is the system that is chosen moving forward. Many roles within organisations such as Who Cares? Scotland where they have regular contact with children in the office for example, but where they do not work directly with children on a regular basis.

However, it is difficult to answer these questions when this is based on a set of disclosure products yet to be decided upon.

**Question 26: Are there any welfare services that provide support to individuals with particular needs that should be added, or are there any services that should be removed?**

Yes  No

N/a.

**Question 26a: If yes, please state what these are**

N/a.

**Question 27: There is the question of the extent to which someone has to be involved in the delivery of a service to bring them within the scope of doing regulated work. At present, the front-line member of staff or volunteer whose normal duties require them to carry out certain activities with an adult, such as 'caring for', means that staff member is doing regulated work.**

**Is this appropriate?**

Yes  No

N/a.

**Question 28: Should the immediate line manager of that member of staff is also able to become a scheme member?**

Yes  No

N/a.

**Question 29: Outwith the activities, a person can be doing regulated work with adults if they work in certain establishments, namely, a care home; or in residential establishment or accommodation for people aged 16 or over.**

**Do you think these are the correct facilities, or should any be added or removed?**

Yes  No

N/a.

**Question 29a: If yes, please state what these are**

N/a.

**Question 30: There are also certain exclusions that apply to work in such establishments. A person whose normal duties involve working in such a place will only be doing regulated work if doing something permitted by their position gives them unsupervised access to adults, and where that contact with the adults is not incidental. Do you think this approach is clear and helpful?**

Yes  No

N/a.

**Question 31: the appointment of a person into certain positions in relation to services for adults means that membership of the PVG Scheme is possible. The positions are:**

- member of a council committee or council sub-committee concerned with the provision of education, accommodation, social services or health care services to protected adults
- the chief social work officer of a council, and
- charity trustee of a charity whose—

**(a) main purpose is to provide benefits for protected adults, and**

**(b) principal means of delivery of those benefits is by its workers doing regulated work with protected adults.**

**Do you think that list of positions is correct?**

Yes  No

N/a.

**Question 31a: Should it be amended either by adding to it, or by taking away from it?**

N/a.

**Question 32: How long should scheme membership last in a mandatory scheme?**

**a) 5 years**

**b) 3 years**

**c) 1 year**

There should be an option for lifetime membership, or membership which lasts as long as someone is in a role. Although we understand that requiring regular positive confirmation of the need for renewed membership would help to address people not remaining on the scheme for longer than necessary, this places an extra burden,

including a financial one if the scheme is to charge each time membership is renewed, on those going through disclosure processes.

**Question 33: Do you think a membership card would be beneficial to you as a member of the PVG scheme?**

Yes  No

N/a.

**Question 34: Do you think a membership card would be beneficial to you as an employer?**

Yes  No

N/a.

**Question 35: Do you agree with the proposals to review the conditions for registered bodies as set out in the Code of Practice and Police Act 1997 and to develop a scheme that can be delivered digitally, that includes registered body duties where possible?**

Yes  No

**Question 36: What is your preferred option for membership and costs for PVG level disclosure?**

Option 1  Option 2  Option 3

Consideration needs to be given to the fee levels and the affordability of these given that many of those who require to be PVG scheme members will be in low paid employment. We do not believe the financial burden should be put on the individual applying for disclosure checks. Organisations should support those with low-income or who have been unemployed etc. to go through these processes. There must be an impact assessment done on those who experience disadvantage, who may be more likely to have criminal records.

**Question 37: Are you in favour of being able to interact with Disclosure Scotland online to manage PVG scheme membership?**

Yes  No

**Question 38: Are you in favour of using electronic payment method for fees?**

Yes  No

**Question 39: Do you have an electronic payment method that you prefer?**

Yes  No

**Question 39a: If you have answered 'yes' please say what it is:**

BACS or Credit Card payment.

The online system should have the ability to produce an itemised invoice/statement to assist with internal accounting and coding of PVG costs.

**Question 40: Do you have any proposals on how the transitional arrangements for moving away from a life-time scheme membership should work?**

N/a.

**Question 41: Should volunteers continue to receive free membership?**

Yes  No

**Question 41a: If no, should they be subject to a reduced fee?**

Yes  No

N/a.

**Question 42: Do you agree that voluntary organisations seeking to benefit from a reduced fee or the fee waiver should be subject to a public interest test?**

Yes  No

N/a.

**Question 42a: If so, how should that test be defined?**

N/a.

**Question 43: Do you agree that employees and employers alike (including volunteers and volunteering bodies) who work or allow an individual to work in protected roles without joining the PVG Scheme or to stay in protected roles after membership has expired should be subject to criminal prosecution?**

Yes  No

This seems unnecessary.

**Question 44: Do you agree that any scheme member who fails to pay the relevant fee to renew their PVG Scheme membership and where there are no employers (or volunteering bodies) registered as having an interest in them in a protected role should exit the PVG Scheme automatically at the expiry of their membership?**

Yes  No

N/a.

**Question 45: Should a person who joined the Scheme as a volunteer and benefitted from free entry later try and register a paying employer against their volunteer membership then the full fee would become payable and a new 5 years of membership would commence. Do you agree with this?**

Yes  No

Again, the wording of this question is difficult as it assumes that the membership will be limited to 5 years, when this hasn't been confirmed by Disclosure Scotland and is included as a consultation question in this form.

**Question 46: Do you agree with our proposals to dispense with the current court referral procedure under section 7 of the 2007 Act?**

Yes  No

We support these proposals as it will result in Disclosure Scotland not holding irrelevant personal information and we think this will further protect people's rights to privacy.

As suggested in the consultation, we welcome the opportunity for individuals to apply to be removed from the list. However, this process must be carried out by Disclosure Scotland with sensitivity and understanding that the process may be distressing, difficult and inaccessible for many who hold convictions which have led to court referrals to disclosure Scotland. There must be clear, understandable information that can be sent directly to those who have been listed on the DS database, without applying to seek protected work.

**Question 47: Are there offences missing from the Automatic Listing Order that you think should be included? You can access the order [here](#)**

Yes  No

N/a.

**Question 47a: if you answered yes to question 47, please list the offences you believe are missing**

N/a.

**Question 48: Do you agree with proposals to create new referral powers for the Police?**

Yes  No

We are concerned that referral powers should not be based on holding ORI, especially if documented by Police when the individual was under 18.

**Question 49: Do you agree these powers should be limited to when police have charged a person with unlawfully doing a Protected Role whilst not a scheme member or where a referral has not been made by a relevant organisation?**

Yes  No

N/a.

**Question 50: Do you think this proposal, to extent the powers of referral currently available to regulatory bodies to local authorities/health and social care partnerships, closes the safeguarding gap in terms of self-directed support?**

Yes  No

N/a.

**Question 51: Do you think that this list of regulatory organisations with powers to make referrals should be amended?**

- Healthcare Improvement Scotland
- The Registrar of Chiropractors
- The registrar of dentists and dental care professionals
- The registrar of the General Medical Council
- The registrar of the General Optical Council
- The Registrar of health professionals

- **The Registrar of nurses and midwives**
- **The Registrar of Osteopaths**
- **The registrar of pharmacists**
- **Social Care and Social Work Improvement Scotland (the Care Inspectorate)**
- **The General Teaching Council for Scotland**
- **The NHS Tribunal**
- **The Scottish Social Services Council**

Yes  No

N/a.

**Question 52: If you think the list should be amended, please give details of additions or removals.**

N/a.

**Question 53: Do you agree with the proposal to provide Disclosure Scotland with powers to impose standard conditions on individuals under consideration for listing?**

Yes  No

We believe imposing standard conditions does not address the issues inherent in the current listing process. WC?S members have expressed serious concerns at the current consideration for listing process, for several reasons:

- The long periods of time involved in the current process, which cause anxiety and uncertainty for individuals being considered.
- Negative impact of the process is the complete lack of clarity about overall timeframes, not only that it takes a long time but that this is not communicated to individuals being considered.
- We have been told by Care Experienced employees wanting to move on from difficult periods in their lives, that the listing process has been negative for them and caused them difficulties.

As mentioned above, WC?S has experience of several cases where Care Experienced people being recruited by our organisation have been considered for listing due to historic crimes committed during traumatic periods of their lives. They were able to keep working whilst making their case in the listing process. If you do not allow an individual being considered for listing to continue working, they may lose their only income and not be able to find alternative work whilst the listing process is taking place. If we are trying to 'rehabilitate' those with criminal records, then preventing them from continuing work would cause them to lose economic stability and support that they may receive from their workplace. The current listing process is highly complex, inaccessible and traumatising for individuals who have historic crimes on their records. <sup>16</sup>

Therefore, to place 'strict supervision restriction' on any person under consideration is unacceptable, as there must be a chance for the individual to make representation

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<sup>16</sup> [WC?S, 2018, Consultation on the Minimum Age of Criminal Responsibility.](#)

as part of the listing process. The only way we could support this is in the most extreme cases and there should be a list of offences/clear criteria which allows these restrictions to be placed on an individual.

Rather than a standard condition to apply to this all under listing – there should be a specific rule put in place for a set of the most serious offences in a listing process, which would then trigger the strict restrictions. For example, a case of rape being committed against a minor and the person working directly with children. However, we know from experience that people are considered for listing for crimes which have specific context and certain traumatic life events attached to them – a conviction alone is not always enough to understand whether someone is suitable to work in protected roles.

**Question 54: If yes, how long should the conditions last before lapsing?**

a) 3 months

b) 6 months

N/a.

**Question 55: Under what circumstances do you think Disclosure Scotland should be able to impose standard conditions and why?**

If standard conditions are to be brought in, they should only be imposed when there is a threat to life or enough risk to make a decision that restricting an individual would benefit those they are working with. However, this must be used only in the most extreme cases. The listing process is a chance for those with criminal histories to make representation and to provide evidence for why they should not be listed – rather than being assumed as dangerous from the outset.

**Question 56: Do you agree that it should be a criminal offence if an individual and employer/voluntary body failed to comply with standard conditions?**

Yes  No

N/a.

**Question 57: Do you agree the age threshold for the shorter prescribed period for a removal application from inclusion on the list(s) to be made should be raised?**

Yes  No

We welcome Disclosure Scotland's action on this, and it is motivated by an understanding that those who commit crimes at a younger age are often trying to move on when coming into contact with PVG processes.

**Question 58: Which option do you prefer?**

a) no change to the age threshold

b) raise the age threshold to under 21 years

c) raise the age threshold to under 25 years

Option A  Option B  Option C

**Question 59: Do you think it's appropriate that organisations, irrespective of where the regulated work is to be carried out, should be informed of a listed individual's barred status?**

Yes  No

N/a.

**Question 60: Do you agree with our approach for PVG Scheme Members in a protected role overseas or organisations employing PVG members to do a protected role, such as providing aid services?**

Yes  No

N/a.

**Question 61: We are proposing that there should be criminal offences in relation to organisations who employ barred persons overseas. Do you think that we should also consider introducing criminal offences in relation to barred individuals offering to undertake a protected role overseas?**

Yes  No

N/a.

**Question 62: Are there any offences missing from either list, those being schedule 8A or schedule 8B, that you think should be included? If so what are they, on what list should they appear and why?**

For behaviour that took place **when the individual was under 16 years old**, or which was dealt with at a Children's Hearing, **we believe there should be a strong presumption that this is never disclosed**. The only exceptions to this would be in extreme cases when a clear and serious risk had been identified and these would need to be dealt with on a case by case basis, considering the wider context of the individual's life and circumstance. As such, the offences listed at schedule 8A and 8B will not be relevant in these circumstances.

*"I had no support, and now something as stupid as that comes up on a PVG. The way I looked at things changed, I just needed the right support."*

- WC?S Member

For offences committed when an individual was over 16 years old, and that were dealt with by a Court (rather than at a Children's Hearing), there may be circumstances in which disclosure is appropriate. However, we would again recommend that this is dealt with on a case by case basis taking into account the offender's wider life experiences and circumstances. As such, we seem limited benefit in set categories of offences such as those provided at schedule 8A and 8B and would instead recommend guidance be provided to assist in the individualised assessment of offences in the context of wider life experience and circumstances.

*"There should be information about what happened at the time of the crime like context and care background."*

- WC?S Member

**Question 63: Are there any offences on schedule 8A that you think should be on schedule 8B? If so, please list them and explain why.**

Please see answer to question 62.

**Question 64: Are there any offences on schedule 8B that you think should be on schedule 8A? If so, please list them and explain why.**

Please see answer to question 62.

**Question 65: Do you agree with the categorisation of the new offences included in Annex C?**

Yes  No

N/a.

**Question 65a: If no, please state how they should be categorised.**

N/a.

**Question 66: Do you believe the rules for disclosure in the current form of 15 years and 7.5 years provide appropriate safeguarding and privacy protections?**

Yes  No

These rules do not apply to ORI and therefore do not provide appropriate privacy protections. We recommend that CYCJ's response is referred to for more detail on the position we support in terms of rehabilitation periods.

**Question 67: Do you agree that a reduction in the disclosure periods from 15 & 7.5 years is appropriate considering the changing policy on rehabilitation of offenders?**

Yes  No

This is difficult to answer without a full knowledge of how the policy on rehabilitation of offenders will change. As this is an ongoing process, it is not possible to have such knowledge at this stage.

**Question 68: What period between 11 and 15 years do you think is appropriate for disclosure?**

11  12  13  14  15

N/a.

**Question 69: Do you think the application process to seek removal of a spent conviction should be reviewed?**

Yes  No

Yes, the application process depends on individuals being aware of and using relatively complicated process to have the spent conviction removed. Such a process places responsibility with the individual. Care Experienced people are often deprived of information and control over their own lives in the care system, and the application process adds yet another barrier which they must navigate. If convictions are spent, then is there any reason why they should not automatically be removed? What is the benefit to society for requiring the individual to go through this process first? Is someone deemed to be a lower risk to children or vulnerable adults because they've successfully navigated an administrative process?

**Question 70: At present, an individual has three months from the date of notification of an intention to appeal to make an application to a Sheriff. Do you think this time period is:**

**Too long  Too short  Correct**

See answers to questions 53 and 69 on the difficulty of disclosure processes for individuals with criminal records.

**Question 70a: If you indicated that the time period is too long or too short, what do you think the time period should be?**

N/a.

**Question 71: Do you think any of the options set out above, those being the *introduction of an administrative process stage prior to application to a sheriff, the introduction of an independent reviewer or making an application to a tribunal*, offer viable alternatives to an application to a Sheriff?**

**Yes  No**

Why is the first option prior to application to the sheriff and not instead of?

We are unable to answer this question as we want to see Disclosure Scotland takeaway hurdles created by complex administrative processes. We do not understand how these options would work in practice.

**Question 71a: If yes, which one?**

N/a.

**Question 71b: If not, do you have any other suggestions?**

N/a.

**Question 72: Do you agree that Ministers should have a power to issue statutory guidance to Police Scotland on the processes governing the generation and disclosure of ORI, including seeking representations from the individual before issuing it for inclusion on an enhanced disclosure or PVG scheme record?**

**Yes  No**

Yes, however ideally the disclosure of ORI should cease altogether.

**Question 73: Do you agree with Ministers proposals to allow for representations to the chief constable before disclosure of ORI to a third party and for providing the individual with the option to appeal to an independent reviewer before ORI is disclosed?**

**Yes  No**

Yes, however ideally the disclosure of ORI should cease altogether.

**Question 74: Do you agree that the independent reviewer being appointed under the ACR Bill should be used for reviewing ORI?**

**Yes  No**

**Question 75: Should there be specific provisions reducing the possibility of the state disclosure of criminal convictions accrued by young people 12 years or older on all types of disclosure?**

Yes  No

**Question 75a: If there should, what age range should the special provisions apply to?**

1. 12 – 14 years
2. 12 – 15 Years
3. 12 – 16 years
4. 12 – 17 years
5. 12 – 18 years
6. 12 – 21 years

In our view the age range should be at least 12-21 for Care Experienced people. We encourage Disclosure Scotland to consider a higher upper age limit for those who are Care Experienced, due to the lifelong effects of experiencing trauma and separation.

**Question 75b: Please tell us why you have selected an age range or given your answer.**

Understanding the context of a crime is viewed as paramount by our Care Experienced members, especially if it took place in a care setting or whilst a young person was in care. One young person has shared their story of receiving a conviction whilst in residential care, which shows up on their PVG. They are now worried how this will affect them in future.

*“There should be information about what happened at the time of the crime like context and care background.”*

- WC?S Member

Therefore, we have chosen the maximum age range as Care Experienced people should be afforded special consideration when considering criminal records in disclosure processes. This is because crimes committed during someone’s Care Experience has specific context that must be considered when being reviewed in disclosures. This also means Disclosure Scotland will uphold the commitments made in their corporate parenting plan<sup>17</sup>, to consider where they could improve their services and processes for Care experienced young people, and which should apply to Care Experienced people aged up to 26 years old.

Furthermore, Scottish Government has recently introduced a bill to increase the minimum age of criminal responsibility to 12 years old, yet this merely recognises the lowest internationally acceptable age. The UN Committee on the Rights of the Child suggests a higher MACR ‘for instance 14 or 16 years of age’. In our view, the MACR should be raised to at least 16 years old, and we recognise that for Care Experienced people they may continue to be unfairly criminalised beyond this age. Therefore, by extending special provisions up to 21, Care Experienced people can be supported to move on and seek employment and not have their convictions held against them.

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<sup>17</sup> Please see [Disclosure Scotland’s Corporate Parenting Plan](#).

*“I understand places need to know about criminal past but only certain things that should be brought up but jail for shoplifting at 14, employers don’t need to know that.”*

- WC?S Member

**Questions 76: Should there be a presumption against the disclosure of all convictions accrued between 12 and a specified upper age, with the only possibility being police disclosure as ORI after ratification by the Independent Reviewer on the Level 2 and PVG Level disclosures?**

Yes  No

We suggest that there should be a strong presumption against disclosure for all convictions accrued between the ages of 12 and an upper age limit that is specifically relevant for those with Care Experience. We think there should be a strong presumption against disclosing any conviction received at a Children’s Hearing. That presumption could be overturned, but only in the most serious of cases, where risk to children and young people had been clearly demonstrated. As stated in our answer to question 75, this is because crimes committed during someone’s Care Experience has specific context that must be considered when being reviewed in disclosures. This also means Disclosure Scotland will uphold the commitments made in their corporate parenting plan<sup>18</sup>, to consider where they could improve their services and processes for Care Experienced young people, and which should apply to Care Experienced people aged up to 26 years old.

However, we do not believe that police disclosure as ORI (even with ratification by the Independent Reviewer) is in any way a suitable alternative to disclosure of conviction information as we have serious concerns in relation to human rights when it comes to ORI (particularly in relation to the right to a fair trial and the right to private life).

This is of particular concern to Care Experienced people as we know that care can have a criminalising effect<sup>19</sup> due to stigma and stereotyping by police (and wider society), increased contact with the police from an early age and police being called to attend minor incidents that would not generally attract police attention in a typical family home.<sup>20</sup>

As such, we would be very wary of introducing any scheme that might increase the frequency or volume of ORI disclosure, particularly in relation to children and young people, and ideally would like to see disclosure of ORI cease altogether.

or

**Question 77: Should there be no state disclosure of any conviction between the age of 12 and the specified upper limit, except where the conviction is for an offence listed in schedule 8A or 8B?**

Yes  No

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<sup>18</sup> Please see page 11 of [Disclosure Scotland’s Corporate Parenting Plan](#).

<sup>19</sup> For more information please read: [WC?S, 2018, Report on the Criminalisation of Care Experienced People](#).

<sup>20</sup> For more information, [The Howard League are currently researching the criminalisation of children in residential care](#).

Please see questions 62 and 76.

**Question 78: If there is a disclosure of an 8A or 8B conviction(s) should all other unspent convictions be disclosed even if the other unspent convictions are for offences not listed in schedule 8A or 8B?**

Yes  No

Please see question 62.

**Question 79: Should disclosure applicants with 8A and 8B convictions be able to apply immediately to a sheriff (or other authority) to have those treated as protected regardless of the passage of time?**

Yes  No

**Question 80: When including ORI on any disclosure about conduct between the age of 12 and the upper age limit should the police only be able to refer to matters they reasonably considered to be serious?**

Yes  No

No, ORI for children should not take place and we have serious concerns that disclosure of this information is a breach of the right to a fair trial and the right to private life.

**Question 81: Do you agree with the proposal to place a lower age limit on applicants for criminal record checks?**

Yes  No

If this happens, must ensure that those under the age limit can still work in protected roles and not discriminated against by employers in recruitment processes.

**Question 82: In what circumstances should a criminal record check for a child under 16 be permitted?**

N/a.

**Question 83: Do you have any concerns with the proposal to introduce a minimum age of 18 years for people who want to become registered person or those who are nominated to be countersignatory in connection with Level 2 and PVG Level disclosures?**

N/a.

**Question 84: Do you think a supported person arranging self-directed social care should have access to vetting information which could include details about previous convictions relating to a prospective carer?**

Yes  No

N/a.

**Question 84a: If you responded 'No' to Q84, do you have any suggestions about how Disclosure Scotland checks could be structured to assist a supported person making their own arrangements for self-directed social care?**

N/a.

**Question 85: Do you think this approach for private individuals working with children or protected adults is correct?**

Yes  No

N/a.

**Question 86: Do you think that specialised interpreters whose assistance may be needed to allow a person to participate in day-to-day life it should be regulated work?**

Yes  No

N/a.

**Question 87: Should vetting information be available if the arrangements are being made by a private individual?**

Yes  No

N/a.

**Question 88: Do you agree that the law be changed to sort this anomaly that a charity must have one main purpose only, that is work with children or work with protected adults, for a trustee to be able to join the PVG Scheme and if a charity has as its main purpose services directed at both vulnerable groups then trustees cannot apply to join the PVG Scheme?**

Yes  No

N/a.

**Question 89: Do you think that provision should be made to bring into force the amendment at section 78(1) of the 2007 Act that would have allowed information about a notification requirement under the 2003 Act made following an application by a chief constable to be included on a basic disclosure?**

Yes  No

N/a.

**Question 90: Please tell us about any potential impacts, either positive or negative; you feel the proposals in this consultation document may have on any particular groups of people?**

We are concerned that the potential financial burden for Care Experienced people going through disclosure processes could be substantial. We would ask that as a corporate parent, Disclosure Scotland operate a fee waiver for Care Experienced people relying on disclosure processes. This will ensure that any proposals do not adversely affect Care Experienced people.

For more information on the potential impacts, please see our answer to question 91.

**Question 91: Please tell us what potential there may be within these proposals to advance equality of opportunity between different groups and to foster good relations between different groups?**

We believe that Care Experienced people should be treated as a specific equalities group, which is why we are keen corporate parents they consider how they could

take this approach into their own services. For example, the recent decision to exempt Care Experienced people from council tax.

As set out in the corporate parenting plan<sup>21</sup> for Disclosure Scotland, they will 'consider Care Experienced young people in all Equality Impact Assessments' and therefore, it is important that for this review, there is an Equality Impact Assessment which specifically considers the impact of proposed changes on Care Experienced people.

#### Discrimination faced by Care Experienced people:

As stated by our membership, Care Experienced people are treated differently because of their care identity and we know that Care Experienced children and young people are some of the most marginalised, socially disempowered, and stigmatised individuals in Scotland. As a result, we believe that Care Experience should be treated as a protected characteristic for the purposes of the Equality Impact Assessment and more broadly.

This is particularly relevant for corporate parents. Under section 58(1)(c) of the Children and Young People (Scotland) Act 2014, corporate parents (including Scottish Ministers and Disclosure Scotland) have a duty to promote the interests of Care Experienced young people.<sup>22</sup> The statutory guidance on corporate parenting makes it clear that this duty includes acting to tackle the discrimination faced by Care Experienced young people.<sup>23</sup> This means that discrimination based on care identity has been recognised at a statutory level in Scotland, and corporate parents have a duty to tackle that discrimination.

Discrimination against Care Experienced young people takes many forms, but as mentioned previous, Care Experienced young people face circumstances that lead to higher rates of criminal convictions at a young age. It is often indirect discrimination which is being allowed to perpetuate or has been given permission to exist because of over-involvement with police procedures because of the placement type or police knowledge of the wider family the young person might be living with via care arrangements.<sup>24</sup>

#### **Question 92: Please tell us about any potential impacts you think there may be to particular businesses or organisations?**

N/a.

#### **Question 93: Please tell us about any potential impacts you think there may be to an individual's privacy?**

As mentioned before, we are particularly concerned about the use of ORI in disclosure processes. See answer to question 94 for more detail.

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<sup>21</sup> Please see page 9 of [Disclosure Scotland's Corporate Parenting Plan](#).

<sup>22</sup> Corporate Parenting duties are defined in law, [by Part 9 of the Children and Young People \(Scotland\) Act 2014](#).

<sup>23</sup> [Children and Young People \(Scotland\) Act 2014: Statutory Guidance on Part 9: Corporate Parenting](#).

<sup>24</sup> For more information please read: [WC?S, 2018, Report on the Criminalisation of Care Experienced People](#).

**Question 94: Please tell us about any potential impacts, either positive or negative; you feel the proposals in this consultation document may have on children?**

We look forward to reading the Child Rights and Wellbeing Impact Assessment that will set this out in more detail.

In our view, the complicated and little understood process of disclosing criminal offences received during childhood is a failure to uphold and protect UNCRC rights. An inquiry into the comparable English and Welsh disclosure system suggested that the disclosure process for youth criminal records falls short of the UK's obligations under the UNCRC, by not being distinct from the regime for adults and for working against the aim of rehabilitating children, whilst 'undermining children's privacy'.

Furthermore, the criminalising of children and young people is a violation of their human rights in and of itself. As mentioned above, the UN Committee on the Rights of the Child suggests a higher MACR than 12 and in our view the MACR should be raised to 16 years old. We appreciate this is outside the scope of this consultation, however, it is important to note that this is an opportunity to significantly improve respect for children's rights in Scotland. Whilst the MACR remains lower than 16 we should at least ensure, outwith extreme circumstances where a clear and significant risk has been identified, that disclosure of convictions accrued during childhood, early adulthood and at Children's Hearings is ended.