

PE2139/C: Automatic expulsion for children charged with committing a crime against another child

Children and Young People's Commissioner Scotland written submission, Tuesday 27 May 2025

Established by the Commissioner for Children and Young People (Scotland) Act 2003, the Commissioner is responsible for promoting and safeguarding the rights of all children and young people in Scotland, giving particular attention to the United Nations Convention on the Rights of the Child (UNCRC). The Commissioner has powers to review law, policy and practice and to take action to promote and protect rights.

The Commissioner is fully independent of the Scottish Government.

Thank you for the opportunity to comment on the above petition. We share the petitioner's concerns about the potential for children who have been harmed by a peer to find themselves in the same classroom as the person who harmed them. Our view is that such situations should be carefully managed to ensure that this does not happen. The child victim has a right to be protected from further harm and to "physical and psychological recovery and social rehabilitation" (Article 39 UNCRC).

To be compatible with children's rights, such situations require careful balancing of the human rights of both children, including their rights to education (Article 28 and 29), to minimise the interference with those rights. Any decision should be made following multi-agency discussion, with an equal emphasis on the rights of both (or all) children involved. Any interference with any child's rights must be both proportionate and necessary. This requires individual consideration and as a result no policy of "automatic expulsion" or exclusion would be compatible with children's rights.

Where a child is accused of causing significant harm to another child, and their presence will cause continued distress, it may be appropriate for the accused child to be excluded from school¹ whilst these discussions take place, in order to protect the rights of the child victim.

The Cabinet Secretary has outlined the legal and policy position relating to exclusion in her submission to the Committee. This requires exclusion to be used only as a last resort, only where proportionate and for the shortest time possible. The Cabinet Secretary also highlighted the requirement that local authorities provide appropriate alternative arrangements for the education of any child who is excluded.² This

¹ In this response we have used the term "exclusion" to mean a temporary exclusion from school. We note that it is extremely rare for a child to be permanently excluded (or expelled) from school in Scotland and where we mean permanent exclusion we will use that term.

² Cabinet Secretary for Education and Skills written submission. https://www.parliament.scot/-/media/files/committees/citizen-participation-and-public-petitions-committee/correspondence/2024/pe2139/pe2139_a.pdf

ensures that whilst they may be excluded from attending their normal school, their right to an education continues to be fulfilled.

In 2023, the UN Committee on the Rights of the Child made a number of recommendations on the use of exclusions, including that they should not be used in primary school, that in secondary schools they should only be used as a measure of last resort and that their use must be carefully monitored.³

The Independent Care Review, in *The Promise*, recommended that: “Scotland must not exclude care experienced children from education or reduce their timetable to such an extent that they are denied their rights to education.”⁴

It is not acceptable for children to be permanently excluded from education for any reason. Where they are unable to attend school, including when temporarily excluded, they must be provided with appropriate alternative education. This may include access to online education, individual support or attendance at an alternative setting.

Support for child victims

We have previously raised concerns about the support that is available to child victims. Access to victim support can be limited to older children, or be aimed at parents rather than the child. Schools may not have access to the information they need to support the child, or be aware of services which can support them.

There is a lack of specialist support available in many areas and this can leave children feeling unsupported, particularly when contrasted with the type of close support which children in conflict with the law receive.

Whilst the Bairn’s Hoose will offer high quality support to child victims when fully implemented, there is an urgent need for holistic services to support child victims in areas where no Bairn’s Hoose is currently in operation.

³ UN Committee on the Rights of the Child, 2023. *Concluding observations on the combined 6th and 7th periodic reports of the United Kingdom of Great Britain and Northern Ireland : Committee on the Rights of the Child*. <https://digitallibrary.un.org/record/4013807?ln=en&v=pdf>

⁴ https://www.carereview.scot/wp-content/uploads/2020/03/The-Promise_v7.pdf p72