



**WHO
CARES?**
SCOTLAND

EQUALITY | RESPECT | LOVE



Legal Aid Reform

Who Cares? Scotland Response

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 around 2,000 members.

At the heart of Who Cares? Scotland's work is 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.

Every year, our advocacy workers support around 1,600 people with around 6,000 individual advocacy issues across all 32 Local Authorities in Scotland. As we take a human rights-based approach to our work, around 10,000 individual rights are logged every year in supporting these issues. We bring Care Experienced people together to connect and shape the world around them. Around 270 unique individuals come together every year to take part in around 350 of our activities across Scotland.

We work alongside Corporate Parents and various communities to broaden understanding and challenge 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 to secure positive change.

Overview

Who Cares? Scotland welcomes the Scottish Government's commitment to modernising Scotland's legal aid system. This reform is an opportunity to create a legal aid system which enables people to understand, exercise and uphold their rights. For Care Experienced people, access to justice is particularly important. Throughout childhood and into adulthood, Care Experienced people can be subject to decisions made about them by public bodies, professionals and other people in positions of power. These decisions can have lifelong consequences, and are not always made with the agreement of Care Experienced people themselves.

With over 40 years of experience providing independent advocacy to Care Experienced children, young people and adults, we are keenly aware that having rights in law does not necessarily translate to being able to exercise those rights in practice. Children and young people, as well as adults, must be able to understand their rights, know where to go to for support, and be able to access independent advocacy and legal advice and representation if needed. "Unless legal rights are enforceable at an affordable cost, the rule of law is meaningless." (Evans Review, 2018, p11).

We therefore welcome the ambition to create a more accessible, sustainable and user-focussed legal aid system. However, we are concerned that the consultation does not give sufficient consideration to the particular legal needs and barriers faced by children and young people, and particularly those with care experience.

While we recognise that this consultation is primarily aimed at the overall framework, governance and delivery of legal aid rather than detail of cases and eligibility; **the new statutory framework must recognise children and young people with Care Experience as a group of rights-holders with distinct legal needs.**

Children and young people as legal aid users

Children are not simply adult legal aid users who happen to be under eighteen. Children have their own independent rights and wishes, and may need legal advice or representation to participate in proceedings challenging decisions made by adults or local authorities concerning their care, protection, family relationships, housing, education, disability, access to services, deprivation of their liberty, poor care and treatment, or other aspects of their lives. For Care Experienced children and young people, this is particularly likely as their lives are shaped by legislation and formal decision-making processes such as the Children's Hearings System where significant decisions about their life are made. However, their ability to access justice can be significantly affected by their age, lack of financial independence, relationships with parents or carers, geographical challenges and difficulties navigating complex legal processes.

Care Experienced children and young people must be supported to understand what decisions are being made about them, why they are being made, and how they can participate in them and challenge them. Independent advocacy and independent non-instructed advocacy has a vital role in making this possible, and the extension of independent advocacy provision via the Children (Care, Care Experience and Service Planning) (Scotland) Act 2026 (CCCESP Act) is hugely welcome. However, advocacy and legal advice or representation are not the same thing, and there will be circumstances where a child needs both. We have called for legal representation to be available for all children facing deprivation of liberty at a Children's Hearing Panel on an opt out basis in our [CHS Redesign](#) and [CCESP Bill consultation](#) responses last year. The Children and Young People's Commissioner Scotland (CYPCS) has also highlighted in their [response to the UNCRC's draft General Comment 27](#) that an advocacy

worker or safeguarder cannot provide the independent legal representation required in Children's Hearings in all circumstances.

The Evans Review of Legal Aid

The need to specifically consider children within legal aid reform is not a new idea. The [2018 Evans Review of Legal Aid](#) considered evidence from Clan Childlaw about the complexity children face in navigating the legal aid system. The Review also recognised that delays in accessing legal aid in family cases can be particularly harmful to children's welfare.

"The current system expects a young person to comprehend and distinguish between four overlapping but different types of legal aid in relation to children's hearings: Children's Advice and Assistance; Children's Legal Aid and ABWOR." (Clan Childlaw quoted in Evans Review, 2018, p48).

The Evans Review proposed a legal aid system which places the user at the centre, and recommended greater use of targeted services and user engagement. These principles are particularly relevant for children and Care Experienced people.

If the new legal aid system is to be truly designed around the needs of the people who use it, it must recognise at a strategic level that different groups experience different barriers to accessing justice and explicitly consider children's needs. This is particularly important for Care Experienced children and young people.

Barriers to legal aid for Care Experienced children and young people

The Scottish Government has already accepted feedback from the Evans Review about children's distinct access-to-justice needs. It is unclear why these lessons have not been embedded when designing the statutory architecture of the new legal aid system.

Any process to re-establish the purpose, principles and priorities of legal aid should ensure that the rights of children are explicitly embedded within that, and that the framework is compliant with the existing commitments to the Promise, Corporate Parenting duties under the Children and Young People (Scotland) Act 2014 (CYP(S) Act) and CCCESP Act 2026 on the Scottish Legal Aid Board (SLAB), and the UNCRC (Scotland) (Incorporation) Act 2024.

We recommend that the Scottish Government complete and publish a Children's Rights and Wellbeing Impact Assessment of the proposals informed by consultation responses and use this to identify and address the following barriers faced by children and young people.

Financial Eligibility

A child in care may require legal advice or representation in circumstances where the interests of their parent, carer, local authority or other adult differ from their own. Financial eligibility arrangements designed around adults and household income can therefore be unsuitable for children in care or young people with care experience transitioning into adulthood who have independent legal concerns.

We note positively that the Scottish Government has already recognised some of these issues. The [Legal Aid Reform Discussion Paper, 2025](#) proposes removing financial and merit tests for children in all cases before a children's hearing, acknowledging that financial eligibility tests designed for adults can be confusing and inappropriate to apply to children.

The UN Committee for the Rights of the Child's 2023 Concluding Observations for the UK recommends the UK:

“17. Ensure that all children have access to:

(b) Legal support and representation in addition to remedies, including by removing barriers faced by children in disadvantaged situations and expanding the types of support provided under the legal aid budget;

(c) Officials working with children in the justice system who have been adequately trained on children's rights and child-friendly proceedings.

47. Noting with concern inequalities in educational attainment and outcomes for children in disadvantaged situations, the Committee recommends that the State party:

(e) Ensure the right of children to appeal their exclusion and provide them with legal advice and representation, where appropriate, in line with the Committee's previous recommendations.¹”

The Committee also made a series of recommendations to ensure that various groups of children who face additional barriers (such as those accused of breaching the law, age disputed or navigating the asylum process, victims of trafficking, or those without regular residence status) have access to legal assistance.

We therefore call for the removal of financial and merits tests for all legal aid applications from Care Experienced children and young people and those listed by the Committee above, and not just for cases relating to Children's Hearings processes. This could include cases involving a dispute regarding contact and residence, which children should have the right to participate directly in actions which they are a subject of as per Article 12 UNCRC. The Advice and Assistance (Scotland) Amendment Regulations 2010 mean that legal aid can potentially be denied on the basis of parental resources a child does not have access to. We agree with the view of CYPCS that this may be incompatible with the UNCRC.

SLAB's process to consider if this is 'unjust or inequitable' in individual cases, for example, where a child is estranged from a parent, requires evidence to be submitted to support this, and places a considerable burden on the child to demonstrate why they should be eligible for legal aid, which for many children will be a significant barrier. This situation equates to a presumption against a child being eligible for legal aid. **This must be replaced with a presumption that all children with experience of care at any point or referred to a Children's Hearing will be eligible for legal aid provision.**

CYPCS also note that while the provisions introduced in the Children (Scotland) Act 2020 will support children to express their views to the Court, they are not a substitute for direct participation as a party, should a child wish to do this. **The form a child's participation takes should be the choice of the child and not constrained by financial barriers.**²

¹ UN CRC Concluding Observations 2016 73c - Ensure that children have the right to appeal against their exclusion and are provided with legal advice, assistance and, where appropriate, representation for those without means).

² CYPCS, Civil Legal Aid - The Children and Young People's Commissioner Scotland, 2025

Inappropriate Application Processes

Advocacy workers have described how overwhelmed Care Experienced children, young people and adults can feel by the volume of forms required, which often overlap in content, and the language and jargon used. These forms can often be emailed over to a young person without explanations being tailored to their individual capacity, or support being offered to complete them.

We emphasise the need for application forms to be streamlined and accessible to prevent disengagement. Materials should be codeveloped to support children and young people to understand and access legal aid which is age and stage appropriate. Visual materials would also help.

“The information requested often overlaps, and frustrates the young people. For one young person, there were six forms they needed to complete for both instructing the law firm (terms of engagement, client questionnaire, anti-money laundering) and for applying for legal aid (client questionnaire, civil legal aid declaration, and a witness questionnaire for me to fill out). This amount of paperwork in quick succession is confusing and overwhelming. Young people may choose to disengage if they feel bombarded with paperwork.” – Who Cares? Scotland advocacy worker, 2026.

The right to legal aid must also be clearly explained to children and young people.

Advocacy workers describe that while social workers typically make a young person aware of legal aid for hearings with offence grounds, they don't often tell the young person they can access free legal advice to challenge and appeal a decision.

Some advocacy workers also described situations where they had worked with children and young people who were very well-spoken and clear on their views but were unable to get access to a lawyer because of their age as they were deemed as not able to instruct one. A blanket age barrier is not in the spirit of the person-centred process the Evans review recommends, or the evolving capacities of Articles 5 and 12 the UNCRC. **Capacity should be determined on a case-by-case basis.**

For Care Experienced adults, finding a solicitor who understands Care Experienced people's lives and the issues that may be important for them can also be extremely difficult. [Who Cares? Scotland's previous response to the 2019 legal aid consultation](#) notes the example of one adult trying to gain legal representation to challenge Police Scotland withholding their records about their time in care who could not find a lawyer to take the case, let alone then apply for legal aid. **Any legal training surrounding legal aid reform should be care-aware.**

Who Cares? Scotland can provide:

- Government-funded Corporate Parenting training, guidance and support to help Corporate Parents such as SLAB or Universities providing legal education and training perform their duties and responsibilities under the CYP(S) Act 2024.
- CPD-certified training to empower lawyers to confidently engage with and support Care Experienced clients.

Geographical Barriers

Care Experienced people's rights can be further at risk when they live in a remote area due to a lack of visibility and access to services. Who Cares? Scotland advocacy workers covering rural and island areas have described how difficult it can be to source local solicitors for a Care Experienced person with capacity to take on their case:

“Basically anyone instructing a solicitor for the CHS or for Family court have to instruct a solicitor elsewhere in Scotland, and that's made even harder if they would be entitled to Legal Aid.

In Shetland there is a general lack of access to justice and legal aid support. Our local solicitors do not have capacity to take on legal aid and have stopped offering services through legal aid. This means that not only care experienced young people cannot access legal aid easily, but also others who may be in need, such as victims of domestic abuse.

Women's Aid have partnered with a solicitor through funding provided by the Legal Education Foundation because of how hard it is to instruct solicitors locally without legal aid.³ This is an important step in removing similar barriers to justice for another vulnerable, and sometimes overlapping, group in our community.

In practice, this means that we have to instruct solicitors in other parts of Scotland. It is hard to have a face-to-face meeting with your solicitor in this situation as they may struggle to travel the distance to get here. This means that there is some kinds of work that they cannot take on at all, even if they were willing to accept someone from Shetland as a client.” – Who Cares? Scotland advocacy worker, 2026.

Reform of the legal aid system must ensure that legal aid is accessible in rural locations, including island communities. This must include the possibility of face-to-face client meetings, as this would help clients to build trust with their solicitor, having a physical space to go to for assistance in navigating the application forms to prevent disengagement and to allow different types of legal aid work to be undertaken. Similar funded posts to the Women's Aid scheme for free/accessible rural legal aid advice would be highly welcome for the Care Experienced community.

Delays in securing legal aid

Although Care Experienced people will not always require legal representation when expressing their views, the availability and opportunity for them to access legal support when taking part in formal processes which affect their lives, is key for their rights to be upheld and their entitlements to support being realised. The Children's Hearing forum is the primary legal forum for legal decisions to be made about their lives, however, advocacy workers have described the delays that finding legal aid for Children's Hearings can cause and the impact this can have on a young person.

³ BBC News, 'Charity launches free legal support for domestic abuse victims', April 2026.

When children and young people try to gain legal representation for a hearing, the legal aid process currently involves lawyers trying to demonstrate there is a legal issue, before aid will be granted.⁴ This assumes that Children's Hearings are not equivalent legal decision-making bodies and that their decisions have less legal status than decisions about adults made in the court system. Yet, we know that young people can receive criminal convictions via the Children's Hearing System and can have their liberty restricted by being secured in a secure care placement. These are legal decisions which have lifelong impact and the option to access child-centred and appropriate legal support should always be made available and affordable for those that want it.

The Law Society of Scotland lists several issues with providing legal aid to children and young people for hearings:

- The duty scheme contains a requirement to give this work 'priority' but what that means is unclear.
- A relatively small number of cases would qualify for the duty scheme each year, and many concern babies who cannot instruct a solicitor.
- There is no information on how and by whom a child will be assessed on their capacity to instruct a solicitor, so a solicitor may turn up to a hearing and discover the child cannot instruct them.
- Fees for travel, time and expenses are restricted, disincentivising solicitors to clear their diaries for the time these cases can take.⁵

Parents of young people can also face long delays in accessing legal aid, which causes deferment of the Children's Hearing and delays the young person reaching a settled point in their life. This can be particularly challenging if the young person or parent has complex needs, or is deemed to have low capacity.

We call for legal aid applications for Children's Hearings (both regarding the child and the parent/s) to be given a clear priority status and funded appropriately in order to reach a settled conclusion for Care Experienced children and young people as quickly as possible.

This is particularly important for cases concerning babies, infants and very young children where delay to forming secure and attached relationships due to decision drift can significantly impact the wellbeing of the child.⁶

The spreadsheet of solicitor firms offering legal aid on SLAB's website was highlighted by workers as being frequently out of date, as this status can change frequently due to the solicitor's capacities and long waiting lists. This can result in situations where advocacy workers are supporting a young person to phone around a high number of firms to try and find

⁴ This is subject to the successful implementation of CCCESP Act 2026, especially s.51 on the Principal Reporter and other's duty to provide the child with information about the availability of child-centred legal advice and representation.

⁵ Law Society of Scotland, 'Children's Legal Aid', n.d.

⁶ NSPCC, 'Keeping the Promise to Infants', 2023.

somewhere able to take on their case and is not an efficient process. Having a live mechanism to check whether firms are currently taking on legal aid work would simplify this process.

Corporate Parenting Responsibilities

SLAB are a named Corporate Parent to Care Experienced children and young people, as legislated for in Part 9 of the CYP(S) Act 2014, and have specific duties to proactively promote the interests of this group and improve its services to meet their needs. The current legal aid reforms suggested do not take these legal obligations into consideration.

For Corporate Parenting to be truly embedded within legal aid reform, there must be recognition of Care Experienced people in the design of a new legal aid system. Therefore, we restate the asks we made of SLAB in the 2019 legal aid consultation which have not yet been actioned:

1. Targeted solicitor support created, including lawyers available to represent Care Experienced people that understand the lived experience of care, are trauma-informed and who can access Corporate Parenting training.
2. SLAB workforce fully trained as Corporate Parents and tailored approach created for Care Experienced people accessing legal aid.
3. A tick box in place as part of the application process to allow individuals to self-identify as Care Experienced, to access tailored support.⁷
4. All Care Experienced people automatically eligible for legal aid.
5. Free contact number for legal advice with lay advisors who are trained in Corporate Parenting and understand care experience.
6. Quality assurance of lawyers who assist Care Experienced people through utilising legal aid services, to safeguard against bad practice.
7. The Children's Hearing system to be perceived by the legal aid system as equivalent to adult courts, to ensure Care Experienced children and young people have equal access to legal representation when required.
8. Expand legal aid eligibility to cover legal advice and support for social work meetings for Care Experienced parents going through pre-birth assessments.
9. Employment and training opportunities for Care Experienced people at SLAB.

We welcome the actions of SLAB to treat Care Experience as a protected characteristic within their own EQIAs and discount the Care Experienced Student Bursary when assessing income.

Accessibility of legal aid for vulnerable groups.

At present, SLAB still requires that the direct personal interest of individual applicants be set out in public interest cases. We support the view of Clan Childlaw that requiring an individual child (who is already managing the impact of the reason a legal case is being raised) to also bear the burden and responsibility of being a party to litigation alone is unlikely to be in their best interests (Art.3 UNCRC).

The current legal aid application requirements may also lead to their voice not being heard effectively (Art.12 UNCRC). As a duty-bearer under the UNCRC (Incorporation) (Scotland) Act 2024, the Scottish Legal Aid Board should be acting compatibly with the UNCRC and must review how they support children to access legal remedies.

⁷ In the 2018 report on SLAB's Corporate Parenting progress, it had been identified that 'the lack of care status information about those accessing legal aid' is a key challenge to address.

For many reasons, such as having a learning disability, poor mental health or living in a state of crisis, many adults will also be unable to pursue a legal case in order to access justice and enjoy their human rights. As a Corporate Parent, SLAB have a responsibility to promote and protect the best interests of young people with Care Experience, however, their Corporate Parenting plan explains how they struggle to take as active measures as other Corporate Parents within the current legal aid structures.

The Scottish Legal Aid Board's Corporate Parenting Plan 2025 states why reforming legal aid to offer support to particular groups such as those with Care Experience or different types of cases is important:

“Our main role is a funder of services delivered by the private and third sectors. We do not in the main deliver direct services to care experienced people. The legislation that governs the administration of legal aid dates from 1986 but the expectations on the legal aid system are now very different. **A key consequence is that the case-by-case legal aid system does not have the ability to secure help for people or direct help to particular groups or types of case.** The Scottish Government has recognised the need for legal aid reform to deliver a more flexible system better able to react to advice demands through a range of different funding mechanisms.” (p4).

We therefore urge the Scottish Government to expand legal aid to organisations, particularly for strategic / public interest cases, to ensure access to justice and legal remedies do not remain a privilege of those able to navigate the legal aid process and cope with taking on the burden of raising a case.