



## Introduction

Who Cares? Scotland is Scotland's only national independent membership organisation for Care Experienced people.<sup>1</sup> Our mission is to secure a lifetime of equality, respect, and love for Care Experienced people in Scotland. We are delighted that the Bill has passed Stage 1 and want to thank MSPs for all of their engagement with the Care Experienced community throughout. The Bill allows for greater rights protection for Care Experienced people and is a historical and essential step towards keeping the Promise through legislation. It unlocks the potential to make a significant difference to Care Experienced people's lives and will help to keep the Promise for individuals.

This response has been shaped by our member evidence session we held with the Education, Children and Young People Committee on the 7<sup>th</sup> October (see notes [here](#)), advocacy evidence, Action on Advocacy and Lifelong Rights campaigns.<sup>2</sup> We will continue to engage with MSPs, our members and others to make the Bill as strong and as effective as possible in order to keep the Promise to Care Experienced people.

Our cover page to this briefing sets out the priority areas for improvement we are preparing amendments with MSPs on and have highlighted to the Scottish Government. These are backed by our campaign partners whose logos are featured. The rest of this briefing evidences why these areas are so important to Care Experienced people and encourages the Committee to support them when voting on amendments. We also outline our position in relation to other areas for improvement in the Bill.

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<sup>1</sup> For more information about Who Cares? Scotland, please see [www.whocaresscotland.org](http://www.whocaresscotland.org).

<sup>2</sup> For more information about our campaigns, please see [www.whocaresscotland.org/lifelongrights](http://www.whocaresscotland.org/lifelongrights).

## Priority areas for improvement at Stage 2

### 1) A definition of independent advocacy on the face of the Bill

We urge the Committee to support an amendment to Section 4 of the Bill to define independence as being separate to, for example, Lead Children's Services Planning Bodies and any care provision contracted by them within the local authority area in which a Care Experienced person resides, or "is placed" within a residential or secure setting.

The Committee already believes that a definition on the face of the Bill is necessary (p.220 [Stage 1 report](#)). The [Mental Health \(Care and Treatment\) \(Scotland\) Act 2003 Section 259](#) offers a useful definition as it defines the specific bodies such as local authorities and health boards who cannot provide independent advocacy to people they provide services for in their area.<sup>3</sup>

**Nevertheless, the 2003 definition would not cover situations where a care provider also acts as an advocacy provider.** This Bill needs a definition like the 2003 definition + where a child or young person is being cared for by a service provider which also offers them advocacy – while they may choose or prefer to receive that advocacy – it is not independent advocacy.

**The Bill should make clear that every Care Experienced person in Scotland should have the option to access independent advocacy no matter where they live or come from.**

#### **For example:**

Even if Tracy Beaker's children's home offers her advocacy from someone directly employed by the home, she should have the option to choose between that and an external independent advocate (employed by an advocacy provider not providing care services in that local authority area).

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<sup>3</sup> It goes further than the [Social Security \(Scotland\) Act 2018 Section 6\(4\)](#) which defines independent advocacy as being 'provided by a person other than the Scottish Ministers'.

This has been our position supported by our campaign partners since last June, and we believe it aligns with [the Scottish Independent Advocacy Alliance's definition of independence](#) as being "structurally, financially, and psychologically separate from services." [The Promise](#) (p115) reiterated this definition in 2020.

The Scottish Child Abuse Inquiry has received testimony from survivors and care providers alike the fundamental value of independent advocacy.

In response to the Minister for Children, Young People and the Promise's concerns around capacity for provision and emphasis on choice ([p. 13 of her response from 12 January 2026](#)); there are enough independent advocacy providers operating in Scotland, including in rural and highland areas, to ensure a sustainable level of provision and adequate competition. Not having a clear enough definition of independent advocacy on the face of the Bill can limit resources to fund providers in rural areas, and for some services, has resulted in contracts being awarded to advice organisations, as opposed to independent advocacy organisations.

It can also result in a lack of ring-fenced funding for independent advocacy – removing the element of choice, for example, in local authorities where there is no offer of independent advocacy for Care Experienced children and young people (not going through Children's Hearings processes).

We know the Minister for Children, Young People and the Promise is considering this question ahead of Stage 2. **This amendment is an essential safeguard to ensure that Care Experienced people's rights are upheld as a result of the Promise and this Bill.**

## 2) Opt-out system of referral for independent advocacy for secure care and young people subject to offence grounds

Section 18 must be strengthened by including an opt-out system of referral for independent advocacy, particularly for any child or young person referred on offence grounds or subject to a secure care “placement”.

The Committee agrees with this recommendation (p.224 [Stage 1 report](#)), however, the Minister shared she wishes to avoid any unintended consequences of disrupting existing advocacy relationships, stigmatising young people referred on offence or secure care grounds or conflating advocacy support with the need for legal advice/representation ([p. 15 of her response](#)).

While valid concerns, these consequences can be avoided. The regulation should make clear that providers will work together to avoid the disruption of advocacy relationships and respect the fundamental principle of choice (see [SIAA Principles, Standards and Code of Practice n.12](#)).

**Having opt-out advocacy in place for young people subject to potentially serious rights restrictions with lifelong impact (such as deprivation of liberty or a potential criminal record) is not stigmatising, it is an essential safeguard for equitable access to justice.**

As the Committee, the Minister and our legal partners agree, independent advocacy is complementary to the right to independent legal representation in order to uphold Articles 6 ECHR and 40 UNCRC. We explain why in detail in our [Stage 1 call for views response](#), in particular, in response to the proposed changes to children’s hearings around the child’s attendance at hearings.

The Minister refers to the [Research Scotland independent evaluation report \(2024\)](#) as evidence of the Children’s Hearings System Advocacy Scheme being demand-led,

however, this report also evidences the experience of demand outweighing supply (p.50).

As well as our campaign partners, this position is backed by the CHS Advocacy National Providers Network and we urge Committee to support this amendment.

### 3) Accountability section

- a) **Requiring post-legislative scrutiny two years after enactment to assess progress toward keeping the Promise by 2030.**
- b) **Establish streamlined data collection, reporting and planning duties for Corporate Parents on their duties and Promise outcomes, in agreement with the government and COSLA.**

We urge MSPs to review pp.36-38 of our [Stage 1 call for views response](#) which evidences in detail why the Care Experienced community feels amendments to strengthen accountability for keeping the Promise are crucial. Since then, [Audit Scotland reported in October 2025 that](#):

"Over five years on there is still confusion about the individual and collective roles and responsibilities across organisations, sectors and new entities," and "responsibility for the Promise cuts across various sectors making it difficult to distribute accountability and ensure each sector is responsible for its role in contributing to delivering the Promise".

We believe this section will help to ensure that:

- There is policy coherence across Corporate Parenting and Promise obligations so duty-bearers are better supported to keep the most challenging parts Promise.
- The provisions of the Bill are fully acted upon.
- The legislation is kept in focus within the next parliamentary session.

- Accountability for improving the ‘care system’ is rooted in primary legislation as opposed to guiding policy, FOIs (in the absence of reliable publicly available data) and rhetoric.

**Other areas for improvement at Stage 2 (in order of the Bill – see our [Stage 1 call for views response](#) for more detail)**

We continue to call on the Committee to:

- Ensure the financial memorandum sufficiently reflects the investment required for the legislation to be timely implemented in order to keep The Promise.
- While ensuring appropriate scrutiny, encourage the swift passage of the Bill before the pre-election period in March 2026.

We also wish to direct the Committee’s attention to [the Promise Scotland](#)’s position on a statutory ‘right to return’ to care in line with the conclusions from the Independent Care Review, and the [Fostering Network](#)’s continuing care amendment proposals.

**4) All provisions within the Bill must be brought into the scope of the UNCRC Act 2024. For example, the rights in Sections 1 and 10 amending sections of the Children (Scotland) Act 1995 must be restated as freestanding rights.**


Backed by the Committee at Stage 1.

**5) A duty for Scottish Ministers to produce guidance that ensures regular renewal of Corporate Parenting training for senior leadership which highlights the ability of Corporate Parents to extend their support beyond the age of 26 where possible.**

Backed by the Committee at Stage 1.

**6) Amend Section 4 (2) to reflect the right to independent collective advocacy for Care Experienced people.**

Our campaign partners have informed us that where independent collective advocacy is not defined on the face of a Bill, it can result in defunding of these opportunities. A quarter of Scottish local authorities do not offer a Champions Board as a route for



collective advocacy to keep the Promise locally, and the rest have varying degrees of independence and effectiveness.

In order for Care Experienced people to be part of the change they wish to see to ‘the care system’, the right to independent collective advocacy must be included in the Bill.

**7) Section 5 should create a broad and inclusive definition of Care Experience in regulations which places a due regard duty on public bodies, can be consistently applied across local authorities and promotes rights-based practice.** This definition must include informal kinship care and all other groups of Care Experience set out above.

Backed by the Committee at Stage 1, and the Minister has committed to review the government’s position on this in light of our and others’ evidence ahead of Stage 2.

**If you have any questions about the content of this briefing, please contact [policy@whocaresscotland.org](mailto:policy@whocaresscotland.org).**