

# Who Cares? Scotland

Rights Abuses as Experienced by Young People During and After Care

October 2014



## Introduction

Looked after children and young people are some of the most marginalised, socially disempowered and stigmatised in Scotland. Due to their experiences, they often do not trust those around them, and many struggle to make meaningful relationships with peers and adults alike. This lack of trust, alongside low self-esteem and few constructive opportunities means that looked-after young people and care leavers can become disengaged from community life and social integration along with active citizenship can be difficult, if not impossible for many. Who Cares? Scotland strongly believes that by supporting these young people to develop and harness skills to understand and voice their rights via long term and stable relationships is essential to empower them; allowing them to break down the barriers they come across throughout their young lives that prevent them from succeeding, achieving and being in control.

The realisation of rights in childhood alongside effective and full participation in the structures that affect their lives, encourages a confident and socially active young adulthood. It is widely recognised that active citizenship has the potential to strengthen the position of traditionally excluded and socially disempowered groups by encouraging stability and social growth. The lack of opportunities, skills and confidence to be active citizens in our society, only compounds the feeling of difference which these young people feel both during and upon leaving care. Who Cares? Scotland believes that the realisation of rights are pertinent to increasing the life chances of looked after young people. When this happens, the process of mobilising their voice and increasing their ability to participate in their lives fully, will truly ensure that they are empowered both during and after their care experience.

## The Right to Be Listened To

Article 12 of the United Nations Convention on the Rights of the Child, states that young people must be listened to and consulted with on matters which affect them. At Who Cares? Scotland we have extensive experience of working in partnership with care experienced young people up to the age of 26. This experience has taught us that it is imperative that young people are given the opportunity to articulate their views and be listened to – and more importantly for there to be a variety of ways in which they can do that both formally and informally. The young people we engage with direct us to support them to voice their views within the complex care system that they are forced to navigate on a daily basis. This is where the need to have long-term, stable relationships right by their side during care really matters. By ensuring that the individual and collective voice of the care experienced population is heard by those supporting them, assessment of needs will be

better informed - reducing the risk of inappropriate intervention being implemented. The truest application of GIRFEC will only happen where looked after children are at the absolute core of their care planning processes and overall care journey. This would also ensure that stretched state resources are utilised more effectively and importantly, correctly.

For the 'right to be heard' to be fulfilled for Scotland's looked-after and care leaver population, we must understand how it is experienced on both an individual and collective basis. For the individual in Scotland, the new Children and Young People (Scotland) Act 2014 ensures that practitioners and service providers, as corporate parents, must seek the views of the young people supported when tailoring support to mitigate against the deficit in need. It is also vital if corporate parents are to fulfil their upcoming duties to safeguard the well-being of looked after children and care leavers via the services they deliver. The legislation ensures that the views of those supported must be collated however it does not state how this should be done. Who Cares? Scotland believes that young people should be able to access empowering support that enables them to voice their views on their own care experience. It is important that when fulfilling this role, any support provided should be independent from the same structures as service providers; minimising the risk of conflict of interest. Only once this support is distinct from those providing the service, can the 'right to be heard' be truly met.

Currently in Scotland, the collective fight to be heard is rising. Increasing numbers of the care experienced population are coming together and uniting to achieve positive change within the care system. Numbers have been increasing since young people helped shape the new Children and Young People (Scotland) Act 2014, when young people and adults alike began to recognise the power of the voice. Care experienced young people being able to constructively help shape legislation has seen the awakening of a collective movement. We believe that this movement has to be encouraged and listened to. By listening to our care experienced population the people of Scotland will develop a greater understanding of the issues faced by this misunderstood and marginalised group. This understanding will encourage better integration, strengthening care experienced young peoples' attachment to their community.

### **Independent Advocacy**

Who Cares? Scotland is committed to the promotion and delivery of quality independent advocacy services for children and young people with care experience. We also recognise the role of non-independent advocacy and its place on the advocacy continuum, with family members at one end of the scale and independent advocates at the other. However for young people making their way through the care system, the presence of an independent, professional advocacy worker is integral to ensuring their rights and views are effectively protected. For this reason an independent advocate must be a provision entirely separate from those who provide a service to the young person and free from the statutory services which can often be of a position which is at odds with the young person's views. Only through this independence can conflict of interest be avoided.

The young people we engage with have informed the view that advocacy provision is inconsistent across Scotland, with service delivery dependant on decisions made by each local authority. Not all

care experienced young people can access professional independent advocacy tailored to the needs of care experienced young people; in our estimation less than 20% of Scotland's looked after population have access to or receive independent advocacy support. Experience has demonstrated that to safeguard vulnerable children and young people it is of utmost importance that independent advocacy is accessible.

### **Active Citizenship**

The right to be an active citizen in our society; the right to exercise democratic influence and the right to have the necessary level of and access to support and opportunities needed to maintain a normative standard of living exists for all of Scotland's population. We believe that this philosophy and indeed theoretical commitment to active citizenship links well with understanding the significance that rights realisation in childhood and young adulthood has in achieving it in practice. The notion of linking rights with responsibilities that the state has towards its citizens – and of course vice versa - marries well with the idea of supporting care experienced young people to take control of their lives, both today and tomorrow. However if we as professionals do not ensure that their rights are realised throughout childhood, the opportunity to live a socially active life can be reduced considerably.

Who Cares? Scotland identifies active citizenship as relating to a normative standard of living in aspects of life which are the cornerstones of social, economic and political participation and the ultimate way to realise and sustain positive wellbeing: accommodation, education, health and employment. Who Cares? Scotland advocacy workers are continually asked to support young people with advocacy tasks relating to each of these areas. Unfortunately such advocacy asks continue to be as relevant today as ever, examples of which follow in the case studies below.

#### *Case Study 1 - Accommodation*

Recently a young person requested the support of our advocacy service after she found herself to be homeless. The young person, who was now 25, had previously experienced rough sleeping whilst she was at school. The young person also had struggled with addiction issues, along with suffering from poor mental ill health. At this point she found herself to be homeless due to her relationship with her mother breaking down. The young person was aware of her rights and that presently in Scotland; all those who find themselves unintentionally homeless are legally entitled to accommodation. Unfortunately local authority homeless casework team informed her that there was no accommodation for her in the entire area. It was a Friday afternoon and she was advised to present at the out of hours service at four o'clock. The young person waited until before 10 o'clock that night when we were told that the local authority could only offer advice and assistance – as a result this young person was forced to stay at an inappropriate housing arrangement over the weekend.

On the Monday morning the young person was supported by her Who Cares? Scotland advocacy worker to present again at her local casework team. After a full day of waiting, she was again told that the local authority had no accommodation for her. The duty worker noted that she was aware

that the local authority was not adhering to their legal obligations however there was nothing more than advice and assistance that could be offered. The young person again had to spend a night in a place where she did not feel safe or secure.

On the Tuesday we again presented to the local case work team who advised that there was no accommodation available. At this point we contacted another third sector organisation. This organisation has the capacity to provide legal representation for those who find themselves in a homeless situation. They contacted the local authority and stated that if the young person was not found suitable accommodation then they would seek a judicial review to be held to challenge the local authority's stance. In just over an hour the young person was allocated supported accommodation tailored to the needs of vulnerable homeless young people. This is despite previous attempts at securing any form of accommodation failing, and despite the young person being aware of the statutory obligations of the local authority.

### *Case Study 2 - Health*

A care experienced young person, who at this point was 21 and had been out of care for several years, spent 11 months on remand in a young offenders' institution for a serious crime following several years of homelessness and chaos due to a poor transition out of the care system. The young person was ultimately found not guilty and released from remand. On her return to the community she moved to a new local authority and registered with a GP practice. At her first appointment with the GP, the young person disclosed that she had spent time on remand for a serious crime. The GP, despite understanding that she had been found not guilty, refused to accept the young person as a permanent patient within the practice due to their period of time spent in prison.

The young person in this situation sought support from their project worker to question this decision. While the GP has the right to refuse registration on certain grounds, this situation was not reason enough and was in breach of The Patient's Rights (Scotland) Act 2011. While the decision could have been contested by the young person with support, they chose not to fight against this decision due to the embarrassment they felt at having been judged in this way.

### *Case Study 3 - Education*

As recently as this year, a Who Cares? Scotland advocate was approached by a looked-after young person who was experiencing discrimination in their mainstream education placement. The young person had recently moved to a new placement within a residential children's unit and had requested a place at the local school. The Head Teacher chose to deny this young person a place at the school solely based on their care status. He based his decision on his power as a Head Teacher to have the final say. As a result this young person spent weeks out of education as the local authority struggled to change the Head Teacher's position – a direct violation of Article 28 of the UN Convention on the Rights of the Child, where it is stated that no child should be prevented from accessing education.

When this young person approached their advocacy worker, they had already missed a number of weeks of education with little success in changing the mind of the school. The Who Cares? Scotland advocacy worker, due to their knowledge of rights and legislation, was able to construct a letter to

the Head Teacher articulating their responsibilities as a corporate parent and suggesting this could be taken further if necessary. Within the same week as receiving the letter, the head teacher had reversed his decision and the young person was accepted into the school.

#### *Case Study 4 - Employment*

Through our work consulting with the care experienced population we are aware of many examples of their rights being violated in relation to employment opportunities. In this case, this particular young person had made a series of moves through secure accommodation and as part of her transition back into the community, was residing within the close support unit which allowed her a degree of freedom, while remaining heavily supported.

Part of this transition involved this young person spending periods of time unaccompanied in the local community. During one of these times, this young person identified a local hairdresser who was advertising for a trainee role. Without support, this young person arranged to attend an interview and then successfully secured a job – a goal which was outlined within her care plan.

Unfortunately this young person encountered several obstacles relating to their care status. The first issue was in regards to payment. The job had arranged to pay the young person £100 per week cash in hand. However the rules of her 'close support unit' stated that any young person in the community alone should have no more than £10 at any one time to reduce the chance of absconding. This issue was put to the social worker by unit staff and they were assured he would respond with an answer prior to her start time the following morning. He did not respond as promised and so the young person was unable to attend her first day. Once the social worker had been reached, several hours later, he stated that this young person should be focussing on developing family relationships, rather than looking for a job – despite this being a goal within her care plan. In changing these goalposts, the social worker not only breached the rights of the young person to seek employment, but also breached his statutory duty to seek the views of the young person prior to any decision making under the Children's (Scotland) Act 1995.

#### **2012 Research**

In 2012, Who Cares? Scotland undertook a piece of research to gather information in regards to rights and the care journey from 116 young people across Scotland who currently in receipt of advocacy supports. This research sought to understand the concept and existence of rights as they are experienced by young people in care or who have care experience.

Of the young people consulted with, 64% had a good understanding of what their rights were, while 30% reported to knowing some. The young people we spoke to were in a more positive position due to receiving advocacy support from Who Cares? Scotland where there is emphasis on helping those supported to understand rights and take ownership of their care plan. As a result, the majority of those consulted noted that they had been taught about their rights by their Who Cares? Scotland advocacy worker or through Who Cares? Scotland campaigning work.

It is through this knowledge that many of those consulted with were able to identify times in their lives where their rights have helped them navigate through their care journey. 78% of the young people spoken to, who reported to understand their rights could identify times where this

knowledge gave them the confidence to speak out against decisions made for them. Interestingly, the areas they identified as requiring knowledge of rights in order to fight for their needs fell into three distinct areas: asking for contact with family; contesting placement moves and accessing appropriate education. Unfortunately these three areas continue to be the most prevalent asks for Who Cares? Scotland advocacy workers.

**Who Cares? Scotland**

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