

## Who Cares? Scotland

Response to the Children's Rights Consultation on incorporating the United Nations Convention on the Rights of the Child into our domestic law in Scotland

August 2019



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

### Introduction

For 40 years, Who Cares? Scotland (WC?S) has held voluntary relationships with Care Experienced people across Scotland, which are independent from statutory services and we have been listening to Care Experienced people without judgement, prejudice or professional bias. We are separate and independent to those who provide statutory services to Care Experienced people and because of this we often hear and observe about elements of the 'care system' which aren't so well seen. By providing independent advocacy, we continue to hear from the current care population and those eligible for aftercare about how the rights they are entitled to can be diluted, infringed or disregarded altogether. Therefore, we know that focusing on the provision of independent advocacy and upholding the rights of children and young people is essential to promoting children's safety, ultimately preventing rights infringements and further abuse of children and young people. We have heard through our advocacy relationships, about how values, attitudes and the culture in which professionals operate, can impede the childhood experience of Care Experienced children and young people and lead to their fundamental human rights not being met.

Our vision is for a Scotland where every Care Experienced person has a lifetime of Equality, Respect and Love.<sup>1</sup> This vision was created with Care Experienced people as well as those who support us. As part of realising that vision, we strongly believe incorporation of the United Nations Convention on the Rights of the Child must be realised and have continually called for this throughout our recent influencing work.<sup>2</sup>

We have first-hand experience of how powerful the UNCRC intentions can be when making far-reaching changes to the lives of Care Experienced children and young people in Scotland. It was the intentions of the UNCRC rights which supported 21 of our Care Experienced members to push for the care leaving age to be raised within the Children and Young People (Scotland) 2014 Act process, and provide stronger provisions through meaningful corporate parenting duties, as well as the extension of aftercare support which should now be

<sup>1</sup> Who Cares? Scotland's Strategic Vision: <https://www.whocarescotland.org/who-we-are/our-vision/>

<sup>2</sup> [Who Cares? Scotland \(2018\) Follow-up on Oral Evidence Session to Equality and Human Rights Committee.](#)

provided up to the age of 26. We believe that with full incorporation of the UNCRC, the possibilities to improve the lives of children and young people through legal challenge and raising understanding of the universality of human rights will continue to allow Scotland to create progressive changes.

Although we will answer the relevant individual questions in the consultation, below is a short summary of what the draft bill should include in order to make the UNCRC rights real for all Care Experienced people in Scotland. This is especially pertinent for Care Experienced children and young people, where parents who are typically rights enablers for children and young people, are not able to play this role.

### **A right to love / A right to grow up loved**

It has been debated whether it is possible to legislate for the right to love and the lack of human rights law which names love explicitly shows that this is an area which has been difficult for people to conceptualise into a duty-bearing rights framework.<sup>3</sup> However, love is consistently named by our Care Experienced members as something which is lacking in their lives and which has a lifelong impact on their wellbeing and happiness. It is often cited as the missing part of their lives which can make a difference to whether they feel like they are thriving or just surviving. Worryingly, members we have worked with have expressed their sadness when they have felt that their caregivers are not permitted to love them because of 'system requirements', or when they have felt that their caregivers are scared to love them. The negative impact of this on a Care Experienced child or young people is unthinkable and compounds a feeling that can last throughout their life of being undeserving of love and a sense of hopelessness.

Therefore, although it may be a complex area to legislate on, we have consistently outlined the moral imperative for those incorporating the UNCRC to consider how best to safeguard against a childhood without love – especially for children who experience care in Scotland and are arguably more vulnerable to a lack of loving, stable and nurturing relationships throughout childhood, which leaves a lasting legacy into adulthood.

The argument against including love as part of human rights law, often rests on its lack of measurability, the fact love is perceived purely as a subjective emotion and that it would be difficult to enforce in a rights framework that creates duty-bearers that then have a responsibility to love.<sup>4</sup> However, by asking children and young people in care directly about the presence of love in their lives, it is much clearer to understand what it should and could mean in practice. We disagree with the idea that love as purely an emotion makes it unable to tangibly be measured and understood, love is visible through the action of those providing love, the existence of support and consistent relationships which create a nurturing and caring environment to grow up in.

In June 2013, at the Social Work Scotland Conference, we were the first people to speak to Care Experienced people about love and present this publicly at an event, to a large group of professionals who were reluctant to refer to love.<sup>5</sup> There was resistance to discussing love within care and recognising the role statutory services have in ensuring it is present in

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<sup>3</sup> Liao, M. S. (2015) *The Right to Be Loved*; Cowden, M. (2016) *Children's Rights From Philosophy to Public Policy*

<sup>4</sup> Cowden, M. (2016) *Children's Rights From Philosophy to Public Policy*

<sup>5</sup> Video of WC?S Chief Executive and Care Experienced people speaking about love at the Social Work Scotland Conference in 2013: <https://vimeo.com/69248479>; The quotes about love from Care Experienced people, shown at the 2013 conference: <https://vimeo.com/219934854>

Care Experienced people's lives. In 2018, the Scottish Government has now recognised the need for children to **'grow up loved'** as a key outcome in the National Performance Framework, which has specific performance indicators attached that influence national and local government spending and activities.<sup>6</sup> This shows that adding love into the way we conceptualise outcomes for children and young people is possible to explicitly state in national policy. Importantly, from our perspective, it sets a helpful precedent for the moral and legal interpretation and implementation of 'love' within childhoods.

There may not be a specific 'right to love' within the 41 articles of the UNCRC, however, we want to see incorporation lead to a recognition that love should be guaranteed for all Care Experienced children growing up in Scotland, and indeed all children. Therefore, we are calling for the preamble to the UNCRC to also be incorporated, as this includes a specific statement about a child growing up in a loving childhood. Incorporation of the preamble gives the need for a loving childhood legal authority and more weight than it currently has in domestic policy and legislation. The UNCRC articles being met, then supports this by creating the conditions in which a loving and thriving childhood can be supported to become a reality. This would also ensure that Scotland's ambition to get it right for every child and that this country is the best place to grow up, would be on a better footing to be realised in practice. Importantly, it would set a new international standard for what children should have a right to as they grow up and it establish a clearer framework for how services and systems support and guide parents or caregivers (in the absence of parents) to ensure their children grow up loved.

### **'Due regard' duty**

We strongly support the need for a 'due regard' duty, alongside a duty to comply. This will ensure the incorporation process goes beyond the Human Rights Act model of providing legal redress for rights abuses and actively encourages systemic change that pro-actively upholds the rights of children in Scotland. This 'due regard' duty should specifically apply to the statutory services which support our Care Experienced population, to ensure their rights are upheld at every stage of care.

### **Children's Rights Scheme**

Alongside direct legal incorporation of the rights as written in the UNCRC, we want to see a strong Children's Rights Scheme which has power to create effective implementation and monitoring of the UNCRC articles to ensure it positively impacts children and young people's daily lives. This should include:

- A statutory duty for Child Rights Impact Assessments to be carried out when creating policy and legislation at local and national government level and across all public sector and regulatory bodies. This should be included within the face of the Bill.
- A statutory duty to set out the complaint mechanisms which public bodies and others should follow, to create a standardised method for individuals to understand and be able to access if necessary. These should be child-friendly and accessible to all.

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<sup>6</sup> <https://nationalperformance.gov.scot/national-outcomes/children-and-young-people>;  
<https://nationalperformance.gov.scot/measuring-progress/national-indicator-performance>

- A statutory duty for Care Experienced children and young people to access relationship-based, independent advocacy to understand and uphold their rights and to navigate complaint processes.
- A statutory duty for the Scottish Government to report on how it has ensured children and young people grow up loved and have their UNCRC rights realised when they are dependent on the statutory intervention from the care and protection system, throughout their childhood. This could be reported on at least every 3 years. This reporting mechanism should be linked with the assessment of the Scottish Government's national performance framework, which includes: **'We grow up loved, safe and respected so that we realise our full potential.'**

### **Higher upper age for Care Experienced people**

We would also like the upper age at which the UNCRC rights cease to apply, to be higher for Care Experienced young people. Article 1 defines UNCRC rights as applicable to all under 18 years old, however, in Scotland we have legislation that support Care Experienced people up to the age of 26 years old. We would like Article 41 to be utilised to ensure this extended protection is not ignored when considering the age at which UNCRC rights should apply.

#### **1. Are there particular elements of the framework based on the HRA as described here, that should be included in the model for incorporation of the UNCRC in domestic law? Please explain your views.**

Yes. We support the position outlined in the consultation response by Together Scotland, that the Human Rights Act provides a framework which allows for redress and remedy of rights are breached.<sup>7</sup>

We especially support the part of the HRA framework which allows courts to declare domestic legislation as incompatible with the European Convention of Human Rights, which if applied in the UNCRC context would allow for a useful mechanism to ensure Scots law and devolved areas of legislation fully upholds the UNCRC. This would continue to allow Scotland's legal system to adapt to and enshrine this international standard of human rights.

#### **2. Are there any other aspects that should be included in the framework? Please explain your views.**

Yes, as well as the reactive approach which the HRA framework supports, incorporation should lead to immediate, transformative change being created pro-actively by public bodies to uphold the rights of children. If incorporation only allows for legal cases to be brought when rights abuses occur, it will miss an important opportunity for the UNCRC to be embedded in the way public services are designed and budgeted for in policy-making processes.

Therefore, we support a 'due regard' duty as being part of the Bill, which would create a statutory duty on public bodies and Scottish Ministers to actively implement the full UNCRC and the optional protocols. We agree with Together Scotland's position that the UNCRC should not just be used as a mechanism for redress and should be embedded in the very way we understand and create policy across all areas.

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<sup>7</sup> [Together Scotland \(2019\) Scottish Government Consultation on the Incorporation of the United Nations Convention on the Rights of the Child into Scots law.](#)

We have seen the benefits of having pro-active duties enshrined in legislation through the introduction of stronger corporate parenting duties in Part 9 of the Children and Young People (Scotland) Act 2014. This has allowed pro-active changes in practice across a variety of public bodies and services, to improve the lives of Care Experienced people. Practical examples of changes made by adhering to corporate parenting duties can be found in the 'Corporate parenting - turning legislation into practice together: report.'<sup>8</sup>

However, we would like the inclusion of a 'due regard' duty on the face of a Bill for incorporation to be far stronger in the mechanisms by which the accountability of public bodies and Scottish Ministers is monitored and reported on. From learning gained by our training and education team, who provide the Scottish Government-funded training for corporate parents, we have come across challenges in ensuring all corporate parents act on their duties. As part of this challenge, we have found that there is a lack of consequence when duties are not being met and therefore, it is difficult to create the changes needed to ensure corporate parenting is fully implemented. Any pro-active duties within the incorporation framework must take this into account.

**3. Do you agree that the framework for incorporation should include a "duty to comply" with the UNCRC rights? Please explain your views.**

Yes, we strongly agree that a 'duty to comply' should be included, as it is vital in ensuring duties are binding and that accountability is emphasised. However, it must be in place alongside a 'due regard' duty to ensure that incorporation does not only focus on breaches of rights but also on pro-actively upholding them for all children and young people.

**4. What status, if any, do you think General Comments by the UN Committee on the Rights of the Child and Observations of the Committee on reports made by States which are party to the UNCRC should be given in our domestic law?**

We would like to refer to Together Scotland's response in relation to this question and agree that all parts of the UNCRC should be incorporated to ensure it has the maximum strength possible in law to protect and uphold children's rights.<sup>9</sup>

**6. Do you agree that it is best to push forward now with incorporation of the UNCRC before the development of a Statutory Human Rights Framework for Scotland? Please explain your views.**

Yes, we strongly agree that we should push forward now with incorporation of the UNCRC. The political support in place to realise the incorporation of the UNCRC must be capitalised on as this is a once in a lifetime opportunity to create transformational change in the way human rights for children are legislated for in Scotland.

We also believe that as a group, children and young people are one of the most vulnerable groups in society, so this would be a positive first step in enshrining any other international rights treaties.

As stated in Together Scotland's response, we have been working alongside many other organisations for a long time to push for incorporation. We know that the rights of children and young people in care are consistently being breached every day and as an advocacy

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<sup>8</sup> [Scottish Government \(2018\) Corporate parenting - turning legislation into practice together: report.](#)

<sup>9</sup> [Together Scotland \(2019\) Scottish Government Consultation on the Incorporation of the United Nations Convention on the Rights of the Child into Scots law.](#)

organisation we understand the urgency of needing to address the cultural view of Care Experienced children as lacking the same inalienable rights as adults and those who hold authority over their lives.

We made clear in our oral evidence to Scottish Parliament that within care there is a complex system set up to protect and keep children safe, which currently comes at a cost to realising and protecting their rights. It is important to assess the standards of childhood set for care experienced people against the standards we set for society more generally and recognise the inherent power imbalance between professionals and children and young people. Utilising the internationally recognised UNCRC to combat this culture by reinforcing the concept of every child having the same inalienable rights, will be potentially powerful and this cannot wait.<sup>10</sup>

### **7. We would welcome your views on the model presented by the advisory group convened by the Commissioner for Children and Young People in Scotland and Together (the Scottish Alliance for Children’s Rights).**

We largely support the draft Bill, however, would want there to be specific mention of the need for Care Experienced children and young people to be given consideration in terms of a higher age at which the UNCRC applies – in line with existing domestic legislation, which considers a Care Experienced person as able to access support until 26 and beyond if needed.

We especially support the draft Bill’s proposal to incorporate the preamble to the UNCRC, as this importantly allows love to be included within the legislation. It makes clear that all the substantive articles of the UNCRC and Optional Protocols should be part of Scots law, which we strongly support.

As Together state in their response: ‘By including the Preamble of the UNCRC, it sends a clear message to children that the rights enshrined into Scots law help to ensure children grow up in a **‘family environment of happiness, love and understanding’**. This has been raised by care experienced children and young people as being of particular importance to them.’<sup>11</sup>

We have been campaigning for a Lifetime of Love for Care Experienced people for years and place significance on this aspect of childhood and life experience, because we consistently hear that it is lacking within the care system. Referring again to our oral evidence, the right to be loved has been an important issue for many of our Care Experienced members – so much so that we now hold an annual Lifetime of Love Rally.<sup>12</sup>

We also support the draft Bill’s inclusion of both a ‘duty to comply’ and a ‘due regard’ duty for public bodies in the implementation of UNCRC rights. As discussed in previous answers, there must be strong accountability and mechanisms for redress for individual children and young people, but this should be alongside pro-active changes by public bodies to ensure breaches of rights do not occur in the first place.

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<sup>10</sup> [Who Cares? Scotland \(2018\) Follow-up on Oral Evidence Session to Equality and Human Rights Committee.](#)

<sup>11</sup> [Together Scotland \(2019\) Scottish Government Consultation on the Incorporation of the United Nations Convention on the Rights of the Child into Scots law.](#)

<sup>12</sup> For information about the Lifetime of Love Rally, please see the Who Cares? Scotland website: <https://www.whocaresScotland.org/get-involved/care-experienced-week-2019/> and Twitter coverage: <https://twitter.com/search?q=%23loverally&src=typd>

**9. How could clarity be provided to rights holders and duty bearers under a direct incorporation approach, given the interaction with the Scotland Act 1998?**

There must be appropriate resource given to implementation of incorporated rights with mass information campaigns available for the public that is accessible to all in Scotland. Especially, the possibilities of incorporation to provide a level of accountability for those providing public services.

We agree with Together Scotland that the Children’s Scheme would be an important tool to ensure implementation is realistic and transformative.

**10. Do you think we are right to reject incorporating the UNCRC solely by making specific changes to domestic legislation? Please explain your views.**

We disagree with incorporation solely by making changes to domestic legislation. We strongly believe full incorporation of the UNCRC should sit in an overarching framework. This makes incorporation of rights much clearer to the public, and especially to children and young people who hold those rights. However, we believe there must also be review and remedy of domestic legislation which does not comply.

**11. If the transposition model was followed here, how would we best enable people to participate in the time available?**

We do not agree with the transposition model and believe the Children’s Scheme can provide an implementation framework to make direct incorporation of the UNCRC meaningful in practice.

**12. What is your preferred model for incorporating the UNCRC into domestic law? Please explain your views.**

As we have made clear, we strongly support Model 1 of direct incorporation and aligning relevant parts of Scots Law to an overarching Act that enshrines the UNCRC. This is explained in further detail in the response by Together Scotland:

- ‘Fully and directly incorporates the UNCRC and its Optional Protocols into Scots law.
- Includes a duty on public authorities to comply with the UNCRC and its Optional Protocols.
- Ensures the UNCRC is accorded high priority in the Scottish domestic legal system, when in conflict with domestic legislation.’<sup>13</sup>

However, we would also like additionality to the rights listed in the UNCRC, especially regarding the age limit of rights being applicable only up to 18 years old, as stated in Article 1. There is domestic legislation which already recognises Care Experienced young people should receive support up to the age of 26 years old and potentially beyond. This is enshrined in the Children and Young People 2014 Act<sup>14</sup> and as Article 41 of the UNCRC states: ‘Nothing in the present Convention shall affect any provisions which are more conducive to the realization of the rights of the child...’ Therefore, we would not want the copy and paste model to overwrite the extended rights enshrined for Care Experienced young people in Scotland in domestic legislation.

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<sup>13</sup> [Together Scotland \(2019\) Scottish Government Consultation on the Incorporation of the United Nations Convention on the Rights of the Child into Scots law.](#)

<sup>14</sup> [Section 57, Part 9 of the Children and Young People \(Scotland\) Act 2014.](#)

We would also like there to be stronger focus on incorporating all aspects of the UNCRC, and as explained it is vital this includes the preamble, which importantly names ‘love’ as an essential part of childhood.

In May last year, we gave oral evidence to the Equality and Human Rights committee, highlighting the fundamental rights which are not being met for those who experience childhood through the care system.<sup>15</sup> We utilised that moment to highlight the importance of incorporation to the Care Experienced community, especially the opportunity for the following UNCRC preamble statement, to be recognised as a right for all children:

***‘Recognising that the child, for the full and harmonious development of his or her personality, should grow up in a family environment, in an atmosphere of happiness, love and understanding.’<sup>16</sup>***

As explained in the powerful testimony provided by one of our Care Experienced members in this committee session, we also see the incorporation of the UNCRC (including its preamble) as a unique opportunity to enshrine the right for all children in care to experience a life in which they are loved:

***‘I would love to live in a world where young people have the right to feel loved, to be loved or have the opportunity to give love... I do not think that many people would deny a child that right... A lot of young people, especially our members, are speaking up and saying that that is fundamentally missing. I would ask the cabinet secretary whether she would give additionality to existing legislation, or legislation that may be adopted, to give young people in state care the right to feel love and to be loved or, the opportunity to give others love or experience it.’***

- Callum Lynch, WC?S Collective Member<sup>17</sup>

**13. Do you think that a requirement for the Scottish Government to produce a Children’s Rights Scheme, similar to the Welsh example, should be included in this legislation? Please explain your views.**

We support Together Scotland’s position that the Children’s scheme model should be a part of the Bill, to create a powerful way of holding public bodies and government to account.

The current view of the scheme in Wales is that it is too weak, as it is proposed as a reporting tool whereas we would want to see a Children’s Rights Scheme that is able to embed fully the ‘due regard’ duty on public authorities to comply with the UNCRC.

In particular, the Children’s Rights Scheme could be an important way for children and young people, and those who support them, to report on how they feel their rights are being upheld by those that provide public services – such as the care system.

For example, we believe a statutory duty should be introduced in such a scheme for the Scottish Government to report on how it has embedded love into the care system and have ensured UNCRC rights have been upheld, to be reported on at least every 3 years. This reporting mechanism should be linked with the assessment of the Scottish Government’s national performance framework, which includes **‘We grow up loved, safe and respected so that we realise our full potential.’** Indicators have already been developed to measure the

<sup>15</sup> [Who Cares? Scotland \(2018\) Follow-up on Oral Evidence Session to Equality and Human Rights Committee.](#)

<sup>16</sup> [United Nations Convention of the Rights of the Child, Preamble.](#)

<sup>17</sup> [The Collective are the national representative body for Care Experienced people at Who Cares? Scotland.](#)

progress of this national outcome, which could be utilised.<sup>18</sup> This would be a powerful way to understand how well Scotland's Ministers and public bodies were **'recognising that the child, for the full and harmonious development of his or her personality, should grow up in a family environment, in an atmosphere of happiness, love and understanding.'**<sup>19</sup>

This is supported in the response by Together Scotland in which they state:

*'Given the consistent and powerful arguments put forward by care experienced children and young people around the importance of love, these progress reports should include systematic reporting on the steps taken by public authorities to ensure that children grow up "loved, safe and respected" in line with the Scottish Government's National Outcome for children. This would provide a specific, regular opportunity through which care experienced children and young people could hold government to account.'*<sup>20</sup>

We would also like to echo their additional points which would see the scheme add in further statutory duties and name the mechanisms by which implementation of incorporated rights can be pro-actively embedded into the practice of public bodies. This includes:

- A statutory duty for Child Rights Impact Assessments to be carried out when creating policy and legislation at local and national government level and across all public sector and regulatory bodies. This should be included within the face of the Bill.
- A statutory duty to set out the complaint mechanisms which public bodies and others should follow, to create a standardised method for individuals to understand and be able to access if necessary. These should be child-friendly and accessible to all.
- A statutory duty for Care Experienced children and young people to access relationship-based, independent advocacy to understand and uphold their rights and to navigate complaint processes.

**15. If your answer to the question above is yes, how long do you think public bodies should be given to make preparations before the new legislation comes into full effect? Please explain your views.**

Any time delay must be a justifiable and have clear parameters for how this would be reviewed, as it is essential that it does not lead to the incorporation project drifting.

**16. Do you think additional non-legislative activities, not included in the Scottish Government's Action Plan and described above, are required to further implement children's rights in Scotland? Please explain your views.**

Yes. There must be a statutory right to independent support that ensures advocacy is provided for children and young people, and those who advocate on their behalf, to bring rights cases to court when necessary. However, this will not be realised unless there is significant financial investment given to the incorporation project, to ensure that the rights legislated for become real for those with Care Experience by providing these types of support services and financial aid for legal costs, if necessary.

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<sup>18</sup> <https://nationalperformance.gov.scot/measuring-progress/national-indicator-performance>

<sup>19</sup> [United Nations Convention of the Rights of the Child, Preamble.](#)

<sup>20</sup> [Together Scotland \(2019\) Scottish Government Consultation on the Incorporation of the United Nations Convention on the Rights of the Child into Scots law.](#)

We understand through our advocacy experience, that in order to access entitlements and legal rights, children and young people should have the option to access an independent source of support to navigate the legal structures and processes involved in challenging those with power and authority who have responsibility for realising their UNCRC rights.

This is supported by Together Scotland, who also recognise the need for significant investment in advocacy services in order to create equal access to those who need it. Additionally, they also name: awareness-raising programmes, systematic training for those who work with children, child rights education for children and their parents and child rights budgeting.<sup>21</sup> We fully support the inclusion of these additional activities.

**17. Do you agree that any legislation to be introduced in the Parliament should be accompanied by a statement of compatibility with children’s rights? Please explain your views.**

Yes. This should happen, alongside the Child Rights Impact Assessments, to ensure new legislation is compatible with the UNCRC.

**18. Do you agree that the Bill should contain a regime which allows right holders to challenge acts of public authorities on the ground that they are incompatible with the rights provided for in the Bill? Please explain your views.**

Yes, this is essential. As discussed, legislating rights into domestic law does not create an impact on Care Experienced people’s lives unless they are given the access to justice that they need to challenge when the UNCRC is not being upheld. As discussed by Together Scotland, any regime introduced must be child-sensitive and available to every child and young person in Scotland, especially those who may have higher levels of vulnerability such as Care Experienced children and young people. The regime should include the ‘provision of child-friendly information, advice, advocacy, access to complaints procedures and, ultimately, access to the courts with necessary legal and other assistance.’<sup>22</sup>

We cannot emphasise enough how important it is for Care Experienced children and young people to have a statutory right to free and universal access to an *independent* source of support to create legal challenge if necessary. The power dynamic which exists between those in care and the adults with authority that have responsibility for upholding their rights, makes it extremely difficult for challenge to be brought by those facing abuse of their UNCRC rights.

We have been on our own journey to challenge the infringement of rights for Care Experienced people by continually calling for universal provision of independent advocacy services, for those who want to take it up. WC?S may have been established to be the consumer voice for children and young people in 1978, however, it took over a decade before any funding was secured for independent advocacy. We only started providing independent advocacy to children and young people in the 90’s as a direct response to the Skinner Report and other abuse enquiries and requests from children and young people themselves for WC?S to provide them with individual independent advocacy.<sup>23</sup>

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<sup>21</sup> [Together Scotland \(2019\) Scottish Government Consultation on the Incorporation of the United Nations Convention on the Rights of the Child into Scots law.](#)

<sup>22</sup> *Ibid.*

<sup>23</sup> Skinner, A. (1992) *Another Kind of Home: A Review of Residential Child Care.*

This is partly since children's rights gained more focus throughout the eighties across the U.K. and Europe. With the introduction of the 'Charter of Rights' in 1986 and the introduction of the 'United Nations Convention of the Rights of the Child' in 1989, WC?S wanted to ensure, on the back of these developments, that Care Experienced young people's rights had a platform via independent advocacy.

To date, six reports from abuse inquiries and reviews over the last 30 years have consistently recognised the value and need for independent advocacy provision, namely:

- Skinner Report (1992),
- Kent Report (1997),
- Edinburgh Inquiry (1999),
- Fife Inquiry (2002),
- Kerelaw Inquiry (2007)
- Shaw Report (2007)

However, all of these reports have only led to a very modest level of provision of independent advocacy for looked after children and young people by local authorities. New legislation, policies and procedures associated with child-care planning have not led directly to any significant re-assessment of the level of independent advocacy provision required. Accessibility remains inconsistent, with some local authorities providing no independent advocacy at all.

We cannot allow the same lack of provision of independent support to be accepted when implementing the UNCRC incorporation project. For incorporation of the UNCRC to have a transformational impact on the individual lives of Care Experienced children and young people, universal and free independent support to create legal challenge must be made available.

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

**Lucy Hughes, Policy Officer: [lhughes@whocaresscotland.org](mailto:lhughes@whocaresscotland.org)**