

Who Cares? Scotland's Response to the Progressing Children's Rights in Scotland: An Action Plan 2018-21 Consultation

September 2018



Who Cares? Scotland [WC?S] is an independent advocacy and influencing organisation working with care experienced people. We provide direct advocacy to care experienced young people, as well as opportunities for national and local participation. WC?S aims to provide looked-after children and young people in Scotland with knowledge of their rights. We strive to empower them to positively participate in the formal structures they are often subject to solely because of their care experience. At WC?S we utilise the voice of the care experienced population of Scotland to inform everything we do as an organisation.

1. Do you agree that the Action Plan should include:

- i. Identified strategic actions intended to secure transformational change in how children and young people experience their rights.

Yes/No

- ii. A summary of specific initiatives being taken forward across all Scottish Government portfolios that captures what we will do in the next 3 years to secure better or further effect of the UNCRC principles.

Yes/No

- iii. A number of key policy specific actions identified through the consultation process that are not currently being taken forward through other Scottish Government initiatives.

Yes/No

Where you answered 'No' to any of the above questions – please provide your reasons why you did not agree.

2. Do you agree that the 4 proposed strategic actions are appropriate and will help to take forward the principles of the UNCRC?

- i. Development of a dynamic Participation Framework for Children and Young People.

Yes/No

- ii. Ambitious delivery, through co-production, of the 3 year children's rights awareness programme.

Yes/No

- iii. Progressing the comprehensive audit on the most effective and practical way to further embed the principles of the UNCRC into policy, practice and legislation, including the option of full incorporation into domestic law.

Yes/No

iv. Evaluation of the Child Rights and Wellbeing Impact Assessment (CRWIA).

Yes/No

3. Are there ways in which the proposed strategic actions listed above could be further strengthened? - please specify.

We are responding to this consultation as Who Cares? Scotland (WC?S) has a proven track record in supporting care experienced people to have their voices heard. As a membership organisation of over 2,000 care experienced members, WC?S acts only on what people with care experience tell us. We have expertise working alongside care experienced people and mobilising them around their experiences of care, which allows us to capture their story in creative, supportive and empowering ways. In turn, this enables the care experienced voice to influence and shape policy and practice.

Strategic Action 1: Development of a dynamic Participation Framework for Children and Young People

WC?S strongly believe that understanding lived experience is the route to change which can truly redress the inequality in Scottish society. Individuals who have been in care are the experts in their own experience, which means they have a lot to offer. Those in power should not only listen to their ideas, hopes and aspirations, but should learn from and act on them. Listening to children and young people, and the care experienced community, links to a wider political shift, to ensure that the most vulnerable members of our population participate in deciding the changes which seek to help them.

“I feel that local authorities should be coming to us, asking for help. I think we should just be listened to. I feel like we need to be heard and supported.”

- **Quote from WC?S Care Councillor, April 2018**

Our theory of change has been developed based on our learning over the last 5 years. It demonstrates our commitment to building capacity within the systems and organisations that have the potential to positively affect the outcomes and life chances of care experienced people, through engaging care experienced people more meaningfully and improving practice and services as a result. Our relationship-based approach, built up over time, allows WC?S to invest in developing care experienced people’s sense of self, and importantly, help them explore and understand how their care experience might contribute to their identity. Investing in care experienced people in this way takes time and provides insight that can transform care and the outcomes of care.

This is why we are welcoming the opportunity for the Action Plan to create a sustainable shift in the culture and processes of policy-making at both a national and local level, to deliver transformational change in how children and young people experience their rights in Scotland and ensure their voices significantly influence public services and decisions which affect their lives. However, we know there must be a real commitment from Scottish Government to realise meaningful participation by investing financial resource in the Participation Framework implementation. Below we have outlined some key points which must be considered in order for this to be a ‘transformational’ strategy.

Inequality and Accessibility:

When designing a participation framework, it must be acknowledged that there are barriers to participation which exist for a variety of children and young people who are affected by inequality and lack their rights being realised on a cultural and structural level, creating an adverse impact that they experience on a daily basis.

From our own organisational experience, we know there is inequalities in accessing different forms of information and opportunities to participate, which specifically exist for children within the care

system. Many young people in care lack parental support and a wider support network of trusted adults, who may encourage them to speak out and use their voice for change. There are also inherent issues for care experienced young people in accessing digitally based networks or platforms – one of the suggested forms of engagement in the strategy. For example, through our advocacy work we know there are concrete barriers to free and private internet access, such as lack of wifi in certain residential placements across Scotland and certain local authority's use of services like Netopian to monitor online behaviour.

Another key example of inequality, which affects the participation of children, is demonstrated by the way that Children's Hearings are practiced in Scotland. The Children's Hearings System is designed to be a process where children and young people's views are "heard, respected and valued" (CHS, 2018). Yet, we know the participation of children and young people in their hearing can be impacted by the fact many hearings take place during school hours. We believe this shows that on a structural level, there are systems designed which do not allow all children's rights to be fully fulfilled in parallel. When a hearing is scheduled during the school day, Article 28, the right to education is supposedly superseded by the Article 12, the right to participate. Yet participation should happen in a way which respects all of children's rights and does not lead to a choice being made in the first place.

These few examples demonstrate how existing rights for many children and young people are not being realised due to the inequalities they face. This can mean, as with the CHS, that many are not able to fully participate in their own lives, let alone with the decision making at local and government level.

Therefore, to create truly inclusive engagement within a participation framework, inequalities must be recognised. There must be an active effort and commitment within this strategy, to remove barriers to participation for children and young people. There needs to be an understanding that a culture has been created which can mean young people don't or can't participate – it is not enough to promise to include them, there must be pro-active effort to outreach and create accessibility. If resource is not set aside to create opportunities which reach the most vulnerable and hard-to-reach individuals, their voices will remain silent within the work of Scottish Government and beyond.

Our Promising Practice of Participation:

WC?S have organisational experience of practicing participation, which can contribute useful learning for the framework. As discussed above, care experienced voices generally do not reach target audiences by themselves. In their day to day lives, care experienced young people often require support to have their voice heard and views considered through independent advocacy. WC?S is the national provider of this service and this work is founded in relationship based practice.

We provide opportunities for members of all ages, stages, abilities and background to come together and connect. We create safe and valued spaces, both local and national, where our members can explore their identities and shape the world around them. Relationships are, therefore, at the centre of everything we do and each care experienced person we work with enters a voluntary agreement by signing up to our membership and choosing to access our wide and varied range of participation opportunities as and when it suits them. The level at which children and young people choose to engage with us and the work we do is completely up to them. This engagement can change as the age and stage of the young person, or when their circumstances change. At any point, they can opt in or out of as much or as little activity as they like.

We have 6 core values which underpin our approach, which are:

1. Voice: We will value the voice of care experienced individuals and groups and will work with them to identify ways to amplify voice.

2. Growth: Our approach is informed by the belief that people with care experience have an amazing capacity to grow as individuals and to shape the world around them.
3. Relationship: Our approach is based on meaningful and equal relationships with those taking part.
4. Opportunity: Our approach recognises that at all members have different starting points and will seek to create positive opportunities for them to engage.
5. Learning: Our approach creates the learning space for people with care experience to better understand their experiences, their rights and their potential.
6. Difference: Our approach values difference and will seek to include people with care experience as widely as possible.

Ensuring participation of children and young people at a local and national level will be a complex process to undertake and there is no one solution. We would like to work with Scottish Government to share our learning and organisational experience of participation, as well as connecting those in charge of the framework's success with the members of our organisation.

Some initial examples we can give of our participation work, is available on our corporate parenting website – which contains videos and reports created from care experienced people's voices, to make sure they are heard by corporate parents across the country. To find these resources, please visit: <http://www.corporateparenting.org.uk/>

Strategic Action 2: Ambitious delivery, through co-production, of the 3-year children's rights awareness programme

We recommend that the audit on the most effective and practical way to further embed the principles of the UNCRC into policy, practice and legislation, including the option of full incorporation into domestic law, happens before the rights awareness raising 3-year campaign takes place.

This will ensure that the content promoted on raising awareness of rights includes how children and young people can use their rights in practice and to improve their everyday lives. We have seen practice where campaigns have aimed to raise awareness of rights, for example the right to family life, yet young people are told how this should happen by courts, the Children's Hearing System and many other formal processes in which the realisation of this right is taken out of their hands.

A practical application of rights is key to ensure they become real for children and young people in Scotland. Again, we have learnings from the education and training practice of our Corporate Parenting Team. Their task is to help corporate parents understand how to uphold the rights of care experienced people that they have duties to implement in their everyday practice as public bodies. The video work with our care experienced members, carried out by the corporate parenting team, shows good examples of how this has been done: <http://www.corporateparenting.org.uk/young-people/our-stories/>.

From this work, we know that lived experience must be a part of how this awareness raising is conducted and carried out. It has high impact, empowers those who share their life experience and leads to real changes in organisational culture and practice. WC?S could offer Scottish Government a source of learning for how to effectively communicate messages in training and awareness raising, which could be utilised in a children's rights awareness programme.

Strategic Action 3: Progressing the comprehensive audit on the most effective and practical way to further embed the principles of the UNCRC into policy, practice and legislation, including the option of full incorporation into domestic law.

As stated above, we suggest the audit must take place before any kind of awareness raising campaign on children's rights. Decision-makers, influential public bodies and the Scottish legal system needs to understand what children's rights mean in practice, before we try to educate Scottish society about them.

Strategic Action 4: Evaluation of the Child Rights and Wellbeing Impact Assessment (CRWIA).

We suggest that as part of this evaluation, there should be inclusion of whether the CRWIA matches with the ministerial Corporate Parenting duties, as part of the Children and Young People (Act) 2014.

Scottish Ministers, including the Scottish Government Executive Agencies and Scottish Government Directorates, are all Corporate Parents with exemptions from some duties set out in sections 61 – 64. However, all are included in Ministers' early commitment to the principles of corporate parenting and the First Minister is recognised by care experienced children and young people as de facto 'Chief Corporate Parent'. Also below is an excerpt from the recent report: *Turning legislation into practice together. First Report on Corporate Parenting Activity in Scotland April 2015 – March 2018:*

"The Scottish Government plays a part in every issue that matters to people in Scotland and so our responsibilities in relation to the issues of importance to looked after children and care leavers are wide ranging at an organisational level and as leaders of change."

There is potential for Scottish Government to uphold their corporate parenting duties through CRWIA's by ensuring the process understands and investigates how care experienced people could be affected by changes proposed.

4. Are there additional or alternative strategic actions that the Scottish Ministers should consider? - please specify.

Corporate parenting plays a key role in the realisation of children's rights who are care experienced. In the statutory guidance published by Scottish Government in relation to Part 9 of the Children and Young People (Scotland) Act 2014, a direct link between corporate parenting responsibilities and the UNCRC was made:

"It is important to note that the 'corporate parenting responsibilities' are underpinned by the United Nations Convention on the Rights of the Child (UNCRC), and closely linked in with the obligations set out in Part 1 (Rights of Children) of the Act. It is recommended therefore, that all corporate parents should have a good understanding of the UNCRC, and what it means for their organisation."

WC?S suggest that Scottish Ministers should utilise powers given to them in Part 9 of the Children and Young People (Scotland) Act 2014, to request information from corporate parents in order to undertake an assessment of UNCRC compliance of their practice as public bodies.

Below is an excerpt from subsections 134 and 135 on section 62 of the statutory guidance on corporate parenting:

"Please note that while it is likely that requests for information by Scottish Ministers will come every three years, Scottish Ministers are empowered to ask for relevant information at any time. Corporate parents should have suitable arrangements in place to generate the required information on request."

The duty to provide information to Scottish Ministers (section 62) provides a layer of accountability, through which the performance of corporate parents, and the outcomes achieved, may be monitored. On the basis of the information provided, Scottish Ministers may take action to improve

the way a corporate parent exercises its functions under Part 9 of the Act (such as issuing a direction under section 64 or updating guidance).”

A key action Scottish Ministers could carry out to realise the rights of children would be to utilise this power to request information, in order to better understand how many Children’s Hearings take place during school hours. In 2016/17, the Scottish Children’s Reporters Administration reported 34,106 Children’s Hearings were held for 14,610 children and young people, yet we do not know whether these hearings compromised those children and young people’s right to their education. We also think this could be a useful opportunity to understand how many children and young people physically attend their hearing, or if not present, have their views expressed by an advocacy worker or in some other form. This statistic is also not present in the SCRA report analysing the hearings which took place in 2016/17.

Children’s Hearings Scotland and the Scottish Children’s Reporters Administration are both named corporate parents and are therefore vital in upholding the rights stated in the UNCRC for the children and young people who are affected by the services they provide.

Creating strategic actions which investigate and hold to account those who provide services and affect the daily lives of children is key in realising rights for children and young people in Scotland. We fully support and recognise that raising awareness of the UNCRC is important, but the structure of certain systems, such as the CHS, means that certain rights of the child are already designed to be in conflict. Scottish Ministers have an opportunity to assess whether the rights of children have been considered when public services design their approach to provision and this would be effective in ensuring the other strategic actions suggested have transformative impact.

If you wish to discuss this consultation, please get in touch.
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