Education, Children and Young People Committee
Wednesday 17 September 2025
26th Meeting, 2025 (Session 6)

Children (Care, Care Experience and Services Planning) (Scotland) Bill

Introduction

1. The Scottish Government introduced the Children (Care, Care Experience and Services Planning) (Scotland) Bill on 17 June 2025.

2. The Bill aims to makes changes in the law in relation to the children's care system. It also aims to change who is responsible for the planning of children's services.

3. The Education, Children and Young People Committee has been designated as the lead committee for the Bill at Stage 1.

4. A SPICe briefing on the Bill was published on Monday 25 August.

Call for views

5. The Committee issued calls for views on the provisions of the Bill, which ran from 27 June 2025 until 15 August 2025.

6. There was a call for views aimed at individuals with care experience and those providing support and a call for views for organisations and academics. The Committee also produced easy read and BSL versions of the call for views.

7. The responses to the calls for views have been published. Summaries of the responses received are included at Annexe A of the 10 September meeting papers.

Committee meeting

8. The Committee began taking oral evidence on 10 September. The Committee will continue taking evidence at its meeting today, on 8 October and on 5 November.

9. At today's meeting, the Committee will take evidence from two panels.

10. On panel one, the Committee will take evidence from:

    - Stephen Bermingham, Practice and Standards Manager, Children's Hearings Scotland

    - Matt Forde, Partnerships & Development Director, NSPCC Scotland

- Margaret Smith, Services Manager, Partners in Advocacy
- Alistair Hogg, Head of Practice and Policy, SCRA
- Laura Pasternak, Policy & Public Affairs Manager, Who Cares? Scotland

11. On panel two:

- Lynne O'Brien, Chief Officer, Children & Families, Aberlour
- Duncan Dunlop
- Anne Currie, Assistant Director for Scotland, The Fostering Network
- Jo Derrick, Chief Executive Officer, Scottish Throughcare and Aftercare Forum (Staf)

Supporting information

12. A briefing has been produced by SPICe for this meeting and is included at **Annexe A**.

13. Children's Hearings Scotland, NSPCC Scotland, SCRA, Who Cares? Scotland, Aberlour, the Fostering Network and the Scottish Throughcare and Aftercare Forum (Staf) all responded to the call for views. Their responses are included at **Annexe B**.

Clerks to the Committee
September 2025

Annexe A

Education, Children and Young People Committee
Wednesday 17 September 2025
26th Meeting, 2025 (Session 6)

Children (Care, Care Experience and Services Planning) (Scotland) Bill – Stage 1 (Session 2)

Introduction

This paper is intended to support members during the Committee's scrutiny of the Children (Care, Care Experience and Services Planning) (Scotland) Bill at Stage 1. A SPICe briefing on the Bill is available to read in full on the SPICe website. Summaries of responses to the Committee's call for views can be found in the Committee's papers for 10 September 2025. The Committee will hear from a range of witnesses including advocacy organisations, those involved in delivery of the children's hearings system, residential providers, and those representing care leavers and foster carers.

Aftercare

Sections 1 and 2 of the Bill deal with aftercare. Aftercare is the term used to describe advice, guidance and assistance beyond universal services provided to children who leave care from age 16. Examples of aftercare support can include helping a young person find accommodation; access education and employment opportunities; and/or support their wellbeing through provision of financial support.

Currently, provisions contained in the Children (Scotland) Act 1995 (the 1995 Act), as amended by the Children and Young People (Scotland) Act 2014 (the 2014 Act) set out local authority duties to provide aftercare support services to eligible young people leaving care under the age of 19. In addition, eligible young people aged 19-25 can also request assistance from their local authority, and the local authority must assess their support needs and provide aftercare support to meet those needs if required.

Section 1 of the Bill amends the aftercare provisions in the 1995 Act to extend aftercare eligibility to those who have been 'looked after' and left care before their 16th birthday, introducing a right for children and young people between the ages of 16 and 25 who were formerly looked after before their 16th birthday to request an assessment of their eligible needs. It also extends the local authority's power to provide aftercare support to meet those needs if required. It is proposed that this will be introduced incrementally for those turning 16 from April 2027.

Section 2 amends the 1995 Act to extend aftercare eligibility to those between the ages of 16 and 18 looked after in Northern Ireland and now resident in Scotland, bringing parity with current provisions already in place for children from England and Wales.

Responses to the Committee's call for views generally supported provisions to expand aftercare eligibility, highlighting that current legislation excludes many young people from support. Key points raised are highlighted below.

Clan Childlaw and the Fostering Network recommended simplifying the proposals. The Fostering Network's submission recommended "amending section 1, subsection 2, to create a duty on local authorities to assess a young person's need for aftercare up to age 26, and to meet any needs identified."

Organisations including Who Cares? Scotland and the Children and Young People's Commissioner for Scotland (CYPCS) noted that, as drafted, the provisions would be out of scope of UNCRC as they relate to a parent act not made in the Scottish Parliament.

Organisations including the Promise Scotland and the Scottish Children's Reporter Administration (SCRA) said young people should not be required to apply for aftercare support, and it should be available to all care-experienced young people. Who Cares? Scotland stated that children placed in foster care outwith their own local authority must be able to access aftercare in the authority they live in.

STAF, UNISON Scotland and local authorities raised concerns about resources attached to the provisions. Housing was mentioned by Angus Council and others as another area to consider. Social Work Scotland and COSLA both stated figures used for the costs of assessment were two years out of date.

Organisations including Aberlour called for clarity around the eligibility of unaccompanied asylum-seeking children.

Corporate parenting

Section 3 of the Bill relates to corporate parenting. A corporate parent is one of the publicly funded individuals or organisations with legal responsibilities under Part 9 of Children and Young People (Scotland) Act 2014 ('the 2014 Act').

These responsibilities are called corporate parenting duties. They aim to ensure that looked after children, and young people leaving care from age 16, receive the same support and opportunities as any good parent would provide. Corporate parents must work together to meet the needs of this group. Examples of corporate parents include Scottish Ministers, local authorities, NHS health boards, Police Scotland and further and higher education bodies.

At present, corporate parenting duties apply to looked after children, as well as those who left care **on or after** their 16th birthday but who are under 26. Section 3 of the

Bill amends the 2014 Act in a manner similar to the way in which section 1 of the Bill amends the Children (Scotland) Act 1995.

The effect of section 3 is that the corporate parenting duties would now apply for the first time to those children and young people who were looked after, but who left care **before** their 16th birthday.

While many organisations responding to the call for views welcomed the intention behind the proposed extension of corporate parenting duties to bring these in to line with the aftercare provisions in section 1 and 2 of the Bill, the majority of respondents also had concerns.

SWS raised concerns about the proposals represented a potential rights issue, contradicting minimum intervention principles. Several organisations including STAF, Who Cares? Scotland and a number of councils highlighted the need to ensure the responsibilities are understood, with national guidance, appropriate resources, monitoring and the development of a shared understanding of good corporate parenting in practice.

Organisations including the Fostering Network called for the corporate parenting provisions to recognise lifelong care experience. Respondents including Adoption UK, Scottish Adoption and Fostering, and the Children and Young People's Planning Partnership (CYPPP). Scottish Borders stated it was unclear how the provisions will apply to adopted and kinship groups.

The joint response from the Scottish Refugee Council and Guardianship Scotland stated corporate parenting responsibilities in the context of unaccompanied asylum-seeking children needed to be better understood.

Advocacy services for care-experienced persons

Section 4 of the Bill says that Scottish Ministers must, by regulations, confer rights of access to what it refers to as care experience advocacy services. This relates to the recommendation from The Promise that care-experienced individuals should have a statutory right to advocacy throughout their care journey and beyond.

Advocacy is likely to be most needed when children, young people, or care-experienced adults are navigating the care system or interacting with key services like health, education, police, or social work. However, at present, Scotland's advocacy landscape is complex and uneven. While some rights to advocacy are legally protected, in other areas it remains a matter of good practice.

The Policy Memorandum (paragraphs 49–50) states that the new right to advocacy is not intended to "cut across or duplicate" existing, bespoke advocacy entitlements. It also highlights that current advocacy services, such as those provided through the children's hearings system and local authority-led advocacy, will remain pivotal.

Much of the detail around the right to advocacy under section 4 is left to secondary legislation. The Policy Memorandum (at para 54) says, without giving further details, that the Scottish Government will develop "a clear timeline and programme for implementation" associated with the advocacy service.

Areas that might be covered in secondary legislation include: eligibility for advocacy; service standards; register of service providers; qualifications and training; and notification procedures.

The majority of respondents to the Committee's call for views were supportive of the principle of extending advocacy, however there were concerns about related issues such as provision of resources.

The need to provide improved, sustained resourcing of advocacy support was raised by respondents including St Mary's Kenmure, Quarriers, STAF and COSLA. SWS and Who Cares? Scotland also highlighted this, stating that the take up rates in the Bill's Financial Memorandum may underestimate demand. SWS suggested a pilot scheme would aid understanding.

CYCJ and Inspiring Scotland/Intandem's response stated that care experienced young people must be aware of their right to advocacy and advocacy should complement services rather than replace them. Clan Childlaw stressed "advocacy is not a substitute for legal representation".

The Promise Scotland, Care Inspectorate, Who Cares? Scotland and the Fostering Network stated the need to provide a more precise definition of 'independent advocacy'. Who Cares? Scotland and the Scottish Independent Advocacy Alliance suggested using the definition of independent advocacy used in the Mental Health (Care and Treatment) (Scotland) Act 2003.

Our Hearings, Our Voice expressed strong support for children receiving advocacy support as soon as they are referred to the children's hearing system.

Respondents including Adoption UK Scotland, South Ayrshire Council and H&SCP, SWS, COSLA, Children First and UNISON Scotland expressed concerns about the detail of advocacy provision being left to subsequent regulations.

The availability of advocacy services for adoptees, those looked after at home and those in informal kinship care was highlighted, with Adoption UK Scotland, Scottish Adoption and Fostering, Who Cares? Scotland, Cyrenians and MCR Pathways all mentioning this in their responses. Accessibility of advocacy provision for disabled children was raised by Barnardo's and Children's Services, Renfrewshire Council.

NSPCC Scotland and the joint submission from Scottish Refugee Council and Guardianship Scotland stated that while they were broadly supportive, clarity is needed on how the advocacy proposals will interact with existing statutory services.

Guidance in relation to care experience

Sections 5 and 6 of the Bill deal with guidance for public authorities and organisations exercising public functions in relation to care experience.

Section 5 puts a requirement on Scottish Ministers to issue guidance relating to care experienced people and their experiences to promote understanding. It also puts a duty on public authorities to raise awareness of the guidance, and to have regard to

it when carrying out their functions (or where functions are to be carried out on the authority's behalf).

Section 6 makes further provision relating to the guidance at section 5, for example stipulating that care experienced people must be consulted.

These provisions relate to the Independent Care Review's recommendation that there should be "an expansive and holistic understanding of 'care experience'" with "an understanding of how the role of the state in individuals' upbringing relates to ongoing rights and entitlements".

While there are existing definitions used by organisations, there is not an overall agreed definition of 'care experience' at the present time. The Scottish Government's Developing a Universal Definition of 'Care Experience' consultation found broad support (80%) for a universal definition.

Many respondents to the call for views were broadly supportive of the proposals for guidance in relation to care experience, however there were several specific concerns raised.

Many of those with positive comments placed an emphasis on the importance of co-production with those who have experience of care. This included responses from St Mary's Kenmure, Scottish Social Services Council (SSSC), Care Inspectorate, The Fostering Network, Nationwide Association of Fostering Providers (NAFP), SCRA, and Clackmannanshire Council.

There were differences of opinion regarding who should be included in any definition of 'care experienced', with some organisations including Adoption UK Scotland and Aberdeenshire Council favouring a broad definition, while organisations including Social Work Scotland and COSLA were concerned this could lead to the inclusion of those who have not been looked after and never had state intervention in their lives.

Quarriers, Barnardo's Scotland, SASW and SWS said any change to definitions needed to ensure that no one who needs access to support was inadvertently excluded from it.

Many expressed disappointment that the Bill did not include a universal definition, but instead left this to secondary legislation. Who Cares? Scotland raised the concern that not including a clear definition in regulations would mean that eligibility requirements will "continue to be guiding not binding, and exclusive," to a range of young people including adoptees and unaccompanied asylum-seeking children.

Who Cares? Scotland also said that the requirement for public authorities to 'have regard to' future guidance when exercising their functions in relation to Care Experienced people should be strengthened. The submission suggested that this "would be stronger if it was a "due regard" duty, so public authorities could be subject to judicial review."

Hub for Success, NSPCC Scotland, CELCIS and Aberdeenshire Council were amongst the respondents who discussed the need for adequate training and resources to support the implementation of any new guidance.

SASW, SWS and the Scottish Refugee Council both highlighted the need for best practice in relation to Unaccompanied Asylum-Seeking Children. Children in Scotland expressed the view that the ASL Act will need to be expanded to include all young people with 'care experience' and not only those who are 'looked after.'

Requirements on residential care providers

Section 8 of the Bill would enable Scottish Ministers, through regulations, to enhance the financial transparency of (non-local authority) residential care providers – children's homes and residential schools.

Should it be determined that excessive profits are being made, section 8 of the Bill would also enable the Scottish Ministers to make further regulations to limit residential care providers' profits. This section of the Bill relates to the Independent Care Review recommendation that Scotland must tackle the issue of profit in the care system.

Residential care is one option for the care of looked after children. It can be provided by a local authority, the third sector or a private provider. Part 5 of the Public Services Reform (Scotland) Act 2010, and associated secondary legislation, provides the current regulatory regime for residential care providers. The regulator is the Care Inspectorate (although it is referred to as 'SCSWIS' in the 2010 Act).

A 2022 Competition Markets Authority (CMA) market study into children's social care in England, Scotland and Wales found that 35% of children's home places in Scotland were provided by the private sector. This compared to 78% in England and 77% in Wales. Report recommendations for Scotland included consideration of the potential unintended consequence that reform of the care system may have on providers, and a call for development of an oversight regime to assess the financial health of providers. The report rejected a ban on private provision or a cap on provider profits.

Following the CMA report, England introduced the Children's Wellbeing and Schools Bill in 2024, which is now being considered by the House of Lords. It includes proposals similar to those in section 8 of the (Scottish) Bill. Wales passed the Health and Social Care (Wales) Act in March 2025, aiming to eliminate private profit from children's residential care.

Responses to this question in the call for views were mixed. There were a small number of submissions, including CYPCS and Children in Scotland who felt that the provisions in the Bill had got the right balance between preventing excessive profits from being made and ensuring that the supply of private residential care facilities continues.

Some respondents felt further consultation, analysis and development is required before legislating on profit limitation. SWS described this part of the legislation as a "plan to have a plan," while the Law Society suggested that "this Bill is premature, pending the outcomes and any recommendations made within related reviews and consultations." The Scottish Government launched a consultation on this aspect of the Bill on 11 August 2025.

There were many comments suggesting that the Bill needed to be clearer in its definition of “extensive profit.” Organisations such as St Mary's Kenmure, SASW, SWS, the Promise Scotland, the Scottish Children's Services Coalition, Quarriers and Aberlour all discussed this point.

A number of responses called for greater clarity regarding the measures in the Bill to gather and use data on the profits of private residential care services.

Other respondents expressed the view that the legislation as set out does not go far enough. Submissions from NSPCC Scotland, Children First, Common Weal and Who Cares? Scotland all set out their objections to this section of legislation, based on it only providing Minister’s with the power to limit profits for providers, rather than for preventing them. The Fostering Network highlight the proposed addition of section 78F, subsection 2, to the Public Services Reform (Scotland) Act 2020 in their response, suggesting that requiring Ministers to have regard to the interests of residential care service providers before imposing or modifying a profit limitation requirement “means the Bill not only fails to take action to eliminate profit, but appears to actively prevent these provisions from being used to this end in future.”

There were also respondents who discussed the differences set out in the legislation between independent fostering agencies (IFAs) and residential care services, with COSLA stating that it is “unclear why a different approach” has been taken between them. UNISON Scotland, Common Weal and COSLA all suggest that residential services should be treated in the same way as IFAs and register as charities.

The submission from the CYCJ questioned “the exclusion of secure care provision and transport from these proposals.”

Some of the respondents, including COSLA, Glasgow City Health and Social Care Partnership and Education Scotland raised the concern that this section of the legislation risks providers withdrawing from the market with the result that there are not enough residential places to meet the need for them.

Fostering services to be charities

Section 9 of the Bill relates to Independent Fostering Agencies (IFAs). It requires an IFA to be a charity - either registered in Scotland, England and Wales or Northern Ireland.

Foster care can be organised directly by local authorities or through IFAs where a local authority has an agreement in place. In practice, local authorities directly provide most placements, with IFAs filling around a third of the remaining need. Fostering services (through both local authorities and IFAs) are regulated by Part 5 of the Public Sector Reform (Scotland) Act 2010 ('the 2010 Act') and associated secondary legislation. As noted earlier, the regulatory body under Part 5 of the 2010 Act is the Care Inspectorate.

As with the section 8, this section of the Bill relates to the Independent Care Review recommendation that Scotland must tackle the issue of profit in the care system.

There were fewer call for views responses to this question than to some of the others, although the majority of those who did respond were broadly in favour of the proposals in the Bill.

The concerns raised focussed on the practicalities of transitioning IFAs to the charity model. The Fostering Network, Who Cares? Scotland, Social Work Scotland and Aberdeenshire Council all expressed the view that sufficient time needed to be given to allow for this to happen, and that clear guidance must be provided to facilitate the change. There were also questions raised by some of the organisations regarding how transition and progress would be monitored in practice and implications for IFAs choosing not to register as charities.

There was also general agreement that any change had to be managed in a way that did not negatively impact children in fostering arrangements. Many organisations including Aberlour and COSLA raised concerns about the possibility that the change would lead to some providers closing. Quarriers were concerned that if any IFAs were to close, that this could have a “disproportionate impact on children with complex needs, who may currently be supported by specialist IFAs.”

The Fostering Network and Who Cares? Scotland suggested that independent adoption services should also be included in the legislation as services that should require to be charities.

Other organisations were strongly opposed to the provisions. For example, NAFP pointed out that IFAs must already follow a not-for-profit model and are monitored by local authorities and this system already offered appropriate accountability without adding the additional reporting burden of accountability to the Charity Commission.

Register of foster carers

Section 10 amends the Children (Scotland) Act 1995 (the 1995 Act) to give Scottish Ministers the power to "make arrangements for the establishment and maintenance of a register of foster carers" in order to facilitate approval of carers and placement of children at local level. The proposals will not change the approval process of foster carers and placement of looked after children.

The Policy Memorandum sets out the objectives of the proposals include improving safeguarding, improving coordination between local authorities, and providing a national platform to support training and professional development.

The register would include name and address; approval (or termination of approval) as a foster carer; information about the foster care being provided (for example, number of children permitted to be in their care).

The register will not be open to the public - Scottish Ministers must authorise any disclosure of entries, and unauthorised disclosure will be an offence, punishable by fine or up to three months imprisonment. The Bill provisions also allow for regulations to be made for a pilot scheme of the register.

Scotland's Adoption Register was introduced by the Adoption and Children (Scotland) Act 2007. Following this, the 2013 review of foster care considered the

introduction of a foster carer register, but rejected the idea due to concerns about costs, administrative burdens and data security.

The Independent Care Review in 2020 recommended that a national register should be considered. The Scottish Government's Policy Memorandum on the Bill states that "Technological advancements and improved data security measures" mitigate challenges identified in 2013.

There was general support for a register of foster carers in responses to the Committee's call for views.

Several organisations including Who Cares? Scotland, CELCIS, SWS, CYPCS and the Fostering Network highlighted potential safeguarding benefits of a fostering register. Includem and STAF suggested strengthening the register by including a record of complaints/comments made by children.

Organisations including COSLA, NAFP and councils stated the purpose of the register was unclear. Several responses highlighted the declining number of foster carers across the country, stating the introduction of the register must not worsen this situation. NSPCC Scotland requested assurance that the register would not stop dual registration of adopters as foster carers. The Fostering Network warned against unintended 'blacklisting' of foster carers, stating this could be avoided by the register recording reasons a person did not gain approval as a foster carer.

Organisations including Barnardo's Scotland, CELCIS, the Care Inspectorate, Children's Services, Renfrewshire Council, the Promise Board Highland, Aberdeenshire Council and Children in Scotland called for clarity on who will manage the register and how it will be maintained. CELCIS and NSPCC Scotland said Scotland's Adoption Register provided an example to learn from.

SSSC stated that while it had been highlighted in responses to the foster care consultation as an organisation which might maintain the register, it was required to charge a fee for registration and does not carry out an equivalent role to 'matching'.

The Fostering Network suggested removing the reference to respite carers in new section 30E(2)(a)(ii) on establishing a pilot scheme, stating that piloting on respite carers may not provide a good indication of the effectiveness of a register.

Other points raised included the potential for the register to be beneficial in standardising training and support for foster carers, improving data collection, facilitating matches of carers with children,

Children's hearings

Chapter 3 of the Bill includes provisions relating to changes made within the children's hearings system. The legislative proposals have been directed by the Scottish Government's response to the Hearings for Children report and the responses to the Children's Hearings Redesign – legislative proposals public consultation, held between July and October 2024.

Sections 11 and 12: Composition etc. of Children's Panel, children's hearings and pre-hearing panels

Section 11 makes changes to the composition of children's panels, allowing them to be composed of a single panel member (rather than the current 3 panel members) in certain defined circumstances, set out below:

- Grounds hearings where the Reporter has assessed agreement may be possible following a meeting with the child.
- Where a child has failed to attend their hearing and another grounds hearing is arranged, or where a child has not been in attendance and the panel members have not been satisfied that the grounds have/have not been accepted.
- Certain circumstances where the hearing is making (or extending) an interim compulsory supervision order (ICSO) (or making an interim variation of a compulsory supervision order). This is where the Reporter has directly referred the grounds to a sheriff and feels an ICSO is needed, and where a grounds hearing has made an ICSO but it will run out before a sheriff has decided on the grounds so a further ICSO may be needed.

Single member panels cannot make a decision on whether or not to put a compulsory supervision order in place for a child.

Where there is only a single panel member, they must be someone who has been appointed as a 'chairing member'. The role of chairing member does currently exist under the Children's Hearings (Scotland) Act 2011 (the 2011 Act), however it is not currently possible to appoint someone as a chairing member. Therefore, this Bill formally provides for separate categories of: ordinary members; chairing members; and specialist members.

Where a single member panel is permitted, the decision on whether to constitute the panel in this way will be taken by the National Convenor.

Section 12 allows certain panel members to be remunerated and paid allowances. The new powers of remuneration are, in particular, intended to apply to panel members fulfilling identified 'chairing member' roles and any 'specialist members'.

The Policy Memorandum describes ‘specialist panel members’ as those “whose particular expertise may enhance the ability of the decision-making tribunal in a particular case.” The Financial Memorandum sets out that the Daily Fee for Chairing Members will be set at £385 per day, in line with the tribunal tiers outlined within the Scottish Government pay policy. Though it also notes that it may be subject to ongoing review.

The Hearings System Working Group had recommended within their Hearings for Children report that a redesigned system “must consist of a salaried, consistent and highly qualified professional Chair accompanied by two Panel Members, remunerated at a daily rate" (p 36).

The Scottish Government's response to this report stated it was not clear that removing the volunteer element of the hearings system entirely “is the appropriate

route at this time." Reasons given for this included the need to maintain the community links panel members bring, resource issues and the potential impact on wider services.

In response to the Committee's call for views, SCRA stated that the proposal for a single member panel could possibly be effective but needed further exploration. In addition, SCRA said that the decision about how many panel members sit on a hearing or pre-hearing panel should rest with the tribunal rather than the National Convener as proposed. Sheriff Mackie's response said it may be more appropriate for single member hearings to be restricted to chairing members.

Children's Hearings Scotland (CHS), SWS, the Care Inspectorate and Children in Scotland all said single member panels had the potential to reduce delays in the system and speed up decision making. CYCJ and Who Cares? Scotland said that single member panels may be appropriate for decisions such as deeming an individual a relevant person or not or deferring a hearing in certain cases. The CYCJ response also said guidelines and rules would be needed to determine whether a single member panel was appropriate.

However, SWS said members generally opposed single member panels, particularly in relation to decisions about grounds. Our Hearings, Our Voice found most young people they spoke to did not support these proposals and Grandparents Apart stated no single member should be able to make decisions in relation to a child.

In response to proposals for specialist members, CHS and SCRA stated that, currently, specialist reports can be provided to hearings to assist decision making. SCRA stated that sourcing specialist decision makers for panels could be challenging as they would, in SCRA's view, have to be fully trained panel members.

Section 13: Child's attendance at children's hearings and hearings before sheriff

Section 13 of the Bill deals with the child's attendance at children's hearings and hearings before a sheriff. The Bill removes the child's obligation to attend hearings and proceedings before a sheriff, though they retain the right to do so.

While the Bill removes the obligation on the child to attend, it allows children's hearings and sheriffs to require a child's attendance where it is necessary for a fair hearing or to assist the children's hearing in making any decision relating to the child.

Where attendance is required, the hearing or the sheriff must have regard to whether the child's attendance would place their health, safety or development at risk, and take account of the child's age and maturity.

In response to the call for views, CHS highlighted the benefits of child attendance at hearings and suggested:

> "…we would propose that Section 14 of the Bill includes provision for the chairing member to work with the Reporter, on an equal legislative footing, to arrange and schedule a hearing in a way that works best for a child."- CHS submission

SCRA agreed with the proposed changes to attendance, though stressed the need to ensure good practice in working with a child. Our Hearings, Our Voice said overall, young people felt it should be easier for children not to attend their hearing and they should not be compelled to attend. Routine hearings in particular were felt to be not important to attend.

Who Cares? Scotland's submission stated the obligation to attend should be removed for all children and young people, with an offer to attend or participate via alternative measures made instead. For children on offence grounds, there should also be an opt-out system of referral for independent legal advice and advocacy.

SASW, Clan Childlaw, CYPCS and CYCJ expressed caution about these proposals, with CYPCS stating that in some cases removing the obligation to attend could negatively impact a child's right to be heard and have the effect of the child losing their voice in the hearing. Clan Childlaw said that, where a child has been referred on offence grounds, their absence may breach their right to a fair trial under Article 6 of the ECHR and Article 40 of the UNCRC.

COSLA, NSPCC Scotland, Children in Scotland, Scottish Women's Aid, Inspiring Scotland/Intandem, Children First and the Fostering Network were among organisations expressing support for removal of a child's obligation to attend hearings, however the Fostering Network stated concern about the proposal to remove the presumption of attendance due to concerns around the erosion of a child's right to attend.

Section 14: Grounds hearings

Section 14 of the Bill makes changes in relation to the process of establishing grounds. The Policy Memorandum (p 38) sets out that these changes "are intended to improve the experiences of children and their families in relation to the grounds hearings process".

Under provisions in section 14 of the Bill, rather than simply moving to arranging a grounds hearing after a decision that compulsory measures are needed for a child, Children's Reporters would be able to engage with children and family members at this stage. The Principal Reporter must also prepare a report which can include the results of this discussion, as well as other information held by the Reporter.

Following the engagement process, the Principal Reporter can then convene a hearing where it is likely grounds will be accepted, or in cases where there is no prospect of agreement or the relevant person does not have the capacity to understand an explanation of grounds, the Principal Reporter must apply directly to the sheriff to decide whether grounds are established.

In response to the Committee's call for views, Who Cares? Scotland called for an opt-out system of referral for independent legal advice and advocacy in relation to agreement of grounds and expressed concern about whether the Bill would mean a single chairing member may be able to resolve disputes where there is no agreement on grounds.

CHS' response said the proposals needed further clarification, as they risked introducing an additional stage into the process:

> "There is a risk that the new proposals will make the process following the point of referral more complex for children and their families and those supporting them to understand. The new proposal in Section 14 of the Bill whereby the Reporter is required to offer the child and relevant persons the opportunity, where appropriate, to have a 'post-referral discussion' to discuss the statement of grounds, the child's participation in the hearing, and such other matters as the Principal Reporter considers appropriate, means that a child and family could be involved in an additional level of discussion around the grounds with the Reporter, before a hearing is convened to make a substantive decision or an interim order." – CHS submission

CHS suggested the introduction of statutory timescales, from the point the Reporter receives a referral to the point a hearing is convened, or an application is made directly to the Sheriff to establish grounds.

Sheriff Mackie's response described the proposals as being made up of the "most complex legal language" that is "almost impossible to follow". The submission from Our Hearings, Our Voce also pointed to the complexity of these proposals.

NSPCC Scotland proposed a new role of 'infant safeguarder' should be present at grounds hearings for infants.

Sections 15 and 16: Relevant persons

Section 15 of the Bill slightly expands the current circumstances under which a relevant person can be temporarily excluded from a children's hearing or pre-hearing panel and allows a pre-hearing panel to make this decision prior to a hearing.

Currently, the Children's Hearings (Scotland) Act 2011 enables a hearing to exclude a relevant person where they are preventing a hearing from obtaining the views of the child. Under the new provisions, where a hearing agrees that a relevant person is **likely** to prevent the hearing from obtaining the views of the child, they can be excluded from the hearing.

Section 16 of the Bill enables relevant person status to be removed from someone who automatically has this status as defined under section 200 of the 2011 Act. This is currently not possible, with only the status of those who are 'deemed' as relevant persons being able to be removed in certain circumstances.

In the call for views responses, SCRA's submission expressed support for provisions to remove relevant person status, though stated that the 3-day timescale was not enough time. SCRA also said that it was not clear how decisions made "at a prehearing panel could extend to the duration of any exclusion" and a relevant person may in practice need to attend a hearing to hear of a decision. SCRA suggest considering exclusion decisions alongside decisions on remote attendance.

CHS supported the power for automatic relevant person status of an individual to be removed in certain circumstances, believing this will lead to a more trauma-informed, rights-respecting approach. CHS also stated:

> "It is also beneficial to see clarity around the power of the Chairing Member and the hearing to manage attendance of relevant persons, where the relevant person's presence is causing, or is likely to cause, significant distress to the child, so that such decisions are made in advance of a hearing in a more trauma-informed way." – CHS submission

Fostering Network said the child's view should be centred in decision making on relevant persons, and the Principal Reporter should seek the child's view on relevant persons as part of new section 69A, subsection 3a.

Scottish Women's Aid said there should be consideration of behaviour harming a mother, as well as behaviour harming a child, as a reason for removal.

Sections 17-21: Other changes

Sections 17 to 21 of the Bill set out further changes to the Children's Hearings System.

Section 17 changes referral provisions in the 2011 Act from the current provision that a CSO "might be necessary" to "is likely to be needed". The word "support" is also added to the existing criteria of "protection, guidance, treatment or control" for referrals to the reporter.

In the call for views responses, CYCJ, Who Cares? Scotland, CHS, SASW and SCRA agreed with the addition of 'support' and SCRA stated it was "pleased that the existing criteria remain unchanged". CHS proposed that a review of the language of section 67 grounds should be undertaken.

The Fostering Network, Who Cares? Scotland and CYCJ expressed disappointment that the language of "treatment or control" will not be modernised by the Bill. Who Cares? Scotland stated these terms should be replaced with "nurture and support". The Promise Scotland said it would like to see amendments at Stage 2 updating the language around 'treatment and control'.

Section 18 places new duties on local authorities, police constables, health boards, and the children's reporter to provide information to children about: their referrals, the children's hearings process and available advocacy.

In the responses to the call for views, Our Hearings, Our Voice said the child's advocacy worker needed to be provided with the information needed to represent a child in a timely manner. COSLA also stated support for sharing of appropriate information.

SCRA stated that the proposals:

> "…could be really effective at making the referral and children's hearing process clear and also effective in increasing the access children have to advocacy service providers." – SCRA submission

Section 19 makes changes to the period for which interim compulsory supervision orders and interim variations of compulsory supervision orders have effect. While the maximum duration of the initial ICSO will remain at 22 days, subsequent orders and non-urgent extensions will increase to a maximum duration of 44 days. Where an interim variation requires to be made urgently, it will apply for a maximum of 22 days. The Policy Memorandum states that for "less urgent" cases, 44 days will be the maximum duration.

SCRA's response to the call for views highlighted the difficult of decision making around ICSOs, calling for further detail and evidence on the proposal showing it would offer an improved experience. SCRA expressed support for proposed changes to timescales of ICSOs.

Who Cares? Scotland stated concern that proposals for single panel members to make or extend ICSOs may breach a child's right to a fair trial. The submission also highlighted the impact ICSOs can have on a child's life, stating that an opt-out right to independent legal advice should be available where an ICSO is being considered.

Section 20 makes technical changes to sections 96 and 98 of the 2011 Act. The Policy Memorandum states this is to "improve the congruence between the two" in relation to extensions of interim CSOs.

Section 21 inserts a new power into the 2011 Act setting out further circumstances in which the Principal Reporter can initiate a review hearing for a CSO, before the expiry of an existing order and without the need for new grounds to be investigated and established. These changes will mean that the Principal Reporter can initiate a review where: there is significant new information; the order is no longer required; there are problems with implementation, suggesting the order could benefit from a review.

'Relevant information' that might trigger a review is information that was not available to the children's hearing previously.

In response to the call for views, Sheriff Mackie's submission stated that Bill provisions for the Principal Reporter to initiate a review where they become aware of 'relevant information' were "hard to follow" and there were questions around what constitutes 'relevant information'.

SCRA stated this power was more appropriate for those working with the child, or the child and family themselves.

NSPCC Scotland's submission said the panel must be empowered to call a review where an infant's case is not progressing.

Children's services planning

Part 2 of the Bill amends existing provisions in Part 3 of the Children and Young People (Scotland) Act 2014 (the 2014 Act) on the planning of children's services. introduces the new term 'lead children's services planning bodies'. It also provides for any Integration Joint Boards (IJBs) covering an area to join local authorities and health boards on the list of bodies required to plan children's services.

In the 2014 Act, 'integration joint boards' (IJBs) are listed as an 'other service provider' for the purposes of children's services planning. This creates an unusual situation for children's services, especially where they have been delegated to the IJB. Section 22 of the Bill amends Part 3 of the 2014 Act to change the status of IJBs in relation to children's services planning where there is a relevant IJB in the local authority area. This change will see IJBs join local authorities and health boards on the list of bodies required to plan children's services. Collectively, and to reflect service planning on the ground, the three bodies are to be known as 'lead children's services planning bodies'.

In response to the call for views, many organisations stated further guidance would be needed to ensure the changes proposed by the Bill were effective.

STAF called for a review of existing guidance before making any further changes to children's services planning. It also called for the government to standardise nationwide support with a framework for resource eligibility and create regional knowledge hubs to share best practice.

The proposals were welcomed by organisations including the Fostering Network, Cyrenians, Includem, Who Cares? Scotland, Clackmannanshire Council, Moray Council/Health and Social Care Moray, Children's Services East Lothian and Polaris Community.

Summary of evidence

A summary of evidence of the 10 September 2025 meeting is included below. **Please note**, the Official Report was not available at the time of writing.

General comments

During the first panel, all three witnesses (Sheriff David Mackie, Fiona Duncan and Fraser McKinlay of The Promise Scotland) highlighted the lack of engagement they felt there had been between the Scottish Government and the sector in relation to the Bill. Sheriff Mackie stated that it was 'a pity' that there hadn't been more engagement as it is difficult to discuss perceived issues with the Bill; instead the decisions the Scottish Government have made have not been explained. It was noted that engagement seems to have picked up since the publication of the Bill.

Fraser McKinlay and Fiona Duncan suggested further legislation would be needed in the next session of Parliament. This should include streamlining care system legislation – an opportunity that had been missed with this Bill.

Fraser McKinlay called on the Scottish Government to set out how it will progress areas of the Promise not in the Bill, asking for more clarity on how the Bill interacts with other policy areas such as housing and education, the other routes the government is using to address some of the key points, and non-legislative changes that are underway. He also said that a right to return to care should be included in the legislation.

Witnesses on both panels generally agreed that the FM was likely an underestimate.

On panel 2, CELCIS expressed disappointment in the lack of focus on kinship care in the Bill, adding there was a lot going on in the background.

UNCRC

Bill sections 1 and 2 (on aftercare) and section 10 (on the register of foster carers) amend the Children (Scotland) Act 1995. As this is pre-devolution UK legislation, it falls outside the scope of the UNCRC Act 2024.

During the second panel, witnesses expressed concern about the drafting of the legislation meaning young people will not be able to access their rights in these areas. Kate Thompson of the Children and Young People's Commissioner Scotland (CYPCS) said that a drafting choice had been made by the Scottish Government, and drafting these provisions as standalone sections would have meant they were covered by UNCRC. She pointed to Stage 3 of the Housing Bill as another piece of legislation where these considerations were being made.

Maria Galli of the Law Society of Scotland and Katy Nisbet of Clan Childlaw also expressed concerns. Clan Childlaw said the Scottish Government had promised an audit of legislation in relation to UNCRC, but this had not taken place, and no attempt had been made to ensure all new legislation is in scope.

Aftercare

On aftercare provisions in the Bill, Fraser McKinlay noted that while the Bill does address the current ‘cliff faces’ faced by care experienced young people as they enter adulthood, adequate resourcing and planning will be critical to ensure successful outcomes.

Fiona Duncan said planning the implementation of this section of the Bill in a way that ensures that the system is not overwhelmed and is instead ready to meet the demand is crucial. She explained this must include all of the policy areas that may be impacted by the implementation, e.g. housing, to ensure a smooth transition.

Sheriff Mackie stated that a child’s plan needs to run as a continuum throughout the services they interact with and throughout their life, but that many children do not

have a plan due to the lack of resources. He also noted that with the move next year to open children's hearings to those aged 16 and 17, the transition between child and adult systems also needs to be kept in mind.

On aftercare, though supportive of the attempt to extend provisions, Clan Childlaw expressed considerable concerns that, as drafted, the provisions would impact those currently eligible for aftercare, impacting their right to support in some cases and leaving them instead with only the ability to request an assessment. The example of a 15.5-year-old coming off a Compulsory Supervision Order (CSO) ahead of their 16th birthday was given.

Clan said there were concerns that aftercare provisions do not do what people think they are going to do. Clan explained that currently a young person in this situation would be eligible for aftercare support, but under the provisions in the Bill this would change to ability to request assessment. Witnesses said all 16- and 17-year-olds need to be able to access the mandatory aftercare provision. They also highlighted the lack of provisions relating to housing/homelessness as a major issue for those leaving the care system.

Claire Burns of CELCIS said care experienced people should be able to access aftercare based on need. CELCIS and the Law Society also stated that the cost provided for aftercare in the Bill's Financial Memorandum are outdated and likely an underestimate. The Law Society also said that many of those benefitting from aftercare will be over 18 and therefore not covered by UNCRC – a human rights impact assessment should have been carried out to establish impact.

Clan also said that someone coming off a CSO before age 16 will not be eligible for continuing care, and the Bill did not consider continuing care.

Corporate parenting

CELCIS stated it was not clear what problem the corporate parenting provision is trying to solve. The proposals would also mean local authorities would have to have due regard to all CE young people and this could include those adopted as babies. Witnesses questioned the need for this.

Advocacy

When asked about the advocacy provisions of the Bill, the witnesses on panel 1 noted that the current structure is fragmented and there are a mix of services across the country. They all agreed that advocacy was important. Sheriff David Mackie suggested that advocacy needed to be available from the very first intervention in the life of a young person, and that access to legal advocacy was also sometimes required.

Fiona Duncan cautioned that while advocacy can have a big impact it can also easily go wrong. She suggested that co-designing services was important and that there needs to be a series of questions asked in order to measure the effectiveness of such services. She told the committee that if advocacy is done well, it can improve outcomes across a number of associated policy areas.

Implementation was also the focus of Fraser McKinlay's comments, who noted that while it was a complicated service to do well, it is important to properly consider a plan to ensure that the needs of young people and families are supported.

On panel 2, CELCIS said independent advocacy is a central plank of the Promise, and there is a need to make sure it's not a one-off offer to families. Witnesses also highlighted:

- advocacy must be independent and appropriate for the individual
- many advocacy organisations are small, funding is precarious, and this issue is not addressed in the Bill
- advocacy must be offered as early as possible - ideally at the point of referral
- advocacy must be legally supported – it is not an either/or.

Guidance

There were mixed views in the first panel in relation to a definition of 'care experienced.' Fraser McKinlay suggested that every individual will have their own definition, and that any definition needs to be as broad and inclusive as possible. He also told the committee that there is a fine balance between ensuring a definition enables the required support for individuals and ensuring it avoids stigma. He suggested that the most important element is how any definition interacts with eligibility for support, and this view was supported by the other panel members.

CELCIS said that a definition of care experience would likely be helpful but questioned what value it would add and whether the test for legislation had been passed.

CYPCS said any definition needs to acknowledge that use of language such as care experienced is a choice and privacy needs to be respected. CYPCS also expressed uncertainty around the benefits of having a definition unless it is linked to eligibility for various supports, stating any definition needs to bring clarity not confusion.

The Law Society said clear and concise law making was needed and only rights that are going to be implemented should be included.

Profit limitation: residential care

When asked about the provisions in the Bill to limit profits in residential care, Fraser McKinlay explained that while the principal is a simple one, the implementation of the policy is complex.

Fiona Duncan told the committee that 'excessive profits' are currently being made. She stated that the Bill is a step in the correct direction and should make the system more transparent, but that there is a lot of work to do to make it work in practice. She explained that the Promise did not make recommendations on the structure of organisations, but about ensuring that all of the money spent by the state should be dedicated to the child. In her view, the outcome for young people is the most important point.

On panel 2, CELCIS said provisions to limit profit on residential care had not been consulted on properly, and there was a need to differentiate between reinvesting surplus and profit going to shareholders. Care is needed to ensure private providers of specific services are not unnecessarily taken out of the system.

The Law Society said the provisions were premature as the Scottish Government consultation on them was still running. CYPCS expressed reluctance at removing the provisions, as progress was needed.

IFAs as charities

On the point of different systems for fostering and residential care, Fraser McKinlay suggested that this makes sense as they are currently constituted differently. The Bill is closing loopholes in the current fostering system while the changes to the residential care system have much bigger potential implications.

Sheriff Mackie shared the view that the system needs to avoid incentivising fostering from lasting longer than was required by setting time limits for decision making, and encouraging foster carers who are potential adopters.

During panel 2, CELCIS said fostering provisions feel pragmatic and similar is happening in Wales. CELCIS highlighted the need for further work to understand the implications of the change, suggesting there should be engagement with the sector to study landscape, and understand which organisations might leave.

Register of foster carers

On the topic of a register for foster carers, Fiona Duncan suggested that there were real opportunities with a register to improve the current system, but that it needs more thought. A register cannot solve all of the societal reasons that foster carer numbers are dropping in Scotland, but it could form the basis for the conversations that need to be had. Fraser McKinlay stated that it is necessary to know how a register fits in with the wider work that the Scottish Government is undertaking to understand its potential advantages in the wider context.

On panel 2, CELCIS stated the Scottish Government needed to clearly set out the rationale for why the register was being set up. Concern about moving children and young people away from their communities was also highlighted.

Family group decision making

Panel 1 agreed that this was an area where the Bill could be strengthened. Sheriff David Mackie suggested that it is important in a rights-based world to engage people in their own process.

On panel 2, CELCIS stated more work was needed to understand whether FGDM should be included in legislation, adding that it was already happening in some local authority areas.

Children's hearings

On the proposals in general, Sheriff Mackie suggested adding a provision to the Bill that states that the Children's Hearings system is an inquisitorial non-adversarial process. He also returned to comments on the importance of a children's plan and introducing advocacy for children's hearings at the earliest possible stage.

Single member panels

Sheriff Mackie told the committee that single person panels should not be feared, and while bigger decisions would be best made by a panel of 3 people, many procedural decisions could be made by just 1. He suggested that Chairs would be best placed to do this. Fiona Duncan agreed that speeding up the process would reduce the delays in decision making that can increase the anxiety levels of the young people and families involved.

Sheriff David Mackie noted that while the Bill was a 'well-intended endeavour' to make the Children's Hearings System easier, the language in the Bill, especially changes related to section 90 of the Children's Hearings (Scotland) Act 2011 (section 11 in the Bill), had sections that were almost impossible to read.

On panel 2, CYPCS said it is not opposed to single member panels but remained cautious, and details still needed to be ironed out. CYPCS also said that having the National Convener making decisions on whether single panel can go ahead will mean seeking info from reporter etc and could be a considerable task.

Clan and the Law Society said further detail on the types of decisions that could be made and the structure of the pane were needed.

Renumeration

Background to the decision to recommend renumeration was provided by Sheriff David Mackie, who explained this was made in the context of a proposed expanded role for the Chair. He explained that the recommendation was made in the hope that a wider diversity of panel members would come forward if renumeration was offered, as currently only those who can afford to volunteer get involved.

On panel 2, CYCPS said while there could be benefits to expanded role, it was not seeing strong evidence for specialist panel members and further details were needed on this as the CRIA was quite speculative and there has not been a trial or pilot. CYCPS also said adding in a specialist member could cause more confusion and be difficult to arrange in remote/rural areas.

Clan and CYCPS said there was potential for the proposals to create a hierarchy. Clan also asked for clarity on the purpose of remuneration, stating if this was to ensure continuity of chair then this could be a good thing. Clan also asked for clarity on the decision-making process around deciding when a specialist member is required. CELCIS said it was not convinced of the merits of remuneration and would

need to look at whether it moved the system on enough to justify the significant costs attached.

Obligation to attend

Sheriff Mackie said removing an obligation to attend hearings was a good move, but stressed this needed to be balanced with the importance of attending where possible. He felt this provision linked in with advocacy services to ensure young people were supported to attend, and the Bill could be strengthened in this regard.

On panel 2, CYPCS said Bill provisions removing the obligation for a child to attend a children's hearing could have a negative impact on children's rights if the child's views are missing. Therefore, the Bill needs to specify how the child's voice will be heard, particularly in the case of disabled children and those with additional support needs. Clan Childlaw stated the provisions needed to balance up the right to a fair trial for those attending hearings on offence grounds, adding that Clan already believe hearings breach UNCRC around access to a lawyer.

Grounds hearings

Sheriff Mackie said grounds hearings can be difficult and that in cases where grounds are not opposed it would be best dealt with by a system that was more administrative, avoiding the need for a hearing. He said that the Bill stops short of introducing this and instead reinforces the existing system. While the Bill does allow grounds to be agreed without the young person being involved, which Sheriff Mackie agreed was a positive, he expressed reservations about how much progress this change is in reality.

On panel 2, CYPCS said the Bill included a mandatory offer of a meeting with the Reporter, when this was originally intended to be the ability to request a meeting. This could lead to a situation where multiple meetings had to be arranged (e.g. for different groups within a family). CYPCS, Clan and Law Society all expressed concerns about the proposals, stating the need for legal representation at these 'potentially significant' meetings. They also raised concerns that the Reporter being involved at this stage was akin to a prosecutor taking up a similar role, and may lead to a situation where a child could incriminate themselves unknowingly.

Lynne Currie and Laura Haley, SPICe Research

11/09/2025

Annexe B

Children's Hearing Scotland – Call for Views Response, Children (Care, Care Experience and Services Planning) (Scotland) Bill

Introduction

Children's Hearings Scotland (CHS) welcomes the introduction of the Children (Care, Care Experience and Services Planning) (Scotland) Bill. This represents a significant legislative step in meeting the aspirations of the Independent Care Review and improving the experiences and outcomes for infants, children and young people in the Children's Hearings System, as well as their families.

CHS is the statutory body responsible for recruiting, supporting and training around 2,000 Panel Members to fulfil the legal requirements of children's hearings. Panel Members make legally binding decisions as to whether compulsory measures of supervision are needed to address the risks to children's and young people's welfare and ensure that their needs are properly met and their rights upheld. CHS have a significant role to play in the effective implementation of this Bill.

CHS's locus relates to Chapter 3 of the Bill and our views on the proposed redesign of the Children's Hearings System, as this is the area that will have the most significant impact on the operational delivery of our work. Whilst we recognise that the proposed changes will represent operational challenges and may be unsettling for some, we are firmly of the belief that the strength of the hearings system, and CHS as one of the principal delivery arms of the system, is our capacity to evolve and adapt to better meet the needs of children and young people, whilst maintaining the ethos of Kilbrandon's founding principles.

To uphold these principles, CHS's Corporate Parenting responsibilities extend beyond the hearings system and we welcome many aspects of the Bill that we hope will have a positive impact for children and families by increasing the scaffolding and support available to them and tackling the poor outcomes linked to care experience. These provisions include the right to advocacy for people with lived experience; extension of eligibility for aftercare support; actions to improve the language of care including guidance around the term 'care experience'; legislative steps to reduce the profit imperative from residential care services; and the enhancement to foster care provisions to improve outcomes for children and young people. Whilst CHS does not have operational responsibility for these services, we welcome the policy intentions set out in the Bill and supporting documentation.

CHS has previously responded to the four key consultations that are included in the scope of this Bill:

- Children's Hearings Redesign
- Future of Foster Care

- Developing a Universal Definition of ‘Care Experience’
- ‘Moving On’ From Care Into Adulthood

Our response to this call for views focuses on the proposed changes to the Children’s Hearing System.

Our response to the proposed changes to the Children’s Hearings System

CHS is supportive of the majority of the proposed changes to the Children’s Hearings System which are set out in the Bill. We have worked closely with colleagues and key players across the sector in development of the “Hearings for Children” report that has informed the proposed legislation. We have also engaged directly with young people, CHS staff and our Panel Community to form a collective view of the proposed changes and the implications which this will have for our organisation, Panel Members, and for infants, children, young people and their families.

In responding to this call for views we have highlighted the areas we particularly welcome, adjustments that would further enhance these provisions, and areas which require further clarification and potential amendments.

Relevant persons:

We are supportive of the power for automatic relevant person status of an individual to be removed in certain circumstances where clearly defined criteria are met (the proposed introduction of Section 128A to the 2011 Act). We believe this will lead to a more trauma-informed and rights-respecting approach for infants, children and young people who experience the children’s hearing system, aligning with both the United Nations Convention on the Rights of the Child (UNCRC) and the European Convention on Human Rights (ECHR).

It is also beneficial to see clarity around the power of the Chairing Member and the hearing to manage attendance of relevant persons, where the relevant person’s presence is causing, or is likely to cause, significant distress to the child, so that such decisions are made in advance of a hearing in a more trauma-informed way.

Removal of child’s obligation to attend their own hearing, and move to a duty to attend, if required to do so by a hearing:

We welcome the safeguards which are in place in respect of this proposed amendment, and the ability of a hearing to overrule a child’s preference not to attend their hearing. There are certain circumstances where the impact of the decisions which a hearing can make upon a child, will have life changing consequences and therefore their attendance is required to ensure their voice is heard, and that they fully understand the implications of the decisions being made.

Data currently shows that of the total hearings in 24/25, less than half of the 21,313 hearings were attended by children.

Furthermore, we have previously expressed concerns about lowering the threshold for children's non-attendance at hearings. Panel Members consistently tell us that the level of engagement and their ability to fully take on board the views of children and young people is better achieved when they are in attendance. Whilst we recognise there are situations where non-attendance, or attendance by electronic means only, is necessary and can safeguard the rights of children, we are keen to work with partners to do everything possible to encourage and support children to attend their hearing. Hearings are more child-friendly now than they were in the past and there have been significant improvements made to encourage attendance and participation including; improvements to the environment of a hearing room, changes to the ways in which children and young people can give their views and changes to allow children and young people to have a representative in a hearing for support. Further improvements should be made by ensuring that there is collaborative planning between the Chairing Member and the Reporter to schedule a hearing in a way that best works for the child, their family, the professionals supporting the child and the people that matter most to the child.

In order therefore to maximise the likelihood of a child's meaningful attendance and participation in their hearing, we would propose that Section 14 of the Bill includes provision for the Chairing Member to work with the Reporter, on an equal legislative footing, to arrange and schedule a hearing in a way that works best for a child. We would propose that once grounds have been established, the Chairing Member is involved in the discussions around arranging, scheduling and planning the first hearing to consider a substantive decision. We are confident that by involving the Chairing Member in the key decisions in the planning of a hearing such as attendance, scheduling, reports, any adjustments which may be required, we will increase the likelihood of the child attending their hearing and also see a significant reduction in drift and delay.

Proposed amendment

Include provision in the Bill to ensure Chairing Members have a legal right to work collaboratively with Reporter on an equal basis in arranging, scheduling, and planning a child's hearing.

Enhanced role of the Chairing Member:

CHS welcomes the new power for the National Convener to appoint and convene single member hearings in the circumstances described in the Bill, for certain preliminary procedural matters. This includes certain grounds hearings for the purpose of considering the statement of grounds arranged under proposed Section 69C, making or extending an Interim Compulsory Supervision Order, and the current functions of a Pre-Hearing Panel including: the attendance of a child or relevant person at a hearing; whether a person should be deemed a relevant person; whether a person should continue to be deemed a relevant person; whether the hearing is likely to consider making a secure authorisation; whether a person should be afforded the opportunity to participate; whether a Safeguarder should be appointed; whether the panel should ask the Reporter to make a referral to the Scottish Legal Aid Board for legal assistance for the child or a relevant person; and whether a person should attend by electronic-means only.

We welcome the safeguard proposed which means that where single member children's hearings or pre-hearing panels may be constituted, the National Convener will always have the option to convene a three member hearing should that be in the child's best interests.

The increasing complexity of hearings requires a level of futureproofing and we believe that this change will introduce more resilience and consistency into the system. The role of the Chairing Member has increased exponentially in complexity and responsibility since the last fundamental review of the system, and of the Panel Member's central role within it.[1] The role of the Chairing Member requires additional training within the increasingly complex legislative and practice context. As a result of additional and accruing complexity in the legislation and policy landscape, it has become an increasing challenge for the volunteer cohort to meet these expanded expectations.[2]

This change will also mean that procedural decisions are taken by a single Chairing Member instead of a full panel of three members, and therefore free up the time of Panel Members to focus on situations where they can utilise their skills and expertise to assist in the making of substantive decisions. We also hope that this will reduce drift and delay for children, young people and their families, which was an important aspiration of the "Hearings for Children" report. There are currently a significant number of infants, children and young people who are currently on Compulsory Supervision Orders and who have been on orders for more than two years. This is not the intention of compulsory measures of supervision and demonstrates the level of drift and delay currently in the system, which we believe will be reduced by having single Chairing Member hearings for procedural matters.

CHS welcomes the introduction of the enhanced role of the Chairing Member as proposed in the Bill. Introducing an enhanced role for the Chairing Member signals an understanding of the significant demands, responsibilities and expectations of this role while also providing additional support and resilience to the volunteer model, which will remain a mainstay of the children's panel, and of Scotland's approach.[3] This will result in greater levels of consistency and continuity, something that children with experience of the hearings system have asked for repeatably. In order to realise the potential of the enhanced role of the Chair they will need to work collaboratively with the Reporter to plan for the hearing, have access to relevant information, and be empowered to decide on how the hearing will most effectively be delivered in a child-centred, inquisitorial manner.

CHS and the National Convener has a strong track record of recruiting, training and supporting around 2,000 Panel Members and we have effectively delivered this core statutory role for over 10 years since our inception. We have a strong track record of recruiting a diverse cohort of Panel Members, for example, about 7% of have lived experience of the Hearings System compared with less than 2% of the general population. CHS has also excelled in involving children and young people with lived experience in the design of the recruitment of Panel Members and staff. We would build on this by involving children and young people in the co-design of the recruitment materials and process for the new cohort of Chairs to help ensure that the skills and values required for a Chairing Member reflect the views of people with lived experience of the Hearings System.

CHS's organisational infrastructure, and the planning we have already put in place, should provide reassurance that CHS is prepared and skilled in appointing the new Panel Member roles in a way that puts diversity and lived experience at the centre of the selection process.

Statutory referral criteria threshold and language:

We support the proposed changes to strengthen the statutory referral criteria threshold from a Compulsory Supervision Order (CSO) from "might be necessary" to it being "likely to be needed". This will assist in ensuring that infants, children and young people enter the system at a time when they most need compulsory measures of supervision.

We also support the introduction of the word 'support' in the language used in relation to the referral criteria and in the making of CSOs. However, we believe that the wording of the Section 67 grounds of referral is still too antiquated and legalistic. We acknowledge that in modernising the wording of grounds there is concern around the potential of losing some of the specificity, however, we believe a carefully constructed co-designed programme could maintain the efficacy of the current wording whilst improving the language. We are therefore keen to work with stakeholders, including children and their families, to improve the language used in grounds of referral, so they are more welfare based, rights respecting and accessible, as was proposed in the Redesign consultation.

Proposed amendment

A programme with clear parameters and reporting requirements is introduced to review the language of Section 67 Grounds so it is more child-friendly and trauma informed. The programme must include the views of children and young people with lived experience.

Redesign of grounds hearings:

CHS welcomes the policy intention of removing grounds from three person hearings, so far as practicable, and moving to a more inquisitorial and trauma-informed process, drawing on the valuable resources of the enhanced role of the single Chairing Member working collaboratively with the Reporter.

The proposals in relation to grounds hearings and what the process will look like, and the different options which are now possible, will require further clarification so they can be communicated clearly/confidently to professionals, children and their families. There is a risk that the new proposals will make the process following the point of referral more complex for children and their families and those supporting them to understand. The new proposal in Section 14 of the Bill whereby the Reporter is required to offer the child and relevant persons the opportunity, where appropriate, to have a 'post-referral discussion' to discuss the statement of grounds, the child's participation in the hearing, and such other matters as the Principal Reporter considers appropriate, means that a child and family could be involved in an additional level of discussion around the grounds with the Reporter, before a hearing is convened to make a substantive decision or an interim order. Therefore,

introducing an additional stage in the process for children, young people and their families.

Under the current system the Principal Reporter has a timescale to make a decision about a referral within 50 working days of receipt, and then a hearing is to be scheduled to take place within a maximum of 20 working days of the Reporter's decision in relation to a referral.[4] It is our view that this time period requires parameters and limits. The new proposals for a 'post-referral discussion' could add a significant amount of additional time to a case progressing to the point of having a hearing. This presents a very real risk of causing further drift and delay before a hearing has taken place.

Furthermore, in cases where there is possibility of some/all grounds being accepted, the Bill proposes that a hearing can be convened to consider the statement of grounds (which may be composed of one or three Panel Members) under the proposed Section 69C. There is a need for clarity around what format this hearing would take. We are uncertain whether this would effectively be a grounds hearing as per the current system and therefore would be introducing an additional step to the current process, which could cause further unnecessary complexity.

We appreciate that in cases where grounds are unlikely to be accepted (under the proposed Section 69D), the new proposals may mean that the process may be quicker in terms of having grounds established, as the Reporter will be able to make an application to the sheriff without the need to have a hearing first, in order for an application to the sheriff to be made for determination of the grounds. There is the potential unintended consequence that in cases where grounds of referral are not accepted and/or not understood this will lead to more drift and delay. We are aware that in a significant number of cases, grounds of referral are not accepted/not understood and this therefore has the potential to affect a large proportion of children entering the Children's Hearings System. For this reason, we would propose that consideration is given to introducing statutory timescales, from the point that the Reporter receives a referral (a referral as defined under Section 66 of the 2011 Act) in relation to a child, to the point that a hearing is convened or an application made directly to the Sheriff. This will become even more fundamental with the enactment of the remaining provisions of the Children (Care & Justice) (Scotland) Act 2024 whereby a new cohort of 16 & 17 year olds will be referred into the Hearings System and there will be time pressures for them to access welfare-based supports of the system before they turn 18.

The Independent Care Review reflected the view of children and young people that they would like grounds to be removed from the hearings process, and we note that these changes do not achieve this aim fully. We do, however, understand the legal formalities which need to be part of this type of hearing, and believe that including statutory timescales for the Reporter to have concluded the preparation phase before bringing a case to a hearing, will help mitigate the risk of further drift and delay.

Proposed amendment

Introduction of statutory timescales, from the point the Reporter receives a referral to the point a hearing is convened, or an application is made directly to the Sheriff to establish grounds.

Specialist Panel Members and Chairs:

We support any steps that can be taken to bring specialist knowledge into a child's hearing, to provide insight and enhance the decision making to help improve outcomes for children. CHS is committed to the policy agenda to shrink and specialise the Children's Hearings System: shrink by increasing support that will prevent the need for children to come into the hearings system and specialise by drawing on the specialist skills which individual Panel Members have, or bringing in additional expertise, to respond to the unique needs of each child.

There are already a number of options available to panels to bring in specialist skills into the hearings system, to compliment the significant skills that Panel Members already have through their training and ongoing professional development. These include:

- Requesting an Independent Report be commissioned;
- Requesting the advice of the National Convener;
- Appointing a Safeguarder; and
- Informing a child about the availability of advocacy services.

The new enhanced role of the Chairing Member will bolster the specialist capacity of children's hearings. The option for the Chair to appoint a specialist Panel Member has the potential to further enhance the level of expertise to assist in making a substantive decision. This will be particularly helpful where there are complex decisions, that would be enhanced by specialist input, for example, where children have complex additional needs, where there are nuanced legal decisions, or where the child is at risk of criminal exploitation. Operationalising this change this will require a high degree of investment and planning. CHS have a strong track record of dointhis, for example in the delivery of our Independent Report Writers function that has independently been audited and found to be a highly effective service that supports decision making in children's hearings. With the induction of specialist Panel Members, CHS will work across the sector to put in place clear parameters and practice guidance, to ensure that this resource is applied consistently and only when absolutely necessary.

In order for this new specialist role to have optimal value and improve outcomes and experiences for children, it is essential that when planning for a hearing, the Chair has the ability to consider: existing reports and evidence; any existing gaps so that missing or additional reports can be requested; whether a Safeguarder should be appointed; and how the voice of the child can be amplified through signposting advocacy services with expertise in understanding the age and stage of the child

(this is particularly important when considering the needs of infants and very young children).

Legislative change will be required in order to allow for data sharing between the Reporter and the single Chairing Member so that the 'Reporter's report' which is proposed within Section 14 of the Bill can be provided when the Reporter passes the case to the single Chairing Member for a decision, and likewise in the joint preparation for the hearing. Data sharing currently allows SCRA to share data with Panel Members – it is our position that legislative steps must be taken to permit further data sharing with CHS, to allow for performance management, quality assurance and the provision of support for new Chairing Members. The Hearings System Working Group's "Hearings for Children" report was clear that organisations must improve ways to collect, share and learn from data. This recommendation is one which CHS fully supports: as an organisation, we are currently limited from creating a robust quality assurance mechanism which may monitor, evaluate and generate learning from decision making. This will be essential in light of the new responsibilities of the single Chairing Member.

The key scaffolds required for this to work effectively will be the single Chairing Member having legislative rights, obtained through delegated powers of the National Convener, to be able to do the following in advance of a hearing:

- Joint planning and scheduling with the Reporter to assess what is required for the hearing and what gaps exist as part of the preparatory work for a child's hearing;

- The sharing of information about the child between SCRA and CHS to ensure the Chair is fully informed to allow them to plan for the hearing; and

- The legal right of the Chair to appoint a Safeguarder, request National Convener advice, request additional and independent reports, and to appoint a specialist Panel Member.

Proposed amendment

- **Include provisions so the single Chairing Member has the statutory powers to be able to appoint a Safeguarder, request National Convener advice, request additional and independent reports and to appoint a specialist Panel Member.**
- **Include provisions so that SCRA and CHS have shared access to child sensitive data to ensure the single Chairing Member has access to all the information they need to plan for the child's hearing and so that CHS can effectively support and quality assure the Chairing Member.**

Composition of Panel:

An amendment we would like to propose to the Bill is the removal of the requirement in relation to the gender composition of a panel in the Children's Hearings (Scotland) Act 2011. The legislation currently states that, "as far as practicable", each panel

should be comprised of both male and female Panel Members. The Coronavirus (Scotland) Act 2020 relaxed this requirement while it was in force. Since then, CHS undertook analysis activities to assess whether relaxing this requirement had any negative impact. The overwhelming conclusion of this analysis was that gender diversity had little to no impact to decision making in hearings. The Coronavirus (Recovery and Reform) (Scotland) Act 2022 introduced a relaxation of the absolute requirement of the gender composition by introducing "so far as practicable" into the Children Hearings Act 2011 which has helped. However, the Children's Hearings System is the only legal tribunal (as far as we are aware) where a gender composition of the tribunal panel is specified in legislation. This has been a design feature of the system since its inception in the 1970s and was initially intended to ensure that panels were not dominated by men. Now the majority of Panel Members are women. As we move to some remunerated Panel Member roles, operationally we need to remove gender as a consideration in the selection process. We consider the current gender composition requirement, although originally included for good reason, is now outdated and is not compatible with equality laws or required within a reformed Children's Hearings System.

Proposed amendment

Removal completely the requirement in relation to gender composition of a children's panel.

Ensuring the voices of lived experience continue to influence the development of the Bill

The voices of care experienced children, young people and adults have been central to some of the changes proposed in the Bill. The complexity of the Bill and the timeframe for responding to the call for views has made it challenging for CHS to engage with our young advisory group, the Experts by Experience, in detail about the Bill. However, we know there is significant interest in the Bill and in late July we facilitated a discussion session with the group to understand their views. We will continue to work with this group as the Bill progresses through Parliament, and as we work with others to reform the Children's Hearings System. It is essential that decision makers create appropriate opportunities to listen to, consider, and respond to the voices of those with lived experience to ensure this legislation leads to better outcomes for infants, children, young people and their families.

NSPCC Scotland response to the Children (Care, Care Experience and Service Planning) (Scotland) Bill call for views

Babies are a uniquely vulnerable group of children. The first few years of a baby's life is a period of exceptional, rapid development, when their brain, their sense of self, their understanding of human relationships and of the world, are shaped by their experiences and environments. A wealth of evidence tells us that a baby's early experiences and environment, most particularly their relationships with primary caregivers and the care they receive, have extensive impacts on their development. Sensitive and responsive caregiving acts as a buffer to stress and later adversity.[1] Disruption to early attachment relationships with a primary caregiving is associated with serious and costly psychological and physical health problems across the lifespan.[2] Early adverse experiences are associated with difficulties across *multiple domains*, including mental health, social relationships, and brain development (e.g., Leve et al., 2012, Dubois-Comtois et al., 2021[3]).

We also know that difficulties arising from early adverse experiences such as maltreatment and contact with the care system are often compounded and maintained by aspects of experiences in the care system, such as changes of carer and delays in permanency.[4]

NSPCC Scotland's evidence at Stage 1 of the Children (Care, Care Experience and Children's Service Planning) (Scotland) Bill will focus on the implications of the Bill proposals on babies and the very youngest children who come into 'care' in Scotland, and who now represent a substantial proportion of the children coming before the hearing for care and protection. Our evidence draws on extensive, direct experience of working with babies, and their families, in and around the 'care' system for many years in Scotland.

We will also set out the seminal findings of the BeST Services Trial, a University of Glasgow-led study, run in partnership with the NSPCC [2] which found that authoritative and consistent oversight of a child's journey through care was crucial in safeguarding children's wellbeing. **It also revealed that decisions about the permanent care of infants were made almost 4.5 times faster in England than in Scotland.**

The Hearings for Children review identified the urgent need to reduce drift and delay in the Scottish system, highlighting the particularly damaging impact of delays in legal decision making on infants and very young children:

"*This is important for all children,* ***but in particular for younger children for whom the long delays in decision-making can impact on their relationships and ability to develop strong and lasting attachments in the formative years of their lives.***"[5]

Robust evidence shows that the *entrenched* problem of drift and delay in achieving a permanent home for looked after children in Scotland has not shifted in over 20

years. This is despite an array of legislation, policy guidance, research and practice improvement aimed at addressing the problem, some of which is referenced in this response.

NSPCC Scotland is clear that changes to the Children's Hearing System, as set out in the Bill, must be closely aligned with wider national activity to strengthen and integrate therapeutic, multi-agency relationship focused support for families in, and on the edges, of 'care'.

While the Bill, as currently drafted, does not make provision to sufficiently reform the Children's Hearing System to uphold infants rights', we recognise the potential of a range of proposals, if sufficiently amended, to lay the foundations for a rights-based, and infant attuned Children's Hearing System. We support proposals intended to increase consistency of the Chair, and to introduce specialism on the panel.

We are also calling for an automatic right to independent representation for infants, mandated timescales around decision making for infants, and a commitment to trial a 'Safe Baby Hearing' approach in Scotland.

NSPCC Scotland's support for the Bill at Stage 1 is entirely dependent on the amendments set out in this briefing being accepted in full. In light of the BeST evidence, it is no longer tenable to simply adapt a care and justice system originally designed and reformed to date primarily around the needs of older children and young people. Transformative action is required to enhance the system's capacity to work with infants and families with increasing levels of complexity in their lives and make legal decisions about infant's care and protection, *and* measure the impact against a pilot of a Safe Baby Court model.

Taken together, we believe these proposals can strengthen the Bill to facilitate collaboration and integration between permanency decision-making, child welfare, and infant-parent relationship.

We call on the Committee to take this rare opportunity to design a care and justice system that can make robust and timely decisions about where our most vulnerable citizens will call home.

Part 1 Chapter 1

What are your views on the aftercare provisions set out in the Bill?

The Bill provides an opportunity to strengthen the support offered to young people who left care before their 16th birthday to be eligible for aftercare, and the rights of access to care experience advocacy services.

The Children and Young People (Scotland) Act 2014 introduced continuing care and aftercare more than ten years ago but there remains limited evidence around how aftercare is being supported by practitioners and services and experienced by young people.

CELCIS research into the implementation of continuing care found that there was inconsistent implementation of continuing care across Scotland - not only between local authority areas, but also within local authorities.

The Promise, Moving On Change Programme (2024); The Promise 100 days of Listening (2020), the Care Inspectorate's Thematic Review regarding Transitions for Care Experienced Young People (2024); and the analysis of responses to the Scottish Government's "Moving on from care into adulthood" consultation (2024) all indicate the challenges facing children and young people as they transition into adulthood and how the system of support is, or is not, upholding the rights of care leavers. The central theme that appears across all of these reports is the importance of positive, trusted, and sustained relationships in positively supporting young people at all transition points in life.

One of the most critical but often overlooked transition is when young people become young parents. Aftercare support must pay particularly close attention to the needs of care leavers who are, or who are likely to become, pregnant to ensure better alignment of relevant systems. However, we know this is not currently the case in Scotland. 80% of children in care have an extremely disrupted attachment history[1] and multiple experiences of adversity, trauma and neglect in early childhood. While we have seen huge advances around trauma informed justice processes in Scotland, particularly in the area of youth justice, the evidence would indicate that we won't tackle difficult social issues at scale until we tackle them in infancy.

We are aware that parents with care experience often face stigma at the early stages of becoming a parent[2]. The Independent Care Review heard reports of structural discrimination within the forms that need to be completed and some people reported facing inappropriate questioning from GPs, Midwives, Health Visitors and other healthcare professionals[3].

We are also aware that some specialist services operate exclusion criteria meaning that, for those parents who do have a live child protection concern, there can be additional barriers to accessing timely and appropriate specialist care. This type of experience can compound some of the challenges people might face as a consequence of being care experienced.

There is growing recognition of the importance of prioritising support for new, and prospective, parents who are experiencing multiple adversities. Adoption of pre-birth IRD in National Child Protection Guidance[4] is a significant development. but is inconsistently applied across Scotland.

The Bill, and supporting documents, must provide a more accurate assessment of the resources required to comprehensively extend and implement 'after care' support for care leavers. Urgent strategic priority and investment is required to ensure 'after care' provision is aligned with anticipatory care planning with expectant parent(s) in a compassionate, consistent and rights-based way.

- Young people with experience of 'care' who require high-quality, relationship-focused support should receive it in pregnancy, as early as possible (1st trimester).

- Continuity of support and professional should be prioritised throughout the pre-birth period and beyond.

- The workforce must be better supported to help care experienced people as they become parents, with particular specialism to address the unresolved trauma – where this is required - which could undermine the infant-parent relationship.

- Multi-agency infant-parent relationship support must be cocreated with parents to alleviate fears about reaching out for support.

- Clear pathways and pathway plans should be developed for new, and prospective parents, to combat the inconsistency in the implementation of 'after care' across Scotland

- Co-creation with young people, professionals and families must be the "golden thread" across the whole of the 'after care' offer to bring lived experience into systemwide planning.

The Financial Memorandum must be revised to include specific financial modelling to ensure that continuing care and all aspects of transitions are sufficiently resourced to ensure that the rights of new, and prospective parents, who have experience of the 'care' system are upheld

What are your views on the corporate parenting provisions set out in the Bill?

What are your views on the advocacy proposals set out in the Bill?

NSPCC Scotland supports efforts to expand the availability of independent advocacy for care experienced people. We note the extensive campaigning work by Who Cares? Scotland on behalf of the Care Experienced Community on the importance of Lifelong Advocacy.

NSPCC Scotland would query how the proposed expansion links up with existing advocacy within the Children's Hearing System (CHS), available under the Children Hearings (Scotland) Act 2011. It is essential that there is cohesion in the system, and it should be possible for a child or young person to keep the same advocate to represent them across different aspects of their lives.

We suggest that the opt-in model proposed in the Bill excludes babies and young children as they will not have capacity or maturity to take up the offer but for whom specific representative of their subjective experiences is vital. Further expansion of advocacy for older care experienced children and young people and care experienced adults out-with the Hearing System, though hugely welcome, risks further inequity for the rights of infants and young children, where infants are not represented within the CHS. We therefore recommend that in addition to these changes, the Bill is amended to guarantee independent representation of the lived experience of infants within the Hearing System. Our proposals for how this may be achieved are discussed below at question 8.

What are your views on the proposals for guidance in relation to care experience?

NSPCC Scotland supports the provision in the Bill requiring Ministers to issue guidance that enhances understanding of 'care', 'care experience', and the experiences of children and young people both before and after entering care. We acknowledge the positive impact such guidance could have in promoting consistency, fostering a stronger sense of identity, and addressing stigma, particularly through more thoughtful use of language. However, we note that meaningful language change is cultural in nature and will require appropriate investment in training and resources. Without sufficient resourcing, there is a risk of ineffective implementation, which could lead to unintended consequences for children and young people.

We agree that the guidance relating to the language of care should be developed in collaboration with children, young people, and adults with experience of care to ensure that the new guidance reflects their views, feelings and preferred communication styles. However, we would like to highlight to the Committee the Promise's recommendation that 'Scotland must make particular effort to understand and act upon quieter voices, including infants and nonverbal children and those with learning disabilities. No group should ever be considered hard to reach'[6]. It is therefore crucial that the unique needs and experiences of children under the age of five are considered while examining the contents of the Bill and in the creation of any future guidance or practice changes.

In our view, the new guidance must be firmly aligned with children's rights and existing GIRFEC frameworks to ensure that all children, young people, and families receive the right support at the right time.[7] It should be written in a clear and accessible manner to support practitioners across a range of organisations and professional settings involved in delivering support throughout the life course.

While we are supportive of the Part 6 (a) and (b) list of persons who are considered care-experienced for the purposes of this section of the Bill, we would seek clarity on how this relates to children and young people who have been adopted. Are children and young people who have been adopted considered under the following criteria of the universal definition – a child or person who has at any time been looked after?

Given that individuals adopted in early childhood may continue to experience support needs throughout adolescence and adulthood stemming from both their early experiences within their birth family and the lifelong impact of being adopted, we ask the committee to consider what regulatory measures might be necessary to improve the visibility and recognition of adopted individuals[8]. Similarly, we would like to seek clarity on how the needs of unaccompanied and asylum-seeking children will be recognised and supported via the provisions of this Bill since their experiences can greatly differ from those of care experienced children born in Scotland.

Financial Implications

NSPCC Scotland has concerns regarding the potential financial implications of the new definition and accompanying guidance, especially in relation to extending rights and eligibility criteria for support services at a time when financial resources are

already limited and services are stretched. It is important that this does not come at the expense of prevention and early intervention services that support families on the 'edges of care', particularly at a time when rising financial pressures on local authorities and increasing demand for services are leading to higher thresholds for social work intervention[9] [10]

It is NSPCC Scotland's view that a more robust and thorough financial analysis and forecasting process is required to ensure that all potential implications are fully understood and appropriately resourced, enabling effective implementation in line with the recommendations of The Promise.

We also believe it is important that a Children's Rights and Wellbeing Impact Assessment is carried out for in relation to support for persons in or with experience of the children's care system, as well as other relevant sections of the Bill, to ensure that potential impacts are fully understood and appropriate mitigations can be identified - helping to ensure the provisions of the bill deliver positive outcomes for children and young people.

Chapter 2

What are your views on proposals designed to limit profits for children's residential care services?

NSPCC Scotland note that the measures proposed here to limit but not ban providers from profiting from children's residential care services go some way towards, but do not fulfil, the central recommendation of The Promise that "Scotland must make sure that its most vulnerable children are not profited from."[11]

The Policy Memorandum suggested this decision was 'due to the evidence from the CMA report indicating that significantly lower levels of profit are being made in Scotland than in England and Wales, and due to the need to ensure stability of placements for children and young people currently in Scottish residential care, as well as ensuring sustainable provision of future residential childcare placements in Scotland'.[12]

We would point out that the CMS Report stated that "In Scotland, this figure is lower but **still substantial,** with independent providers accounting for around one-third of placements.[13]" It is therefore an area that must be considered carefully, especially as Care Inspectorate Scotland (CIS) data shows that in Scotland, the private sector's share of children's homes increased from 33% in 2014/15 to 45% in 2021.[14] It is unclear if there are updated figures to see if this trend has continued.

We recognise concerns raised that moving towards a total ban on profit in residential care could be prohibitively expensive. However, Wales passed the Health and Social Care (Wales) Act to support their 'Eliminate [Profit] Programme in 2025, which goes further than the measures proposed here and also 'eliminates' profit from children's residential care. As part of the work for this Bill extensive financial modelling was carried out, including based on varying scenarios of how private sector providers responded to the changes - "It is anticipated that the proposals with a larger upfront cost, specifically those connected with eliminating profit…transitional financial support will be provided by Welsh Government to those affected, local authorities

and local health boards respectively. Over a ten-year period, it is anticipated that both proposals will generate revenue savings which will assist in their longer-term affordability."[15] Similar financial modelling would be useful in Scotland.

We also recognise the Scottish Government's commitment to 'ensuring sustainable provision of future residential childcare placements in Scotland.'[16] We note that similar concerns were identified in Wales.[17] We would encourage the Scottish Government to produce modelling that has influenced their decision in this area.

What are your views on proposals to require fostering services to be charities?

NSPCC Scotland supports the proposal to require all fostering services to be registered charities. We note the central recommendation of The Promise that "Scotland must make sure that its most vulnerable children are not profited from."[18] This proposal fulfils the aspiration set out by The Promise.

What are your views on proposals to maintain a register of foster carers?

NSPCC Scotland supports the creation of a register of foster carers. It will facilitate better data collection and national understanding about the foster care network in Scotland. It may also aid with securing the best possible placements for children. While we recognise that keeping children close to their communities where possible is often in their best interests, there may be good and closer options of suitable foster carers who are technically out of local authority area but who are geographically close to a child's community. There a centralised register, like the adoption register, could be especially useful.

A national register may also aid in nationwide communications with foster carers about training opportunities or policy changes. We note that training opportunities for foster carers of babies and very young children may be very limited in some local authority areas, belying the critical nature of supporting foster carers to provide attuned care to infants who have experienced trauma. Case audits in GIFT showed that most foster carers -over 90% - were offered support to enhance their ability to support the needs of the infant in their care. This followed the comprehensive assessment carried out of the experiences and needs of the child and their main caregiving relationships.

NSPCC Scotland would also wish to ensure that there are no unintended consequences in creating a national register of foster carers in terms of precluding the dual registration of adopters as foster carers in Scotland.

The issues of drift and delay in the Children's Hearing System and surrounding systems making decisions about the care of children and young people in Scotland are well documented [19] [20] This can lead to situations where children who are unable to safely return to the care of their birth parents remain in foster care for significant lengths of time – often multiple years – before being adopted or achieving permanence in another way. This can present significant problems to infant's wellbeing as they move from the care of their foster parent, who they may have formed a significant attachment to, to their eventual 'forever home'. This represents an inbuilt 'rupture' in attachment relationship and is a psychological risk to a young

child. We have actively encouraged the Scottish Government to examine and address the issue of entrenched drift and delay through reform of the Children's Hearing System. However, an option that may also offset problems associated with drift and delay is to remove this 'in-built rupture of attachment relationships' between foster and adoptive parents by allowing dual registration of carers as both foster and adoptive parents.

There is evidence that commitment of foster carers is critical to the success of infants in care and that higher levels of 'commitment' from carers had positive outcomes for children[21]. Facilitating dual registration in Scotland was a key recommendation of the BeST Services trial (2025). NSPCC Scotland see the Bill as an important opportunity to consider a statutory framework around dual registration as a principal element in achieving a Foster Care System which acknowledges the unique needs of infants.

We have learned from experienced practitioners in two local authority areas that dual registration may be regarded as too difficult or too emotionally demanding, due to the distress and loss that the prospective adoptive parent will experience if the infant they are fostering is re-unified with their birth family. NSPCC notes that despite this being regarded as a barrier in some areas, Dual Registration is in operation in some local authorities in Scotland and is widespread in other jurisdictions. A national approach of dual registration would mean that in every case possible, it will be the adult who carries the emotional load of loss, rather than the infant.

Chapter 3

What are your views on the proposed changes to the Children's Hearings system?

Panel Structure/ Tribunal decision making model.

NSPCC Scotland welcomes the provisions at Chapter 3 (Children's Hearings) sections 11 and 12, providing for a new panel structure, made up of chairing members ordinary members and with scope to include a specialist member, who all receive renumeration.

However, the provisions must be strengthened to deliver the central change to the panel structure which the Hearing System Working Group recommended–
a significantly enhanced role of chair who is consistent to the child's case – and address the substantial evidence base around the need for authority, consistency and a child focussed approach in the legal decision-making model. (BeST, 2025)

Chairing Member

NSPCC Scotland's position is that the bill must clearly provide for a paid chairing member, with tribunal competence and power to call a Review, who is **consistent to a child's case in their journey through the hearing system**.

We propose a Duty on National Convenor to ensure that the Chair of a Children's Hearing is consistent for every hearing regarding that child, 'so far as is reasonably practicable.'

The central recommendation at the heart of Sheriff David Mackie's and the Hearing System Working Group's proposals for a re-designed Hearing's System (Hearings for Children, 2023) was for a new decision-making model which retains the original Kilbrandon three person structure, but which renumerates members and is headed by an '*authoritative, salaried, consistent and highly qualified professional Chair*'.

The review identified the authoritative chair role as central to addressing the entrenched problems in the current system, including (but not limited to):

- the unacceptable levels of drift and delay in children's journeys through the care system, identified repeatedly over two decades in Scottish research, which policy and practice reform have failed to address, and for which the hearings system is partly responsible.

- the significant challenges the current panel structure face in managing a highly complex, emotive and increasingly adversarial legal tribunal.

- the tendency of the panel to focus at times on the needs of parents rather than the needs and best interests of the child[22] [23] [24]

Continuity of the new chair role was considered an indispensable feature of the new panel structure, with the review concluding that:

*Throughout all of the Group's engagement one message has come across consistently from almost all children, families and members of the workforce: the biggest difference that can be made is to ensure continuity of decision makers. As far as possible, the Chair must be the same Chair each time a child and their family attend a Hearing. This should also apply to Panel Members where possible and desirable. (*hearings-for-children-the-redesign-report.pdf, pg 33)

We stress the particular importance of a consistent 'case carrying' chair for infants and very young children in the CHS. Infants' profound and unique vulnerability, the increased complexity and adversity in the lives of families in the hearing system (SCRA), the pace at which the circumstances of a child's life can change and the high levels of risk this can represent to infants immediate and lifelong wellbeing, demand a consistent chair with advanced, 'evolving' knowledge of the child and family circumstances.

The BeST Services trial in Scotland (Minnis et al 2025) which compared an infant mental health intervention for infants, birth parents and foster parents, where infants had been placed out with their birth family, within different legal and social care contexts, found that continuous judicial oversight of infant's cases within the specialist family court system facilitated infant-centred practice, in comparison with the children's hearing system. In the latter, advice to parents from their lawyers was seen as key factor in promoting a more adversarial service landscape, which was harder to manage in the absence of strong judicial leadership. Strong judicial leadership was regarded as central to ensuring that not only is there fairness in the system, but that the system is seen to be fair to all involved, including the infant.

It is sometimes assumed that children only attend one children's hearing, over the course of a year. However, SCRA data reveals a more complex reality. According to SCRA 2022/23 and 2024/25 analysis reports, over 19,800 children were referred to the Children's Reporter, and more than 43,600 Children's Hearings were held for over 19,500 individual children. These figures highlight how many children are actively engaged with the system and, crucially, how often they return. In 2022/23, over half of these 19,500 (52.5%) had two or more hearings, with 9.5% attending five or more hearings. In 2024/25, the trend intensified with 54.3% of children involved in multiple hearings, and 10.2% attended five or more[25] [26]. These statistics demonstrate that well over half of all children engaged with the system experience repeated hearings often over extended periods and in emotionally demanding circumstances.

An audit of the first fifty infants' cases randomised to the Glasgow Infant and Family Team (GIFT[27]) during the BeST trial (2025), found the number of hearings held during the intervention ranged from between 1 to 13 hearings (Bryce, 2018, p. 4). A further small audit of 10 infant's cases found that the average number of Children's Hearings per child during GIFT involvement was 3 (range 1-6)[28]. Where there were multiple Children's Hearings about a child it was rare for the case to be heard by the same panel members.

The current model of ever-changing panel chairs (and indeed wider panels) is nonsensical, where a deep understanding of a family's circumstances is central to decisions being made about the infant.

We urge the committee to ensure the current provision for a paid chair is strengthened to meet *Hearings For Children's* central recommendation of a continuous chair. We suggest that a better approach would be to create a duty on the National Convenor to ensure the Chair of a Children's Hearing is consistent for every hearing regarding that child as far as is reasonably practicable.

Strengthened powers and competencies of the Chair

NSPCC Scotland is concerned that the Committee should give very specific consideration to the range of competencies and qualifications that Hearings for Children deemed essential to the new role of chair, and what additional provision may be required in the bill to ensure the appointment of chairing members who have the authority, competence and powers to carry out this role as intended.

In particular, we urge the Committee to scrutinise whether the bill needs to a) include a mechanism to ensure the new chair's tribunal competence and b) clarify and strengthen the Chair's power to call a Review Hearing.

Tribunal Competence

The substantial evidence base around the adversarial and at times hostile and highly emotive nature of children's hearings - and the necessity of an authoritative chair to both manage the forum and keep it focussed on the needs and rights of the child - indicate a robust system is required to be in place to ensure that persons appointed to the role of panel chair fulfil a standard, necessary criteria. In particular, we note and fully support the stress that Sheriff David Mackie puts on the chair having the

necessary legal competency in respect of children's rights, and human rights, to manage what has proven to be an imbalance in the system.

Chair's Power to call a Review Hearing

Hearings for Children placed a great deal of importance on the Review Hearing, which it stressed must be *"the place for an open and honest inquiry into what progress has been made, where the strengths of the family lie, and what challenges there might have been in meeting the terms of the order".*

The Scottish Government accepted the recommendation and noted that a chairing member can use the powers in sections 146 and 147 of the Children's Hearings (Scotland) Act 2011 to direct the National Convener to give notice to the implementation authority to take remedial action, failing which they may apply for an enforcement order, and where 'Review Hearings can be strengthened through improved practice, learning and guidance from the National Convener'.

NSPCC Scotland is concerned that the powers at 146 and 147 of the 2011 Act may not be sufficient to empower the chair in the way that Hearings for Children intended.

In complex cases where a baby has been placed out-with the care of their birth family, avoiding delay in responding to concerns is imperative, to serve the needs, best interests and rights of both infants and birth parents.

Equally, the hearing system must have the authority to function in a way which gives birth parent(s) the absolute best chance of being safely reunified with their infant. Most essentially, this means the hearing system has a critical role in enabling birth parent(s) to timeously access the support, services and interventions they need to address the challenges they face in being able to safely care for their baby, within a timescale suited to the infant's developmental needs.

The panel must be sufficiently empowered, legally, and otherwise, to call a review where an infant's case is not progressing, including where *vital services* for birth parent and infant are not accessible in the relevant timeframe, with the associated power to hold services to account.

Tribunal Competence

The substantial evidence base around the 'adversarial' and at times hostile and highly emotive nature of children's hearings - and the necessity of an authoritative chair to both manage the forum and keep it focussed on the needs of the infant - indicates a robust system is required to a) ensure that persons appointed the role of panel chair fulfil a standard, necessary criteria and b) a clear process is in place whereby chairs are awarded with the competence to chair a legal tribunal. We strongly support Sherif Mackie's recommendation that the bill directly addresses the issue of the appointment of chairs, including how the National Convener will assess legal competence in the exercise of their proposed new power of appointment. We would suggest the Judicial Appointments Board may have an important role to play in this process.

Specialist panel member

NSPCC Scotland's position is that the bill must clearly provide for a 'specialist' panel member, with enhanced knowledge relevant to a child/ family's case, who is also consistent in the child's case. This would benefit all children and young people in the hearing system and is of particularly critical importance in the cases in infants and very young children, where a specialist member would have advanced knowledge of early child development, attachment and the impact of trauma on infants

NSPCC Scotland welcomes the provision at Chapter 3 section 2 (b) for specialism in the children's panel. However, we are firmly of the view that the provision must be strengthened to provide for specialism in the panel as the default position.

The Promise found that the hearings system must 'shrink and specialise' to better serve the best interests and rights of those children and families before it. In particular, it demanded that the system pay more attention to the 'quietest voices' - including infants and very young children.

Hearings for Children recommended that the potential value of specialist Panels or Panel members, with specialist training, be considered in system re-design.

The HSWG has heard that . . . there might be scope for the development or evolution of more specialist panel members, which may be bespoke to specific circumstances and respond confidently to the challenges in children's and family's lives. For example, panel members with additional training and expertise in the developmental needs of infants and babies, or with a special focus on children in conflict with the law. (The Promise, 2022)

Consultation with expert practitioners in Scotland's Infant Mental Health Forum[29] identified a strong consensus that specialist knowledge of early child development is essential to equip the panel to make decisions about the care and protection of infants and very young children, in line with upholding their best interests and their rights under GIRFEC and the UNCRC.

There's a strong, shared recognition that the current, non-specialist system is poorly equipped to make decisions about the care of infants with complex child protection needs. Vastly enhanced training on child development, Infant Mental Health and the impact of trauma on children – as well as on parents – is an absolute must. (Infant Mental Health Forum Discussion Group NSPCC, 2023)

NSPCC Scotland's position is that panels hearing the cases of infants must include a consistent member with specialist knowledge of early child development, who remains attached to the case. The unique and highly specific needs of infants, the very clear challenges in understanding their views, the substantial challenges in hearings remaining focussed on the needs and rights of babies and younger children in particular [30] [31] and the baby blind spot[32]that exists at the heart of the system demand that this is the case.

We note the concern identified by the Hearing System Working Group that specialism may not be achievable in rural areas. We would suggest there may be various routes to achieving this structure across all areas. For example, some

experts suggested a specialist member may be routinely achievable if the panel included a member with professional expertise in IMH, for example trained social worker or health visitor, or clinical psychologist. In their view, the balance of decision makers with appropriate knowledge and experience and a chairperson with suitable gravitas would best match the profound and life changing significance of the decisions being made and create the most safe and effective context for these decisions being developmentally informed, evidence-based and leading to improved outcomes[33].

Alternatively, there may be a case for a trained cadre of specialist 'infant aware' panel members with advanced training in early child development, across the country. The Scottish Child interview model may be helpful to consider in this respect.

NSPCC Scotland notes that specialist knowledge underpins the Mental Health Tribunal Scotland (MHTS) decision making model, which informed the Hearing System's Working Group's thinking around a new panel structure. The Mental Health Tribunal, which "considers and determines applications for compulsory treatment orders of persons under the Mental Health (Scotland) Act 2003, considers appeals against compulsory measures and plays a monitoring role by periodic review of CSOs", is comprised of a panel of 3 paid members: a legal chair, a psychiatrist experienced in the diagnosis and treatment of mental disorders and a general member who has experience of the social care of people with mental health disorders. MHTS - Panel Members

We urge the committee to clarify *why* levels of specialism should be so profoundly different in legal tribunals tasked with making deeply complex and consequential decisions about adults, compared with the model for children i.e. significant and consistent specialism for adults compared with a rotating panel of lay volunteers in the case of babies, children and young people.

It may be helpful to consider the area of family time decision making when considering the need for infant specialism in the CHS.

Family time (previously known as 'contact') is one of the most contested areas in the CHS[34]. Where an infant or very young child has been placed out with the care of their birth family, decisions about family time can be *particularly* complex and emotionally challenging, requiring considerable knowledge of early child development coupled with an unwavering focus on the best interests of the infant in the decision-making process. Put simply, it is hard to imagine making a more difficult and emotive decision than determining how often, and for how long, a mother can see her baby, where her baby has been removed from her care.

Contact decision-making, by its particularly challenging nature, has been found to directly contribute to drift and delay in the hearings process around infants. A small audit of the cases of ten infants in the care of the GIFT team found that Children's Hearings were often called at random points and often by birth parents challenging contact decisions made by the panel.

Discussion with social workers suggests that conditions of family time in the case of babies and very young children may often be for high levels of contact, for example

at 5 days per week. We note the CELCIS (2017) finding that in most cases where a panel's decision about the frequency and length of 'contact' diverged from the social worker's recommendations, the decision was for more contact[35]. This suggests that panels may at times prioritise parent's needs over the social worker's assessed best interests of infants, and may reflect the wider evidence base that panels can 'lose focus' on the needs of the infant, and indeed focus more on the need of the birth parent (Walker et al 2013[36]; NSPCC 2023; Kainth et al, 2025)

There may also be a common-sense assumption that very high levels of contact are necessary to maintain the infant's attachment relationship with their birth parent, thus increasing the chance of re-unification. We note the lack of evidence in this field but point to the research by Cathy Humphries and colleagues who found there to be no relationship between levels of contact and reunification of infants with their birth parents.

Family time can be extremely stressful for an infant who has experienced maltreatment and/ or trauma within their birth parent relationship and who may experience high levels of distress, where family time is poorly managed. These experiences may cause the child further harm and risk potentially undermining the development of a secure attachment relationship with a foster/ kinship carer, upon which an infant's recovery from trauma depends. Family time may also present significant challenges for birth parents who are struggling with multiple adversities and may have little therapeutic support in soothing their distressed child in a 'high pressure' contact situation. We understand there are attempts to address this in some areas, however reforming family time as a therapeutic intervention in the best interests of infants and birth parents will take significant effort. Having a panel with expertise about infant development would support this endeavour and allow better informed, infant-centred decision-making.

NSPCC consider there to be a clear and urgent case for infant specialism on every panel hearing the cases of infants given the complexity of decisions they are making about some of the most vulnerable citizens in Scotland.

We would also consider it very helpful if the Bill provided for specialism in every panel, depending on the needs or background of the child involved, for example specialism in youth offending, specialism in harmful sexual behaviour, specialism in neurodiversity etc.

Attendance at Hearing:

The existing obligation for a child to attend must be removed and replaced with a presumption that a child will attend their Hearing, with some limitations.

We support a presumption **against** babies and infants attending Hearings, with age 5 potentially being an age bar for this presumption.

Experts in discussion are clear that a presumption that all children attend their Hearing, with excusal involving a decision and an administrative process in each individual case, is not in the best interests of babies and very young children. The still-developing capacities of children at this age mean that their ability to form and communicate their views and 'articulate' their lived experience is substantively

different from that of older children and young people. Understanding an infant's behaviour as communication takes considerable time and particular skills and requires careful consideration of the infant's behaviour within the context of their primary caregiver relationships. This cannot be done safely within the timeframe of a Hearing, by Panel Members who may not have the necessary specific skills and understanding.

Research conducted in Scotland found that panel members drawing inferences about an infant's views and relationships through observation of their behaviour and interaction during a Hearing may constitute a risk to decisions being made in their best interests (Gow, 2018). This is because infants who have experienced trauma in their early relationship with primary caregivers – particularly neglect and abuse - commonly miscue their feelings or needs. Babies learn quickly to adapt their behaviour to keep themselves safe, for example smiling to please a parent who is angry or appearing calm and quiet when they feel frightened by a parent's behaviour. The behaviour of an infant who is miscuing their feelings and needs will at times be counterintuitive to what we expect: smiling may not mean happy; passive may not mean calm inside. Therefore, NSPCC Scotland strongly supported the recommendation in Hearings for Children that 'There must be no presumption that babies and infants should attend their Hearing'[37]

We understand that it is increasingly uncommon for babies to attend hearing due to the growing understanding of infant's distinct developmental needs, however we would support absolute clarity in the bill on this issue.

S13 of the Bill removes the obligation for a child to attend their Hearing. There is a caveat that the Hearing can require a child to attend where this is 'necessary…(a) for a fair hearing, or (b) to assist the children's hearing in making any decision relating to the child.' When doing this the panel must consider whether (a) the child's attendance at the hearing, or that part of the hearing, would place the child's health, safety or development at risk, and (b) taking account of the child's age and maturity, the child would be capable of understanding what happens at the hearing or that part of the hearing.

We would like to see this provision strengthened and balanced. We agree with others that in simply removing the obligation on children to attend Hearings without replacing it with anything else may lead to a void in older children and young people's participation. We therefore would advocate for a position closer to the recommendation in Hearings for Children:

The existing obligation for a child to attend must be removed and replaced with a presumption that a child will attend their Hearing, with some limitations. There must be no presumption that babies and infants will attend their Hearing.[38]

To achieve the spirit of the second part of this recommendation, we support a presumption **against** babies and infants attending Hearings, with age 5 potentially being an age bar for this presumption.

The circumstances where this presumption can be overruled should be extremely limited, likely to where a child expresses a wish to be present. We suggest that the exceptions in the Bill as proposed are too wide, and that the direction to the panel to

consider the child's age and maturity when implementing them are not strong enough.

Establishment of Grounds Process

Grounds:

NSPCC Scotland suggests that it is essential that an independent representative for the infant is present at Grounds Hearings, where informal discussions to alter Grounds or the statement of facts may take place. We would suggest that our proposed role of 'Infant Safeguarder', discussed below, would be well placed to fulfil this role.

We support the Hearings for Children recommendation that the Grounds process be separated out from the Hearing Process and placed under the remit of the (potentially specialist) Sheriff.

NSPCC Scotland advise that the government explores a duty on the Reporter working with birth parents to reach agreement on Grounds, to consider whether removing any Ground or supporting fact may have an impact on availability of relevant support services for the child or family in the future or may undermine future permanence or adoption proceedings. The decision regarding removing grounds/ supporting facts must be made with the best interests of the child as paramount consideration. We say more about this below.

However, we have some concerns around proposed changes to the Grounds process overall. A key concern is the lack of clarity. Even among legal experts consulted by NSPCC Scotland, there was uncertainty about what the results of proposed changes are. We support Sheriff David Mackie's recommendation that the Government and legal drafters set an example, under UNCRC, to make the legal framework understandable.

We would urge the Committee to seek clarity about the legal effect of changes made and any consequences.

NSPCC Scotland strongly supported the recommendation of Hearings for Children that 'There must be no more Grounds Hearings'. Instead, it was recommended that the grounds process be separated out from the Hearing Process and placed under the remit of the (potentially Specialist) Sheriff. We believe this recognised that in cases where consensus is not possible, this stage of the process is inherently adversarial. It is therefore sensible to locate it within the remit of the Sheriff Court, where the Sheriff has the necessary experience, authority, and skills to manage it. The aim being that when the case does arrive at the door of the CHS for substantive decision making, all parties are starting from a place of shared understanding of agreed grounds and a more inquisitorial atmosphere may continue from there on.

We are concerned that the proposal for single member panels held by the Chair as part of the Grounds process carry several risks. The first is that the above advantage, of removing one of the most inherently adversarial parts of the process from the purview of the CHS, is lost. Another is that it adds another level of further complexity to another complex system.

The enhanced role of the Reporter – ascertaining scope for agreement and understanding of the statement of grounds, through engagement with the child and their relevant person(s)[39] - appears similar to what is envisaged in Hearings for Children.[40] However, it includes an added level of complexity. In the HfC model there were two options for the Reporter – 1) If the Reporter determines after conversation that grounds can be agreed to - proceed to administrative Hearing that the parties need not attend, or 2) If grounds cannot be agreed – refer to the Sheriff for proof. The model proposed in the Bill presents a new, third option to refer the case to a single member panel where 'there is no clear agreement, but constructive discussion of the grounds may be possible and effective.'[41] This adds a significant level of complexity to the determination being made by the Reporter.

In some ways this proposal resembles that of the 'Legal Member' suggested in the Scottish Government Consultation on CHS Redesign. A key concern raised by Sheriff David Mackie about this proposal was that "*Appeals against the decisions of Sheriffs on the establishment of grounds for referral are rare; one cannot help wondering whether decisions by less judicially experienced Legal Members will generate more appeals to the Sheriff Appeal Court.*"[42]. The system's ability to make decisions within their developmental timescales is a fundamental priority in creating a system which recognises the rights and needs of infants. Any changes to the system which not only do not help to reduce delays, but may contribute to further delays, are untenable.

We are also aware that the Children's Commissioner and others have identified possible Human Rights implications with this proposal. We would encourage the Committee to consider this carefully.

Proposed changes to the Grounds Process would result in a 'Single Panel Member' and in some ways, the Reporter becoming involved in a more 'mediative' process aimed at reaching agreement with relevant Persons on Grounds and therefore the need for Grounds Hearings. NSPCC Scotland supports aspirations to cut down on both the amount of time and associated harm this stage of the process often contributes to. However, we stress that proposed benefits of change must be balanced against possible risks or unintended consequences.

NSPCC Practitioners and Social Work Experts NSPCC have consulted with suggest that in their experience, where a proof takes place to determine Grounds at the Sheriff Court, there can be an element of 'negotiation' of Grounds between legal representatives, with the aim of finding a set of facts that all can agree to – described as similar to 'plea bargaining' in criminal cases. Practitioners have suggested that this can cause issues. They described situations where specific factual instances are removed from the agreed statement of facts or Grounds of Referral are dropped.

Social workers we consulted suggested this is most likely to happen in highly complex cases, where parents may accept some but not all grounds. In the experience of some social workers, this may happen most commonly where there are concerns about child sexual abuse or domestic abuse, where parents may for example agree to accept a ground of 'lack of parental care' but not a ground/ fact related to sexual abuse or domestic abuse.

We are extremely concerned that this may lead to children's lived experiences of abuse not being considered during the hearings process. In the short term this will impact on children's access to essential therapeutic recovery services, to which they have a right under the UNCRC. In the longer term, it may mean serious child protection issues are completely lost sight of, and in the worst-case scenarios, children living with very high levels of risk.

A recent study by Barnardos and SCRA (2020) found children's lived experiences of sexual abuse hidden within Children's Hearings data. The analysis of the case files of over two hundred children in the hearings system found a third of children impacted or highly likely to be impacted, by child sexual exploitation. [43]

We advise caution as a more mediative approach to grounds is suggested. While encouraging greater agreement between relevant people is advantageous to reducing adversariality in the system, this must be balanced against potential unintended consequences. We would advise exploration of a duty on the Reporter or a Single Panel Member working with relevant persons to reach agreement on Grounds, to consider whether removing any Ground or supporting Fact may have an impact on availability of support services for the child or family in the future or may undermine future permanence or adoption Proceedings. The decision must be made with the Best Interests of the Child as paramount Consideration.

NSPCC Scotland also suggests that it is essential that an independent representative for the infant is present at Grounds Hearings, where informal discussions to alter Grounds or the statement of facts may take place. We would suggest that our proposed role of 'Infant Safeguarder' would be well placed to fulfil this role.

3 Month Timescale for Grounds Process:

NSPCC Scotland call for a statutory three month set time limit for the establishment of grounds process (with flexibility for Sheriffs in exceptional cases)

Hearings for Children identified the urgent need to reduce drift and delay in the Scottish system, highlighting the particularly damaging impact of delays in legal decision making on infants and very young children:

This is important for all children, ***but in particular for younger children for whom the long delays in decision-making can impact on their relationships and ability to develop strong and lasting attachments in the formative years of their lives.***

(Hearings for Children, Pg 34 hearings-for-children-the-redesign-report.pdf)

The review's recommendations around statutory measures to tackle delay focused on the earliest 'establishment of grounds' process, well known to cause delay particularly in the cases of infants and very young children. The report called for measures to address the 'systemic delay' baked into the system at this point. It concluded that potential solutions for re-design must include consideration of a statutory three month set time limit for the establishment of grounds process (with

flexibility for Sheriffs in exceptional cases) and measures to prioritise the developmental needs of infants and babies where systemic delays may impact on their ability to form lasting and consistent relationships.

NSPCC Scotland strongly welcomed the recommendation of a 3-month timeframe around the grounds process as an important step *towards* tackling the entrenched levels of unacceptable drift and delay in the Scottish system. It is deeply disappointing that the Scottish Government has decided not to consider a timescale, despite the considerable weight of evidence and we would encourage the Committee to explore this further with the Government as part of the Bill scrutiny.

Removal of Requirement for Infants to agree to Grounds:

NSPCC Scotland strongly support the changes proposed under s14 of the Bill which 'removes the current requirement that, where the child is not capable of understanding the grounds for referral (for example, a child of a very young age) this must automatically be referred to the Sheriff to determine grounds even if all relevant persons are able to agree to the grounds'.[44] This change was a key recommendation of Hearings for Children,[45] and removed an automatic additional cause of drift and delay for babies and infants.

Part 2

What are your views on the proposed changes to Children's Services Planning set out in section 22 of the Bill

NSPCC Scotland would appreciate clarification on the rationale for extending the statutory responsibility for children's service planning to include Integrated Joint Boards (IJBs) in the Bill, as its inclusion was unexpected. Without further context, it is difficult to fully assess the practical implications of this proposed legislative change.

Unlike the other provisions set out in the Bill, the issue of children's services planning, to the best of our knowledge, has not been subject to prior consultation nor was it a direct recommendation of the Independent Care Review.

Notwithstanding the limited information provided, we are, in theory, supportive of the Government's ambition to ensure more appropriate and consistent input from IJBs in relation to children's service planning throughout Scotland. We recognise that multi-agency collaboration is fundamental to the design and delivery of more effective, child and family centred services. This is essential to realising the approach to whole family support required to Keep The Promise by 2030[46]. However, the inclusion of IJBs must not, now or in the future, compromise the autonomy of local authorities to deliver services that are tailored and responsive to local need.

Ensuring that the statutory duties for Children's Services Planning in Part 3 of the Children and Young People (Scotland) Act 2014 placed upon a local authority and the relevant health board area, are also placed on IJBs could be one way to enhance the process of multi-agency strategic planning. However, as evidenced by research recently undertaken by CELCIS[47], there is variability in integration across Scotland, and a lack of clarity and consistency about local delegation arrangements. At

present, not all IJBs hold direct responsibility for children's services. This results in an unclear understanding of current operational practice, which may undermine the effective implementation and impact of the proposed changes. It also calls into question whether legislation is the most appropriate means of improving outcomes for infants, children, and young people in this context.

NSPCC Scotland recognise the enhanced role that IJBs could play in supporting children's service planning, particularly given their responsibilities for adult services that are essential to the delivery of holistic whole-family support and services that can positively influence child wellbeing, for example, housing, mental health, domestic abuse, and alcohol and drug recovery support services, as outlined in the policy memorandum. We also believe that the third sector can play a vital role in shaping the development and delivery of local children's services plans and encourage the Scottish Government to give greater recognition to third sector organisations as a meaningful and more equal partners in this process[48].

Additionally, we recognise the importance of building the interconnections between adult services and children's services and would welcome more effort from the Government to strengthen the coordination between these services, particularly in relation to supporting transitions, as recommended by The Promise. This could help ensure that more children and families receive the right support at the right time across the life course, in line with Getting It Right for Every Child[49]. However, we believe that achieving this will require more than just the procedural adjustments to local children's services planning arrangements proposed in the Bill. Greater Government investment and resourcing of children's services, particularly in social work are essential for successful implementation of The Promise.

As outlined in the Children and Young People (Scotland) Act 2014, one of the main aims of children's service plans is to ensure that action to meet a child or young person's needs is taken at the earliest appropriate time. However, while prevention and early intervention are recognised as key national and local approaches to supporting children and families, NSPCC Scotland's independent audit of the 2023-2026 children's services plans for each local authority, revealed that working in this way with children under five (the early years), including the pre-birth period, is not currently treated as a strategic priority in children's services planning in Scotland[50].

This current lack of focus on the under -five age group is disappointing, particularly given the Scottish Government's longstanding policy commitment to providing children with the best start in life. This is especially concerning considering the Government's clear recognition of the importance of the earliest years of a child's life and the vital role that preventative and early intervention support plays in improving long-term outcomes.

Other Issues

Are there any other comments you would like to make in relation to this Bill?

Safe Baby Hearing

NSPCC Scotland's position is that the current Bill should provide for a trial of a bespoke 'safe baby approach' within a re-designed hearing system, which adapts key features of the evidence based 'Safe Baby Court' model within a Scottish context

The science of early child development demands that the 'care system' is built around the incontrovertible evidence of what infants need to recover from trauma and thrive in their earliest years, and to provide the co-ordinated support – including specialist support - that birth families in and on the edges of care need to enable them to safely care for their infant.

Yet care systems across the world have been slow to 'follow the science'; to focus on infancy as a singularly unique developmental stage offering unparalleled opportunities for coordinated intervention and support to achieve better outcomes for children and birth families and requiring a *highly bespoke approach*.

The problem of care systems not being attuned to the unique needs of infants – increasingly understood as the Baby Blind Spot[51] - is not unique to Scotland.

Entrenched problems such as chronic drift and delay in decision making about the permanent care of infants in the care system and a lack of intensive, specialist family support to optimise the chances of the infant achieving permanence within their birth family, can be seen across the world.

Jurisdictions in America, Australia, New Zealand have been pointed to the challenge of developing baby safe care systems for some years now and have developed iterations of 'safe baby' approaches, the most established of which appears to be the 'Safe Baby Court' model[52]. In this model, an integrated team around the child and family works closely alongside a family judge, trained in the science of early child development, who leads on the development of a 'therapeutic judicial climate', paying *particular attention* to the parent-child relationship, calling services to account, and driving permanence decision making within a timescale aligned to the developmental needs of the infant.[53] [54]

Safe baby approaches have, as far as we are aware, been developed within jurisdictions where public welfare decisions about infant's care are made in a family court setting. That is, the family court model is adapted to work in a bespoke, infant focussed way alongside infants, parents and foster/kinship parents, and services, in a way that is trauma informed and highly attuned to the needs of both infants and birth parents.

NSPCC Scotland is of the view that a re-designed hearing system, with strengthening of key proposals in the current bill, most importantly a consistent professional chair and infant specialism in the panel, may provide the ideal context within which to adapt a 'safe baby court' type approach to Scotland's Children's Hearings System.

This is because some of the essential components of a 'safe baby' model are already present in Scotland's care system or could be developed in the context of a re-designed hearings system. For example:

- the Children's Hearing's System was set up specifically to provide a less formal, child-needs led, non-adversarial and trauma informed decision-making forum, which safe baby approaches aspire to develop in their adaptation of family court systems.

- Core features of a re-designed hearings system recommended by Sheriff David Mackie and the Hearings System Working group, and partially represented in the current bill, reflect components of a safe baby approach. Most importantly the highly skilled, authoritative chair with tribunal competence who is **consistent in the child's case**, who works alongside child and family and who is instrumental in the development of a 'therapeutic tribunal climate', and the presence of infant specialism in the decision-making model.

- Out-with the CHS, in the 'scaffolding' that essentially surround the hearings system, Scotland boasts an increasingly infant focussed service landscape which again reflects key components of safe baby approach. This includes the much maligned but highly skilled children and families social work workforce, an enhanced health visiting pathway which has unparalleled reach with our most vulnerable families and potentially represents a 'jewel in the crown' of an infant focussed system, and a fast-developing infant mental health estate, providing specialist infant mental health expertise in every health board area in Scotland.

NSPCC notes that Scotland is successfully growing an 'infant focussed estate' in a comparatively short period of time. We believe the current bill offers an unprecedented opportunity to harness its potential and embed a 'safe baby' approach in the context of a re-designed children's hearing system.

NSPCC would therefor hugely welcome the bill providing for a commitment to the robust, resourced development and trialling of a 'safe baby hearing' approach, designed around the evidence-based needs of the infant and family, with the authority to call services to account and to ensure that the necessary therapeutic support for parents is accessible in timescales attuned to the best interests of the infant. Within this model, timings of tribunals would be integrated with local authority permanence processes, where assessment, interventions, and decisions are made according to a set timescale.

It is our opinion that such a trial should be mandatory within the bill, to 'test' if a 'safe baby hearing' approach can safely meet the needs of infants and play its role in delivering The Promise to infants and very young children and their birth families.

Statutory Timeframe around legal decision making

NSPCC Scotland's position is that Scotland should introduce a statutory timeframe around the entire process of legal decision making about a looked after child's permanence, which ensures that that the wider care and permanence decision making process is fully synchronised with legal decision-making.

Article 3 of the UNCRC requires that 'In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration '. NSPCC is concerned that a legal system which is not designed/ reformed to eliminate structural delays, and make decisions within infant's developmental timescales, necessarily means that decisions are not being made in infant's best interests.

Robust evidence shows that the *entrenched* problem of drift and delay in achieving a permanent home for looked after children in Scotland has not shifted in over 20 years. This is despite an array of legislation, policy guidance, research and practice improvement aimed at addressing the problem, some of which is referenced below[55].

Of particular note is the 2018 SCRA research which assessed progress made in reducing time to permanence and asked the fundamental question of whether a set timescale needs to be introduced in Scotland for the length of time a child can be accommodated and/or in what is intended to be long-term placement before a local authority decides to progress an application for a permanence order.

Most recently, in November 2019 Dr Helen Whincup's seminal, longitudinal '*Permanently Progressing'* study, scrutinising the pathways to permanence of 1,836 looked after children under the age of 5, reported at Phase 1 that despite the Scottish Government's explicit commitment to early permanence, it took two to three years to achieve permanence, even for those children who became looked after from birth. It also showed that the time taken to reach a decision for a child was influenced by the hearing system and that a Compulsory Supervision Order for a young child could be a source of delay[56].

Five years later, in 2025, Professor Helen Minnis (et al,2025) seminal BeST trial, reported that looked after infants in England achieve a permanent home **4 and a half times faster than infants in Scotland**, **with associated damage to infants in the short and the long term and at double the cost of the English system**. The legal timescale around the decision-making process was found to be a key factor in infants in England achieving a permanent 'forever' home within their developmental timescales, alongside an authoritative 'case holding' judge overseeing the process and keeping it focussed on infant's rights and needs.

As referenced above, NSPCC Scotland strongly welcomed Hearing for Children's conclusions about the particularly damaging impact of delays in legal decision making about infants, the urgent need to reduce drift and delay in the Scottish system and the recommendation of a 3-month time limit for the grounds process.

However, while a timeframe around grounds would be a step in the right direction, we are clear of the need for a timeframe around the child's journey through the looked after system. Delay in decision making is not systemic *only* to the grounds process but can be encountered throughout the child and family's journey through the hearings system and at its conclusion. Some of the crunch points where delays can occur in the case of infants and very young children in the hearings tribunal system include, but are not limited to:

- Establishment of Grounds: where birth parents do not accept the grounds of referral the process moves to the Sheriff court. This is more likely in the case of infants, where it is the parent(s) who must accept the grounds, and which Hearings for Children found to be a cause of considerable delay in the system, and which at times can take as long as 6 months or even a year.[57] In this extreme case, if a baby is referred to the Reporter aged 8 months and the case goes to Sheriff Court, the child could be a toddler of twenty months of age before their case comes before a hearings tribunal for substantive decision making. This period represents a **hugely significant period** in an infant's developmental trajectory.

- Children's Hearings process - once grounds are established and the child and family enter the CHS, delays in decision making may be common. The BeST trial (2025) found that lay tribunals '***tended to defer difficult decisions to future meetings'*** which in most cases involve a completely new panel of tribunal members who do not know the infant's case, thereby contributing to drift. In an audit of the first 50 GIFT cases, Bryce et al[58] found that where there were multiple Children's Hearings about a child it was rare for the case to be dealt with by the same panel members.

- The ongoing recruitment and retention crisis in children and family's social work will undoubtedly exacerbate the problem of robust information being unavailable to the panel, and impacting on deferred decision making.

- The appeals process is identified as causing delay in the hearings process. Panel decisions, particularly those around the frequency of 'family time', can be subject to appeal by birth parents. In some cases, this incurs further delay as the case is transferred between the hearing's tribunal and Sheriff Court system and back[59]. An audit of a small number of GIFT and LIFT cases conducted by Love in 2023 found that Children's Hearings appeared to be called at random points in time, often by birth parents regarding contact decisions.

In England and Wales, the Family Justice Review (2011) found that care proceeding cases, which then averaged at 52 weeks, took 'far too long'. It recommended that the system become more child focussed and that a mandatory timescale be introduced, resulting in the establishment of the Public Law Outline, the legal framework in the UK that guides local authorities in child welfare cases, ensuring that care and supervision proceedings are conducted efficiently and within a statutory framework.

The unified family court established under the review holds the authority and responsibility for permanency decisions, with the overarching, legally prescribed

timescale within which to attend to that responsibility. This means that the child and family's journey - from becoming looked after until a decision about the child's permanent 'forever home' is made - is through one system, one court, one judge, with a clearly mandated timetable. Whilst there has been some discussion[60] and criticism of the length of the statutory timeframe in England, including some concern about a 'rush to adoption',[61] the English system does not experience the significant levels of drift and delay that we see in the Scottish system.

Representation of Infants:

NSPCC Scotland consider it imperative that infants are guaranteed, in every case, to have their voice and lived experience independently represented at Hearing. Our position is that the bill includes provision for an automatic right to independent representation for all infants. We suggest automatic appointment of an 'infant safeguarder', a trained professional who has a clear role in representing the lived experiences and rights of infants at hearing.

The right of babies and very young children to have their views heard is equal to that of all children. Article 12 of the UNCRC makes it clear there is no lower age limit on the obligation on state parties to take into account the voice of children when making decisions about them.[62] Scotland has been forward thinking in recognising this in the creation of the Voice of the Infant pledge and Best Practice Guidance.[63] The Promise also committed to hearing the voices of all children as a key component of making decisions in their best interests and directs us to pay particular attention to the quietest voices, including babies and very young children.[64]

There are clearly substantial additional complexities in hearing the infant's 'voice' in the system. Infants, by their very stage of development, cannot participate in the way older children can, making it hugely challenging for their voices and experiences to be heard. To safeguard infants' rights to be heard in Hearings, we must identify clear processes to ensure that the experiences of infants are gathered in developmentally appropriate ways. Facilitating this is fundamental to upholding infants' rights.

NSPCC Scotland notes that a proposed option to ensure the voice of infants is represented at Hearings is 'Non-Instructed Advocacy (NIA)'. While we support its aspirations and philosophy - that all children, regardless of age and maturity, are entitled to have their voice represented – we do not consider it fit for purpose for infants.

NIA draws definite distinctions between 'views' and 'best interests', making clear that it is not the role of the non-instructed advocate to draw conclusions or make recommendations about best interests. However, in the case of babies and very young children, this distinction is extremely challenging to make. We are concerned that the model proposed by NIA in drawing this distinction very firmly may be open to legal challenge as we are advised by experts in practice this line is very hard to draw distinctly[65].

NSPCC Scotland consider '*subjective lived experience'* to be a holistic descriptor of what an infant is experiencing, and that understanding and relating the infant's subjective lived experience must be the goal of independent representation.

One of the most developmentally appropriate ways to understand and represent an infant's subjective lived experience involves gathering information about the infant and their behaviours from the important people around them, who have knowledge of the infant in different contexts, which may include birth parents, foster and kinship carers, health visitors, family nurses, early years workers and infant mental health services.

We note that 'Better Choices for Children Report' recommended 'an expert voice for the child from an early stage in a permanence process akin to the role of the children's guardian in England, Wales, and Northern Ireland. We also note that Scotland remains the only country in the UK where infants in the care system – and indeed all children- are not automatically appointed independent representation, to safeguard their rights and best interests. In England and Wales, a CAFCASS Guardian who is legally instructed and in Northern Ireland a Guardian Ad Litem, is appointed for every child in care proceedings to independently represent the interests of the child.

We would therefore like to see **the Bill make provision for the automatic appointment of an 'Infant Safeguarder' in all cases involving infants and very young children in the Children's Hearing System.**

Safeguarders are currently more likely to be appointed in the cases of very young children. However, they are not a consistent feature in the Hearings of most infants, being appointed in only 20% of cases involving children aged 0-3. Research also identifies a lack of clarity amongst Panel Members and other CHS stakeholders about when a Safeguarder should be appointed and what their role is. Conflict between parents/carers and agencies or within the family has been identified as the primary reason for appointing a Safeguarder. Experts consider this arguably 'ad hoc' approach to the appointment of a Safeguarder, rather than as a procedural right in every case, as potentially impacting on the credibility given to Social Workers and Social Work assessments at Hearing and a risk to the on-going therapeutic relationship between families and Social Work[66].

We would suggest that the 'Infant Safeguarder' would have a standardised remit - to represent the subjective lived experience of the infant throughout the infant's engagement with the Hearing System, rather than have their particular remit determined by the Sheriff or Panel. As discussed above, this would involve gathering information about the infant and their behaviours through important people around them. They would be automatically appointed for all infants – we would suggest all children under 5 – on referral to the Reporter, with their role being to represent infant's best interests throughout the process, including at hearings but also monitoring things such as if services are being provided as planned. To this end, we suggest it may be helpful if the Infant Safeguarder had a clearly defined role in the on-going monitoring and accountability.

NSPCC Scotland suggest that it is essential that an independent representative for the infant is present at Grounds Hearings taking place at the Sheriff Court, where informal discussions to alter Grounds or the statement of facts may take place. We would suggest that our proposed role of 'Infant Safeguarder' would be well placed to fulfil this role.

We would envisage 'Infant Safeguarders' requiring specialist training on early child development, infant mental health, and the impact of trauma on infants - differentiating them from the current Safeguarder cohort.

Finally, we wish to pre-empt a concern often raised at the suggestion of representation for infants at Hearings. There is consistent feedback that there are already many adults in the room at Hearings and that this risks the child being overlooked and can be overwhelming for children. We recognise that this was an important point raised by the Hearings for Children Report, and we support measures to make the experience of attending Hearings less traumatic for children and young people, and their birth parents. However, as discussed above, we are of the view that infants should not be physically in attendance at Hearings except in exceptional circumstances. Therefore, this same consideration is not applicable to infants. We recognise that aiming for a Hearing Space that is as unintimidating as possible for vulnerable family members is also key to creating a trauma-informed system. However, the needs of adult family members must be balanced against the rights of infants. It is rightly recognised that parents and other family members must be entitled to legal representation to support their voice being heard. We suggest that to ensure equity, infants must also have a right to be represented. And in fact, that the need for this right may be even more acute as infants are and should not be in the room at the vast majority of Hearings.

Regulation of Solicitors in the Children's Hearing System

Consideration of Rights of Audience for Solicitors working within the CHS:

NSPCC Scotland urges the Committee to seriously consider the need for a 'rights-of-audience' accreditation for solicitors representing relevant persons and children at hearings

It is well documented that children's hearings have become more adversarial due to the presence of solicitors and the imbalance this has created in the tribunal towards focussing on parent's needs.

Solicitors acting on behalf of birth parents *clearly* have an important role to play in hearings, fulfilling a birth parent's right to independent representation in a legal tribunal making decisions about the care of their child. However, NSPCC Scotland is strongly of the view that solicitors must be required to undertake this role in the full understanding of paramountcy and with specific training.

We strongly support the recommendations in both The Promise and in Hearing's for Children, that a form of accreditation is required for solicitors in the children's hearings tribunal if the adversarial culture and imbalance in the system towards legal voices is to be addressed.

We note that The Promise recommended the creation of an 'accredited legal specialism' to set standards for legal professionals. Hearings for Children recommended consideration of a 'rights-of audience' approach, where 'lawyers must demonstrate certain skills and attributes before being able to appear on behalf of relevant persons and children at hearings'. [67]

The Scottish Government considers that practice review and improvement will be sufficient to address this issue[68]. However, we are concerned that this may not be enough to underpin the culture change required.

We note that The Children (Scotland) Act 2020 (s.7) placed a duty on Scottish Ministers to regulate for the creation of a Register of Solicitors who would be eligible to be appointed in cases covered under section 22B(6) of the Vulnerable Witnesses (Scotland) Act 2004, where a person is prohibited from personally conducting their case. This included the ability to set requirements to obtain and maintain a place on the register – such as for professional qualifications and training required for a Solicitor to be placed, and to maintain, their place on the register.

A similar provision for Solicitors operating within the Hearings System may help ensure that all professionals working within the system are appropriately trauma informed. In the case of Solicitors representing relevant persons in the cases of infants and very young children, NSPCC would also strongly recommend a training requirement around early child development, attachment and the impact of trauma within their primary attachment relationships on infants. [69]

National Guidance Family Time Decision Making

NSPCC Scotland recommends the bill provides for a duty on Ministers to create National Guidance on Family Time Decision making to inform the decisions that panels are routinely making about family time orders, for infants and their birth parent(s). This guidance must take account of the unique needs and rights of infants.

The Review of the Children's Hearing System (2024) recommended the development of National Best Practice Guidance around family time (previously contact) and its role in the maintenance, repair and development of safe family relationships. Vitally, the review stressed the importance of a clear process for hearings to enquire about what is working/ not working around Family Time, as part of a regular review process.

The Scottish Government accepted the recommendation in the response to Hearings for Children (SG 2023). However, we are not aware of any work to take this forward.

As discussed above, family time is one of the most contested areas in the CHS[70] Where a baby has been placed away from their birth family, decisions about what contact they should have with their parent(s) can be *particularly* complex and emotionally challenging for panel members. As discussed above, family time is one of the most contested areas in the CHS (NSPCC Scotland,2023) Where a baby has been placed away from their birth family, decisions about what contact they should have with their parent(s) can be *particularly* complex and emotionally challenging for panel members.

NSPCC Scotland is strongly of the view that making such complex decisions requires considerable knowledge of early child development coupled with an *unwavering focus* on paramountcy and the rights of the infant. We note that experts in the field of Infant Mental Health describe *inherent challenges* in remaining focused

on the best interests of the infant, in the context of a vulnerable birth parent's distress. [71] [72]

High levels of contact may often be ordered for babies in Scotland at 5 days per week, and there may be a common-sense assumption that this is critical in maintaining an infant's attachment relationship with their birth parent and will support the best chance of the infant returning home. There is a paucity of research in this area, but we note Humphries study finding no relationship between high frequency contact and reunification[73] and the call from the CORAM Foundation that robust, larger scale research be conducted in this area.

We also note CORAM best practice guidance on infancy contact, based on their research in this area[74], which includes:

- **Settling in time** – court to allow a settling in period of no more than 14 days with the foster carers before contact begins to allow the baby to settle and develop positive attachments without diminishing the established child/birth parent relationship.

- **Regularity and length of contact** – ideally no more than three times a week, to reduce disruption to the infant's routine while maintaining close and consistent contact with birth parents. Sessions should be no longer than two hours and should be purposeful in developing the child/birth parent relationship.

- **Continuity of care** – the foster carers to remain on site during contact so they are available to support the birth parent in meeting the needs of the child.

Whilst practice around family time will vary across Scotland, there is evidence that some family time arrangements may be vastly unsuited to the best interests of the infant, and may cause further trauma including undermining the essential attachment relationship between baby and foster/ kinship carer. Panel decisions about the frequency and duration of family time MUST be informed by an advanced understanding of the needs of the infant, as well as a consideration of the birth parent's rights

It is therefore essential that Scottish Ministers honour their commitment to create National Best Practice Guidance on Family time Decision Making. NSPCC Scotland support a Duty to create such guidance being included on the face of this Bill and that this guidance must take account of the unique needs and rights of infants.

UNCRC Incorporation Applicability

NSPCC Scotland note that the drafting mechanisms chosen in the Bill mean that key provisions will fall out-with the scope of the UNCRC (Incorporation) (Scotland) Act 2024, including S1 provisions on Aftercare and S10 provisions on the Register of Foster Carers. This is extremely disappointing following a commitment from Cabinet Secretary Shirley-Anne Sommerville in 2023 that:

"To ensure that as much future legislation as possible is in scope for the powers in the UNCRC Bill, we can try to minimise making amendments to UK Acts and instead

make relevant provisions in standalone Acts of the Scottish Parliament. The Government's commitment to maximise the reach of the Bill's UNCRC protections, and in time the Human Rights Bill protections, will be a factor weighing in favour of making freestanding provision in future Acts of the Scottish Parliament."

NSPCC Scotland find the derivation from this position extremely disappointing and suggest it contradicts the commitment made when Incorporating the UNCRC to be held accountable for upholding the rights of babies, children and young people. It is also extremely disappointing that the reasoning for and consequences of taking this drafting approach are not acknowledged in the Child Rights and Wellbeing Impact Assessment (CRWIA) or the Policy Memorandum.

NSPCC Scotland strongly support the calls of Together Alliance for Children's Rights:

- The Bill is amended so that Section 1 and Section 10 are re-enacted as stand-alone provisions in this Bill, rather than amendments to the Children (Scotland) Act 1995.

- The CRWIA and Policy Memorandum is strengthened to evidence why the drafting route was chosen, assess the negative impact on children's access to remedy under the UNCRC Act and demonstrate that the Government's November 2023 commitment to minimise amendments to UK Acts will be followed.

Family Group Decision Making:

NSPCC Scotland supports Children First's calls for strengthened legislation to support more consistent access to Family Group Decision Making across Scotland, as part of the Children (Care, Care Experience and Services) (Scotland) Bill. We support the suggestion that this is achieved through a responsibility for the Reporter to:

a) Account for whether an offer of Family Group Decision Making has been made to the child/family at the point a referral is received.

b) If this offer has not been made, to consider whether it would be in the child's best interests to offer FGDM, either while the Reporter's investigation takes place, or as a recommendation as part of the Reporter's decision that no compulsory measures are required.

We note the opportunities FGDM represents to work collaboratively with families before the point at which compulsion is required.

We would suggest that there may be particular scope for success through FGDM work pre-birth. Pregnancy offers a unique opportunity for therapeutic work, with motivation to make positive changes to care safely for their child uniquely high for expectant parents. NSPCC Scotland is therefore very supportive of a change which may contribute to a culture shift which encourages more widespread practices of working therapeutically pre-birth.

NSPCC Scotland agree with the approach suggested by Children First which envisages FGDM as an earlier intervention opportunity. We understand the vision that FGDM would come prior to CHS involvement, be an option where the bar for grounds is not met or would run concurrently with Investigations by the Reporter. We view this as essential, especially in the case of infants. As discussed at length above, the level of drift and delay commonly seen in the cases of Infants moving through the CHS is highly damaging to the health and wellbeing of Scotland's most vulnerable babies and young children. Therefore, when building any further scaffolding and support around infants and their families in the system we must ensure that there is no risk of unintended contribution to further drift and delay.

We would also suggest that in introducing strengthened legislation around access to FGDM, there should be a commitment to monitoring and evaluation of the impact of changes on Reporter decision making. This will be useful in creating a continuous feedback loop where services can be iteratively improved. It will also alert to any possible unintended consequences.

Permanently Progressing found that a disproportionate number of referrals to the Reporter for infants were initially rejected as they didn't meet the evidential bar for grounds but then a further referral in respect of the same infant went on to be accepted and indeed, that that infant went on to become looked after[75] There is some suggestion that this may indicate a bias against moving forward to Hearings for Infants at first referral. It would be necessary to monitor how inclusion of FGDM as a part of Reporter's recommendations after rejected referrals might impact patterns of decision making in the cases of infants.

SCRA Response to the Children (Care, Care Experience and Services Planning) (Scotland) Bill Call for Views

Summary and introduction

The Scottish Children's Reporter Administration (SCRA) welcomes the opportunity to respond to the Committee's call for views on the Children (Care, Care Experience and Services Planning) (Scotland) Bill. Along with other children's services developments, this Bill seeks to improve the experience of children and families by making a number of significant changes to work across the children's hearings system. When taken with other current legislative change in the Children (Care and Justice) (Scotland) Act 2024 we think that the children's hearings system will look and feel different.

In explaining our position in relation to the provisions of the Bill to Committee, SCRA has considered certain principles:

- that there is an evidence base for improvement
- that change will be an improvement
- that the improvement is in the understanding and experience of children and families

There are some areas of the Bill where we have no direct expertise and we have not commented. There are some areas of the Bill where our comments are more limited. We do comment on some areas of the Bill which deal with professional practice in the children's hearings system, and where we do this we have tried to avoid jargon or the language of practice. We may not always succeed in this, so apologies.

Suggested technical or semantic amendments are not covered in this document and are being shared separately with Scottish Government officials.

The work of the Children's Reporter – background information

The Children's Reporter works in the children's hearings 'system' - Scotland's statutory approach to child protection and children in conflict with the law. If a compulsory supervision order might be required then the circumstances for a child will be considered by Children's Reporters, who will decide if the circumstances need to be considered by panel members in a children's hearing.

A children's hearing is the tribunal which can respond to concerns about a child's circumstances (whether about the care or treatment of the child by adults or the behaviour of the child) and can address concerns using a compulsory supervision order (CSO).

There is a clear separation of role within the existing children's hearings system, which is fair and balanced, is rights respecting and ECHR compliant. If there is a

factual dispute which requires resolution before an order can be made for a child then this is done by a Sheriff. Since the system began it has developed an operational reality based on the system principles as envisaged in The Kilbrandon Report (1964). All the different elements of this system work together. Any system change which impacts a single element of the system can have an impact on the whole system. Our response to this call for views is written in that context.

Part 1 Chapter 1

1. **What are your views on the aftercare provisions set out in the Bill?**

SCRA are not involved in the provision of aftercare – but we understand that the children we work with are the children who will benefit from effective aftercare provision. In this context we agree that relevant children should have access to aftercare between the ages of 16 and 26.

We don't think that it is clear that aftercare eligibility will be extended to children who are looked after following their 16th birthday (in line with the provisions still to be enacted of the Children (Care and Justice) Scotland Act 2024), if they were not looked after before their 16th birthday. We would like more clarity to be provided around this.

Whilst this is an area where we would defer to the thinking of our local authority partners, we do not think children should be required to apply for aftercare support. Those children most likely to need supports may be the children who are least likely to apply for them. Instead, we think there should be something more proactive on supporting services to offer and provide appropriate supports between the ages of 16 and 26, for any child who was a looked after child at any point in their childhood (so up until age 18, and other 'entry' criteria to aftercare support may also be required, like refugee or UASC status or lengthy inpatient medical care).

2. **What are your views on the corporate parenting provisions set out in the Bill?**

SCRA have a statutory corporate parenting responsibility. We agree with the extension of corporate parenting duties to any person under 26 who was looked after at any point in their childhood. We will need to review what this means for our service.

3. **What are your views on the advocacy proposals set out in the Bill?**

In principle SCRA fully supports the extension of advocacy services with a specialised understanding of care experience. We agree that these services need to be co-designed with care experienced people. This will help ensure that the service is easily accessible and useful, throughout a person's life.

4. **What are your views on the proposals for guidance in relation to care experience?**

SCRA is/are of the view that such guidance will help develop a shared understanding across the public sector, and as such will be valuable. We would be pleased to be involved in the development of any such guidance.

SCRA would need to be able to consider the guidance before considering how we can have regard to it as part of our statutory function, as a result aspects of the Bill may need to be sequenced / implemented subsequent to any development and implementation of guidance. Any such guidance might have additional impacts on our own practice direction and other documents / information / approaches, which would require changes to be made.

Chapter 2

5. **What are your views on proposals designed to limit profits for children's residential care services?**

In response to the Scottish Government consultation on the future of foster care SCRA were clear that the care of children should not be about profit, monetisation or marketisation. We continue to hold this view.

6. **What are your views on proposals to require fostering services to be charities?**

No views given.

7. **What are your views on proposals to maintain a register of foster carers?**

No views given.

Chapter 3

8. **What are your views on the proposed changes to the Children's Hearings system?**

Before answering the particular questions, we think it important to set out our view of some essential features of the children's hearings system that underpin our responses.

Firstly, the Principal Reporter is a state official whose primary role is to make the initial decision about whether the state is to intervene in the life of a child and their family. The Principal Reporter delegates his powers to Children's Reporters employed by SCRA. The Children's Reporter receives referrals and investigates a child's circumstances by requesting information from other people. If the Children's Reporter decides such compulsory intervention is required, they will arrange a children's hearing and draft the reasons for the child coming to the hearing (the statement of grounds).

The statement of grounds at a children's hearing will set out to the child and relevant persons (parents/carers) the facts which underpin the decision of the Children's Reporter - that compulsory state intervention is required (with reference to the various statutory grounds in section 67 of the Children's Hearings (Scotland) Act 2011 (the 2011 Act)).

The statement of grounds from the Children's Reporter provides the legal basis for the children's hearing's decision making on whether compulsory state intervention is required (in the form of a compulsory supervision order (CSO)). Before a children's hearing can decide on the need for a CSO, certain checks are made on what the reporter has written in the statement of grounds, to safeguard the rights of the child and relevant persons in the process[1].

Any proof application to be determined by the Sheriff may not result in the Children's Reporter leading evidence before the Sheriff. The vast majority of proof applications are resolved by the child, (if old enough to understand), and the relevant persons, accepting the Reporter's statement of grounds before the Sheriff. However, this process will normally take some time, it will involve legal advice for the child and relevant persons, the disclosure of evidence by the Children's Reporter and sometimes some amendment of the content of the statement of grounds by the Reporter. This provides an additional aspect to the checks on what the Reporter has written in the statement of grounds, and functions as additional and effective safeguarding of the rights of both the child and relevant persons.

At various stages throughout the child's journey through the children's hearings system, the Children's Reporter may take a position that is contrary to the views of the child or relevant persons. For example, the decision the Children's Reporter takes on the need for a children's hearing, or what they write in the statement of grounds, may not be agreed by the child and/or relevant persons. As a result, although the children's hearing is not adversarial in the sense seen in a traditional court, it is important to understand the role of the Children's Reporter as being (at least potentially) that of an "adversary" of the child and relevant persons. Although this does not prevent SCRA developing ways to better support the child and relevant persons in connection with children's hearings, any such contact must be seen in the context of the Children's Reporter's role.

The separation of decision making about the facts in the statement of grounds by the Sheriff, from decision making about the need for compulsory intervention by the children's hearing, is a cornerstone of the system. It was one of the key principles outlined in the Report of the Kilbrandon Committee which led to the children's hearings system. In a children's hearing decisions are made by three panel members, who are volunteers, recruited, trained and supported by Children's Hearings Scotland (CHS). The chief executive officer of CHS is the National Convenor, who can delegate to staff members of CHS but not to panel members – who are independent and impartial decision makers within children's hearings.

The CSO made by a children's hearing gives the local authority (and possibly other agencies) the powers to intervene in the life of the child and their family. The local authority (normally through their social workers) make recommendations to the children's hearing, indicating what form any order should take. They then have the

duty to implement any order made by the hearing. If a change to the CSO is required, then a social worker must ask for the order to be reviewed, making a further recommendation explaining what is now needed, and why. The decision about the CSO sits with the children's hearing. However, the work to create and support effective change for a child, and build relationships, is done by those working with the child and family in a local authority and other agencies.

In our response to the Redesign consultation in 2024 we expressed the view that if there is a perceived gap, or difficulty in current practice, then there should be a remedy to improve that. Such remedy could be legislative change – but it should be practice change first - if and where that is possible. We continue to hold this view.

There are some proposed legislative changes in this Bill which do not entirely follow the proposals that were consulted on in 2024, making it difficult to apply our previous thinking to the current Bill. However, where possible, our approach is still one of best practice rather than of legislative change.

We will cover areas of the Bill sequentially – rather than through area of priority.

Section 11 – Single member children's hearings and pre hearing panels

SCRA are not responsible for the provision of panel members to a children's hearing. SCRA are responsible for the arrangement and administration of children's hearings, which are held in buildings managed by us. When we reference a single panel member in this response we are referring to a single chairing member, as explained in paragraphs 150-157 of the Bill's Policy Memorandum, so all single panel member decisions we see as being made by a single panel chair.

The Redesign Consultation process in 2024 contained a proposal to introduce a single legal member to the hearing system. The single legal member has been replaced in the Bill by a single panel chair as a decision maker. As a result, the 2024 consultation did not fully explore the single panel chair proposal and the potential implications of this. We think there are possible implications in relation to the power dynamic within the hearing and across the decision makers of the hearing, and potentially also in relation to future volunteer recruitment which need to be fully explored.

A single panel member could perhaps work effectively to make decisions that are currently made in a pre hearing panel, but we think more exploration of this is required. This is because some decisions, e.g. about deeming relevant persons, are difficult and time critical. The Bill also proposes that a single panel member can be the decision maker in decisions not currently covered by a pre hearing panel. These 'new' decisions include making interim compulsory supervision orders, which can be challenging and contentious.

Decision making in relation to interim compulsory supervision orders can be some of the most difficult and contentious decision making in the Children's Hearings System. Once a child is subject to any interim order, they are more likely than not to remain subject to the order during any subsequent decision making process in relation to a proof application. The new decision proposed in the Bill, to require a child to attend a hearing for consideration of making an interim CSO for the child,

may be one which is strongly opposed by a child and a family. A single panel chair may require support from other Panel Members for such decisions. The role of the single panel member in relation to the grounds at the start of a child's involvement with the children's hearing needs to be fully considered, developed and tested.

We can see the attraction of a single decision maker, as the short notice requirements of some decisions could mean that a single panel member is easier to find, than three. At this stage, however, we would like to see more detail on the proposal and evidence to show that the single panel member decision maker would offer an improved experience for children and families, or improved decision making. We also think that there probably needs to be consideration of some stated exceptions to the decisions that could be delegated to a single panel chair, or (as mentioned above) a list of the functions the single panel member can perform. The option for a single decision maker to be able to defer decision making to a 3 panel member hearing we believe should always be available, as required, in relation to every single panel member decision.

We have some questions about whether it is appropriate for the decision about how many panel members sit on a hearing or pre-hearing panel to be placed with the National Convener, and we think that this decision more properly lies with the tribunal. Therefore, where it is competent for there to be a single panel member, that panel member should be able to request that additional panel members be allocated. We accept that the National Convenor functions include the provision of panel members for hearings, but there are information sharing as well as logistical considerations which need to be considered in full.

Section 11 - Specialist Panel Members

We know there is a need for some situations to have specialist information to assist decision making. That is already available to the children's hearing, in the form of specialist reports. Currently, all panel members are required to have sufficient and holistic knowledge and understanding of matters relating to children, which enables them to identify if and when additional information is required in relation to a child.

In relation to specialist decision makers we think there could be difficulties in defining specialisms / identifying specialists/ maintaining specialist knowledge and in resourcing requests for specialist decision makers – and, as indicated above, all panel members are already required to have sufficient holistic knowledge and understanding of all relevant matters relating to children.

We are of the view that the specialist decision makers would also need to be fully trained panel members, and are unclear whether or how they would work in a volunteer as well as a paid capacity. There may also be implications for other fragile workforces if recruitment from them is required.

We can see areas of potential challenge – if a hearing decides a specialist decision maker is required, no-one is available and a decision still requires to be made within a definite time frame. There are also logistical difficulties to requiring a specialist decision maker and deploying them effectively. There are elements of the specialist role we covered in some detail in our response to the Children's hearings redesign consultation 2024. We have included these at the end of this call for views.

Section 12 – Remuneration of Children's Panel members

We are not averse to panel member remuneration. There are likely benefits that flow from the provision of payment to the quality of the 'service' provided. Paid panel chairs may sit on children's hearings more frequently and will see the same children more often – which would help to provide the continuity of decision maker that children have been requesting. We can see that skills may develop across more frequent work and that 'professionalising' the role of the chair should bring more consistent quality to it.

That being said, we are also not aware of any current evidence base which demonstrates that there is an improvement linked directly to the remuneration of panel members. That includes improvements in the conduct of the hearing, the decision making of the hearing, the experience of children and families at the hearing and an improvement in overall outcomes for children who are involved in the children's hearings system. If paying only chairing members, this creates an imbalance, or a perception of imbalance, between panel members - which brings some risk of undermining the independence of individual panel members. There is a risk that people may stop volunteering; a risk that side panel members are likely to defer to the chair, particularly around difficult decisions, and it is likely that the chair will be seen as the key or primary decision maker by everyone in the room.

The Bill gives a 'power' for the National Convenor to remunerate panel members. We hope that this means that the approach can be fully tested and a positive evidence base in relation to the benefits of payment will be developed before remuneration is rolled out nationally. Comments from the 2024 consultation which we think are still pertinent are included at the end of this response.

Section 13 – Child's attendance at children's hearings and hearings before sheriff

We agree with the proposed changes to the attendance of a child at the children's hearing, when required. We think that in the Bill as drafted the right of the child to attend is preserved, but the removal of the obligation should reduce pressure on children. The pre hearing panel or hearing's right to require attendance in certain circumstances is a necessary safeguard. All of those involved will need to ensure good practice in working with a child, giving the child opportunity to share their views and to provide those views to the decision maker – in the children's hearing or in court.

Section 14 – Role of Principal Reporter and grounds hearing

The offer of a discussion with the Children's Reporter

We agree with the addition of a statutory discussion with the Reporter. It will be crucial that this discussion is meaningful, fair and accessible, in the context of the continuing involvement of the children's hearing and / or the sheriff.

The discussion with the Reporter as set out in the Bill does not stand alone. After the discussion, or in the event of a discussion not taking place, the Reporter is required to draft a report. Then the Reporter is required to select the correct route for the

grounds that have been shared with the child and family – whether to go to the children's hearing, or to the sheriff court.

We have questions about the inherent power imbalance in a state official determining the need for state intervention, drafting the reasons for state intervention, and then meeting with a family and authoring a report of that meeting for the next statutory decision maker. The Reporter continues to be a party to proceedings. This makes it more challenging for the Reporter to gather the views of other parties (the child and relevant persons) about the statement of grounds and pass them to other decision makers without any perception of unfairness.

The discussion at the children's hearing considering the grounds could be very similar to the discussion with the Reporter, but both discussions have different consequences. This might be difficult for children and families to understand, and their experience will need to be carefully considered in a way which is meaningful, fair and accessible (as stated above).

Currently a pre-hearing visit is available across the country, if a child or family wish to take up the offer[2]. A pre-hearing visit takes place in the time between the Reporter decision and the hearing. This is an informal opportunity to visit a Hearing Centre, ask questions about what will happen at the hearing and try to think about what might be needed to help engagement and participation at the hearing.

We think this pre hearing visit has a different tone to the statutory Reporter discussion as currently proposed in the Bill, and it could be logistically difficult to have two meetings in a short period of time. Having said that, we do support the offer of a discussion with the Reporter to explain the grounds process; to give a child and family the opportunity to ask questions; to familiarise a child and family with the hearing centre and the space they will be coming into for their children's hearing.

Families will not be obliged to engage with the discussion – but a report will be developed as a result of it and decisions will be made which take into account this report, even when the discussion did not occur. If the discussion has the status as currently drafted we think the issues that potentially arise are:

- There is a complexity to the approach to the grounds process which is difficult to understand and to communicate (we include some flow charts at the end of the response which illustrate this)

- It will be difficult to decide that the discussion is 'inappropriate or ineffectual' because of the specified areas for discussion

- The discussion may not be able to be offered to children and relevant persons where short notice or emergency decisions in relation to grounds are happening – which creates a two-tier approach for the first time

- A potential for actual or perceived unfairness in terms of the power imbalance and the overall role of the reporter. In addition, it is essential that the reporter's opinion of whether the child understood an explanation from the reporter of the grounds is no more than information that the hearing should be able to have regard to (along with relevant information from others) in deciding

whether the child is capable of understanding the grounds. The Reporter's opinion must not be able to bind the hearing.

- A question about whether children and relevant persons are likely to view the discussion as helpful
- A question about whether children and relevant persons are likely to fully understand the purpose of the discussion
- The possible negative impact on other interactions by the Reporter to support the child's participation and engagement
- The offer of a discussion, and take up of the discussion, will build in delay
- There will be time, and therefore costs associated with the discussion

We also continue to have concerns about the power dynamic in the discussion. The Reporter has drafted grounds for referral and cannot create any pressure or perception of pressure on a child and family to accept what has been drafted. We are wary of any underlying assumption that reaching agreement in relation to the content of a statement of grounds is inevitably better than going to proof, and we think that family rights need to be afforded and protected in full, by robust supports being available from the earliest stage.

We think this means that legal aid should be available for relevant persons and children to be supported by legal representatives in any such meeting, if they wanted such support. We also think that advocacy support might be helpful in addition, before, during and after any such meeting.

Selection of Hearing or Proof Application

Children's Hearing – all grounds likely to be accepted (69B)

We have a strong sense of how the new 69B provisions will work.

Arrangement of children's hearing: possibility of some or all grounds being accepted (69C)

The Explanatory notes for the Bill make clear that this section allows for a 3 person panel or a 1 person panel – which will have different dispositive powers (page 15). In some circumstances a 3 person panel must sit, in others the children's hearing may consist of 1 member or 3 members. Only 3 members would be able to continue to make a dispositive decision - a CSO.

The new 1 member hearing to consider grounds potentially creates an environment for this discussion which is very different to the heated and emotive atmosphere which can currently characterise some grounds hearings. In line with 3 member hearings, the 1 member hearing could amend the statements of fact prior to a children's hearing making a dispositive decision. It could also offer a second attempt at discussion, when a child and family have not been able to meet with a Reporter under 69A.

Application to Sheriff – grounds unlikely to be accepted (69D) / relevant person unable to understand (68E)

We are also relatively clear about the 69D and 69E provisions and think that this 'straight' to proof option may result in less delay at the start of the process for those children who require a proof proceeding to take place. There are additional considerations relating to understanding, engagement, participation and the experience for children and families in relation to this 'route' which will require more work.

Report by Principal Reporter (69G)

We think that this report will accompany any referral under 69 (B,C,D,E) to a children's hearing or to court and we would want to ensure that the report does not influence decision making in a positive or negative way. There is, after all, no requirement for a family to attend any discussion with the Reporter. More work is required to determine the content of the report and the status of the report for decision makers, if indeed it has any status. This area of the Bill requires further conceptual and operational consideration.

Section 71A

As a result of the new approaches in section 69 A – G, section 71A has been developed to enable a children's hearing to be the principal decision maker in relation to any interim decision. We have consistently held the view that the children's hearing is the best forum for making decisions about children. However, we can see that this process needs some more modelling – it could be confusing for a family who have been told they are going directly to court, to also be told that they are going to the hearing. Currently, a child and family will be involved with both the children's hearing and the court at the same time – but the new Bill reorders the process and the implications of this need to be fully considered.

Section 89B / 89C – Child's understanding / acceptance of grounds

SCRA are supportive of the general approach taken to the new provisions in section 89B. If relevant people accept the statement of grounds, and children are too young to understand or don't have capacity, then this should be enough for a children's hearing to move on and consider whether the child needs a CSO.

This also feels like the rights and responsibilities that relevant persons have in relation to the child are understood and respected by the legislation, which feels more trauma informed than the approach which is currently taken.

However, we have strong reservations about the provisions of section 89B(3)(b):

> "where the child is not in attendance at the hearing, that the child has not understood an explanation of the ground given by the Principal Reporter."

This puts the assessment of the children's hearing in relation to the capability of a child on the same footing as the information reported to the hearing by the Reporter. If any reference to the Reporter's discussion is needed, we think it would be better included as something for the hearing to have regard to, when considering whether the child would be able to understand an explanation from the chair. We do not think that the Reporter's view of whether the child understood their explanation should tie the hearing's hands.

90A Acceptance of grounds: supporting facts

We agree with the overall approach set out in this section of the Bill.

Section 94A – Application to Sheriff following decision to proceed on basis of relevant person's views

SCRA think that it is right that 94A continues to allow a children's hearing to take the decision that proof proceedings may be required, and we think that the addition of 94A (3) allowing a child, relevant persons or a safeguarder to also ask that a proof proceeding should occur is crucial.

Section 95A – Children's hearing to consider need for making of interim compulsory supervision order

Section 95A may need more detail to explore when a 3 person hearing or a single person hearing becomes appropriate, across the range of children's hearings that can occur. To reinforce what we already said in section 11, we are not sure that a decision about an interim compulsory supervision order (ICSO) should be made by a single member hearing. We think this needs to be explored, tested and evaluated. These decisions can be amongst the most difficult that a children's hearing can make and can have a significant and lasting impact on a child and family. If an ICSO is in place it is much more likely that further ICSO's will be made as well – perhaps over lengthy periods of time (see also our response to section 11 above.)

Flow charts

SCRA have developed some flow charts of the different section 14 provisions, to illustrate the available options, and how they are intended to fit together. These flow charts illustrate how complex the provisions are, and whilst the complexity lies within the work of professionals we think that there is a duty on professionals to be able to explain what will happen to a child and family as a result of the statutory decisions that are made. Explanations may need to be given more than once, as some decisions depend on other decisions. Such explanations will be hard to give and may be harder to understand. We have included these flow charts at the end of this document. Comments from the 2024 consultation which we think are still pertinent are included at the end of this response.

Section 15 - Powers to exclude persons from children's hearings

The section extends the exclusionary powers that can be used by the children's hearing and simplifies the expression of the powers as well, so that the existing

provisions in relation to relevant persons will be extended to the child. The decisions about exclusion can be made at a pre hearing panel or children's hearing and the reasons for exclusion are focussed on the child – on obtaining the child's views or causing / being likely to cause significant distress. We are not clear how decisions made in advance at a pre hearing panel could extend to the duration of any exclusion, and a hearing will still have a duty to let a relevant person know what happened during a discussion they were excluded from, so, in practice, relevant persons may still attend at a hearing centre or remotely. Exclusion decisions may be considered alongside decisions to require a person to attend remotely – and this might be the best approach to take to these matters.

Section 16 – removal of relevant person status

SCRA thinks that Section 16 provides an appropriate balance between the, at times, competing rights of a child and their relevant persons. On occasion, a relevant person will have a limited relationship with a child or even no existing relationship out with the children's hearings statutory process. This can mean that a wealth of detailed private and personal information can be passed to a relevant person who would otherwise not be in possession of such information at all. SCRA think the proposed process – a children's hearing discussing the removal of relevant person status and a court being asked to make the decision where relevant, is the strongest approach to take to these matters, and provides the best protections to all parties within the children's hearings process.

It is important that questions about relevant person status are resolved swiftly, but there also needs to be sufficient time for the issues – which can include factual disputes and complex legal issues - to be properly considered and determined. The proposed 3 day timescale is not enough time. Additional thinking may be needed around the timing of these decisions as well – it might be necessary to make a decision to remove relevant person status from someone, or determine what information they should receive before any proceedings begin – we are not sure how this could operate under the current provisions.

Section 17 – Tests for referral to principal Reporter and making of compulsory supervision order or interim compulsory supervision order

We are pleased the test for referral continues to refer to a compulsory supervision order. SCRA agree with the addition of 'support' into the referral criteria and the tests for a compulsory supervision order or interim order, and we are also pleased that the existing criteria remain unchanged.

Section 18 – Information about referral, availability of children's advocacy services etc

We think that the additional duties for referrers as outlined in section 18 could be really effective at making the referral and children's hearing process clear and also effective in increasing the access children have to advocacy service providers. SCRA think that there will need to be a consistent approach to the sharing of consistent materials and we would be pleased to be involved in the development and trial of any such materials. We also think such materials should be co-designed with children.

Section 19 - Period for which interim compulsory supervision order or interim variation of compulsory supervision order has effect and Section 20 – Making of further interim compulsory supervision order

SCRA agree that the initial ICSO for a child should remain at 22 days – an ICSO can be a significant intervention and can alter the family life of a child – it is right that this is for a limited period before review.

We also agree with subsequent ICSO's lasting for up to 44 days. We think this can bring a flexibility and limits the number of children's hearing discussions that a family may need to have prior to a discussion which can make a more determinative decision. We agree that these timescales should also apply to an interim variation.

Section 21 – Principal Reporter's power to initiate review of compulsory supervision order

This is a new power for the Principal Reporter to initiate a review. The power is intended to reduce delays for a child and allows the Reporter to call a review hearing if there is new information (which does not require new grounds), and the Reporter considers that the order ought to be terminated or varied. A Reporter is likely to use such a power as a last resort, and it may only have limited impact. We continue to see the power to call a review as sitting more comfortably with those involved in direct work with a child, or with those impacted by the compulsory supervision order (the child and family).

Part 2

9. **What are your views on the proposed changes to Children's Services Planning set out in section 22 of the Bill**

No views given.

Other

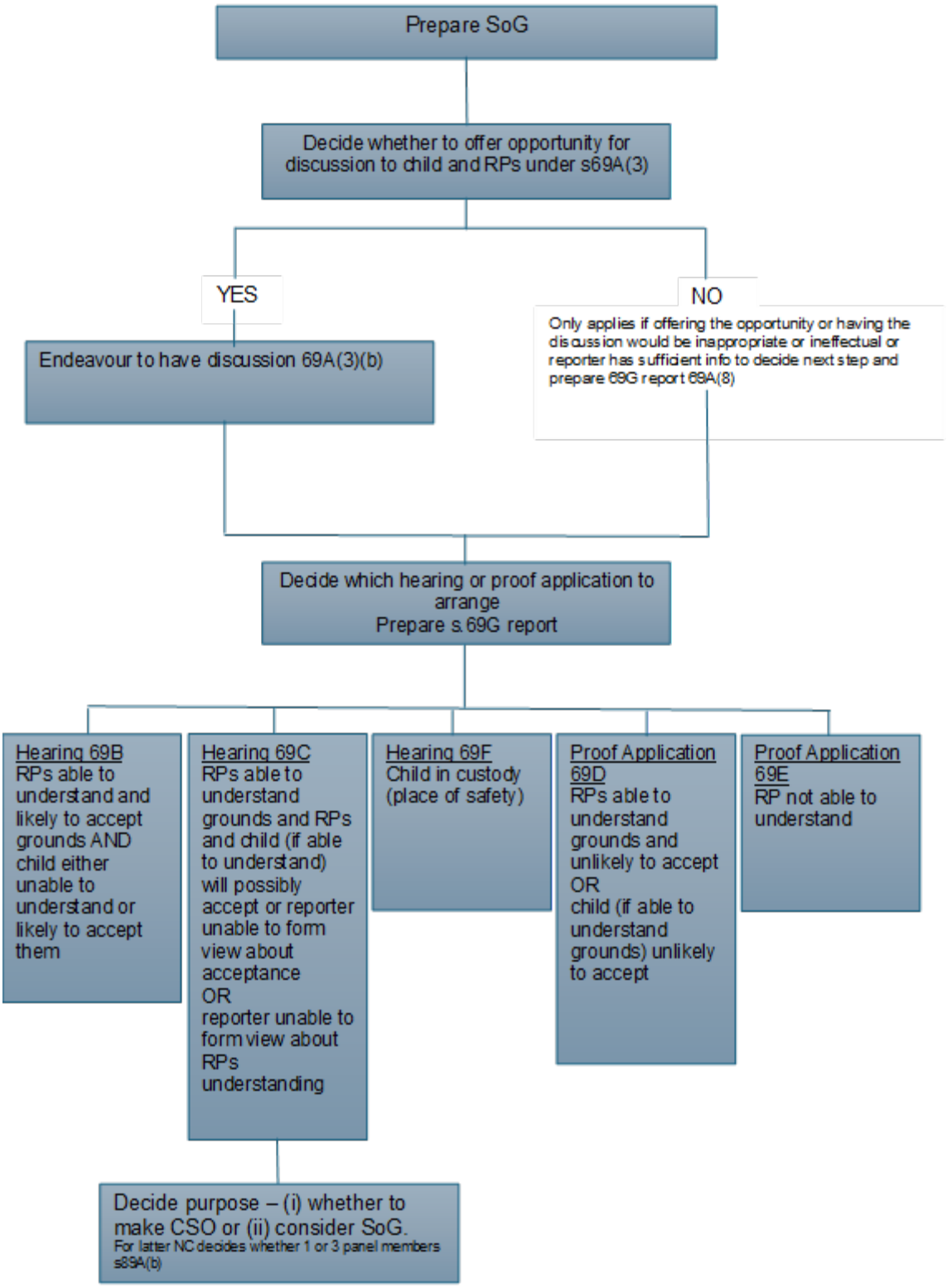
10. **Are there any other comments you would like to make in relation to this Bill?**

We think this Bill contains some significant change for the children's hearings system. The focus on rights and on explanations at various stages is important. We think that the drafting of the Bill is not always accessible or clear, which may be unavoidable, but hopefully the experience of the 'end user' of the re-designed system will be different. Children and their families will have more contact with people and more information at the right times, and the process should focus on them and what they are saying.

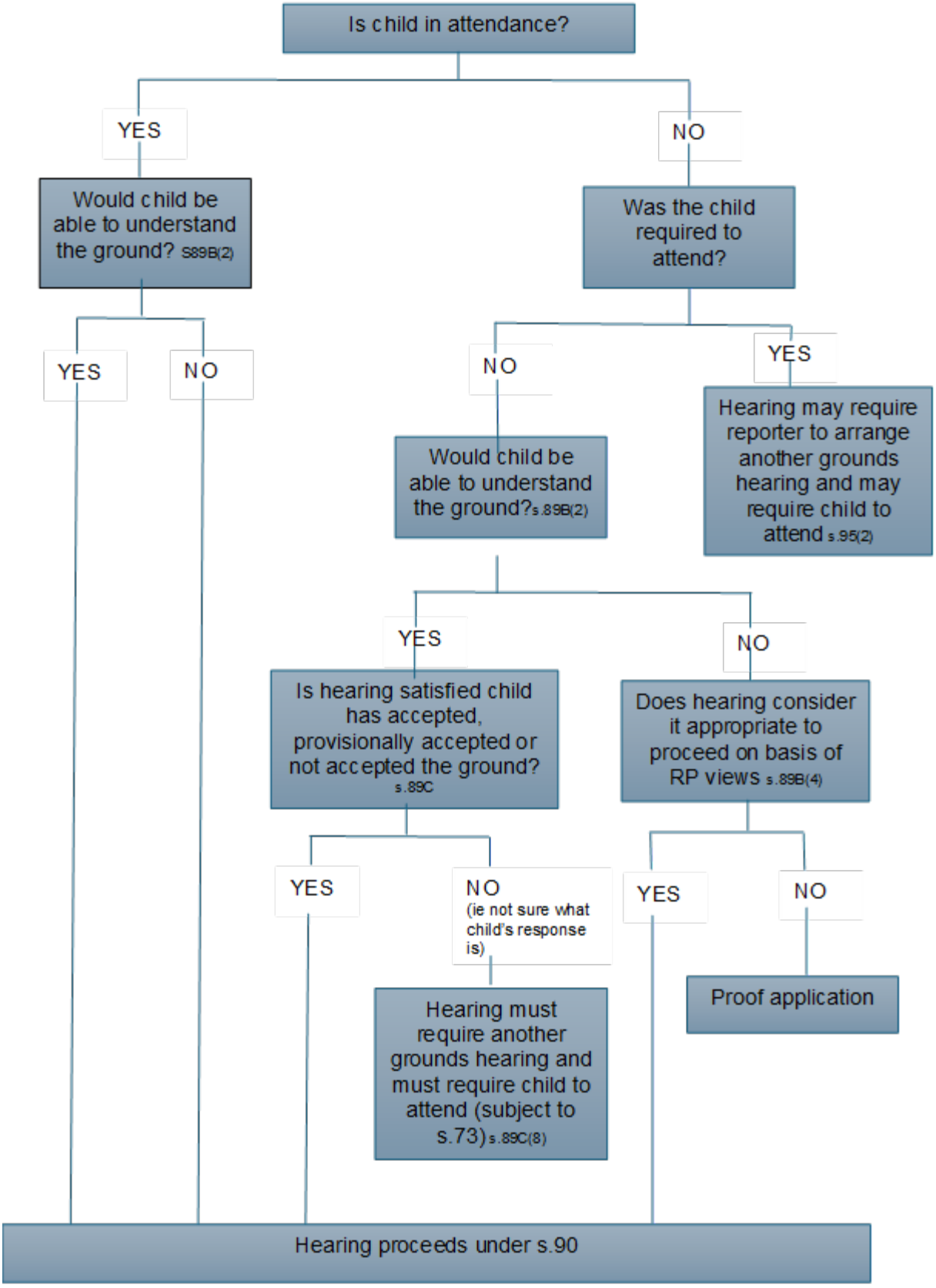
We would be pleased to give additional evidence in relation to the impact of the Bill on our work, if that is thought to be helpful.

Flow Charts developed by SCRA, illustrating SCRA's thinking about the Bill provisions:

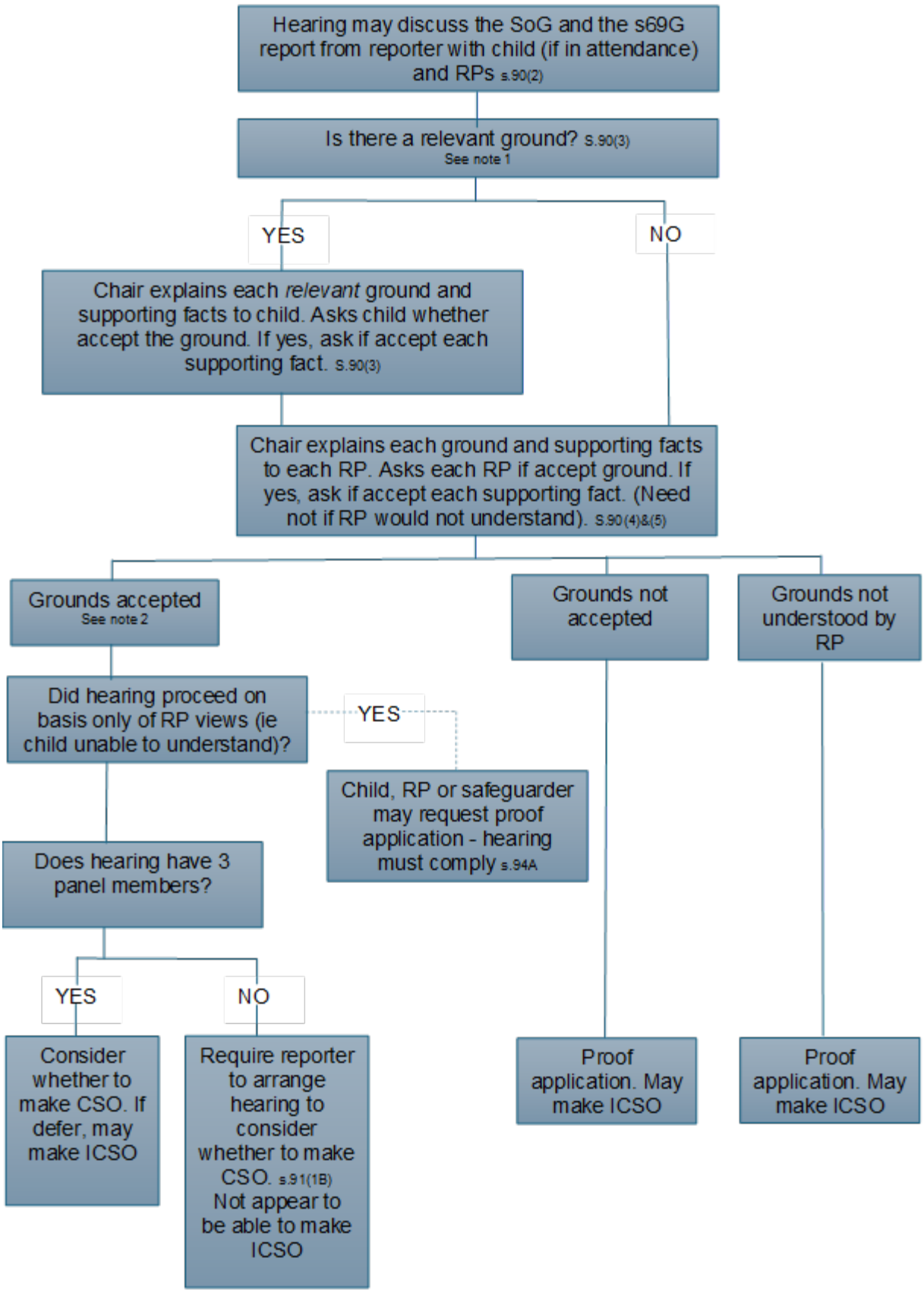
Flowchart 1 – Reporter Actions after Preparing Statements of Grounds (SoG)



Flowchart 2 – Initial Grounds Hearing Process



Flowchart 3 – Section 90 Hearing Process



1. **Relevant Grounds – defined in s.90(3).** A “relevant ground” is a ground other than a ground about which the grounds hearing is satisfied:

   a. The child would not understand an explanation (applies whether or not child in attendance).

   b. The child did not understand an explanation from the reporter (applies where child not in attendance).

   c. The child accepts the ground (applies where child not in attendance).

   d. The child provisionally accepts the ground ie accepts the ground and sufficient supporting facts to ad up to the ground (applies where child not in attendance).

   e. The child does not accept the ground (applies where child not in attendance).

For a child in attendance at the first ground hearing a “relevant ground” at that hearing is any ground other than a ground that the child would not be able to understand.

If another grounds hearing is arranged any ground that the first grounds hearing decided the child accepts, provisionally accepts or does not accept (all where the child did not attend) is not to be put to the child at the second grounds hearing, as these are not “relevant grounds”. (Unlikely to arise often as it would require the first hearing to be satisfied that a ground is accepted/provisionally accepted/not accepted and to be not sure about the child’s response to another ground).

2. **Accepted Grounds - defined in s.91(4)**

   a. Accepted in full by the child and RP. Accepted in full by the child includes a hearing deciding in the absence of the child that the child so accepts.

   b. Ground and some supporting facts accepted by the child and RPs, sufficient to add up to the ground, and hearing considers it appropriate to proceed on the supporting facts accepted by child and all the RPs present. Accepted by the child includes a hearing deciding in the absence of the child that the child so accepts.

   c. Child not able to understand and either (i) RPs accept in full or (ii) RPs accept some supporting facts, sufficient to add up to the ground, and hearing considers it appropriate to proceed on the basis of the supporting facts accepted by all the RPs present.

Some areas of SCRA’s response to the Children’s hearings redesign consultation 2024[3] which continue to be relevant and applicable to our position in relation to the provisions of this Bill, provided for information and ease of reference.

Section 11 – Specialist Panel Members

When addressing the introduction of new roles in the Children's Hearing in our 2024 Redesign response we covered the issue of specialist panel members in some detail. We continue to think that the issues we raised then are relevant:

> *"Introducing new panel roles has practical issues in terms of identifying and delineating specialisms – of different panel members but also in identifying which specialisms might be relevant to a particular child. It will also be important to recognise that a child's circumstances (or knowledge of them) will change over time and therefore relevant specialisms will change over time as well. Holistic or generalist panels are well placed to adapt with a child over time. In a situation where some panel members are specialist and some are not, there is a real risk of losing the focus on the need for all panel members to have sufficient and holistic knowledge and understanding of all relevant matters relating to children.*
>
> *We are unsure about the mechanisms for selecting particular panel members. We do think that there are issues with using the complexity of a child's case as the basis for selecting the particular configuration of panel members. There would need to be a link to the particular additional skills or knowledge that paid chairs might provide in comparison to unpaid chairs in these circumstances – and the variety of circumstances which can arise in children's hearings. It is also quite difficult to predict what will arise within a children's hearing – as the discussion can raise or flag concerns which are not obviously present or are not the focus of professional assessments or reports. Every child is indeed unique - and this is reflected in their children's hearing. In some ways this is also relevant to the idea of care experienced panel members – everyone's care experience is unique.*
>
> *There may also be structural considerations in relation to the role and independence of the National Convener (NC) in selecting panel members which would require very careful consideration. The current structure, with three lay volunteer panel members, has been found to be ECHR compatible but the introduction of specialist or differentiated roles would impact on the task of the National Convener. Further, the NC might require access to child-related information which is not currently available to them. Any approach that is adopted must ensure the structural independence of panel members, ensuring they are independent from external political influence and independent from each other."*

Section 12 – Remuneration of Children's Panel members

The 2024 Redesign Consultation asked a question about priority resourcing in the 'system'. SCRA were clear that the *"children's hearings system needs a period of certainty, stability and investment at the conclusion of this redesign process. If that investment is not forthcoming then we will need to limit our aspirations and ambitions."* This was in the context of recognising that the current operation of the system occurs with multi-million pound deficits and is reliant on discretionary in-year support, this has been the case for a number of years.

Our position was that:

> *"if there is available funding then funding upstream - within early intervention in local authority areas and in family support services – can have a positive impact on referral into the statutory children's hearings system. Funding within a local authority can also lead to more effective implementation of any compulsory supervision orders if they are required by a child. The children's hearing system is damaged if the referral process is not as good as it can be and there is no, or inadequate resourcing available for children who are subject to a CSO for their needs to be comprehensively met."*

We also gave the view that:

> *"High quality training consistently attended by all panel members (not just new ones), and panel chairs can make a big difference. Reporters would all agree that if you have three panel members who understand the issues for a child, know what they are able to do, and are clear what everyone thinks about that – then a good decision with clearly articulated, evidence based reasons is likely to be made."*

Section 14 – Role of Principal Reporter and grounds hearing

In our answer to Q34 in the Redesign Consultation - Response 94221218 to Children's hearings redesign - Scottish Government consultations - Citizen Space, we suggested some alternative ways of improving the experience of children and their families at a children's hearing:

> *"The key issue that makes grounds hearings so difficult for children and families seems to be the 'putting' of grounds at the start of the hearing, with a detailed run through by the chair. There are different ways that a response to the statement of grounds could be obtained. For example, the following, alone or in combination, could improve the experience:*
>
> - *A single panel member (chair) could put the statement of grounds at the start of a grounds hearing. Other panel members could join thereafter.*
> - *Legal representatives could respond on behalf of their client, including potentially in writing, in advance, with corresponding processes which could take place following these written responses.*
> - *The need for detailed, word by word read through of the statement of grounds could be removed, particularly if the person has a legal representative.*
> - *It could be made easier for a response to be given in the absence of others (child or relevant persons). The current exclusion criteria are quite tight.*
> - *Further, there could be a process out with the hearing, but this needs to be fully explored. It would need to be given careful consideration because of all the aspects and interconnections. This could potentially be*

> *more efficient and could maybe progress straight to proof if a relevant person or the child responds that they don't accept. We do not think that a proof process for every set of grounds is necessary or proportionate. The approach of the Child Youth and Community Tribunal in operation in Guernsey involves some elements of this.*

In our previous consultation response SCRA were also clear that the:

> *"complexities of a different approach might outweigh any benefits. In any amended process SCRA thinks that the following would be essential:*
> *1. The process of giving a response needs to be more child and relevant person friendly, while maintaining fairness.*
> *2. Any changes to process need to be at least as efficient in terms of not requiring additional steps in the process nor additional layers of stress and/or potential confusion for the child and family.*
> *3. Any changes in process would need to take into account how/whether to provide for the possibility of amendment of grounds or discharge of grounds and how to deal with interim decisions."*

In our response to the Redesign consultation in 2024, SCRA said we:

> *"support the general approach that a child and parents should be offered the opportunity to meet with the Children's Reporter, if that would be appropriate. Our view is that this meeting should have a more limited purpose than that set out in the consultation and that it should be done as best practice, rather than as a statutory requirement."*

The 2024 Redesign Consultation was asking about the idea of a 'post-referral' meeting with the Reporter. Our response was in relation to that, and our position in relation to this has not changed. We also said that:

> *"We think the current safeguards in the children's hearings system are robust, functional and child centred. The scheme of grounds / the basis for state interference in the life of a child needs to be right in the first place. Then safeguards in the form of advocacy, legal representation, safeguarding the child can all play their relevant part."*

In relation to the proposed Reporter meeting, questions we raised at consultation remain – about the meeting having:

> *"the potential to create all the same complexities that arise in children's hearings around managing attendance when individuals do not want to be or can't be in the same place at the same time, or would find it difficult to be open or to speak in front of another person(s). Separate meetings or discussions with individuals may be more appropriate depending on all the circumstances."*

Who Cares? Scotland Response to the Children (Care, Care Experience and Services Planning) Scotland Bill Call for Views

Information about your organisation

Who Cares? Scotland is Scotland's national independent advocacy and 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 over 2,000 members.

At the heart of Who Cares? Scotland's work are the rights of Care Experienced people, and the power of their voices to bring about positive change. For over 45 years our independent advocacy workers have supported Care Experienced children and young people to have their views heard and their human rights upheld. We also provide a range of participation and connection opportunities for Care Experienced people across Scotland.

Part 1 - Chapter 1 of the Bill

What are your views on the aftercare provisions set out in the Bill?

Eligibility for Aftercare:

When we ensure everyone in our community has access to the support they need, when they need it, everyone benefits.

We supported our Care Experienced member Jasmin Kasaya-Pilling to petition the Scottish Parliament on this issue from August 2022 to September 2024, receiving 533 signatures. We are therefore pleased to see measures in the Bill which address some of Jasmin's calls.

Jasmin called on the Scottish Parliament to urge the Scottish Government to:

- Extend aftercare provision in Scotland to "previously looked after" young people who left care before their 16th birthday, on the basis of individual need;
- Extend continuing care throughout Care Experienced people's lives, on the basis of individual need; and
- Ensure Care Experienced people are able to enjoy lifelong rights and achieve equality with non-Care Experienced people. This includes ensuring that UNCRC and the findings of the Promise are fully implemented in Scotland.

We welcome that the Bill commits action on the first call in Jasmin's petition above, as this will help to keep The Promise (p118): "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." It should bring about equal opportunities to access human rights in terms of housing, education, employment and financial support. On eligibility for all Care Experienced people, please note our answer to question 4.

UNCRC Compatibility:

However, we are concerned that children will not be able to access justice if these provisions are breached, as they are currently drafted to amend the Children (Scotland) Act 1995. This places these rights beyond the scope of the UNCRC (Incorporation) (Scotland) Act 2024 (UNCRC Act) under Section 6(2), as the UNCRC Act only applies to provisions in post-1999 legislation. (footnote 1)

To bring these provisions within scope of the UNCRC (Incorporation) (Scotland) Act 2024, the Bill should include new freestanding rights or duties within its own text, rather than amending pre-1999 legislation. This would ensure that the duties are subject to the UNCRC Act, meaning children and young people could challenge any breaches where necessary. This would be in line with the commitment from Scottish Government to take a maximalist approach to UNCRC incorporation.

Sufficient Investment:

The financial memorandum notes that "all costs are steady-state - i.e. do not include any recruitment, training or other costs which might be required to expand capacity to provide aftercare." We regularly advocate for Care Experienced children and young people who are being denied their rights under existing legislation due to local authorities facing resourcing issues. We encourage decision-makers to ensure local authorities are fully supported to implement these changes so that the Promise is kept on an individual level for every Care Experienced person seeking support.

It is well known that Scotland is currently experiencing a social work workforce crisis, and social workers are currently often only able to deal with child protection issues and the most pressing of their caseloads.

- Social Work Scotland's most recent Social Worker Vacancy Report, December 2024, highlighted that the total Whole Time Equivalent (WTE) of all social workers has fallen since June 2024, and over a half of the loss of senior WTE staff (55%) was in children's teams.
- Many respondents to Social Work Scotland's "Setting the Bar" briefing calling for a maximum caseload for social workers highlighted the tensions between what they were being asked to do, and the resources they were being given to do it with. As a result, many highlighted the "moral distress" caused by rising caseloads pushing them to operate in ways inconsistent with their professional values and judgement, and highlighted that often they were only able to prevent further deterioration of someone's situation, but did not have the capacity to empower and enable people.
- Research by CELCIS in 2022 exploring the implementation of continuing care highlighted that resources and capacity of the workforce were among the biggest barriers to consistent implementation of this policy, with the majority agreeing that there were insufficient resources, and around half of respondents feeling that there was insufficient capacity and infrastructure.

Whilst we welcome the expansion of aftercare, we are concerned that the financial memorandum does not include provisions to increase an already stretched workforce to meet these duties. Investment is required in order to make these rights realisable.

The Financial Memorandum notes that eligibility for these provisions would be sequenced, based on a “gradual eligibility” model. Clear communication of this phased approach will be vital so that children, young people, their carers and practitioners that support them are aware of their entitlements, as well as who is not eligible for support. The Who Cares? Scotland National Advocacy Helpline commonly receives calls from carers and professionals, including social workers, who feel they have exhausted all of their options to help a young person but are still concerned about their situation and unsure what else to do. We also receive calls from carers and professionals who aren’t sure of what people are entitled to and how to access it.

Adding an increased complexity of eligibility must be very clearly highlighted and communicated to all who work with Care Experienced people and Care Experienced young people themselves. It is critical for accountability to set expectations that will be met, as well as to ensure that other support can be arranged for children and young people who need it but will not be eligible.

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

Area for Improvement: Ensure the financial memorandum sufficiently reflects the investment required.

Footnote 1: For more information please see the Scottish Alliance for Children’s Rights (Together)’s new ‘Promise Bill and UNCRC scope concerns’ briefing https://togetherscotland.org.uk/media/4139/cccesp_uncrc_scope_final.pdf

What are your views on the corporate parenting provisions set out in the Bill?

We welcome these provisions as they address the issues raised by Jasmin in her petition referred to above.

Life after care can be vastly different for each Care Experienced person. The data and research available highlight the stark inequalities this group faces compared to their non-Care Experienced peers. In 2020, The Independent Care Review (The Money, 2010; 1011) published 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, domestic abuse).

Five years on from the publication of these figures, we continue to hear from Care Experienced people that they are experiencing the impact of being in care long after they have left the “system”.

- June 2023, Ipsos and the Trussell Trust published research revealing that one in five people referred to Trussell Trust foodbanks in Scotland were reported to have care experience.
- The 2024 Scottish Prison Service’s Prison Survey showed that 42% of prisoners self-reported that a social worker had been involved in their lives as a child and 30% had been involved in children’s hearings. The actual figure may be higher as 3% did not answer.
- The Scottish Child Abuse Inquiry, which has cost £98.7 million as of 30 June 2025, was set up to run from 2014-2018. It has been unable to wind down due to the number of survivors coming forward and evidencing the impact abuse in care happening as recently as December 2014 has had across their lives.

Who Cares? Scotland research found that 2 out of 3 Care Experienced adults who participated in our Summer of Participation, 2023 had a negative experience when leaving care, and over 80% of Care Experienced adult participants want extra protection for their rights in law.

It is undeniable that there is a clear and pervasive inequality for Care Experienced people that reaches beyond the statutory aftercare support currently provided to them. Arbitrary definitions and financial pressures result in cliff edges of support for those previously looked after by the state. In line with our Lifelong Rights campaign, we support a more ambitious approach which extends Corporate Parenting duties to cover Care Experienced people of all ages.

This would recognise that, as noted in The Promise, “Scotland’s parenting responsibilities are life long and holistic for the young people that Scotland has cared for” and “Older Care Experienced people must have a right to access supportive, caring services for as long as they require them.”

Without legislation, some Corporate Parents already 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 Offer18 and the Care Experienced Student Bursary – all of which allow for equality of opportunity with no upper age limit being applied. However, this practice is not consistent across all Corporate Parents, often due to the combination of a lack of legal imperative to support those over the age of 26, resources issues within local authorities and a lack of understanding of Corporate Parenting and the issues faced by Care Experienced people from leadership.

In our experience, the Corporate Parents who engage with our team often and fully take up our offer of support are the ones who are most likely to have removed upper

age limits and also widen their support to those with experience of all types of care. We see a direct link between our support and them deciding to go above and beyond what is in the legislation, because we tell them it's the right thing to do, and our training motivates them to want to do all that they can.

Regular training updates for senior leadership and clearer guidance is essential to ensure senior leaders fully understand why supporting Care Experienced people lifelong is so important and how this fits with their existing Corporate Parenting duties. Please see our position in response to Question 10 around building in more streamlined monitoring and accountability duties into Corporate Parenting.

Area for Improvement: In order to realistically keep the Promise by 2030 we call for 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. The guidance should also emphasise the ability of the local authority to use discretion and provide aftercare beyond 26 on a case-by-case basis.

What are your views on the advocacy proposals set out in the Bill?

We welcome the inclusion of a right to independent care experience advocacy services in the Bill, answering the calls from our Action on Advocacy campaign. Independent advocacy ensures that Care Experienced people are informed of their rights, options and have their voices heard in decisions affecting their lives. At Who Cares? Scotland, our professional independent advocacy workers work one-on-one with Care Experienced people to have their voices heard in decisions affecting them.

As this infographic shows, for over 50 years, Care Experienced people, inquiries and reports have called for the right to independent advocacy (footnote 2). The creation of a duty for Scottish Ministers to create the rights of access to “care experience advocacy services” through regulations is a significant step forward in making this call a reality. We set out in more detail below how to future-proof the Bill to ensure that advocacy is truly independent, lifelong, relationship-based and accessible to all Care Experienced people who need it.

Ensure the independence of advocacy:

The Bill currently refers to “Care experience advocacy services” as being “‘independent services of support and representation”. While we appreciate the reference to independence, this lacks any further definition on the face of the Bill that would provide greater legal clarity and safeguards.

An independent advocacy worker works only for the person they are supporting and is entirely centred on the voice, rights and wishes of the individual. The Scottish Independent Advocacy Alliance (SIAA) states that independent advocacy must be "structurally, financially, and psychologically separate from services." The Promise (p115) reiterated this definition in 2020.

“I know my advocate is there for me not SW [social work] or school etc. And my advocate says what I want her to say.” Care Experienced person, 2023.

However, a growing number of local authorities in Scotland are no longer providing independent advocacy services. This means that employees of a local authority, which also provides residential childcare placements, or employees of a foster care agency, could be providing advocacy. Our members have told us that they struggle to trust non-independent advocacy services, and that it can be hard to raise rights issues where ultimately one person or a team with a potential conflict of interest will be responsible for both investigating the issue and delivering the service under scrutiny. We believe that it isn’t true advocacy if it isn’t independent.

A useful definition already exists in the Mental Health (Care and Treatment) (Scotland) Act 2003 Section 259. Greater legal clarity on the face of the Bill regarding the meaning of “independent” should aid consistent implementation in line with this principle across Scotland

Area for Improvement: amend 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.

Ensure advocacy is as accessible and relationships-based as possible:

The policy intention is to introduce a right to advocacy for children, young people and adults with care experience, and regulations may provide further specification. This is significant as Care Experienced people have told us that whilst they may leave care, the effects of care never leave them. This is a historic commitment which recognises the lifelong impact that care can have. We also welcome the duty on Scottish Ministers to ensure that the right to independent advocacy is available to the extent necessary for Care Experienced people to exercise it.

“Thanks so much for this. It is really nice to hear his views and he has given us a really clear steer for what he wants for his time with his family, and for himself.” - Advocacy feedback from a Social Worker, 2024.

Nevertheless, further safeguards are necessary to ensure that no Care Experienced person is left without advocacy, regardless of their care type, length of time in care or communication needs. The Bill must reflect the broad and inclusive universal definition set out in the Promise. This includes informal kinship care, adoptees, those who have experienced adoption disruption and unaccompanied asylum-seeking children.

“Personally, independent advocacy has 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.” – Care Experienced person, 2023.

The “Guidance in relation to care experience” is not intended to replace existing statutory definitions which apply to those who are Care Experienced or affect their existing legal entitlements. The policy intention is to “ensure that advocacy support is available at the right stage of a person’s care journey rather than focused exclusively on age” (footnote 3). We call for reassurances at Stage 1 that leaving the specification of eligibility to future regulations will not limit the right to advocacy to particular care processes or length of time in care. As otherwise, advocacy might not be relationships-based or accessible to all.

We similarly seek reassurances that Section 4(a) of the Bill will not be interpreted to limit the right if other advocacy services are available or depending on how long you’ve been in care for (footnote 4). Such an interpretation would exacerbate the existing “cliff-edge” Care Experienced people can face in terms of advocacy provision, where in many areas across Scotland services are already capped by age or care type. The local authority assesses unmet need, and there is no publicly available data or reporting on how decisions about provision are made. For example, in some areas you are no longer eligible for advocacy when you turn 16, in others, unless you are currently going through a Children’s Hearing, you cannot access advocacy.

These “cliff-edges”, often driven by cuts, damage relationships. We know that when Care Experienced people can rely on a consistent and trusted advocacy worker who understands their unique circumstances, they can build a strong, ongoing connection that enables better advocacy over time (footnote 5). Funding must also allow for relationship-based practice, and not impose barriers on young people who already have an advocacy worker from continuing to work with them. This is a current issue we see created by the different funding for core advocacy funded by local authorities, and CHS advocacy funded by Scottish Government. We also know that the need for advocacy isn’t necessarily related to time spent in care, rather, the unique circumstances of that time, however long, spent in care.

Such an interpretation could negatively impact the quality of advocacy provided. For example, there could be no choice of provider (footnote 6), advocacy services under the Social Security (Scotland) Act 2018 are not independent from local authorities; many other types of advocacy may have waiting lists or apply prioritisation criteria which doesn’t include care experience; many providers do not operate a relationships-based service; and the advocacy worker may not have a specialism in Care Experience which is an essential part of the relationships-based practice, especially at crisis points such as those relating to mental health.

Choice of provider is also particularly important for people with intersectional identities who may wish to choose a particular advocacy service, such as mental health advocacy, care experience advocacy, or social security advocacy for the specialist knowledge that service holds. Being eligible for one type of advocacy cannot remove eligibility for another service. People’s lives are complex and their issues are often intertwined.

Younger children or young people with complex communication or additional support needs are often unable to access advocacy because the commissioner has directed the provider to prioritise children in other processes, such as child protection. This is

a clear example of unmet need and demand outweighing supply. Supported decision-making in the form of non-instructed independent advocacy would ensure specialist support so that these rights are also upheld and views respected (footnote 7).

The Care Inspectorate's Joint Inspections of services for children and young people in need of care and protection 2018-2020 reported that from reviewing case records, independent advocacy had only been offered to young people in care in just over a quarter of cases. For young people whose names were on the child protection register, independent advocacy was only offered to them in a few cases and to their parents or carers in just under one fifth of cases. The Care Inspectorate found regularly that, as well as being in short supply, the criteria for accessing independent advocacy was often unclear, both to children and young people and frontline staff.

Area for improvement: Seek assurances that the regulations will ensure eligibility for truly relationships-based, independent advocacy, for all Care Experienced people regardless of their care type, length of time in care or communication needs. They must promote choice and are inclusive of supporting decision-making (non-instructed advocacy).

Independent advocacy as a form of early intervention:

The Promise found that "Care Experienced children and adults must have the right and access to independent advocacy, at all stages of their experience of care and beyond". Yet five years since the Promise was published, our evidence tells us that Care Experienced people are not receiving adequate access to independent advocacy, and there are inconsistencies in provision across Scotland leading to a postcode lottery.

Independent advocacy is a valuable early intervention tool. Gathering a child's views about what is wrong, what they need and advocating for them to receive this support before an issue escalates can reduce the levels of trauma incurred and state intervention needed. However, due to funding some local authorities currently do not fund independent advocacy for children and young people on the edges of care. For example, those who are looked after at home, in informal kinship care or in child protection processes.

Adequate funding for independent advocacy ensures that all children and young people involved in formal care processes are able to benefit from this support at an early stage. Currently, our teams across numerous local authorities have to operate waiting lists and respond to the most immediate hearings and crises.

Despite the commitment to independent advocacy in the Promise, we have generally seen cuts rather than investment in services since 2020. We believe that no matter where you live or are/were cared for in Scotland, independent advocacy should be available at every stage of life, regardless of age, which care processes you've been through or how long you've spent in care. Having a statutory right to advocacy isn't about having another right, it's about ensuring that Care Experienced people are able to enjoy and access all of their rights on an equitable basis to non-Care Experienced people, no matter where they live.

“It is important to have that person in the middle that is only for you to make you feel comfortable throughout the process and explain things in terms that you understand.” – Care Experienced person, 2023.

Ensure adequate investment:

We are concerned that paragraph 13 of the Bill’s financial memorandum states that the dataset used to estimate the Care Experienced population and subsequently to cost these provisions “does not include individuals experiencing informal kinship or other care arrangements.” Around 18% of children and young people who requested advocacy support from Who Cares? Scotland during the period of 1st April 2023 to 31st March 2025 were in kinship care (including formal kinship care, section 25 placements and informal kinship care). Not using the universal definition of Care Experience (which will be key in informing eligibility for this section when developing the regulations) when projecting the costings risks underestimating the investment required in order to keep the Promise.

Paragraph 45 explains that the costs for lifelong advocacy have been based on the take up rate of existing advocacy services, and provision for 5% and 10% of the population is provided. However, the Care Experienced population is underestimated and the current take up rate would increase with proper advertising and awareness which paragraph 46 commits to do.

Paragraph 47 also highlights that “costs identified are based on the assumption of one case of advocacy per person who comes forward for advocacy services in a year.” Our data shows that 01/04/2023 to 31/03/2025, Care Experienced people requesting independent advocacy from Who Cares? Scotland had an average of 4.7 issues they were seeking support with.

Paragraph 48 also explains that the demand for advocacy will likely decrease as people get older and are able to access universal support and other specialist services such as mental health advocacy. However, access to other services is not guaranteed, specialised in terms of care experience or easy to access.

Paragraph 52 states that there are no confirmed costs of the duty on Scottish Ministers to make arrangements by regulations for the provision of independent advocacy support on local authorities. However, across many local authorities we already need to operate waiting lists to manage demand, and those waiting lists can be capped and will not include demand from those Care Experienced people who are not eligible for the service.

For this Bill to deliver truly transformational change, it must provide the right investment to make all the outlined changes possible without reallocating vital funds from other key services and provisions. Independent advocacy is an essential form of rights protection and must not come at the cost of access to services which support specific children’s rights, such as the right to health, to leisure and play, to education, or to be supported to stay with their family. Rights are indivisible, and UNCRC Article 4 requires governments to legislate and invest in services in a way that ensures all are upheld.

Area for improvement: seek clarity from the Minister for Children, Young People and Keeping the Promise that new provisions in the Bill will receive investment at the appropriate level.

Collective advocacy:

We also recognise the value of independent collective advocacy in enabling access to rights to be pursued by a group of individuals for systemic change, as highlighted by the Scottish Independent Advocacy Alliance (SIAA). This removes the burden from one person pursuing an issue and can have a further-reaching impact than individual advocacy.

Champions boards are a good example of collective advocacy which currently exist for Care Experienced people. The boards are groups of Care Experienced young people across different local authorities which provide a space for young people to meet with local Corporate Parents and influence change they wish to see in their area. We believe that there are currently 24 local authorities with Champions Boards which operate with varying degrees of independence, and 25% of councils do not have a Board at all. These are most effective when run independently of the organisations they seek to influence and hold accountable.

The Scottish Mental Health Law Review (SMHLR) emphasised the importance of access to both individual and collective advocacy, recognising that systemic issues affecting groups of children require a collective voice to influence policy and practice effectively. However, SIAA highlight that collective mental health advocacy has recently been defunded by one IJB, arguing that statutory obligations are met through individual advocacy alone. Clear statutory language is essential to prevent narrow interpretations and ensure that both local and national governments are held accountable for adequately resourcing independent advocacy. The SMHLR recommends placing duties on Scottish Ministers to support collective advocacy for children and young people, ensuring that their voices are heard not only in individual matters but also in shaping the services and systems that affect them. The Bill presents a timely and powerful opportunity to embed these recommendations into law for Care Experienced people.

Area for Improvement: Amend Section 4 (2) to reflect the right to independent collective advocacy for Care Experienced people.

Footnotes:

Footnote 2: Please see https://www.whocaresscotland.org/wp-content/uploads/2025/06/Action-on-Advocacy-advocacy-timeline-2.pdf to access Advocacy timeline

Footnote 3: This reflects the changes made in Section 1 of the Bill.

Footnote 4: See paragraph 21 of the Bill’s explanatory notes.

Footnote 5; This relationships-based principle must be contained within the regulations.

Footnote 6: As is the basis of the Children's Hearings Advocacy model, and best practice.

Footnote 7: This is a well-established approach that ensures the person is treated as an individual with inherent worth and rights, not excluded due to perceived incapacity. For more information, please see https://www.siaa.org.uk/information-hub/non-instructed-advocacy-guidelines/

What are your views on the proposals for guidance in relation to care experience?

A definition of Care Experience must be in regulations:

The introduction of a duty on Scottish Ministers to publish guidance in relation to "care experience" is intended to reduce stigma. We welcome this as almost 50% of Care Experienced adults reported during our Lifelong Rights campaign that they feel stigmatised when receiving support.

Section 5 does not define Care Experience in statute so as not to exclude groups of people, despite the government's consultation having resulted in support for a definition which is broad and inclusive. We noted above that the guidance will not alter eligibility requirements to aftercare, replace statutory definitions which apply to those who are Care Experienced or affect their existing legal entitlements.

We are concerned that without a clear definition in regulations, eligibility requirements for aftercare, advocacy and other support will continue to be guiding not binding, and exclusive, for example, to people with experience of informal kinship care, adoptees, those who have experienced adoption disruption and unaccompanied asylum-seeking children.

A benefit to defining Care Experience by regulation is that it can be updated more easily. Language and the groups we have recognised as Care Experienced has also evolved over time. The Care Experienced community is a relatively young identity movement, and the way it talks about itself is rapidly evolving, as is the social policy surrounding it (footnote 8)

The Promise states that "a universal and inclusive definition of care experience which encapsulates everyone with even the smallest experience of care will help to normalise care as more people can understand and relate to it.… Scotland must ensure that current definitions that act as the access point for rights and entitlements are inclusive enough to benefit all young people for whom Scotland has had parenting responsibility." (p118)

Who Cares? Scotland uses a broad and inclusive definition of Care Experience which includes foster care, secure care, formal and informal kinship care, adoption and adoption breakdown, unaccompanied asylum seeking young people, young people looked after at home, and residential care. This could also include someone who spent time in supported accommodation or a residential special school as a

child or young person if there was social work involvement in placing them there, however not everyone living in these settings will be Care Experienced.

Local authorities must continue support for as long as required, on an individual basis over the age of 26. The Independent Care Review made a strong case for investing upstream to get it right for every Care Experienced child and adult, at the economic benefit to other services.

We encourage Corporate Parents to also adopt this definition through our Corporate Parenting training, and look forward to shaping the regulations in this regard. To be clear, we are not proposing altering the definition of “looked after” children, rather, to ensure that the broad definition of Care Experience (which includes “looked after” children) can shape existing and future eligibility for rights and support.

This section requires public authorities to have regard to future guidance when exercising their functions in relation to Care Experienced people. This would be stronger if it was a “due regard” duty, so public authorities could be subject to judicial review. 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 (footnote 9). 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 are fully implemented. A proactive procedural duty of due regard should take this into account.

The guidance should also promote rights-based practice (in addition to ‘experiences and needs’ as set out in the Bill) in relation to Care Experienced people and the planning and provision of public services.

We are concerned that Section 5, Subsection 5 could be interpreted as a limit on the responsibilities of local authorities to any Care Experienced person living in their area, as opposed to those who were ‘looked after’ by the local authority while a child. We believe that Care Experienced people should be able to choose to live, work or study in the area that is best for them, without compromising their rights to practical and emotional aftercare support from the team local to them, as recommended in our Housing Issue Paper.. This must be clarified in the Bill to ensure consistency of application across local authorities.

Area for Improvement: 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.

Identification of Care Experience:

We support the position of the Children and Young People’s Commissioner Scotland (CYPCS) that the word “identify” must be removed from Section 5A(2), due to the risk of violating a person’s Article 8 right to respect for their private and family life.

If Care Experienced people are required to provide proof of status in order to access support, they may have to submit a Subject Access Request in order to gain this. In practice, this can mean that a Care Experienced person receives their full care records before they wanted to or without appropriate advocacy, resulting in a Care Experienced people engaging in a potentially traumatic situation.

It is essential that any proof required adopts the same process used successfully by the Care Experienced Student Bursary. The Bursary provides a list of professionals who can provide a letter certifying that the applicant is Care Experienced, providing a range of options for the applicant to pursue. Alternatively, guidance should require local authorities to create a process for Care Experienced people to be able to apply for a “letter of proof” that can be provided without the applicant having to receive detailed and traumatic information about their life that they were not seeking.

Area for Improvement: ensure guidance upholds Care Experienced people’s rights to privacy and operates in a trauma-informed way.

Footnote 8: For example, new ideas for flex-secure and models of foster carers moving into a family’s home are being proposed, widening the types of care that will exist in future. An increased focus on early intervention and keeping families together may see more children in need of enhanced support and protection remaining at home with supervision or entering informal kinship care without coming into contact with the Hearings System and becoming formally looked after. National Care Leavers Week has evolved in the last few years to National Care Experience Week as the idea of care experience as a lifelong identity with a lifelong impact has been developed amongst the community. Over the past century, terms like orphanages and house parents gradually became outdated, as has other language associated with the “care system”. Language in legislation can quickly become outdated and feel stigmatising.

Footnote 9: Under Part 9 of the Children and Young People Scotland Act 2014.

Part 1 - Chapter 2 of the Bill

What are your views on proposals designed to limit profits for children’s residential care services?

We welcome the intention of this provision but it does not go far enough.

Who Cares? Scotland firmly supports the statement in the Promise that “Scotland must avoid the monetisation of the care of children and prevent the marketisation of care… and make sure that its most vulnerable children are not profited from… There is no place for profiting in how Scotland cares for its children” (p111).

The Welsh Government has gone further in its Health and Social Care (Wales) Bill by legislating to remove profit completely from residential care services, where care will only be provided by the public sector, charitable or non-for-profit organisations in

the future, and the money saved from shareholders' profit will be reinvested into children's welfare.

We believe it is more in keeping with the Promise to legislate to avoid excess profit-making entirely. However, it is vital that planning for this considers the implications for current provision, and how that might be supported to create a sense of security for Care Experienced people currently in "placements" with for-profit institutions.

The Promise was also clear that "Regulatory bodies must scrutinise any presence of profit to ensure that funds are properly directed to the care and support of children" (p110).

We encourage the Scottish Government to consider the Welsh example (requiring all children's residential care services to be registered as "not for profit" entities) in its upcoming consultation.

We appreciate the government's intention to ensure the stability of placements for children and young people currently in Scottish residential care, as well as ensuring sustainable provision of future placements.

The government should continue to apply the key principles of stability and sustainability by developing a clear roadmap to ensure there is due consideration and collaboration with Care Experienced children and young people currently experiencing profit-led "placements", and the sector, in order to ultimately fully keep the Promise in this area.

A roadmap must include consideration of the following:
- A stronger definition of profit-making in the regulations.
- Measures to permit only registered "not for profit" entities to receive funding to deliver care.
- Clarifying by regulation that any surpluses must be reinvested back into care services.

Area for Improvement: Ensure a clear roadmap is developed to ensure there is due consideration and collaboration with Care Experienced children and young people currently experienced profit-led "placements", and the sector, in order to ultimately fully keep the Promise in this area.

What are your views on proposals to require fostering services to be charities?

We welcome the measures around creating transparency around profit from residential care and not-for-profit principles of Independent Fostering Agencies. The Promise was clear that "Scotland must make sure that its most vulnerable children are not profited from." (p.111).

We echo The Fostering Network's Calls that the transition must be planned in a way that avoids any disruption to children's lives or to the retention of foster carers. We also agree with their position to future-proof the Bill by extending the requirement for

charitable status to adoption services:

“Although all independent adoption services currently operating in Scotland are registered charities, this change would prevent agencies without charitable status from providing adoption services in the future, and solidify Scotland’s commitment to the principle that there is no place for profit in children’s social care.”

Area for Improvement: extend the requirement for charitable status to adoption services.

What are your views on proposals to maintain a register of foster carers?

We welcome giving Scottish Ministers the power to create a register of foster carers due to the increased safeguarding and public protection measures it would bring.

The Scottish Child Abuse Inquiry has an extensive record online which evidences that children have been continuing to experience abuse in foster care as recently as December 2014, the upper limit of their scope into historic abuse. More robust measures to identify concerns with potential foster carers are required.

This section of the Bill amends the Children (Scotland) Act 1995. All provisions must be brought into the scope of the UNCRC Act 2024.

We are also supportive of the register for the potential to make better matches between children and foster carers, providing that in line with The Promise, children do not become matched too far away from where they currently go to school and have established social networks and relationships with family members. Some children may want to live in a different area for many reasons, however we currently advocate for many children who do not want to move to the area being proposed. Guidelines must be developed to ensure this works in the child’s best interests and has the child’s views at the centre of this decision.

As stated in our response to question 1, guidance is also required to ensure that young people who are placed with carers outside of their home local authority are able to access aftercare in that area if that is where they have built their life and choose to remain after leaving care.

Area for Improvement: We recommend that the register also record complaints and concerns made about a foster carer by a child, young person or other relevant person to help identify concerning patterns in behaviour.

Area for Improvement: 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.

Part 1 - Chapter 3 of the Bill

What are your views on the proposed changes to the Children's Hearings system?

We welcome the following changes in this Chapter which reflect our calls in our Children's Hearings System Redesign consultation response:

- Powers to exclude relevant persons and remove relevant person status (Section 15 and 16).
- The changes regarding extended duration on interim Compulsory Supervision Orders (ICSOs) (Section 19).
- Post-referral discussion option with the Reporter (Section 21).

Below we provide comments on the following sections:

Single panel member decisions (Section 11):

We support single panel members being able to take procedural decisions to improve the efficiency of the Children's Hearings System (CHS). However, we oppose a single panel member taking any substantive decisions in a young person's life.51

An interim Compulsory Supervision Order (ICSO) is a flexible order panels can use if it is necessary as a matter of urgency for the protection, guidance, treatment or control of a child or young person. The child or young person can be removed from their home or remain there on an ICSO, or be required to reside in a named place or in a place of safety. An ICSO currently lasts for 22 days but provisions in the Bill extend this to 44 days, and they can also be renewed lasting up to a total of 66 days before the section 67 ground is established in court. If grounds are accepted or established, there are no limits to the ICSOs which may be set in place by the children's hearing.

We are concerned that the provision in Section 11 subsection 13 for single panel members to be able to make or extend an ICSO may affect a child's right to a fair trial under Article 6 ECHR and Article 40 UNCRC. ICSOs can have serious consequences on a young person's life. Whilst they may only last for a set period of days, an ICSO can make provisions that may require a child to move to a new home, be unable to speak to their parent or attend school and see their friends, or cause other significant disruption to a child's life. The level of shock and trauma this can create for a child is not necessarily lessened by the fact that the change may only last for a set number of days, particularly as they are often extended or converted into a longer-term CSO. The decision to create an ICSO for a child is a substantive decision that should not be made by one single panel member.

An opt-out right to independent legal advice and advocacy must be available to ensure additional safeguards that support the child or young person's views to be heard if an ICSO is to be made or extended.

Area for Improvement: Section 11(13) is removed or amended so the making or

extending of an ICSO is always subject to a hearing of three members of the Children's Panel.

Area for Improvement: An opt-out system of referral for independent legal advice and advocacy.

Child's attendance at children's hearings and hearings before sheriff (Section 13):

We welcome to removal of the existing obligation on a child to attend their hearing and the enhanced offers referenced to ensure that the child's voice is not lost from the process.

However, as recommended in the Hearings for Children report 2023, we still believe that there should be an offer made to a child to attend or participate via alternative methods at every hearing. We disagree that this "would replicate the current approach of an obligation which can be disregarded in some circumstances", as a proactive offer makes it clearer to the child, parents and carers that there are options in the process to ensure the child's views are always checked and respected. Removing the obligation to attend without making this offer could have the unintended consequence of the child not accessing their right to attend such hearings and proceedings (footnote 1).

However, we do not propose that such an offer is made to all babies and very young children in line with their evolving capacities, due to the evidence highlighted by NSPCC's response and previous 2023 research on Keeping the Promise to Infants, 0-3 Year Olds. Attending a hearing can cause great distress and there is a risk of panel members and professionals drawing assumptions about the meaning of an infant's behaviour without the requisite training (as the behaviour of a very young child who has experienced trauma can often be counter-intuitive to interpret).

Supported decision-making (in the form of non-instructed independent advocacy) would ensure that in situations where the child has complex communication or additional support needs, or is younger, they would have specialist support to ensure that their rights are upheld and any communicated views are respected.

Forcing a child to attend:

We are very concerned by Section 13 subsections (2) and (10) that "there will be some situations where the child must attend, regardless of their preferences"(footnote 2). As independent advocacy workers, we would strongly encourage a young person at risk of deprivation of liberty to attend their hearing to instruct their lawyer and share their views. We would explain to them the potentially huge consequences of not attending.

Nevertheless, young people who do not want to attend their hearing are generally making this choice due to the level of emotional distress and trauma they feel it would cause, and their Article 12 UNCRC right to respect for views must be balanced with their Article 40 right to a fair trial. This Bill has the potential to deliver transformational change in requiring panel members to be trained that they must not treat the child less favourably if they choose not to appear before the panel.

Just as adults are able to exercise the choice not to attend their sentencing, children must be given this option and be able to rely on a lawyer to ensure their rights are upheld and their case is not treated in an unfair manner. For a young person who is very clear that they do not want to attend, compelling a child to attend would only be possible by involving the police to forcibly remove them from their home. While we appreciate the need to balance rights in this context, this is at complete odds with the spirit of the redesigned CHS to be child-friendly and trauma-informed. This would significantly hinder them from being able to engage in the process and damage their trust in the system and professionals around them.

For children called on serious offence grounds or subject to a secure care "placement", whether or not they wish to attend their hearing, they must have opt-out independent legal representation in order to uphold their right to a fair trial (UNCRC Article 40, ECHR, Article 6). There should also be opt-out independent advocacy to help convey the views of the child to the lawyer and ensure the child understands the process, potentially lifelong consequences and serious interference with their rights. Where a child chooses not to attend their hearing, their lawyer should be permitted to attend in their place, at no prejudice to their case.

Area for Improvement: The obligation to attend a hearing should be removed for all children and young people. They should receive an offer to attend or participate via alternative measures for every Hearing. There should be an opt-out system of referral for independent legal advice and advocacy for all children on offence grounds and subject to a secure care "placement".

Role of Principal Reporter and grounds hearing (Section 14):

In Section 14, subsection 5, where the Principal Reporter prepares a statement of grounds for a child, there should be an opt-out system of referral for independent legal advice and advocacy at that stage. The Reporter should be looking for the most appropriate way for a child to communicate their views and independent advocacy can support the child before they have to make complex legal decisions about the grounds.

Here, as above, this should include supported decision-making in the form of non-instructed advocacy, especially given the revision where the Principal Reporter doesn't have to engage with the child and family on the grounds and whether they agree with them and the supporting facts, and the child's participation in the hearing (footnote 3).

Area for Improvement: Section 14 must include an opt-out system of referral for independent legal advice and advocacy, including non-instructed advocacy.

We are also concerned that in cases where there is no clear agreement of the grounds, in particular offence grounds, a hearing with a single chairing member can resolve any disputed elements of the grounds. Section 89C (3) and (4) allow the grounds hearing to be satisfied if the child does not accept all of the supporting facts in relation to a ground but "the child accepts sufficient of the supporting facts to support the conclusion that the ground applies". This reiterates the importance of

opt-out independent advocacy as an additional safeguard to support the child to have their views heard in this complex legal process with a potential criminal record and lifelong impact.

Tests for referral to Principal Reporter and making of compulsory supervision order or interim compulsory supervision order (Section 17):

We welcome the addition of “support” to modernise the language of the statutory referral criteria regarding “protection, guidance, treatment or control”. However, we are disappointed not to see the removal of “treatment” and “control”, as recommended in the Hearings for Children report 2023.

The criteria must be wholly reframed to avoid young people feeling as though something scary will be done to them, and instead prioritise their nurture, protection and support. The language being aimed at legal professionals is not a reason to keep it, rather, a reason to change it as language influences culture which impacts practice and decision-making.

We agree that “skilful explanation, interpretation and confirmation of children’s understanding will always be required” when communicating legal and complex processes to children. However, this does not happen often enough in practice and should not only be the case for children who have the support of an advocacy worker – it should be the job of all professionals in the process to communicate in this way.

Child-friendly language and developmentally appropriate two-way communication should confirm understanding, where the child can explain their understanding in their own words or through other creative means. At this conversation, the role of advocacy can also be explained and offered to a child to support with the child’s understanding and agency. This is particularly important for children who are subject to offence grounds or a secure care “placement”.

Area for Improvement: The statutory referral criteria must be wholly reframed to remove the words “treatment and control” and replace them with “nurture and support.” At the point of referral, the role of independent advocacy must be explained and offered to the child.

Information about referral, availability of children’s advocacy services etc. (Section 18):

Having previously called for the right to independent advocacy at the earliest possible opportunity to be written into legislation; we celebrate the new duties to provide a child with information about the referral and children's hearings process, as well as the availability of children’s advocacy services and the new requirement to share information with an advocacy worker regarding when and where a child’s hearing is to take place.

However, the Bill doesn’t include an opt-out system of referral for advocacy like the English model because of “the extent of existing presenting demand for children’s advocacy at around 20% of hearings in the year to November 2024”. As CHS advocacy is currently only funded by Scottish Government for 10% of hearings, we

believe this is an incorrect assumption that there is no surplus demand. As the Bill introduces new duties on professionals to explain and offer independent advocacy to children, the demand on current provision is likely to increase yet the financial memorandum makes no indication that this service will be uplifted to meet increased demand.

In 2024, our advocacy workers raised over 5,660 issues for over 1,500 Care Experienced people. We know that when advocacy is explained by an independent advocacy worker, around 98% of eligible referrals accepted the offer of advocacy. Yet only around 20% of Children's Panel Hearings have an advocacy worker, and many of our regional teams need to operate waiting lists. At the moment, we know we cannot reach everyone who needs and requests advocacy. A recent Research Scotland independent evaluation report (2024)67 of the Children's Hearings System Advocacy Scheme backs up the issue of demand outweighing supply.

Opt-out advocacy is absolutely essential for the protection of children and young people's rights in the Hearings System and access to justice. This position is backed by the CHS Advocacy National Providers Network and we urge Scottish Government to adopt this policy. Failing this, opt-out advocacy must be established as a legal right for children and young people referred on offence or subject to a secure care "placement" as an absolute minimum to ensure protection of their human rights.

This should ensure a proportionately sufficient level of independent advocacy provision, in order to ensure all children and young people can access this support at the point of need. These supports must be available across all local authorities, ensuring that young people in rural areas have the same opportunities as those in more connected locations.

Area for Improvement: 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".

Footnotes:
Footnote 1: See Part 10 of the Children's Hearings (Scotland) Act 2011, sections 78(1)(a) and 103(4)).
Footnote 2: See paragraph 172 of the Bill's policy memorandum, 2025: These situations are 'where the grounds of referral relate to the child's conduct which has brought them into conflict with the law, and the consequences for the child may include long-term disclosure of criminal offences, or restriction or deprivation of liberty, the hearing may well consider that the child's attendance is essential to uphold their right to a fair hearing or to assist the hearing in making its decision.'
Footnote 3: To the Children's Hearings (Scotland) Act 2011 Section 69A (8). This is where it would be 'inappropriate or ineffectual to do so (taking account, for example, of the child's age and maturity)', or 'if the Principal Reporter already has sufficient information, based on previous engagement (or attempts to engage) with the child'.

Part 2 of the Bill - Children's planning

What are your views on the proposed changes to Children's Services Planning set out in section 22 of the Bill.

We welcome the extension of statutory responsibility to Integration Joint Boards (IJBs) regarding the development of Children's Services Plans. IJBs are Corporate Parents and will have a beneficial role to play in promoting the health and wellbeing of Care Experienced people in their area.

Are there any other comments you would like to make in relation to this Bill?

Who Cares? Scotland strongly supports the general principles of the Bill which are an important step towards keeping the Promise and upholding Care Experienced people's rights. While ensuring appropriate scrutiny, we encourage swift passage of the Bill before the pre-election period in March 2026.

Monitoring and Accountability:

We recommend that MSPs add legislative monitoring and accountability measures such as post-legislative scrutiny and streamlined data collection, reporting and planning duties to ensure that:
- The provisions of the Bill are fully acted upon;
- The legislation is kept in focus within the next parliamentary session, and;
- Accountability for keeping the Promise is rooted in primary legislation as opposed to policy, FOIs (in the absence of reliable publicly available data) and rhetoric.

Despite reports, statements and duty bearers insisting that change is happening, many Care Experienced people are not feeling enough change in their own lives. Who Cares? Scotland is deeply concerned about the lack of progress across these areas. For example:

- The third Oversight Board report this year found that "Scotland is not halfway towards keeping its promise", and "some people, some organisations and some systems are not yet doing enough, and this risks the country as a whole failing to deliver the promise."
- This year, we reported on the dilution of the original aim for Scotland to become a nation that does not restrain its children as set out in The Promise.
- This year, our report commissioned by the CYPCS highlighted that given that in 2022/23, the exclusion rate for looked after pupils was almost six times the rate for all pupils; "the Promise commitment to end formal and informal exclusions must be enforced immediately, better understood and properly resourced across local authorities".
- This year, the Scottish Parliament's Education, Children and Young People Committee convened a meeting with care experienced young people who were involved in boards/steering groups helping to implement the Promise in their local areas. The Committee wanted to gather their views on voice, to hear whether they feel listened to, whether their input is valued and whether they have seen tangible

results as a result of their input. On Promise progress, participants raised issues around social work provision, and said that “while there were moves in the right direction, change was not happening fast enough though there was still time.”

Areas for Improvement: Include an accountability section in the Bill with provisions on:
- Post-legislative scrutiny where the Bill is reviewed two years after enactment, including consideration of what further action may be needed in order to keep the Promise by 2030.
- Streamlined data collection, reporting and planning duties for Corporate Parents on existing Corporate Parenting responsibilities, provisions of the Bill and other outcomes of the Promise, to be produced in agreement with the Scottish Government and COSLA.

These reporting duties could include areas such as:
- Progress to eliminate the practice of restraint of children and young people in care;
- Progress to eliminate the exclusion of Care Experienced people from education;
- Longitudinal data on Care Experienced adults’ outcomes to inform policy addressing inequalities;
- Equalities data on children taken into care and the families we remove them from. This could include protected characteristics and care experience to identify patterns and address systemic bias and opportunities to target early intervention and family support (footnote 1)

Footnote 1: Unlike in England, it is not mandatory in Scotland to record the ethnicity of children taken into care, or other identities their parent holds. There is research to suggest numerous minority groups are over represented in the care system however without accurate data being collected it is difficult to identify patterns and challenge this.

Please note: Our fuller response including footnotes and references has been emailed to the committee and is available on our website in the resource library.

Aberlour response to the Children (Care, Care Experience and Service Planning) Bill Call for Views

Aberlour is the largest solely Scottish children's charity. Delivering more than fifty services across Scotland, we work with disadvantaged, marginalised and discriminated against children, young people and families, providing services and support in communities around the country. We help to overcome significant challenges families face, such as the impact of drugs and alcohol, growing up in and leaving care, poor mental health, living with a disability, or the impact of poverty and disadvantage.

We aim to provide help and support at the earliest opportunity to prevent problems becoming intractable or spiralling out of control. We are committed to Keeping the Promise and to the realising the human rights of all children and young people. This means working every day to make rights real for the children, young people, and families we support and being unwavering in our ambition to ensure all of Scotland's children have an equal chance regardless of their start in life.

Introduction

At Aberlour we understand the importance of Scotland Keeping the Promise by 2030. We provide safe, loving and supportive services across Scotland for children and young people who often face complex challenges. These include residential children's houses, mother and child recovery houses and many other services with a focus on supporting children and young people to remain with their families where it is safe to do so. Applying a rights-based approach, we are committed to meeting the needs of those with care-experience and supporting them to fully access their rights.

Our response will refer to key challenges and specific issues affecting care experienced young people unable to live with their families, unaccompanied asylum-seeking young people, and young people with disabilities and complex needs. We comment on the proposals contained within the Bill but also reflect on the wider systemic changes required if we are to Keep the Promise by 2030. Like many others, we share concern about the lack of progress and pace in implementing change and therefore support the passing of the Bill in this parliamentary term to build momentum and deliver on The Promise we have made to Scotland's children, young people and families.

However, there are challenges within this Bill, and on its own it will not be enough to deliver the change required. There is much wider work needed to strengthen supports for families, declutter the care landscape and truly put the voices of care-experienced people at the heart of any new system. Our organisational ambition to eradicate child poverty and give all children an equal chance, and the best possible start in life is at the heart of everything we do. This is all part of our defining mission: "to be brave for our children and young people." To that end, we urge the Scottish Government to do the same.

Our response focuses on aspects of the Bill that relate to services where we have direct experience. Throughout our consultation response, we have reflected what children, young people and families at Aberlour have told us as part of our commitment to upholding their right to have their voices heard. The issues we raise are not new, and reflect feedback shared across previous consultation responses, evidence sessions with the Scottish Parliament and directly in dialogue with colleagues in the Scottish Government, MSPs, policy makers and wider decision makers across Scotland's Children's Service Leadership.

We urge Scottish Government to commit to undertaking the necessary actions to ensure we fulfil our commitment to Keep the Promise to all Scotland's children, young people and families.

What are your views on the aftercare provisions set out in the Bill?

The extension of aftercare to apply to children and young people who leave care before their 16th birthday is welcome.

We also welcome the confirmation that aftercare provision will apply to unaccompanied children and young people under 16. However, most unaccompanied children and young people are over 16 years old when they arrive in Scotland.

Unaccompanied children and young people who come to Scotland through the National Transfer Scheme, have looked after status and therefore 'experience of care'. Scottish Government's Ending Destitution Together Strategy 2021-2024 also stated that 'Unaccompanied asylum seeking children (UASC) are treated as 'looked after' children' (p.40), however, the proposals for aftercare provision set out in this Bill are unclear on whether unaccompanied children and young people who come to Scotland post-16 have the same rights and status as other looked after children. Therefore, we would like this to be clarified.

Data from our national Guardianship service suggests the biggest issue for unaccompanied young people accessing aftercare support is the lack of consistency in provision across different local authority areas. Any ambiguity in entitlements will result in further inequity.

It is also essential that steps are taken to explicitly address how the proposed changes in aftercare provision within this Bill will interact with other pieces of legislation, most notably continuing care and the right to return.

What are your views on the advocacy proposals set out in the Bill?

We agree that advocacy is important to ensure that children and young people's voices are heard and their rights realised at every stage of their care journey.

However, rather than solely relying on an extension to independent advocacy to uphold rights, our collective implementation of the UNCRC and the GIRFEC approach should ensure that all services who have a footprint in the lives of children and young people have a role in ensuring the child's voice is heard. Many of the professionals in the team around a child will see a core part of their role as being an

advocate for a child, taking account of a child's views and wishes and balancing this with their ‘best interests’. Some of the children and young people we support have shared while they can feel let down by the system at times they worry that having even more professional roles created to try to fix this will not work. There is a risk by adding more professionals to an already cluttered landscape we create further complexity and inadvertently push the voices of those we seek to centre to the margins.

Therefore, while we support the proposal in principle, we believe advocacy should be consent based and only put in place where a child wants this, rather than making it a requirement. There are of course situations where independent advocacy is hugely valuable in terms of ensuring the voice of the child is not lost and a specialist role with the primary purpose of upholding children’s rights where there is conflict and complexity is highly effective.

However, we think in many cases the best form of advocacy comes from family support workers, youth workers, social workers and others who have strong relationships with children and young people already.

What are your views on the proposals for guidance in relation to care experience?

We have previously called for and agree with the proposal that guidance is produced to articulate definition of care experience. It is important the language chosen reflects children, young people and families preferred terminology. However, while for some children and young people their care experience is an important part of how they identify, others may have a more complicated relationship with their care status.

Although we are supportive of the proposal, we believe it is important it is clearly explained how any change to how we define experience of care influences existing legislation or eligibility for certain supports. It is essential any new definition takes account of potential unintended consequences, including resource implications of extension of supports to a wider group of children, young people and adults.

Experience of care includes a wide range of situations; however, one universal aspect is the presence of professionals and care providers in a child’s life. While children and young people with disabilities are not given the same status as ‘Looked After’ children, and while we do not propose they should not be defined as such, more needs to be done to ensure they are better supported to create more positive transitions and their rights are upheld as they move into adult services.

We also believe unaccompanied children and young people should be included in the definition of care-experience, so they can access the services and supports they require. While young people within our Guardianship service are deemed ‘Looked After’, they are at times still unable to access entitlements under current legislation due to differing interpretation of current law and variation in available supports across different local authorities. Any new guidance must generally offer clarity for this group and make clear that UASC should be accessing these entitlements.

However, important as the language we use to describe care experience is, even more important is the range of supports available to address the needs of people who fall within the agreed definition.

What are your views on proposals designed to limit profits for children's residential care services?

While we support action to eliminate profiteering from the care system, we have grave concerns about the potential impact of these proposals on residential care providers. The ability for a Minister to put a profit limitation requirement on services could have catastrophic impact on our ability to deliver high quality, flexible, responsive care for some of our most vulnerable children and young people.

The current way our system both designs and commissions services, means Children's Residential Care providers need to be able to generate some surplus in order to manage shifts in demand. Within Aberlour, surplus income from our residential services is used to maintain full staffing, even when we are supporting reduced numbers of children due to higher levels of complexity or periods of lower demand for places in our houses. We invest heavily in our Children's Residential Services to ensure we are providing the highest quality care, supporting staff learning and development, offering clinical supervision and engaging in a range of other developmental and practice opportunities. Our physical buildings are under constant review to ensure children and young people in our care live in warm, comfortable, nurturing environments which are designed to support their healing and growth. Eliminating the ability of organisations to manage the financial instability of the external landscape through the introduction of restrictive and reductive approaches will put services at risk.

So while we agree in principle that organisations should not profiteer from children's care, there is a need for much greater clarity on the proposals, including assurances that high quality and choice for children and young people will not be eroded.

What are your views on proposals to require fostering services to be charities?

In principle, we support the proposal to require fostering services to be charities. Our assumption is this is viewed as a way of preventing profiteering in the care sector and ensuring that any surplus is reinvested back into the services that look after children, young people and families. Eliminating profiteering is a clear goal of the Promise and one we support.

However, it is important that this proposed change is not a step towards phasing out of Independent Providers, a view expressed in some consultation responses shared within the analysis of the Future of Foster Care Consultation. Our view is having a rich and diverse range of fostering provision supports recruitment, retention and ultimately the availability of different types of support settings which meet a wider range of needs. In our experience, foster carers also express that they value having a choice about the agency they choose to foster with. Many of our foster carers have a longstanding connection to our organisation which holds great meaning for them and us. In addition, in Aberlour we invest a lot of time and resource in ensuring our foster carers and their wider family are supported in a way which upholds our

organisational values and approach. Although we are a small provider, we offer bespoke placements, often for children who have complex needs and require additional care and support to settle in their new home and find the stability they need to heal and grow.

In addition, while we understand the underlying intention of the proposal, we are aware a shift of this nature in the current climate could further destabilise an already fragile fostering landscape. Great care would need to be taken to mitigate any risk of rupturing stable fostering arrangements which are working well for children and young people, ensuring they are not impacted by any wider organisational changes. Steps would also need to be taken to ensure changes do not accelerate the loss of existing foster carers given the challenges we have across Scotland in recruiting new families to undertake this role.

What are your views on proposals to maintain a register of foster carers?

To express a view on the creation of a centralised register of foster carers we would require greater detail on the intended purpose of this. Foster care is already a very regulated area of practice and any additional requirements need to have a clear rationale explaining the intention of the change and how it would impact or intersect with other regulatory activity.

While we understand a national register may support better oversight and strengthen safeguards for children and young people, there are complexities around GDPR, maintaining and updating the information collated, agreeing who would be able to view this and in what circumstances.

As already stated above, our foster carers state they value having a choice about the agency they choose to foster with and have joined us because of our values, approach and the specific supports we have in place. This has led to us having a very stable group of fostering families who have been with us for many years. A risk of introducing a fostering register, depending on how this is managed, could be increased movement of foster carers between different fostering providers, putting additional pressure on an already fragile sector.

What are your views on the proposed changes to the Children's Hearings system?

We welcome much of the change that has been proposed for the Children's Hearing System and refer to the Children's Hearing System's response[1].

We support proposals which mean the Children's Hearing System will become smaller, focusing the resource to deliver more specialised support with greater consistency of engagement to ensure children and young people are comfortable and their voices are heard more clearly.

Are there any other comments you would like to make in relation to this Bill?

We believe that not all reform to the care system will be achieved through legislative change, however, we recognise there are areas where this is necessary to create momentum for change.

The success of this Bill and our wider ambition to Keep the Promise by 2030 will be hugely influenced by our ability to scale up and deliver whole family support in the way children, young people and families have told us will best meet their needs. Without radical extension of the current whole family support infrastructure and increased investment in earlier intervention and prevention, transformation of the care system will not be possible.

We are not confident the financial memorandum is adequate. If this Bill is to be successful and become an Act before dissolution of Parliament next year, there needs to be a lot of work done to ensure there is proper resourcing of the proposals laid out in the Bill so that its impact is felt. We refer also to previous answer around the proposals around residential and foster care – the unintended consequences of both need to be fully considered within the financial memorandum. We are concerned the memorandum significantly underestimates costs at present. This level of financial risk needs to be given more thoughtful consideration, and we envision this may be a huge barrier to the passage of the Bill through committee and subsequent stages.

We also note the Bill relates to legislation that pre-dates devolution such as the Children and Young People's Act 1995 (Scotland). We are therefore concerned that children and young people who wish to take action under the UNCRC Incorporation (Scotland) Act due to being unable to access entitlements contained within this Bill will be unable to do so. We need to ensure all new legislation is actionable as otherwise, the long-awaited and hard-fought UNCRC rights enshrined in law become meaningless, and some children and young people will continue to be failed. We refer to Together's briefing on this issue[2].

Finally, we do not believe this Bill on its own will resolve all the challenges we currently have. Our hope is that further legislative change prioritises decluttering the landscape, simplifying systems and processes so children and young people understand and can easily access the supports they need to thrive and have their rights upheld. However, we recognise the importance of this Bill in taking us a step closer to Keeping the Promise for 2030 and we are therefore committed to making sure the best version of this legislation is passed before dissolution of Parliament.

The Fostering Network Response to the Children (Care, Care Experience and Services Planning) Scotland Bill Call for Views

Information about your organisation:

The Fostering Network is the UK's leading fostering charity and membership organisation. We are the essential network for fostering, bringing together everyone who is involved in the lives of children in foster care. We support foster carers to transform children's lives and we work with fostering services and the wider sector to develop and share best practice. We have been leading the fostering agenda for 50 years, influencing and shaping policy and practice at every level. In Scotland all 32 local authorities and 22 of 25 independent fostering providers are in membership with us, covering 99% of foster carers.

Part 1 - Chapter 1 of the Bill

What are your views on the aftercare provisions set out in the Bill?

We support the intent of the aftercare provisions set out in the Bill. However, we believe young people who were looked after at any point before their sixteenth birthday should have the same right to aftercare as those looked after on or after their sixteenth birthday, so should not be required to apply for aftercare. We recommend amending section 1, subsection 2, to create a duty on local authorities to assess a young person's need for aftercare up to age 26, and to meet any needs identified. Furthermore, while we appreciate it may not be practicable to require local authorities to continually assess an individual's need for aftercare throughout their adult life, we propose that any aftercare services provided before the age of 26 should continue for as long as they are needed, and that care-experienced adults should have the right to apply for and receive aftercare beyond their 26th birthday. As The Promise recognises, "Aftercare must take a person-centred approach" with "no cliff edges" (p.92).[1]

We are disappointed by the lack of provisions around Continuing Care in the Bill. In our response to the Scottish Government's consultation on 'moving on' from care into adulthood,[2] we recommended the introduction of a 'right to return' to Continuing Care for young people who wish to return to live with their foster families after they have moved out, in parallel to the experiences of many young people raised by their birth families.[3] The Promise supports this, saying that "Young adults for whom Scotland has taken on parenting responsibility must have a right to return to care and have access to services and supportive people to nurture them" (p.92).[1] We are not proposing that foster carers should be required to keep a room available for young people who have moved on to independence, in case they wish to return to Continuing Care. Although this may be desirable, we acknowledge it would not be practical. However, where a young person wishes to return to Continuing Care and their foster carer has space for them, we believe the duty on

local authorities to provide Continuing Care should remain in place.

In our response to the 'moving on' consultation, we also recommended that the Scottish Government extend the upper age limit for Continuing Care so young people can stay with their foster families for as long as they need to. Again, this is supported by The Promise, which states that "Young people must be encouraged to 'stay put' in their setting of care for as long as they need to" (p.92).[1] Young people across the UK now leave home at an average age of 24,[4] so the upper age threshold of 21 for Continuing Care puts care-experienced young people at a further disadvantage at a time when they are particularly vulnerable. Care-experienced adults are over twice as likely to experience homelessness, almost twice as likely to have poor health, and over 1.5 times more likely to have financial difficulties than their peers without care experience.[5] Removing the greatest source of security and protection – their home – before they are ready can therefore be extremely dangerous.

We would urge the Scottish Government to extend the duty on local authorities to facilitate and support Continuing Care arrangements for young people until their 26th birthday – including young people who are seeking to return to a foster family – and to fully fund this change. This must apply in all cases where the foster family agrees, the accommodation remains available, and a Welfare Assessment supports this decision.

REFERENCES

[1] Independent Care Review (2020) The Promise. thepromise.scot/resources/2020/the-promise.pdf

[2] The Fostering Network (2024) The Fostering Network's response to the Scottish Government consultation on 'moving on' from care into adulthood. thefosteringnetwork.org.uk/media/re4cvnms/moving-on-consultation-response.pdf

[3] Hill, K., Hirsch, D., Stone, J., & Webber, R. (2020) Home Truths: Young adults living with their parents in low to middle income families, Centre for Research in Social Policy, Loughborough University. lboro.ac.uk/media/wwwlboroacuk/external/content/mediacentre/pressreleases/2020/09/Loughborough%20-%20Home%20truths.pdf

[4] ONS (2024) Milestones: Journeying through modern life. ons.gov.uk/peoplepopulationandcommunity/populationandmigration/populationestimates/articles/milestonesjourneyingthroughmodernlife/2024-04-08

[5] Independent Care Review (2020) The Money. carereview.scot/wp-content/uploads/2020/02/The-Money.pdf

What are your views on the corporate parenting provisions set out in the Bill?

We welcome these provisions, but we would support an even more ambitious approach which extends Corporate Parenting duties to cover care-experienced people's whole lifespan, in recognition that, as noted in The Promise, "Scotland's

parenting responsibilities are life long and holistic for the young people that Scotland has cared for" (p.92).[1]

REFERENCES

[1] Independent Care Review (2020) The Promise. thepromise.scot/resources/2020/the-promise.pdf

What are your views on the advocacy proposals set out in the Bill?

We welcome the proposals to require Scottish Ministers to create regulations to confer rights of access to care experience advocacy services. However, we believe that these proposals could be strengthened.

Firstly, independent advocacy services should be defined within the Bill. We note Who Cares? Scotland's concern that leaving the definition of independent advocacy to be set out in secondary legislation will further delay the realisation of this right for care-experienced people, and may risk the definition being diluted so advocacy is not truly independent.[1] Given that the Mental Health (Care and Treatment) (Scotland) Act 2003 already provides a definition of independent advocacy, there is no reason to delay on the wording of a definition in this Bill. It should also be clear in the Bill that the right to advocacy includes non-instructed advocacy for babies, infants, and children with additional communication needs.

Additionally, this section should set out that the right to advocacy should apply to all care-experienced people, regardless of the kind of care they have experienced or how long they have been in care. The proposal in section 4, subsection 4, that the regulations may "specify circumstances in which, or descriptions of care-experienced people by whom, a right to advocacy services is exercisable" creates a concerning opportunity for these rights to be limited. We suggest this wording should be amended to "specify additional circumstances in which, or additional descriptions of people by whom, a right to advocacy services is exercisable", allowing the scope of the right to expand but not reduce.

Care experience should also be defined more fully in the Bill, again to avoid further delay in the realisation of these rights for care-experienced people. While we appreciate that section 5 of the Bill requires Ministers to publish guidance which is to include a definition of care experience, we believe the interim definition published in the Bill could be more inclusive and contain at least the categories suggested in the Scottish Government's consultation on a universal definition of care experience, each of which was supported by a majority of respondents.[2] As such, subsection 6 should be amended to define care-experienced people as anyone who has been: "(i) looked after, including at home, in kinship care, foster care, residential care, at a residential special school, or in secure care, (ii) subject to a kinship care order, (iii) cared for in an informal kinship care arrangement, (iv) adopted, (v) cared for in supported accommodation, (vi) cared for or otherwise supported in such

circumstances as may be specified." This would ensure people with experience of these various forms of care have access to the rights introduced through the Bill as soon as it is passed, with the potential to widen this to other categories through the guidance.

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[1] Who Cares? Scotland (2025) MSP Briefing on the Children (Care, Care Experience and Services Planning) (Scotland) Bill. Available at whocaresscotland.org/resource-library/

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What are your views on the proposals for guidance in relation to care experience?

We support these proposals, which we anticipate will help increase understanding of care experience and enable public authorities to deliver more effective, person-centred services for care-experienced people. As above, we believe care experience should be defined in more inclusive terms in the Bill, rather than the relatively narrow definition in the Bill being later widened in guidance.

Part 1 - Chapter 2 of the Bill

What are your views on proposals designed to limit profits for children's residential care services?

Proposals to limit profits in children's residential care services are a positive step, but do not go far enough. The Promise Scotland states that "There is no place for profiting in how Scotland cares for its children" (p.111),[1] yet the Bill in its current form only seeks to limit, not eliminate, profit from children's residential care. The proposed addition of section 78F, subsection 2, to the Public Services Reform (Scotland) Act 2020 would require Ministers to have regard to the wellbeing of children being looked after by local authorities, and to the interests of local authorities, but also to the interests of residential care service providers – including the opportunity to make a profit – before imposing or modifying a profit limitation requirement. This means the Bill not only fails to take action to eliminate profit, but appears to actively prevent these provisions from being used to this end in future. The Welsh Government has taken bolder action to eliminate profit entirely from its children's social care system through the Health and Social Care (Wales) Act 2025,[2] and we encourage the Scottish Government to follow this example by requiring all children's residential care services to be registered as charities.

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thepromise.scot/resources/2020/the-promise.pdf

[2] Health and Social Care (Wales) Act 2025. Available at legislation.gov.uk/asc/2025/1/contents

What are your views on proposals to require fostering services to be charities?

We support these proposals. We believe this requirement should be introduced in a phased way to allow sufficient time for independent fostering services that are not currently registered as charities to obtain charitable status. Clear guidance must also be provided to these services to support them in obtaining charitable status, and to their foster carers to explain the purpose of the change. The transition must be planned in a way that avoids any disruption to children's lives or to the retention of foster carers.

We consider there would be merit in extending the requirement for charitable status to adoption services. Although all independent adoption services currently operating in Scotland are registered charities, this change would prevent agencies without charitable status from providing adoption services in the future, and solidify Scotland's commitment to the principle that there is no place for profit in children's social care.

What are your views on proposals to maintain a register of foster carers?

We strongly support proposals for a register of foster carers, something we have long campaigned for. We are pleased that provisions allow the register to potentially facilitate both "the approval (or otherwise) of persons as foster carers by fostering services" and "the placing of children with foster carers by fostering services" (new section 30A, subsection 1). This would enable the register to deliver two key benefits: safeguarding children and young people, and supporting better informed matching of children with foster carers. These are in addition to the benefits we believe the register will bring to foster carers' status and the ease with which they can transfer between services, supporting retention.

The following comments relate to three specific parts of the provisions for a register of foster carers. Firstly, we agree that it would be beneficial for the register to include information about "persons who have been considered by a fostering service for approval as a foster carer but not so approved" (new section 30A, subsection 3), but suggest that this should only apply to those who have not been approved specifically because there are concerns about their suitability to work with children. The idea that an individual would be added to a register as soon as they apply to foster, even if they ultimately withdraw their application or their circumstances at the time prevent them from progressing, may discourage some from applying in the first place. At the very least, we believe there should be a requirement that the reasons an individual was not approved as a foster carer are included in the register, to avoid 'blacklisting' individuals who are not necessarily unsuitable to foster but were not approved due to their circumstances at the time of their application. This could mirror the requirement

in subsection 2d to include the reasons a person's approval as a foster carer has been terminated.

Secondly, provisions in new section 30A, subsection 4, requiring information to be provided to the relevant person "by the fostering service which approved, or, as the case may be, did not approve the person to whom the information relates as a foster carer", make it the fostering service's responsibility to provide information to the register. We consider this appropriate for most of the information specified in subsections 2 and 3, but there are some cases where we think it would be useful for an individual foster carer to be able to update their own details, particularly in relation to the examples given in subsection 2f: other information about the person and other members of the person's household. It should be possible for a foster carer to provide optional demographic information about themselves, for example, or to add details of training they have completed, which could be used to provide more tailored matching suggestions for services. As such, we recommend that new section 30B, subsection 2 is amended to enable Ministers to make provision about foster carers' ability to access and edit their own personal data in the register.

Thirdly, provisions in new section 30E to allow the register to be operated on a pilot basis for a period of time are sensible, but we believe there are certain conditions for this to be effective. A pilot that applies only to "respite" (short break) foster carers may not be a good indication of how well a register would work on a national scale, particularly in relation to the matching of children with foster carers, as the administrative burden for short break carers to update the details of the number of children in their home – or for their fostering services to do so, if applicable – will be much higher than for foster carers who look after children for periods of months or years. The transition to fully using the register may take longer for this group of carers, so the matching benefits may be slower to emerge. We therefore recommend removing the example of respite carers in subsection 2(a)(ii). Furthermore, if the pilot is only to apply to specified fostering services, a sufficient number of services should be chosen to allow the register's benefits for matching to be realised. These should be neighbouring or, in the case of independent voluntary providers, broadly coterminous services to allow local cross-service matching to take place.

Part 1 - Chapter 3 of the Bill

What are your views on the proposed changes to the Children's Hearings system?

Many of the proposed changes to the Children's Hearings system in the Bill are welcome.

We are pleased to see provisions to create chairing and specialist members of the panel, and to enable remuneration of panel members, as recommended by the children's hearings redesign report to improve the consistency of panel members and ensure the relevant expertise is involved.[1]

We support the removal of a child's obligation to attend a children's hearing but

believe this should be removed in all cases – children should never be forced to attend their hearing against their will. We are concerned by the removal of the presumption that children will attend, and call for this to remain in place, except for babies and very young children, to ensure children's right to attend is not eroded.

We are also disappointed that the language of "treatment or control" has not been modernised as recommended by the children's hearings redesign report.[1] The addition of "support" does not negate the stigmatising and potentially frightening tone of this language for children and young people, and we believe the words "treatment or control" should be replaced entirely with "support".

Proposals to create powers to exclude persons from a children's hearing, or to remove relevant person status, are welcome to ensure hearings are safe for children and are focused on making decisions which are in their best interests. However, the Bill does not go far enough to centre children's views in decisions about who is involved in their hearing. We often hear from foster carers who tell us that they are not considered relevant persons in hearings for the children they look after, despite the fact that they often spend the most time with these children and can provide a great deal of insight into their needs. Although foster carers can apply to be 'deemed' relevant persons, many do not know how to do so or are not aware that this is an option. This means they are unable to meaningfully contribute to decisions about family time for children, planning for children's futures, arrangements for keeping in touch after children move on, and other important aspects of children's lives. Of course, children may not always want their foster carers to have relevant person status, and this should be respected. However, we believe that in the vast majority of cases, where a foster carer has a significant role in the upbringing of a child, their inclusion as a 'relevant person' in hearings would be appropriate and welcomed by the child.

We have previously advocated for all foster carers to be automatically considered relevant persons in the hearings of children they look after, but now appreciate the practical difficulties with extending eligibility for automatic relevant person status in legislation. Nonetheless, we believe change is required to make it easier for foster carers, and other important people in children's lives, to be deemed as relevant persons, where this is in line with children's wishes and best interests. The easiest way to achieve this would be to require the Principal Reporter to seek children's views on who they wish to be involved in their hearing as part of new section 69A, subsection 3a. We urge the Scottish Government to introduce provisions to this effect. This would increase the likelihood that foster carers have the opportunity to be involved in children's hearings where appropriate, while ensuring that children's views are truly prioritised. Accompanying guidance must also be produced to support all who are involved in the hearings system to understand foster carers' role and to communicate with them about the process of being deemed a relevant person.

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Part 2 of the Bill - Children's planning

What are your views on the proposed changes to Children's Services Planning set out in section 22 of the Bill.

We welcome the proposal to require integration joint boards to carry out functions relating to children's services planning jointly with local authorities and health boards.

Are there any other comments you would like to make in relation to this Bill?

FOSTER CARER FINANCES

In addition to the lack of provision to extend Continuing Care or increase opportunities for foster carers to be involved in the children's hearings system, we are extremely disappointed that the issue of financial support for foster carers is missing from the Bill.

Our research, the findings of the independent review of the Scottish Recommended Allowance (SRA) for foster and kinship carers,[1] and the analysis of the Scottish Government's consultation on the future of foster care[2] all demonstrate the inadequacy of financial support for foster carers. Less than a third (29%) of foster carers in Scotland who completed our 2024 State of the Nations' Foster Care survey said they feel their allowance and any expenses they can claim meet the full costs of looking after the children they foster. Furthermore, only 21% said their fee is sufficient to cover their essential living costs, for example bills, rent or mortgage, and food (not for the children they foster).[3] Data from FOI requests we sent to local authorities show that the average fee paid to local authority foster carers in Scotland in 2023/24 was £261.15 per week – equivalent to £13,579.80 per year, assuming fees are paid for all 52 weeks of the year. However, the level of fees paid in Scotland varied by up to £667.24 per week, or £34,696 per year. Furthermore, only 19% of local authorities in Scotland said they provide fees over the national living wage for a notional 40-hour week.[4]

Inadequate financial support threatens the retention of foster carers, as 28% of those who completed our survey in Scotland who have considered resigning from the role said financial difficulties contributed to this. It also hinders the recruitment of new foster carers, as fostering services in Scotland who completed the survey named finances as the primary reason preventing suitable applicants from enquiring about fostering.[3] Both these issues have a direct impact on children and young people by limiting the pool of foster carers available, meaning children may have to live far from their communities, with carers who cannot meet their needs, or in residential care where this may not be appropriate for them. Therefore, as The Promise (2020) notes, "To provide the care that children require, foster carers must be sufficiently financially maintained."[5]

We have calculated the allowance rates required to cover the full costs of caring for a child in foster care.[6] Supported by Pro Bono Economics, our calculations are based on Loughborough University's Minimum Income Standard for the UK [7] and Nina Oldfield's research on allowances [8] which includes the additional costs of caring for a child in foster care. While we will continue to campaign for the Scottish

Government to increase the SRA to meet our recommended rates, we believe the SRA should be enshrined in legislation with a statutory annual uprating duty to avoid the delays and freezes we have seen since its introduction. We also believe the Bill should introduce a duty on all local authorities and IFAs to pay the SRA, and for local authorities to pass the appropriate funds allocated for this to IFAs, as the recent SRA review found this is not always happening. Additionally, the Bill should create a duty on services to publish information about their allowances and fees online, as the review found that not all local authorities have complied with the voluntary agreement to do so.

As for foster carer fees, these have been widely neglected in government policy, but the Bill is an opportunity to address this and make fostering financially viable. Support for a national approach to fees is widespread among Scotland's fostering community: 73% of foster carers and 72% of fostering services in Scotland who completed our 2024 State of the Nations survey said they think the government should set a national fee framework to apply to all fostering services.[3] An even higher proportion of those who responded to the future of foster care consultation – 82% – agreed that there should be a national approach to foster carer fees and additional payments in Scotland.[2]

We therefore recommend the addition of provisions to the Bill requiring Scottish Ministers to develop a national fee framework for foster carers within a set timeframe. The framework should set out that fees are to be paid 52 weeks a year to ensure foster carers are not left without an income when they do not have a child in their care. This should include periods of time when they are available to foster but do not have a child in their care, as well as during allegation investigations and short breaks from fostering.

GUIDANCE ON ALLEGATIONS

As well as the provisions requiring Scottish Ministers to create guidance on care experience, we believe the Bill should require Ministers to update the national guidance on allegations in fostering families. 91% of respondents to the 'future of foster care' consultation agreed that the Scottish Government should update its guidance on managing allegations against foster carers.[2] While we were involved in the development of the 2013 guidance [9] and we remain supportive of its key principles, new guidance is needed to reflect the latest language, best practice, and research on the impact of allegations on foster families. Additionally, the 2013 guidance has not been fully implemented across Scotland, so we believe new guidance should be on a statutory footing.

Many foster carers will experience an allegation at some point during their fostering journey. In our 2024 State of the Nations' Foster Care survey, 7% of foster carer respondents in Scotland reported experiencing an allegation in the past 24 months. Existing guidance states that independent support should be considered for foster carers subject to an allegation. Our position now is that all foster carers subject to an allegation should receive independent support, as well as the offer of counselling and support for their family, given the significant emotional impact that allegations can have on foster carers and their wider families. However, access to this support is still not widespread: in our 2024 State of the Nations survey, only 61% of foster

carers in Scotland who had experienced an allegation in the previous 24 months said they received independent support, a fifth (21%) received specialist counselling support, and a fifth (21%) were offered support for their wider family.[3]

Financial support is also limited during allegation investigations. In our 2024 State of the Nations survey, we asked fostering services if they continue making fee payments to foster carers if they are unable to foster as a result of an ongoing allegation investigation. Of the 17 fostering services that responded to this question in Scotland, less than a quarter (24%, four services) said they pay foster carers fees for the full duration of the investigation and 29% (five services) said they do so for part of the investigation.[3] This is likely to place additional pressure on foster carers. Therefore, it is crucial that full fees are paid throughout the entirety of investigations to reduce this pressure.
This is important both for foster carers' wellbeing, and to support retention. Of foster carers in Scotland who completed the 2024 State of the Nations survey, those who had experienced an allegation/s in the previous 24 months were twice as likely to say they were considering resigning from fostering (26%) than those who had not (13%). Furthermore, of foster carers in Scotland who had considered resigning from fostering at any point, almost a quarter (23%) said their experience of an allegation/s contributed to this.[3] Allegations will inevitably be difficult for carers and it is essential that they are investigated thoroughly, but we would suggest that a process that is driving carers to consider resigning from the role is not working as it should.

We therefore believe the existing guidance on allegations should be strengthened to improve experiences for foster carers and help them continue fostering where appropriate. The Bill is an opportunity to ensure this issue remains a priority for the next government by creating a requirement on Scottish Ministers to update the guidance within a set timeframe. The new statutory guidance should require fostering services to provide foster carers with independent support, counselling, support for the wider family, full fees, and regular communication on the progress of their allegation investigation.

LEARNING AND DEVELOPMENT FRAMEWORK

The Bill should also introduce a requirement on Scottish Ministers to create a statutory national learning and development framework for foster carers. While the Scottish Social Services Council's Standard for Foster Care [10] includes expectations of foster carers' training, it is not sufficiently clear or user-friendly and does not appear to have been widely embedded across Scotland. Consequently, the quality of foster carers' training in Scotland remains in need of improvement. In responses to our 2024 State of the Nations' Foster Care survey, less than two thirds (64%) of foster carers in Scotland approved within the last five years said they would rate their pre-approval training as excellent or good. Furthermore, less than three in five (59%) of all foster carers surveyed in Scotland said they would rate their post-approval training as excellent or good.[3]

A national learning framework was widely supported by respondents to both our survey and the Scottish Government's 'future of foster care' consultation as a way of improving the quality and consistency of training. 69% of foster carers in Scotland who completed our survey agreed that there should be a standardised accredited

framework for pre- and post-approval training of foster carers, while a further 8% thought this should be the case for pre-approval training only, and 5% for post-approval training only. Additionally, 72% (13 of 18) fostering services in Scotland who completed the survey agreed that there should be a standardised accredited framework for pre- and post-approval training of foster carers, while a further one service said this should be the case for pre-approval training only, and one for post-approval training only.[3] In the 'future of foster care' consultation, 83% of respondents agreed that there should be national learning framework for foster carers which could also be a pathway for continuous development.[2]

Again, introducing a requirement on Ministers to create a national learning and development framework for foster carers would ensure it remains a priority for the next government.

OTHER ISSUES

We are concerned that not all the changes in the Bill will be within the scope of the United Nations Convention on the Rights of the Child (UNCRC) (Incorporation) (Scotland) Act. In line with the Scottish Government's maximalist approach to incorporating the UNCRC, we believe that where provisions in the Bill are currently proposed to amend legislation that is outside the scope of the UNCRC Act, these provisions should instead be created anew to bring them within the scope of the Act.

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Scottish Throughcare and Aftercare Forum (Staf) Response to the Children (Care, Care Experience and Services Planning) Scotland Bill Call for Views

About STAF

STAF is Scotland's membership organisation for those who support young people as they transition from care. We play a pivotal role in shaping policy and practice that directly impacts the lives of care-experienced individuals.[7]

This Bill represents a significant legislative effort aimed at reforming both the care and the justice landscapes for children and young people across Scotland. Its provisions are likely to have profound implications for the wellbeing, fundamental rights, and future life chances of those who have been in care. Our detailed position on this legislation is based on the evidence of our workforce practitioner members and stakeholders, alongside our care experienced young adult experts, committed to improving outcomes for this at-risk cohort.

Our engagement with the Bill is underpinned by a clear and unwavering foundational commitment. Our overarching vision is to grow a Scotland where the wellbeing and success of young people transitioning from care are indistinguishable from those of their peers in the general population.[7] This guiding principle informs all of our influencing work, which consistently strives to promote policies that foster an environment rooted in love, facilitate recovery from trauma, and ensure that a young person's life trajectory is not predetermined by their care experience.[7] This core commitment serves as the bedrock upon which our analysis and recommendations regarding the Bill are constructed.

Part 1

Chapter 1: Care and Support Provisions

What are your views on the aftercare provisions set out in the Bill?

The Bill proposes giving individuals who left the care system before their 16th birthday the right to apply for aftercare services.[1] Our "Youth Justice Voices" project, while not explicitly detailing "aftercare provisions" as a standalone section, heavily implies their critical importance through concerns about the adequacy of "throughcare and aftercare support" within remand settings and Young Offenders Institutions (YOIs).[5] Young people engaged with us directly observed that a lack of consistent and comprehensive throughcare and aftercare support in remand settings contributes significantly to reoffending. As one Youth Justice Voices member powerfully articulated, it leads them "*right back to square one which leads to re-offending… nae money, nothing and then go back to where I used to be*," highlighting the direct link between insufficient support and a return to previous negative circumstances.[5]

As much as we welcome the transparency of the allotted financial resources within the accompanying financial memorandum, we remain concerned that there is an existing scarcity of resources allocated to care leavers (as a discrete group as defined in the sections 29 and 30 of the Children (Scotland) Act 1995, amended by the 2014 Act) and any changes could result in the unintended consequence of a return to a transactional arrangement, relying on eligibility and proof of need to access support. This creates additional barriers to the right to support and risks increasing stigma - something from which we have been markedly moving away. Further, we have concerns about the impending care-leaver payment, particularly where it intersects with other forms of social security support, and the risk of an unintended consequence of pushing care leavers beyond the threshold of need. Should this be the case, it could result in care leavers receiving less aftercare support, creating a perverse disincentive to apply for the payment.

Added to this, increasing the numbers of care experienced people eligible for support without increasing the budget fully and *proportionately* could end up being the worst of both worlds: more people become eligible and apply for support; less money over all is available per capita to provide that support. Everyone is underserved and services over stretched.

To address these critical issues, we urge the Scottish Government to:

- **Prioritise individualised, needs-led planning:** End age-based cliff-edges and mandate person-centred transition planning for all care-experienced young people, through to adulthood.[8]

- **Improve the articulation between adult and children services**: when still in care between the ages of 18 and 21 young people are often still the responsibility of children's services and yet can be aged-out of healthcare support. This transition needs to be seamless and focused on need, not thresholds to accessing support.

- **Guarantee lifelong support:** Enshrine the right to needs-led, lifelong support for care-experienced individuals, ensuring it adapts to their evolving circumstances.[8]

We also seek "clarity in legislation or guidance regarding the upper age limit for the application of UNCRC rights in Scotland" [4], especially since young people can remain in care until 21 and receive aftercare services up to 26(aftercare being considered a "'children's service' for planning purposes."[4)] Section 29 of the 1995 Act requires local authorities to provide aftercare, that is to "advise, guide or assist" young people leaving care who require this support or that have requested it, "unless they are satisfied that his welfare does not require it".[6] Section 30 sets out when a local authority may provide financial support towards education or training expenses of eligible young people.[6] The Regulation of Care (Scotland) Act 2001, Section 73, further amends Section 29 of the 1995 Act, requiring local authorities to assess the aftercare needs of young people who have been looked after.[6] This includes taking into account the young person's views, carrying out Pathways Assessments, preparing and reviewing pathway plans, and providing financial and accommodation

assistance.[6] The risk of creating a system that could ultimately offer the least support for the largest number of young people must be avoided at all costs.

What are your views on the corporate parenting provisions set out in the Bill?

The Bill does not explicitly detail corporate parenting provisions, but it is a central policy area for STAF.[5] Our engagement in corporate parenting discussions is extensive. We have served as the secretariat for the Cross Party Group on Care Leavers, which provided a platform for issues raised by the care-experienced community to be discussed with Members of the Scottish Parliament (MSPs) and other change-makers.[7] Furthermore, we actively participate in the strategic development of a range of Corporate Parents plans and approaches to supporting care-experienced people, demonstrating our direct involvement in shaping and influencing corporate parenting initiatives.[7] Our broader corporate parenting policy is well-established and articulated through foundational reports such as "We Can and Must Do Better" (2007), which emphasised the critical need to enhance learning and development for all individuals working with looked-after children and care leavers.[9] We also actively support and promote the Scottish Care Leavers Covenant, a commitment highlighting the importance of young people with care experience,[9] and continue to led on a partnership with The Promise Scotland to develop and deliver the Moving On Change Programme with and for our members and young adults. Our engagement extends to active participation in policy development through submitting responses to consultations, including the statutory guidance for Part 9 of the Children and Young People (Scotland) Act 2014, which specifically addresses corporate parenting.[9] We also provide educational resources and insights on corporate parenting, including presentations and interviews with experts, to inform practitioners about its implications and requirements.[9]

To strengthen corporate parenting, we ask the Scottish Government to:

- **Mandate universal understanding of care experience:** Require all corporate parents and relevant sectors (health, education, housing) to *fully understand and apply* a flexible, inclusive, and non-stigmatising definition of care experience, co-produced with lived experience.[8] Defining care experience is a welcome step towards this, however defining and understanding are often very different conceptions. Understanding of care experience must be demonstrated through practice, evaluated through inspection, and published prominently to ensure clear accountability. In all cases, it should never dilute the rights to support of care leavers as defined by the 1995, amended by the 2014, Children (Scotland) Act.

- **Prioritise trusted relationships:** Implement policies that ensure every care-experienced young person has a strong, lasting relationship with a trusted key person.[8] Wherever possible, ensure continuity of care through robust commitment to planned handovers, allowing time for relationship-building at the care experienced individual’s own pace.

What are your views on the advocacy proposals set out in the Bill?

The Bill requires Scottish Ministers to ensure that care-experienced people have access to advocacy services.[1] It is not clear within the financial memorandum how

advocacy services should resource any inevitable increase in workload, nor is there a clear demarcation of where advocacy ends and lifelong support begins. Without considerable additional funding, extending advocacy, although vital, risks underserving the care experienced community. Within the context of the justice system, Youth Justice Voices consistently underscored the vital importance of "advocacy" and the provision of "proper legal support and advice for children and young people throughout a trial".[5] This emphasis extends beyond mere legal representation to a profound need for consistent, relational support. There was a strong call from young people for "someone to support you through the process" – a consistent person of contact who could help young people understand complex information, access necessary support, and guide them through the often daunting physical and emotional journey of legal and care processes.[5] This approach should be applied more widely at any point that an individual needs to assert their rights, including, but not limited to, accessing appropriate housing, seeking financial advice and support, or engaging in further or higher education.

The concept of a "single point of contact" for individuals who have been harmed was also strongly supported, with the relationship with this contact person highlighted as important.[5] It was suggested that an organisation could provide various opportunities, information, and support, and significantly, it was noted that this contact person need "not necessarily [be] social work if the relationship was negative".[5] This reveals a nuanced understanding of trust and acknowledges that past negative experiences with statutory services can hinder effective support. The preference is for a model, similar to the Bairns Hoose approach, where a single point of contact helps consolidate information and support, prioritising the quality and nature of the relationship above the formal service provider.[5]

To enhance advocacy and support, we urge the Scottish Government to:

- **Invest in relational practice:** Provide dedicated resources and protected time for professionals to build and maintain authentic, trusting relationships with young people and their families.[8]
- **Ensure clear and enforceable rights:** Legislate for crystal-clear, accessible, and consistently upheld rights for all care-experienced individuals.[8]

What are your views on the proposals for guidance in relation to care experience?

The Bill requires Scottish Ministers to publish guidance that promotes a better understanding of the terms "care" and "care experience".[1] STAF, through our response to the Scottish Government's 'Definition of Care Experience' consultation, generally welcomed the idea of a universal definition of care experience. However, this welcome was accompanied by a degree of scepticism regarding the ultimate *purpose* of such a definition.[3]

The prevailing sentiment was that previous significant work, particularly the Independent Care Review, the Care Leavers' Covenant, and the setting out of The Promise, had already comprehensively covered the conceptual groundwork for a universal definition of care experience.[3] What was perceived as missing, rather, were tangible signs of *implementation* of these existing, well-articulated principles.[3] This

observation points to a potential disconnect between the legislative intent of defining care experience and the practical realities of ensuring its impact on the ground.

Our ongoing work is committed to highlighting and amplifying the voices of both the workforce and the care-experienced community. This is done to provide crucial context and insight into the process of making sound policy and legislation. We aim to ensure that the rights of care-experienced people to throughcare, continuing care and aftercare are consistently upheld and respected.[3] We also lead on co-designed solutions such as a proposed Minimum Income Guarantee pilot for care leavers in Modern Apprenticeships, aiming to tackle financial insecurity and ensure care leavers have the same opportunities as their peers.[10]

To ensure effective guidance and understanding of care experience, we ask the Scottish Government to:

- **Mandate universal understanding of care experience:** Require all corporate parents and relevant sectors (health, education, housing) to fully understand, apply and demonstrate a flexible, inclusive, and non-stigmatising definition of care experience, co-produced with lived experience and still upholding care leavers' full rights to support.[8]

- **Ensure comprehensive communication of definitions:** Require effective communication and widespread understanding of any new, agreed-upon universal definition of care experience across all corporate parent areas and sectors.[8]

- **Develop implementation plans for cross-sectoral understanding:** Demand clear implementation plans detailing how health, education, housing, and other sectors will learn and understand the scope of care experience to ensure the rights of care-experienced individuals are upheld and exercised.[8]

Chapter 2: Service Regulation and Provision

What are your views on proposals designed to limit profits for children's residential care services?

The Bill grants Scottish Ministers powers to limit the profits that can be made from children's residential care services.[1]

Our broader policy and influencing work provides an ethical and philosophical lens through which such proposals are to be viewed. Our overarching mission is to promote policies that ensure "life chances are not determined by care experience" and to foster an environment with "love at its heart".[7] Our efforts are directed towards achieving better outcomes for care leavers across various areas, including poverty, education, employment, housing, justice, and health.[7] While not directly addressing profit, a profit motive in the provision of care could be seen as potentially conflicting with a "love at its heart" approach or with the goal of ensuring equitable life chances, particularly if it leads to compromised care quality, reduced investment in young people's wellbeing, or inflated costs within the care system. Therefore, our foundational principles affirm a strong preference for a care system that unequivocally prioritises the wellbeing of young people over financial gain.

What are your views on proposals to require fostering services to be charities?

We have a longstanding commitment to engage with issues related to foster care and supported living arrangements, as evidenced by our "Supported Lodgings, Supported Carers Focus Group".[7] Our primary concern in the context of fostering services is for them to be focused on the *quality of care provided*, the *support available for carers*, and the *outcomes achieved for young people* within fostering arrangements, rather than the specific legal or financial structure (e.g., charity vs. for-profit) of the service provider. The organisational model may be considered secondary to the practical impact on young people and carers. Therefore, should this proposal proceed, our focus would continue to centre on how such a requirement impacts the recruitment, retention, and support of foster carers, and ultimately, the stability and quality of placements for young people, rather than the charitable status itself.

What are your views on proposals to maintain a register of foster carers?

The Bill gives Scottish Ministers the power to create a register of foster carers.[1] As noted previously, we maintain a "Supported Lodgings, Supported Carers Focus Group" [7], indicating our active interest in issues affecting foster carers and supported lodging providers. A register of foster carers could be viewed as a mechanism for enhancing quality assurance, promoting professionalisation within the fostering sector, or improving oversight. While no direct view from our members has been forthcoming, our general advocacy for a supportive and effective care system suggests that any proposal for a foster carer register would be evaluated based on its potential to genuinely enhance the safety, stability, and quality of foster care, and how it impacts the foster carer workforce, rather than simply adding administrative bureaucracy.

To improve service regulation and provision, we urge the Scottish Government to:

- **Establish seamless adult service pathways:** Create and fund integrated pathways from children's to adult services, guaranteeing continuous support for care-experienced individuals with lifelong needs.[8]

- **Scale up independent living initiatives:** Invest in and replicate successful 'Practice Pad' or similar models nationwide, equipping young people with essential life skills before independent living.[8]

- **Prohibit premature independent tenancies:** Legislate against expecting 16 or 17-year-olds to hold autonomous tenancies.[8] Where such tenancies are deemed appropriate, ensure comprehensive support is provided for as long as the young person requires it.

- **Mandate planned housing transitions:** Ensure all moves into a young person's first home are planned, respectful, and never crisis driven.[8]

- **Extend housing protocols universally:** Legislate to extend and formalise existing housing protocols to explicitly include all children who have grown up in care, regardless of original placement location.[8]

- **Optimise IFA collaboration:** Recognise and strategically employ Independent Fostering Agencies (IFAs) for their capacity and specialist provision within the fostering system.[8]

- **Formally recognise supported carers:** Elevate and value the role of supported carers as a critical component of lifelong care and positive transitions for care-experienced people.[8]

- **Address the foster carer crisis:** Launch an urgent, government-led, and significantly funded national strategy to tackle the foster carer recruitment and retention crisis.[8]

- **Promote shared practice:** Fund initiatives for shared training, cross-local authority protocols, and transparent funding models between local authorities and IFAs to foster better collaboration.[8]

- **Modernise fostering guidance:** Urgently review and update the outdated statutory guidance for fostering in Scotland (2009) to align with current legislation, best practices, and address systemic issues.[8]

- **Streamline carer assessments:** Implement reforms to expedite and streamline foster carer assessment processes, addressing staffing shortfalls and ensuring prompt access to GP medical assessments.[8]

- **Mandate GP responsibility for medicals:** Require GPs, as corporate parents, to take responsibility for and absorb the costs of timely medical assessments for foster carers.[8]

- **Improve allegation investigations:** Implement reforms to significantly speed up and enhance information sharing in investigations into allegations against foster carers.[8]

- **Collect and publish allegation data:** Mandate the routine collection and public reporting of statistical data on the time taken to resolve allegations against foster carers.[8]

Chapter 3: Children's Hearings System

What are your views on the proposed changes to the Children's Hearings system?

The Bill includes provisions for making changes to the existing children's hearings system.[1] Our Youth Justice Voices provided extensive feedback on the proposed changes to the Children's Hearings system, reflecting a deep concern for the experiences of young people within the justice and care frameworks.

Extension of System Beyond 18: Concerns were raised regarding the practical implications of allowing children to remain within the Children's Hearings system after their 18th birthday. Young people questioned whether supervision would continue, the potential for conflicts in how they were treated, and whether this

extension could be optional.[5] A strong desire was expressed for young people to avoid transfer to Young Offenders Institutions (YOIs) from secure care if their liberation was imminent after turning 18, highlighting a preference for continued support within a child-focused environment.[5]

Child-Friendly Justice System: There was a robust call for a justice system that is genuinely child-friendly, where children are treated as children, not adults, both in legal processes and when deprived of their liberty.[5] Young people conveyed a feeling of being judged and stigmatised based on their offence rather than their age, encapsulated by the statement, "they don't look at your age, they look at what you're in for".[5] Recommendations included implementing different transportation methods for children, such as being transported by a known person when safe, to reduce trauma and stigma associated with traditional police transport.[5] The importance of a consistent support person throughout the entire legal process was also emphasised, someone who could help young people understand complex information, access necessary support, and guide them through the often daunting physical and emotional journey of legal and care processes. As one Youth Justice Voices member put it, "There should be someone to support you through the process".[5]

Secure Care vs. YOI for Under 18s: Previously, our Youth Justice Voices firmly asserted that individuals under 18 should be treated as children and receive support more likely found in secure care than in YOIs. The sentiment "You don't get treated as a child in a Y.O.I."[5] powerfully conveys their experience. They argued that all remand and sentences for under 18s should be directed to secure care, deeming YOI placements for this age group inappropriate unless there is a demonstrable safety risk to others at home.[5] YOIs were perceived as ill-equipped to meet the mental health needs of children and were seen as causing trauma due to their appearance, sounds, and the process of getting there.[5] Concerns were also raised about the frequent use of remand, which can lead to a loss of community ties and increased reoffending due to inadequate throughcare and aftercare support. Furthermore, young people reported being exposed to negative influences and behaviours in YOIs, making it more challenging to avoid future trouble.[5]

We are pleased to acknowledge the significant progress made by the Scottish Government in addressing this critical issue. Their commitment to ensuring that no young person under 18 is placed in a Young Offenders Institution (YOI) by the end of 2024, supported by investment in alternatives to custody [13], is a welcome step that directly aligns with our long-standing advocacy for a right not to be imprisoned up to the age of 18.[4] We would like to see a commitment that this is extended to all care experienced people up to the age of 21 in line with continuing care arrangements.

Support in Secure Care: Respondents suggested that support within secure care environments needs to be highly individualised. They also advocated for programmes available in YOIs, such as work experience, to be equally accessible within secure care settings, ensuring that children in secure care have similar opportunities for development and preparation for future life.[5]

Rules on Anonymity: Our Youth Justice Voices proposed that anonymity rules should continue to apply even after a young person turns 18. This recommendation stems from a concern that revealing information can have a devastating impact on

young people and their families, particularly when news outlets disregard context. They suggested that information should only be shared in extreme cases where public safety is demonstrably at risk, and such decisions should be made by a judge.[5]

Double Jeopardy and Cross-Border Placements: The group advocated for a shift in powers, suggesting that authority be taken away from the Police and given to the Children's Hearings panel, and for the elimination of double jeopardy.[5] An example was cited where a child was recommended by the panel not to go to secure care but was subsequently placed there by the courts, leading to a feeling of being "on trial twice".[5] Strong opposition was expressed against cross-border placements, with the belief that Scottish children should not be placed hundreds of miles from their families, communities, and friends, but rather accommodated where they live or in close proximity.[5]

Restraint: A call was made for more robust law and guidance concerning restraint, particularly within YOIs.[5] Young people described traumatic experiences of being restrained, including being "smashing to the ground" [5], which they found unfair and unnecessary. They believed that restraint practices were likely worse in YOIs due to less regulation compared to secure care. It was also noted that past traumatic experiences could cause young people to react negatively to being touched during restraint, leading to frustration and lashing out unintentionally.[5] A Youth Justice Voices member called for "more of a law with stricter consequences for prison as secure aren’t as rough."[5]

To further improve the Children's Hearings system, we ask the Scottish Government to:

- **Foster safe learning environments:** Implement policies that allow young people to learn from mistakes without jeopardising their long-term security, including support for navigating family reconnections.[8]
- **Prioritise family in transition planning:** Mandate the proactive and compassionate consideration of family relationships in all planning for young people in care.[8]
- **Fund tailored family support:** Allocate resources for flexible, bespoke support to families to facilitate safe and beneficial reconnections.[8]
- **Adopt a compassionate approach to birth parents:** Develop and implement policies that ensure a more caring and supportive engagement with birth parents whose children are in care.[8]

Part 2

What are your views on the proposed changes to Children’s Services Planning set out in section 22 of the Bill?

The Bill stipulates that integration joint boards will be responsible for children’s services planning, in collaboration with local authorities and health boards.[1] As evidenced in our Youth Justice Voices' response to the Children (Care and Justice)

(Scotland) Bill [5], the themes discussed in this response, (such as support for harmed individuals, information sharing, the concept of a single point of contact, options for a child's order, the extension of the hearings system beyond 18, changes to the criminal justice system, the comparison between secure care and YOIs, support within secure care, anonymity rules, double jeopardy, cross-border placements, and restraint) primarily relate to the *outcomes* and *experiences* of children within services. As such, these discussions did not fully address the administrative or strategic *planning mechanisms* outlined in Section 22 of the Bill,[5] however, they give a strong indication of the direction and focus of planning for which Children's Services should aim.

It is important to note that STAF has previously engaged with the topic of children's services planning, having responded to a "Consultation on Children's Services Planning: provision of statutory guidance" in 2019.[14] This indicates our general involvement and interest in the overarching subject of how children's services are planned and delivered. Nevertheless, we note that there has been no review of this guidance since this, nor have we seen an evaluation of how well the guidance is working. Before making any changes to Children's Services Planning, we would ask that a full evaluation take place first.

To strengthen Children's Services Planning, we urge the Scottish Government to:

- **Standardise nationwide support:** Establish a unified national framework for resource eligibility and support access for care-experienced individuals across all local authorities.[8]
- **Create regional knowledge hubs:** Invest in regional hubs, modelled on successful initiatives like Housing Options Hubs, to share best practice and enhance flexibility for care leavers across boundaries.[8]

Other

Are there any other comments you would like to make in relation to this Bill?

Our Youth Justice Voices generally conveyed a positive sentiment regarding the overall direction of the Scottish Government's proposed changes in the Bill, stating that they felt the government is "moving in the right direction".[5] This indicates an acknowledgement of the Bill's positive intentions and potential for progress.

Throughout their feedback, the respondents consistently emphasised the "vital importance of relationships, advocacy, a single point of communication, and proper legal support and advice for children and young people…".[5] This repeated emphasis suggests that these elements are considered fundamental to a just and supportive system, regardless of specific legislative provisions. They represent core principles that young people believe should underpin all interactions within both care and justice frameworks.

However, a broader STAF perspective, while not explicitly tied to *this specific Bill*, offers a critical lens on legislative ambition. As an example, a general critique from STAF, in the context of a Bill related to the age of criminal responsibility, suggested that legislation can "lack ambition" and may consequently "lack positive impact

should it pass un-amended".[2] This perspective advocates for a bolder, more child-centred, relationship-based, and trauma-informed approach, actively tackling systemic poverty and adverse childhood experiences.[2]

While the "right direction" of the Bill is acknowledged, the depth, speed and ambition of the proposed changes are questioned. Despite its positive intentions, the Bill may be perceived as cautious or incremental. The time available to fully explore and engage with stakeholders within the parliamentary term seems pinched and risks the process being rushed. For it to truly achieve its stated aims, it may require significant amendments or more robust implementation guidance that forces a radical shift in practice, moving beyond mere acknowledgement of trauma and stigma towards genuinely supportive frameworks.

To foster a more compassionate and professional system, we ask the Scottish Government to:

- **Empower frontline workers:** Support and resource leadership that actively listens to, trusts, and empowers frontline workers to provide the best possible care.[8]

- **Foster cross-team collaboration:** Mandate and resource enhanced collaboration across all caregiving teams (foster, kinship, residential, supported lodgings) to collectively develop young people's life skills.[8]

STAF's long-established aim is to listen to, reflect and act on the voice of young people leaving care alongside those charged with looking after them, whether frontline worker or director of services. Only by doing so, can we create a care system that prioritises what is important to care experienced young people, and what works for care experience professionals. The voice of both the workforce and of care experienced people feeds into all our events, learning and development opportunities, and policy work, guiding us as we focus on the issues that matter to *them*, collaborating with our members to overcome the barriers that they and our young people face. From our inception, we have held space for the voice of young people to be at the heart of everything we do. We will continue to do this in partnership with the Scottish Government and others for as long as it takes. Only by learning from people delivering and leaving care, constantly being responsive to their evolving needs, can we truly Keep the Promise. Staf is aware that more needs to be done to reach out, listen to and amplify these voices, to understand the experience of care, to raise awareness of their rights to continuing care and aftercare, and to reshape the support required for them to succeed and we stand ready to play our part.

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