



**WHO
CARES?**
SCOTLAND

EQUALITY | RESPECT | LOVE



A Human Rights Bill for Scotland

Response to the Scottish Government's public
consultation

October 2023

www.whocaresScotland.org

Who we are

[Who Cares? Scotland](#) is Scotland's only national independent membership organisation for Care Experienced people. Our mission is to secure a lifetime of equality, respect, and love for Care Experienced people in Scotland and we currently have just over 4,100 members.

At the heart of our work are the rights of Care Experienced people, and the power of their voices to bring about positive change. We provide individual relationship-based independent advocacy and a range of participation and connection opportunities for Care Experienced people across Scotland.

We work alongside Corporate Parents and various communities to broaden understanding and challenge the stigma faced by Care Experienced people. We work with policy makers, leaders, and elected representatives locally and nationally to shape legislation, policy and practice. We do this collaboratively to build on the aspirations of [The Promise](#) and secure positive change.

Summary

This response provides comment on Scotland's new Human Rights Bill that will incorporate international human rights standards into Scots law. We welcome the Scottish Government's emphasis that all people should be treated with dignity and that human rights should be at the heart of strategies, policies and decision-making processes across all areas of government and the wider public sector.

In particular, we note that the Scottish Government intends to incorporate rights in a way which ensures they can be enjoyed and accessed by everyone without discrimination via an equality provision, within the limits of devolved competence.

We know from the Independent Care Review and our work since that many Care Experienced people today are experiencing barriers in realising their rights. We must ensure that Care Experienced people of all ages are recognised as rights-holders in Scotland and can access vital support as and when they need it, in order to thrive in our communities, to everyone's benefit.

Therefore, this Bill is a historic opportunity to:

- Take a rights-based approach by promoting equality, for example, by explicitly naming care experience in the equality provision as a group that experiences greater barriers in realising their rights.
- Strengthen and achieve Scotland's collective responsibility to Keep The Promise, the commitment from the Independent Care Review, which sets out how Scotland can make sure every Care Experienced child and young person grows up safe, loved and respected, and able to fulfil their full potential.
- Ensure that Scots law reflects the lifelong rights of all Care Experienced people in Scotland.

Our response has been developed by drawing on evidence from our advocacy service, participation work and recently published research '[Incorporating International Human Rights: The protection of Care Experienced People's Rights in the Scottish Human Rights Bill' \(2023\)](#) by Dr David Scott (Scottish Council on Global Affairs and the Glasgow Centre for International Law and Security, School of Law, University of Glasgow).

He concludes:

- *“Care Experienced people, like many people who face disadvantage in Scotland, stand to benefit from the introduction of economic, social, and cultural rights into Scots law. Yet Care Experienced people also face specific forms of discrimination and embedded inequality which require particular consideration and targeted intervention.”*

“While recognition in guidance, international law, and outcome monitoring would go some way towards this goal, this report shows that the most secure way to ensure Care Experienced people’s rights are protected is to recognise them in the text of the Bill.”

“To do so would be consistent with the Scottish Government’s wider efforts to keep its promise to Care Experienced people and make a real difference to the effective protection of their rights.” (Scott, 3)

To supplement this evidence, between June and August 2023 we carried out a large participation exercise called the ‘Summer of Participation’ which engaged over 200 Care Experienced people across a diverse range of ages, backgrounds and protected characteristics (see the next section for more information).

Our response precedes the launch of our Lifelong Rights Campaign during Care Experienced Week at the end of October at our [Love Rally on 29th October 2023](#).

We and others will be calling for;

“A lifetime of equality for Care Experienced people by having:

- Extra protection for Care Experienced people of all ages to access their rights.
- Independent, relationship-based, lifelong advocacy for every Care Experienced person in Scotland who needs it.”

We have answered only the questions most relevant to our members, evidence and expertise.

Who Cares? Scotland is calling for:

The Scottish Human Rights Bill to include:

- An equality provision which names and explicitly protects Care Experienced people.
- A Human Rights Scheme which states that there should be independent advocacy for people whose rights are most at risk, specifying Care Experienced people.

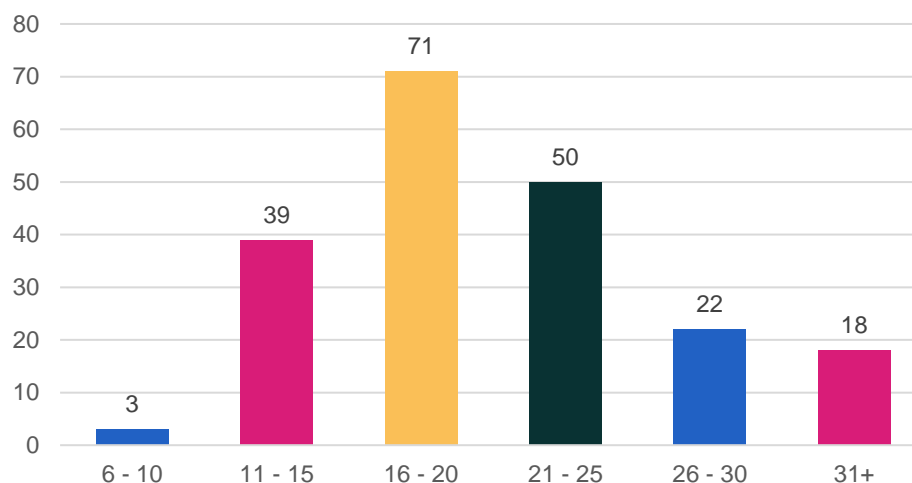
Approach and demographics

Our Summer of Participation 2023 involved having age-appropriate, trauma-informed and conversational-style interviews (with one set of questions for under 16s, one for 16+) with Care Experienced people about the Bill.¹ In addition to questions on other policy areas, for the Human Rights Bill for Scotland we asked about experiences leaving care, of stigma, and for views on extra protection in the law, lifelong rights, participation and lifelong advocacy.

We created a safe and supported space to share lived experience through connection opportunities with staff who hold direct, trusting relationships with our members. We also had an online survey which engaged the wider Care Experienced community over the age of 16.

Responses were relatively spread out by age, tending towards young adults with 60% of respondents aged 16 – 25. Around three quarters (76%) of respondents completed the questions aimed at those aged 16 and over, while the remaining 24% completed those for under 16s.

Responses by Age



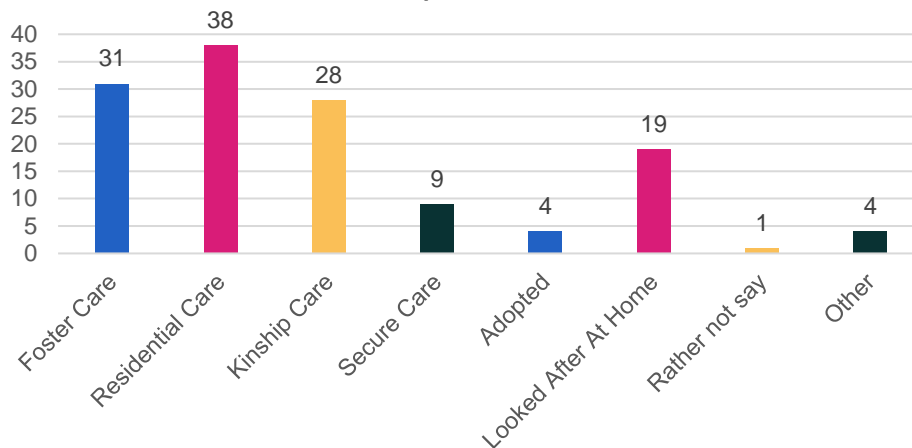
58% of respondents were female, while 38% were male and 1.5% each were transgender, non-binary or preferred not to share.

For pragmatic reasons we adopted different approaches to ascertaining experiences of care.

- Online survey – as this was aimed at over 16s, many were likely to be currently living in their own tenancies, so to capture breadth of experience and range of responses received we asked people to share their experiences of different types of care. As such, those completing the online survey were able to choose multiple options.
- Consultation – to reduce the number of questions young people needed to answer and to keep the conversation focussed and flowing, we simply captured current placement information in consultation meetings.

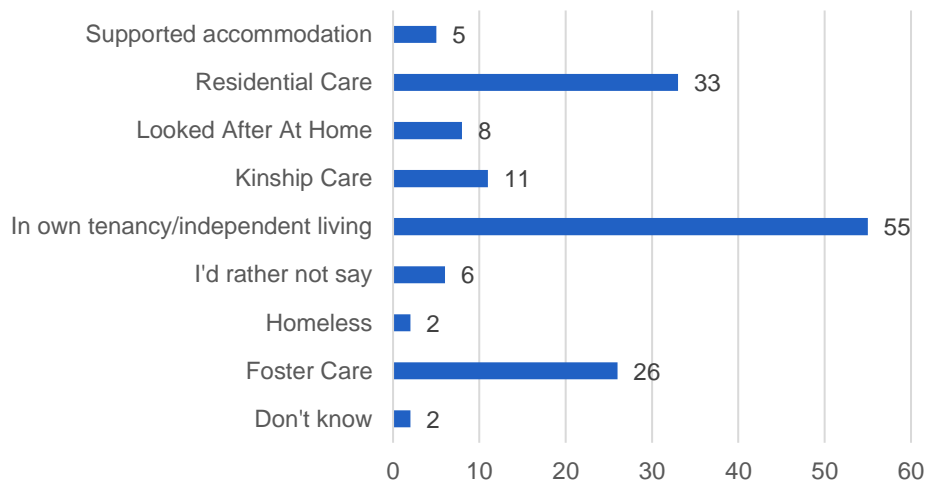
¹ Please note, several respondents (n=5) aged 16+ chose to complete the questions aimed at Under 16s because they were still at school/had not yet transitioned to adult services so the questions in the 16+ questionnaire were not so appropriate for them.

Care Experience of Online Survey respondents



On average, respondents had experience of more than one type of care, working out at around 2.1 per person for the 64 people who responded using the online survey. “Other” types of care experience include respite care, ‘step up’, supported accommodation and supported care. The most popular responses were residential care at 29%, foster care at 23% and kinship care at 21%.

Current Care Placement of Consultation respondents



40% of respondents were currently living in their own tenancy or independently, with residential care at 24% and foster care at 19%.²

² All but eight of those consulted shared information of their current placement. Those who did not either preferred not to share or did not know.

Response to the consultation questions

Part 4: Incorporating the treaty rights

1. What are your views on our proposal to allow for dignity to be considered by courts in interpreting the rights in the Bill?

We are supportive of this proposal, but it does not go far enough on its own to achieve the aim of lifelong rights and equality for Care Experienced people. As set out fully in our answers to questions 14-17, explicit recognition of Care Experienced people in the text of the Bill via the equality clause is required to realise the human dignity of Care Experienced people in practice.

Scott sets out the recognition of Care Experienced people's human dignity at the international level. For example:

- Council of Europe, [Committee of Ministers Recommendation Rec\(2005\)5 on the rights of children living in residential institutions](#), 16 March 2005
- Council of Europe, [Recommendation CM/Rec\(2010\)2 of the Committee of Ministers to member states on deinstitutionalisation and community living of children with disabilities](#), 3 February 2010
- UN General Assembly, '[Guidelines for the Alternative Care of Children](#)', A/Res/64/142, 24 February 2010
- Council of Europe, '[Recommendation CM/Rec\(2011\)12 on children's rights and social services friendly to children and families](#)', 16 November 2011
- UN Committee on the Rights of the Child, '[2018 Day of General Discussion: Protecting and Empowering Children as Human Rights Defenders](#)', 28 September 2018
- UN Committee on the Rights of the Child, '[2021 Day of General Discussion: Children's Rights and Alternative Care Outcome Report](#)', 13 June 2022.
- UN Committee on Economic, Social, and Cultural Rights, '[List of issues in relation to the seventh periodic report of United Kingdom of Great Britain and Northern Ireland](#)', E/C.12/GBR/Q/7, 23 March 2023, para. 27.

We also know that dignity is a principle referred to throughout [the Promise evidence framework \(2020\)](#), for example:

- Protecting children's rights in the National Performance Framework (p.726 of the framework)
- Treating children with dignity in children's homes (p. 788 of the framework, [The Howard League, 2019](#))
- The Maori concept of 'Aroha' or 'love' in youth residential work (p. 836 of the framework, University of Otago, 2016)

Yet these sources all focus largely on the rights of children and young people in care, with limited recognition of care experience as a lifelong identity. For example, the UN Guidelines for the Alternative Care of Children only apply to under 18s and not all guidelines apply to informal care.

We also note Scott's concerns over grounding Care Experienced people's rights **only** in through the use of international materials (Scott, 19). [The Promise states that](#), 'older care experienced people must have a right to access to supportive, caring services for as long as they require them.' Scott concludes that explicit recognition in the Bill would 'more securely and directly' protect this right, grounding recognition in domestic as opposed to purely international law.

3. What are your views on the types of international law, materials and mechanisms to be included within the proposed interpretative provision?

Please see our answer to question 1 above, alongside Together (Scotland's Alliance for Children's Rights) answer.

4. What are your views on the proposed model of incorporation?

We support a model of incorporation which will improve equality of outcome for Care Experienced people of all ages, with as many international human rights being made binding in law as possible within the devolved context.

The Bill needs to be clear, so that rights-holders know their rights and how to claim them, and duty-bearers know their responsibilities to uphold their rights and are held accountable.

We agree with the direct treaty text approach to incorporating the treaties, removing any text that relates to areas reserved to the UK Parliament. Cherry-picking or re-writing rights could set a dangerous international precedent. However, through implementation, we can set out how international human rights can be realised within the Scottish context. We believe this will also future-proof the legislation for national and international developments.

Direct incorporation of ICESCR will go some way in helping to protect Care Experienced people beyond childhood and address gaps in support, as its scope is not restricted by age limits in the same way as the UNCRC and current Corporate Parenting duties under the Children and Young People (Scotland) Act 2014. However, we know an equalities approach is also required if we are to address the many disadvantages Care Experienced people experience when accessing their socio-economic rights (Scott, 16).

Therefore, Who Cares? Scotland is calling for the inclusion of Care Experience explicitly in the equality provision, as set out more fully in our answer to question 15 below.

5. Are there any rights in the equality treaties which you think should be treated differently? If so, please identify these, explain why and how this could be achieved.

We echo [Together's response](#) to this question.

Part 6: Incorporating further rights and embedding equality

13. How can we best embed participation in the framework of the Bill?

We support explicit references to participation and advocacy in the proposed Human Rights Scheme, naming Care Experienced people as a group whose rights are most at risk as part of a wider human rights based approach to the Bill (Scott, 19).

We echo the Human Rights Consortium Scotland's (HRCS') calls around groups whose rights are most at risk;

- Being involved in defining Minimum Core Obligations and;
- Being embedded in the Scottish Human Rights Commission's participation work.

See also our answers on participation in the form of independent advocacy to questions 27 and 40 below.

Through Who Cares? Scotland's representation on the Lived Experience Board, we set out that just as Care Experienced children and young people have the right to have their views heard in decisions affecting them under Article 12 UNCRC, so too should Care Experienced adults.

Our Summer of Participation 2023 findings reiterated that there should be a universality on the right to be heard and that there should be parity between children and adults because, at a basic level, 'we are all human':

- *"Because we are all humans, we should have equal rights. Children should have more rights because people generally listen to adults. Not all adults are listened to though, that's why it's important that everyone has the same right."*
- *"Activists have been saying for a long time 'nothing about me, without me', it is really basic and fundamental that you get to participate in decisions being made about your life."*
- *"Children or adults should and always get their rights listened to especially if its decisions affecting them. Just because you are an adult that doesn't make these things any less easy, especially if you didn't get the right support when you were a child."*
- *"Children and young people are able to address the immediate issues faced, but adults will always be able to show the lifelong costs of poor care management in childhood and adolescence. It's important to balance both I think."*
- *"I'm an adult now and still feel I need to be heard as I need support for various things. Just because I'm seen as an adult doesn't mean life is suddenly fixed and I don't need support. I'd like to make sure my rights in this continue and I am listened to."*

For Care Experienced people, relationships with carers and professions can end suddenly once adulthood is reached or Corporate Parenting responsibilities end, and this can lead to feelings of loneliness for Care Experienced people:

- *"You get to a certain age and it feels like there isn't anyone that truly cares anymore. When you turn a certain age it feels like all the support has stopped."*
- *"It's almost as though there is a cut off to when your thoughts and views matter."*

Our Helpline was set up to support Care Experienced people by providing lifelong advocacy throughout Scotland. Through advocacy we can make sure Care Experienced people's voices are heard beyond the age of 26 (or in areas where there is no advocacy provision or with age cut-offs before 26), leading to early intervention, improved service provision, and access to justice, preventing rights breaches from the outset.

We have had approximately 3,500 calls since we started our Helpline in 2020, evidencing a growing need for the right to participation of Care Experienced adults. For example, the calls we receive raise socio-economic rights issues from Care Experienced young people and adults around finance, debt, benefits, banking, grant funding, support in higher education, housing, job-seeking and employment.

14. What are your views on the proposed approach to including an equality provision to ensure everyone is able to access rights, in the Bill?

We strongly support including an equality provision in the Bill. When we ensure everyone in our community has access to the support they need, if and when they need it, everyone benefits. This should apply the duties to as many rights as possible, including the Special Protection treaties.

However, we disagree with the proposed approach to model the equality provision purely on Article 2 of ICESCR or Article 14 of ECHR, as although Care Experienced people share the various characteristics listed, as a group in their own right, they have historically not been recognised by the broad category of 'other status' (Scott, 17).

15. How do you think we should define the groups to be protected by the equality provision?

We and others³ are calling for Care Experienced people of all ages to be named in and explicitly protected by the equality provision.

"The most direct route for recognising the rights of Care Experienced people would be through explicit inclusion of Care Experienced people in the non-discrimination clause of the SHRB..."

Explicit inclusion of care experience in the text of the non-discrimination clause, then, would ensure that Care Experienced people's rights are considered and protected by public authorities across Scotland, grounding their rights in the text of domestic law and helping challenge the disadvantage and discrimination Care Experienced people face every day compared to the rest of the population." (Scott, 16-17)

The term 'Care Experienced' refers to anyone who has been or is currently in care, for any length of time regardless of their age (see definition from the Independent Care Review (2020) [here](#) and on our website [here](#)).

This care may have been provided in many different settings, including living with a relative who is not the person's parent (known as kinship care), being looked after at home with the

³ Organisations supporting our calls for the Bill at time of publication include Human Rights Consortium Scotland, Together (Scottish Alliance for Children's Rights), Education Scotland, Creative Scotland, Aberlour, the Scottish Youth Parliament and Clan Childlaw.

help of social work, living in a residential home or school, living with foster carers, living in secure accommodation, and experience of adoption.

We believe Care Experienced people must be included in the equality provision, rather than 'Care Leaver'⁴ or Care Experienced Child or Young Person, as from birth to old age, the evidence shows that they continue to have their rights diluted, infringed, or disregarded altogether.

For example:

- *"[There is a] loophole of leaving care before 16th birthday then no duty on social work to support through 20s - can lead to social work service predominantly being to get care experienced people back home before their 16th birthday to ensure no ongoing financial commitments. Everything is categories - we are all care experienced."* (Care Experienced person, Who Cares? Scotland's Summer of Participation, 2023).
- *"Evidence shows that Care Experienced people have vastly different life outcomes compared to non-Care Experienced people... Because of the lifelong impact of care experience and its impact on people's earnings, opportunities, and reliance on public services across their lives, protection of Care Experienced people's rights is needed beyond childhood."* (Scott, 8)

The evidence

The Independent Root and Branch Review of Care found that Care Experienced people in Scotland are:

- Almost twice as likely to have poor health.
- More than twice as likely to have experienced homelessness.
- Over twice as likely to have no educational qualifications and less than half the chance of having a degree.
- Over one and a half times more likely to have financial difficulties.
- Over one and a half times more likely to experience severe multiple disadvantage (homelessness, substance use, mental health, offending).

[\(The Money report, The Promise \(2020\), 10.\)](#)

However, three and a half years on from the publication of the Promise, we hear time again from the Care Experienced community through participation and advocacy evidence, including our Helpline, that Care Experienced adults are being left to struggle and are still facing stark inequalities in areas including health, socio-economic deprivation, education and housing.

⁴ 'Care Leaver' is an age restricted eligibility rather than an identity, as per s.66 of the Children and Young People (Scotland) Act. If you leave care before your 16th birthday, you are not a 'Care Leaver' and therefore not eligible for aftercare (further support from social work). Aftercare is only available for people who leave care on or after the 16th birthday, and is potentially available up to age 26. This creates further inequality for Care Experienced people, as evidenced by Jasmin-Kasaya Pilling (on behalf of Who Cares? Scotland), '[Petitioner submission: Extend aftercare for previously looked after young people, and remove the continuing care age gap](#)', PE1958/B, 24 October 2022.

For example:

- Our advocacy evidence tells us that:
 - Between March 2021-2023, 425 individuals mostly aged 16 or older raised 788 issues around finance, debt, benefits, banking, grant funding and support in higher education.
 - Between April 2021 and March 2023, 187 individuals, mainly aged 16 or over, raised a total of 288 issues related to housing.
- 7/10 respondents to our participation work on mental health had been unable to access mental health support, while all participants felt their care experience had impacted upon their mental health, finding that trauma can affect Care Experienced people throughout their lifetime. ([Who Cares? Scotland, Tend Our Light \(2022\)](#)).
- 1/3 Care Experienced parents we surveyed felt comfortable asking for help from services, with many parents sharing their perception of their experience of care leading to an automatic referral or assumption of social work involvement. Only 37% felt able to get the support they needed. ([Who Cares? Scotland, Believe in Us \(2022\)](#)).
- Across Scotland, 1% of people are Care Experienced. Yet this rises to one in five (20%) people referred to food banks in the Trussell Trust network in Scotland ([Ipsos and the Trussell Trust, 'Hunger in Scotland' \(June 2023\)](#)).

When you leave care it doesn't leave you - care has a lifelong impact, and Care Experience can be a lifelong identity. Our membership strongly feels that Care Experienced people of all ages must be seen and heard as a group of rights holders and given extra support and protection throughout their lifetime if we are to reduce the inequalities this group face ([Who Cares? Scotland, Navigating the World of Rights, 2020](#)).

In our Summer of Participation 2023, the majority of people we spoke to were in strong agreement of the need for equity in the protection of rights between Care Experienced people and their non-Care Experienced peers, and between children and adults, given their different circumstances and scaffolding of support:

- *"People think it's our fault that we have ended up in care when it isn't. I think the law should do more to protect us. It shouldn't put us at a disadvantage when it isn't our fault."*
- *"We have to live with the trauma and stigmas attached to our care experience all throughout our lives so it's only right and fair that we get that protection too because sadly when we don't get to, we become just another statistic in a presentation about the failures of the system rather than a success story."*
- *"...It's harder for us to be allowed and able to do things, so we might need extra help and support."*

The main reason given for the need for equity was the lifelong impact of being in care, meaning that there should be lifelong protection of rights, especially for Care Experienced people:

- *"When we speak of protected characteristics in terms of equality we do so in recognition of how these factors determine the likelihood that someone will experience disadvantage - care experienced people often have multiple protected characteristics but being care experienced is a predictor of life outcomes and they aren't always good - we need to ensure that we wrap a rights based legislative framework of rights [around] care experienced people so that we can ensure children and young people grow up loved, are able to heal, and get everything they need,*

want and deserve, but as they grow into adults, they aren't forgotten and that Scotland has a duty to do the right thing.”

- *“The full effect of a childhood in care for me wasn't felt until I was well into my 20s. The emotional damage it caused was only apparent long after I was eligible for any type of support from after care services. That meant I had to go it alone and seek out support independently.”*
- *“For me I believe we should have that [extra protection], the experience of being care experienced has a lifelong effect, you feel that abandonment and those attachment issues for the rest of your life. I'm nearly 30 and I still struggle with the trauma I experienced in care, it never leaves. I go months not thinking about it and then it's still there, it comes back. The feeling of being taken from my mum, I still think of that, and now I can't hold a relationship to save myself, and that's why.”*
- *“Yes we should get extra protection. We have trauma which lasts a lifetime.”*
- *“Care experience doesn't ever really leave you.”*

An additional barrier Care Experienced people identified was not necessarily having access to parental or family support in adulthood:

- *“Not all people can call their parents for help when in thirties, why can't we rely on our Corporate Parents?”*
- *“A lot of care experienced individuals might not have the novelty of family support/guidance. They may not have the luxury of someone teaching them life skills/social norms and most likely have experienced some form of adverse childhood experiences/trauma which could play a part in vulnerabilities. More often than not a person experiences the [sic] care system through the [sic] fault of someone else so they should have their rights protected by law to ensure they are not at risk of additional traumas.”*
- *“I think it is really important that support is offered to care experienced people until they feel they are able to cope on their own. It can be difficult to move on without support of family and to lose relationships with carers because you are a certain age seems unfair.”*

Stigma and Discrimination

We also know from our older members that they continue to experience stigma and discrimination. For example, from our Summer of Participation 2023 findings, the majority of our members over 16 said that they were made to feel different in some way, to feel labelled or othered, or like neither they nor their situation was 'normal'. Some with this view contrasted their treatment in care, including supports and 'rules', against the family-based care non-Care Experienced people could expect, and described experiences of suspicion and rejection:

- *“My carers who fostered me for a bit it felt different because we weren't their children and never would be their children so they kind of never treated us the same. They went away on holiday and left us behind and that felt like we were treated differently.”*
- *“Every single day I experience stigma of being care experienced especially in university as people don't think I am smart enough to have a place at [sic] and be respected.”*

- *“I was working as a cleaner and was doing lots of jobs with no issue. A cleaner job came up in the local social work office, however I was advised that I couldn’t work there as I was care experienced i.e. I might access files/info...discrimination. This happened a few times where I wasn’t allowed/trusted to lock up or have keys to the offices I was cleaning.”*

Overall, there was a frequent perception amongst the older cohort that Care Experienced people were deemed to be ‘bad’ in some way, that something was ‘wrong’ with them, or that being in care was ‘their fault’. Media stereotypes were cited as a factor here, causing shame and embarrassment:

- *“[Media] narratives contribute to [stigmatic treatment] as I have found you are met with a great deal more scepticism if identified as a care leaver and generally treated as though troublesome and not credible, if not pitied.”*
- *“I never told anyone or talked about it until around 40 years after I left care. I was very aware of the dangers, restrictions and prejudices that the care experienced “label” would carry.”*
- *“Teachers, social workers, other parents and neighbours often used inappropriate language or assumed the worst of me. I was outright told by social work that I would statistically be likely to grow up to be like my parents.”*
- *“I did feel stigma from the police, one time they had given me a lift home and this one guy said to me ‘all you kids in care are the same, you’re all bad, you didn’t get brought up properly’. I reported him.”*

The policy

The international human rights framework and specifically, recognition of lifelong rights for Care Experienced people in the Bill via the equality provision, will help to bring greater accountability to Keeping the Promise, which is something our members have called for ([Paving the Way, 2022](#)). Indeed, [the Scottish Government’s implementation plan for Keeping the Promise](#) references the Human Rights Bill under ‘keeping families together’ and ‘tackling inequality’.

The Promise says that:

- ‘Scotland’s parenting responsibilities are lifelong and holistic for the young people that Scotland has cared for.’
- ‘Present definitions that operate do not ensure that those who leave care prior to their sixteenth birthday are able to access legal entitlements, even though they have been removed from their families by a decision of the State.’
- ‘Older care experienced people must have a right to access to supportive, caring services for as long as they require them.’

We heard from some members over the summer about the lasting positive impact of effective support and consistent and trusting relationships with a professional or carer after ‘leaving care’. For example:

“I moved into supported lodgings (when I was pregnant) that was willing to take me and the baby. They were amazing. That’s what changed things for me. I still go and see them now, they were so good to me, they cared for me and helped me learn how to be a mum. They are like grandparents to my daughter. I don’t know how things would have turned out if it wasn’t for them.”

However, the most frequent viewpoint we heard was from those who didn't feel ready to leave care when they did, experiencing a perceived cliff edge of support, inconsistency in provision and quality of support, and wanting a safety net in the form of extra support and advocacy:

- *“My experience has been awful, I felt like I was just booted out the door. I was told on my 18th birthday, ‘that’s you, we don’t need to see you anymore, bye’.”*
- *“It was difficult at the start as it happened so very quickly following a breakdown with my foster carers, it was quite overwhelming. I ended up in a place (homeless accommodation) where I didn’t want be. I didn’t have much money or a regular income as wasn’t working so this put added stress on me.”*
- *“My experience of transitioning to adult services was very poor. It felt as though accessing support was made purposely difficult, I witnessed a lot of people fall through the cracks in this transition.”*
- *“Might have been better if I hadn’t left my area but once I did the council just forgot about me.”*
- *“I think when I “leave care” as an adult, I think I would want a yearly check up see how I am doing. I feel like people in care may have worries or mental health conditions from what they’ve experienced being in care, so there needs to be a safety net.”*
- *“I felt there was no one there to listen to me or advocate for my rights, I was overwhelmed already trying to manage independent life in lieu of any support and I simply didn’t have the time, strength or experience to articulate myself in a way that would be listened to.”*

The National Taskforce for Human Rights Leadership also recognised the need for particular attention to the realisation of the rights of Care Experienced people in their report ([2021, 41](#)).

There is also a growing number of Corporate Parents in Scotland, and local authorities in Scotland and England, that have chosen to treat Care Experienced people as a protected characteristic, including Edinburgh, Falkirk and North Ayrshire Councils and the Scottish Qualifications Authority (Scott, 18). In addition, the Scottish Funding Council has asked all colleges and HEIs in Scotland to treat care experience as a protected characteristic.

Domestic law

We appreciate that the equality provision has to operate within the limits of the equal opportunities reservation in the Scotland Act 1998, as well as the wider Equality Act framework. Throughout our response, we refer to the recently published [‘Incorporating International Human Rights: The protection of Care Experienced People’s Rights in the Scottish Human Rights Bill’](#) (2023) by Dr David Scott (Scottish Council on Global Affairs and the Glasgow Centre for International Law and Security, School of Law, University of Glasgow). This report sets out that:

“As a group who face far higher rates of poverty, homelessness, hunger, and ill-health than the rest of the population, Care Experienced people have much to gain from the SHRB’s provisions.”

“Nevertheless, evidence shows that the disadvantages Care Experienced people face are specific in nature. Inequalities for Care Experienced people stem not only from the pre-existing disadvantages which may bring them into contact with the care system, but also as a result of direct and indirect discrimination in the practices of public authorities. Their specific disadvantage necessitates specific recognition.”

“...Care Experienced people must be made a focus of the SHRB, in order for the Bill to live up to the Scottish Government’s primary goal of improving the lives ‘of those who are most marginalised and disadvantaged in our society.’” (Scott, 20-21)

The report also reviews various legislative and other ways that the Bill could protect Care Experienced people and concludes that inclusion of Care Experienced people within the equality provision should fall within the exceptions granted to the Scottish Parliament set out in the consultation paper. This is backed up by a [legal opinion](#) from the Equality and Human Rights Commission in 2018.

International law

Our answer to question 1 also sets out the vast recognition of Care Experienced people’s rights at the international law level. However, this is largely limited by type of care experience and to children and young people. Only at the UN Committee on the Rights of the Child [2018 Day of General Discussion: Protecting and Empowering Children as Human Rights Defenders](#), was lifelong support for people who have lived through alternative care first recognised, by Scotland’s contribution (20).

The Scottish Government has an unmissable opportunity to show real human rights leadership by making the Bill the first piece of human rights legislation nationally and internationally to explicitly include Care Experience as a lifelong characteristic, protected by the equality provision.

16. Do you agree or disagree that the use of ‘other status’ in the equality provision would sufficiently protect the rights of LGBTI and older people?

We disagree.

17. If you disagree, please provide comments to support your answer

Care Experienced people share the various characteristics listed, and we agree with the Scottish Government that naming these groups in the text of the equality provision to ‘help to ensure clarity of exactly who the provision is intended to protect’ ([A Human Rights Bill of Scotland: consultation \(2023\)](#), 26.)

For Care Experienced people as a group in their own right, they have historically not been recognised by the broad category of ‘other status’ (Scott, 17).

LGBTI people, older people and Care Experienced people must be named in the equality provision to ensure that they can legally challenge discriminatory protection of their rights under the Bill.

Part 7: The duties

19. What is your view on who the duties in the Bill should apply to?

We agree with the proposed approach that the duties should apply to bodies carrying out devolved functions as we want to avoid so far as possible any legal challenge and resulting delay as occurred with the UNCRC Bill. In particular, we support mirroring the UNCRC Bill's approach to ensure the Bill covers private actors, for example, secure care providers.

However, as with the UNCRC Bill, this will mean that the Bill will no longer apply in some areas affecting, for example, the right to family life of Care Experienced children and young people.

We echo Together's calls for an audit to make any excluded areas covered by the Bill's protection in the future. We also encourage the Scottish Government to continue encouraging the UK Government to incorporate these rights into UK Law.

20. What is your view on the proposed initial procedural duty intended to embed rights in decision making?

We support this. However, this should be **no less than a duty of 'due regard'**, as this would mean that if public bodies do not think about rights when making decisions, this particular duty can be reviewed by a judge. [Together's response](#) sets out how this has improved accountability for rights in Wales through the Rights of Children and Young Persons (Wales) Measure 2011.

Our learning from [our education and engagement work with Corporate Parents](#) tells us that we have come across challenges in ensuring all Corporate Parents act on their duties under Part 9 of the Children and Young People Scotland Act 2014. 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 and The Promise is fully implemented. A proactive procedural duty of due regard should take this into account, and with independent review of duty bearers' level of success in upholding their duties, rather than relying on self-assessment and reporting alone.

This duty should remain even when the duty to comply comes into force, so public bodies continue to proactively think about how to prevent possible rights breaches in advance, and how to advance rights via impact assessments.

21. What is your view on the proposed duty to comply?

We support this. We set out above the challenges in holding Corporate Parents to account, so this duty is vital to ensure that the rights are binding and duty-bearers are accountable. It will also ensure that the maximum available resources are used to advance rights over time. We also support the duty of non-retrogression of rights.

"Consistency can only come with legal binding agreed parameters. Legal duty brings legal responsibility." (Care Experienced person, Who Cares? Scotland Summer of Participation 2023).

22. Do you think certain public authorities should be required to report on what actions they are planning to take, and what actions they have taken, to meet the duties set out in the Bill?

Yes. This will help to bring about more accountability for Keeping the Promise to Care Experienced people of all ages, if they are named in the equality provision.

We echo HRCS' calls that it should be a requirement that public bodies consult with people whose rights are most at risk when developing these reports.

Currently, duties on Corporate Parents to plan and report on how they will meet their Corporate Parenting duties in Part 9 (Corporate Parenting) of the Children and Young People (Scotland) Act 2014 are limited to Care Experienced Children and Young People up to the age of 26.

Reporting duties would ensure Care Experienced adults are being recognised, and the right data is being collected, to inform work being done to Keep the Promise; reduce severe and multiple disadvantage; and enhance rights protection and equality for Care Experienced people.

Indeed, some Corporate Parents go further and extend their support and policies to Care Experienced adults above the age of 26, which we have celebrated and consider best practice. This has been particularly evident across the higher education sector where access to degree level study for Care Experienced people has been further widened with the introduction of minimum entry requirements, the [Guaranteed Offer](#) and the [Care Experienced Student Bursary](#) – all of which allow for equality of opportunity with no upper age limit being applied. The Bill should reflect this to ensure consistency across Scotland for every Care Experienced individual accessing services.

23. How could the proposed duty to report best align with existing reporting obligations on public authorities?

As explained by our answer to question 22, this would complement and address a gap in existing reporting duties around care experience. It could alleviate some of the pressure public bodies feel in relation to reporting if Corporate Parenting reporting and human rights reporting were more closely aligned.

It could also support more attention being given to the upper age of Corporate Parenting responsibilities (around 19-26) as we know many Corporate Parents solely situate plans and reporting within their children's services.

24. What are your views on the need to demonstrate compliance with economic, social and cultural rights, as well as the right to a healthy environment, via Minimum Core Obligations and progressive realisation?

We support this, in particular the requirement for action, use of maximum available resources and ensuring non-retrogression of rights.

26. What is your view on the proposed duty to publish a Human Rights Scheme?

We agree. We think the Human Rights Scheme, if well linked to other implementation plans including Keeping the Promise, can provide an implementation framework and some accountability to make direct incorporation meaningful in practice. However, this alone will not adequately protect Care Experienced people.

In support of recognition in the equality provision, Scott states that:

“Full and specific protection of Care Experienced people’s rights would therefore require their integration into the legislative system of the SHRB, in order to ensure that violations of their rights could be properly enforced and rectified through the court system.” (Scott, 20)

Part 8: Ensuring access to justice for rights-holders

27. What are your views on the most effective ways of supporting advocacy and/or advice services to help rights-holders realise their rights under the Bill?

In order to achieve a lifetime of equality for Care Experienced people;

- We echo calls from HRCS' that a right to independent advocacy should be placed on the face of the Bill, and;
- The Human Rights Scheme should specify that there should be independent advocacy for people whose rights are most at risk, specifying Care Experienced people.

Care Experienced people have told us there should be provision of advocacy for all Care Experienced people who need or want it regardless of age. The above proposals would strengthen the provision of independent advocacy for Care Experienced people beyond the age of 26, lifelong when required, as set out in The Promise.

In line with best practice in [the National Practice Model for the Children's Hearings System](#), which is rooted in the [Scottish Independent Advocacy Alliance's standards and codes of best practice](#); advocacy provision should be independent, relationships-based and specialised to the characteristics of the individual at risk.

This is also a way of embedding the right to participation in the Bill as per our answer to question 13, and will help to ensure early intervention, improved service provision and access to justice, to prevent rights abuses from escalating and happening in the first place.

Echoing HRCS' call, the Human Rights Scheme should include reporting on the availability of independent advocacy.

According to Care Experienced people during our Summer of Participation:

- *"Age doesn't mean at one point there's a fairy wand waved that fixes my issues and concerns brought about by my disability and care experience. I think no matter the age, this burden can follow you so the appropriate supports should be alongside you. My advocate helps make clear my rights to supports as well as helping me with day-to-day things like applying for college care experienced bursaries."*
- *"I didn't know half my rights until my advocate spoke to me about them. Some care young people need extra help as their life might have been extra tough. I'm 18 now and will need help for a long time. I wouldn't want that taken away from me. We should get the help we need when we need it. It doesn't matter the age."*

Eight clear benefits of advocacy were highlighted by respondents:

- 1) Independent advocacy provides a voice to those who otherwise would not have one.
- 2) Independent advocacy provides a level of confidence and comfort to those who receive it in being able to deal with issues which affect them, and develop skills which will help them self-advocate in future.

"Personally, it's made a big difference to me, it feels like it's helped me a lot to express my feelings and get my point across about things I probably would never have opened up about. I think you should be able to have an advocate at any age as you can still struggle to express yourself when you are older,

and you still need to have that person who can help you to tell people how you feel.”

- 3) Receiving independent advocacy allows for an understanding of what is happening in Care Experienced people’s lives, what their rights are, what decisions have been made and why, and what support is available to them.
- 4) Older respondents noted there is a degree of self-determination, choice and agency which comes from receiving independent advocacy, both in terms of gaining/regaining some control and direction, as well as accessing the entitlements and supports that are right for the person receiving it.

“Not everyone who uses services will have a thorough understanding of their options or decisions that are made for them. It is so important that individuals are given the opportunity to make informed decisions or to have consolidated understanding of decisions that are made for them.”

- 5) It is seen as truly independent and does not involve any conflict of interest, judgement, ulterior motive or agenda. The Care Experienced people we spoke to liked to know that their advocacy worker worked only for them, and not for any other agency or body who had a vested interest in their lives or the people around them.
- 6) We heard views from older participants about the importance of the consistency of the advocacy relationship and the predictable consistency of the remit of the role, which unerringly supports the views and wishes of those being supported.
- 7) It infers accountability on decision-makers and those in power.

“It takes knowledge, experience and confidence to hold people to account, to raise and maintain standards of service to an acceptable level, this is usually not attainable without an independent advocate. In my view everyone needs to be held to account. It isn’t good enough for anyone to be allowed the complacency to operate in the knowledge there’s no real recourse for their actions if they don’t provide the services they ought to.”

- 8) Lastly, and perhaps most importantly, we heard evidence that an independent advocate could provide a positive, trusting and lifelong relationship.

Part 9: Implementing the new Scottish Human Rights Act

38. What are your views on our proposals for bringing the legislation into force?

We agree with the Human Rights Consortium Scotland’s recommendation to bring the legislation into force within 6 months.

39. What are your views on our proposals to establish Minimum Core Obligations through a participatory process?

We agree with the Human Rights Consortium Scotland’s recommendation that a duty to comply should be no more than two years later, and this date should be specified in the Bill. The duty to have due regard should continue to apply after this time, but should then be accompanied by the duty to comply, as per our answer to question 20.

40. What are your views on our proposals for a Human Rights Scheme?

The Human Rights Scheme must specify that there should be independent advocacy for people whose rights are most at risk, specifying Care Experienced people as per our answer to question 27.

It should also include:

- The proposed reporting duty on Scottish Ministers, with parliamentary scrutiny.
- An update on the progress of actions in Scotland's Second National Action Plan for Human Rights (SNAP2) which mention Care Experienced people, for example:
 - *"The human rights review of current evidence on life expectancy and adverse mortality rates in Scotland."*
 - *"The human rights review of current national strategies and delivery programmes in Scotland in order to better understand, reduce and prevent infringements of people's right to be free from violence and abuse."*
 - *"The human rights review of people's experiences to better respect, protect and fulfil the right to work, and develop a best practice workers' rights framework."*
 - *"Carry out a mapping exercise of independent advocacy services that enable individuals and groups whose rights are most at risk to participate in decision-making, access justice and realise their rights. Use the findings and recommendations to inform, improve and support the implementation of work to develop, expand and ensure access to universal and specialist independent advocacy services across Scotland."*
 - *"Develop a framework for social housing decision-makers, including Registered Social Landlords and local authorities, to help them: (a) take a rights-based approach; (b) ensure the progressive realisation of the right to housing; and (c) prepare for accountability on compliance."*
- Any plans to introduce further legislation to give effect to the human rights framework set out in the Act.
- The right to participation including in developing the Scheme, ensuring Care Experienced people are named as a group whose rights are most at risk (Scott, 19).
- Human rights monitoring and evaluation and impact assessments:
 - Improved data collection using human rights indicators to ensure the inequalities faced by Care Experienced people are captured, monitored, and effectively tackled by the Scottish Government and local authorities. This should address the gaps in the available data on Care Experienced people identified by the Independent Root and Branch Review of Care in 'The Promise' ([The Money report](#), 4).
 - The requirement for human rights impact assessments to be carried out, which include consideration of Care Experienced people of all ages, as per our ask for the equality provision.
- Not only information and awareness raising, but a plan for empowering human rights education and training in relation to the rights in the Bill.

- Human rights budgeting, guidance and domestic and international accountability. Note here that Scott’s conclusion set out in our answer to question 1 that Care Experienced people’s recognition must be grounded in domestic law, and that guidance alone will not adequately protect Care Experienced people, as it would:
 - *‘Be weaker in protection than if care experience were named in the text of the Bill, with guidance unlikely to attract the type of strong judicial enforcement envisaged by the non-discrimination clause.’*
 - *‘Remain subject to revision by future governments, denying Care Experienced people the public recognition of their rights by the entire Scottish Parliament.’* (Scott, 18)

41. What are your views on enhancing the assessment and scrutiny of legislation introduced to the Scottish Parliament in relation to the rights in the Human Rights Bill

We agree. This will ensure compatibility with these rights.

42. How can the Scottish Government and partners effectively build capacity across the public sector to ensure the rights in the Bill are delivered?

We agree that guidance is essential and should be developed with people whose rights are most at risk including Care Experienced people as recommended specifically in the National Taskforce for Human Rights Leadership report against recommendation 17 ([2021, 41](#)).

“Services knowing what care experience is and what we are entitled to. If the job centre doesn’t know job start grant, how are care experienced people meant to know.” (Care Experienced person, Who Cares? Scotland’s Summer of Participation, 2023).

In order to embed equality and human rights for Care Experienced people across government and public services, any capacity building must reinforce existing Corporate Parenting training and public education work in schools.

Where duties sit within bodies that are not named as Corporate Parents in the Children and Young People (Scotland) Act 2014, support to enhance their knowledge and understanding of the rights issues specifically affecting Care Experienced people must be extended to them.

43. How can the Scottish Government and partners provide effective information and raise awareness of the rights for rights-holders?

Not only information and awareness raising should be provided, but a plan for empowering human rights education and training in relation to the rights in the Bill. This is essential, as we know that even now Care Experienced people sometimes don’t know what rights and supports they are entitled to until it is too late:

- *“I was incredibly disappointed to find out at the age of 26 that I could have had help to navigate the homeless system, to get into uni, to stay in it etc.”* (Care Experienced person, Who Cares? Scotland’s Summer of Participation 2023).

The Scottish Government should reinforce existing human rights training for Care Experienced people, for example, the [Empowered Voices Training Programme](#).

Our response to question 42 outlines the importance of aligning the training and support resource allocated to Corporate Parents in Scotland with enhanced learning and knowledge building in relation to human rights for Care Experienced people.

In our Summer of Participation 2023 we also heard calls from all age groups for public education in order to ensure understanding and acceptance of Care Experienced people and avoid stigmatising treatment:

- *“I think a lot of people don’t understand why I get some support that they would never access. People believe that you don’t deserve it just because you happen to be care experienced without understanding what it means to be care experienced.”*
- *“We need to educate people starting school about what care experience is/means and what it isn’t.”*
- *“[Communities] need to be trained on care experience, like they are trained on other things. That worker at the bank might be the only person that care experienced person has spoken too about a problem, they might not know where to turn, they might not understand what’s going on, they might not have been taught how to manage their bills when leaving care, then you get the worker that the care experienced person has gone up to, and they have no empathy does not understand care and shuts the door on you. That needs to change.”*
- *“Most folk I know is with their mum and dad’s. Me and some other people I know aren’t. It’s just different and folk don’t understand what care is like.”*

The Scottish Government must ensure that whole-school communities (pupils, staff, parents/carers) are educated about care experience to ensure that the next generation grow up to have empathy and understanding for Care Experienced people. Approaches like the [Communities that Care Whole-School Approach](#) are key to creating this ethos of support and inclusion.

44. What are your views on monitoring and reporting?

As above, we call for improved data collection using human rights indicators to ensure the inequalities faced by Care Experienced people are captured, monitored, and effectively tackled by the Scottish Government and local authorities.

This should address the gaps in the available data on Care Experienced people identified by the Independent Root and Branch Review of Care in ‘The Promise’ ([‘The Money’ report](#), 4). Improved data collection should be evident in public bodies’ reporting.

However;

‘Entrusting the protection of Care Experienced people’s rights to monitoring schemes alone would leave Care Experienced people with no specific ability to take a case before the courts where their rights have been violated. This would leave their rights with a lower status of protection and enforceability than other marginalised groups...

Full and specific protection of Care Experienced people's rights would therefore require their integration into the legislative system of the SHRB, in order to ensure that violations of their rights could be properly enforced and rectified through the court system'. (Scott, 20).

Should you wish to discuss the contents of this response, please contact:

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