

# Journeys to identity: Why care records matter

**Laura Brown, David Grimm, Dr Gregor Clunie**

## **Abstract**

Care experienced people often find themselves applying for their care records in search of answers — to address gaps and inconsistencies in the knowledge they hold about their childhoods and personal development, which may in turn affect their broader senses of self. This article, written from our own lived experiences, provides a commentary on a system of writing, accessing and reading records which is not aligned to the circumstances and purposes of care experienced people and which indeed frequently disempowers and (re-)traumatises. We share our experiences of applying for and reading our records, as an adoptee and as a care experienced person. We also draw on the discussions and experiences of a Who Cares? Scotland care records campaign group. This commentary reveals the power imbalance at the heart of record keeping where the rights to memory, identity, and childhood are effectively questioned. It also makes suggestions for future practice. It asks for a complete rethinking of how care records are regarded by professionals and the sector, advocating for a shift in power as regards the production and control of information and a significant improvement in the care offered to those of us who choose to access it.

## **Keywords**

Care experienced people, care records, Who Cares? Scotland, subject access requests, identity

## **Corresponding author:**

Gregor Clunie, [gclunie@whocarescotland.org](mailto:gclunie@whocarescotland.org)

## Introduction

Since late 2018, care experienced members of Who Cares? Scotland have been meeting regularly to discuss the meaning and significance of care records in our lives. This has entailed exploration of our experiences of accessing records, work alongside corporate parents to improve processes surrounding records access and visioning work to imagine radically different ways of supporting care experienced people to build — and where necessary to reconstruct — coherent narratives of childhood and personal development.

Individually and collectively, our group has identified our goals in accessing our records as being most broadly to find answers to profound existential questions, relating variously to our lives before care, our relationships with our birth families and the reasoning behind state intervention and decision making.

Many of us have identified the difficulty of recovering coherent narratives of childhood and early development amidst the 'fog of war' that can characterise care experience, the complexity of professional processes and the absence of appropriate support for personal meaning-making. This type of knowledge is the scaffolding for our sense of self, such that its absence can be confusing, disorientating and distressing.

Unfortunately, our group's experiences of accessing records has often been frustrating, alienating and re-traumatising, with record holders often being ill-prepared to respond to our specific purposes and circumstances. Members have discussed their subject access requests being met with suspicion or even hostility, cold bureaucratic responses and a lack of emotional support. It is common to receive papers describing the most traumatic moments in our lives through the post, without warning or signposting to relevant support services.

With regard to the substance and presentation of records themselves, members of our group have received files which are disordered, incomplete and fragmentary, which contain very significant, unexplained and often inconsistent redactions, which use unprofessional and stigmatising language, or which are

illegible. Our experiences have led us to broader reflection on underlying dynamics of identity, memory, power, loss and shame.

In this article, we compare and contrast our experiences of accessing social work (David) and adoption (Laura) records and explore the meaning and significance of this process in our broader lives. Further, we examine the existing legislative framework around the right to access, before briefly considering potential improvements in view of the recent recommendations of the [Independent Care Review](#) in Scotland. In this connection, we want this article not merely to be an exploration of our own experiences, but rather also to function as an earnest call to action to all corporate parents in Scotland.

A corporate parent is a Scottish public body that has, by virtue of being named in the Children and Young People (Scotland) Act 2014, a set of legal duties which require them to uphold the rights and promote the wellbeing of care experienced people (see part 9 of the act). Wellbeing is defined in this context by reference to eight indicators, with the 'achieving' indicator relating specifically to children and young people 'being supported and guided in their learning and in the development of their skills, confidence and self-esteem at home, at school and in the community' ([Statutory Guidance](#)). We know that a secure sense of self and the capacity for self-love and self-understanding, structured around coherent autobiographical memory, are crucial foundations for us all to thrive. Bearing in mind that many corporate parents are 'data controllers', we believe that these latter functions should, in respect of information relating to care experienced people, be understood in the broader context of their corporate parenting duties. Any good parent should support their children to understand who they are, where they've been and to have the pride and confidence needed to stand tall in a challenging social world.

A secure sense of self can be the difference between experiencing life as a painful series of threatening encounters or instead as an enriching adventure alive with opportunity and connection. We hope that for all those children and young people yet to enter care, self-knowledge and self-esteem can be developed in meaningful relationships with people who love them, with the therapeutic support of caring professionals as needed. However, for those of us

who left care with heads full of fractured recollections and many more questions, we need honest, patient, caring support to help us understand.

## **The law in Scotland**

Individuals can access their social work records by making a 'subject access request' under the Data Protection Act 2018, s.45 of which affords 'data subjects' the right to access their 'personal data', which public authorities must provide in writing 'without undue delay' and in any case within one month (s.54). In such cases as the local authority fails to produce the information within the timeframe, or at all, then there is a legal route to challenge and hold the agency to account in court or via the Information Commissioner's Office (ICO). Schedule 3 of the Act creates an exemption in the case of social work data whereby a local authority would not need to provide the information where doing so would be likely to cause 'serious harm' to the physical or mental health of the data subject or anyone else.

Significantly, 'personal data' is defined for the purposes of the Act as 'any information relating to an identified or identifiable living individual', with the meaning of the term 'relating to' crucially determining the scope of the accessible information. The ICO's guidance anticipates that this may include information which is 'biographically significant' or information used to 'make a decision about' that individual. However, it remains to be seen whether interpretation will be broad enough to effectively protect care experienced people's interests under Art. 8 of the European Convention on Human Rights in 'receiving the information necessary to know and to understand their childhood and early development' (*Gaskin vs The United Kingdom*, no 10454/83, ECHR 1989). Indeed, while much of the relevant information speaking to our childhoods is inextricably relational, it appears from the experiences of members of the campaign group that some local authorities are taking a very cautious approach to the provision of third-party information.

With regard specifically to information on adoption, adopted people aged 16 or over can access adoption court records from the Sheriff Court, Court of Session or from National Records Scotland. Additionally, information held by voluntary

adoption agencies must be disclosed to an adopted person who has made a request to a local authority for adoption support services under s.9 of the Adoption and Children (Scotland) Act 2007 (relevant draft Statutory Instrument available [here](#)). In relation to adoptees under 16, an adoption agency has discretion to provide the information where it thinks 'it appropriate to do so'(Part 2 S.3(2) of the instrument). Although no doubt well intentioned, it is unclear why access to agency records should be dependent upon requesting local authority support services. Further, given that there is no express time limit on agency responses nor seemingly any formal ICO oversight, this right of access appears weaker than that obtaining under the Data Protection Act 2018, from which adoption agency records are excluded.

## **Power**

David and Laura consider that their experiences reveal crucial dynamics of power and control which underpin the creation, management and provision of access to records. With regard to access, Laura and David experienced polarising differences in treatment, which is considered to reveal how reliant applicants are on the goodwill of record holders. In David's case, he found that the people dealing with his subject access request went above and beyond to ensure the process was as welcoming and inclusive as possible. The parties involved in processing the records were clear and concise in their explanations and they made sure that David knew when, where and how he would receive his files. They offered support and multiple ways of receiving the files — within weeks he was in possession of his life records, which arrived in a single envelope, that had to be signed for.

In contrast to David's inclusive experience, Laura's experience has leaned towards controversy. In attempting to access information from a voluntary adoption agency, Laura was initially encouraged by telephone communication to arrange to meet a representative in person, who would 'have the records with her'. At this stage, Laura had been made to feel empowered — she had a sense of excitement and anticipation to read her history and find out more about where she came from.

However, on the day of the meeting and having travelled many miles from home, Laura met with intransigence, being told that she wouldn't be able to see the records until she discussed with the agency the past and present state of her search and reunion and her life more generally. Whilst Laura was keen to access and view the records, she was also keen to have her own copy to read at her own pace, in private, at home. However, she was told that she had no legal right to obtain a copy of them and could only view them by appointment at the agency offices.

This felt to Laura like an individual, discretionary decision and she was astonished that on the whim of a stranger, she could be denied a copy of crucial information about her life. Laura felt betrayed, let down and unspeakably disappointed.

Fortunately, Laura has professional legal experience and was able to bring an action to the Sheriff Court. The agency began offering Laura copies of bits and pieces of the records, before eventually relenting and providing a copy of the whole file. The Sheriff (this is the judge presiding in the Sheriff Court in Scotland) helpfully recognised in his judgment 'the claimant would have been correct to recognise a reluctance, indeed resistance in the respondents providing a full copy of her file to her'. This is however not likely to be a practical course of action for many.

While David had a good experience of accessing his records, his experience of reading them has led him to reflect on the power of meaning-making deployed in their creation and processing. During his school years, David had taken to telling different people different things about his life — half-truths, curated stories with invented aspects — in order to protect himself from stigma and discrimination. When these unstable stories met with the cold, clinical written word of his records, written persuasively and possessing all the traits of truthfulness, everything began to unravel — he began to doubt himself and his own memories. David and Laura reflect that the position of the adult, the professional, who writes about the life of a child who, aside from the ordinary asymmetry of explanatory and descriptive power, may be living in a fog of war, is one of great power and responsibility.

## Shame

While David had at different times felt shame on account of being care experienced, Laura had grown up feeling proud of being an adoptee, holding a pride of being picked for adoption. She had grown up hearing stories of how she had been chosen out of so many others and how she had lived with a foster family while waiting to live in her forever home. While Laura's experience of adoption and later life experience have led her to re-evaluate her memories of her upbringing and have raised pressing questions, she's adamant that she has never felt shame for her past, her adoption or how her life has been lived.

Laura did however feel shame on account of how she was treated in requesting her records, the response of the adoption agency implying that what she was doing was somehow wrong, improper or unwise. For her, this is one expression of an adoption model which is flawed insofar as it severs relationships with birth families and in many cases hands control over information surrounding adoptions and the adopted person's early life to adoptive parents. Laura believes that this implicitly prioritises the interests of parents and the state in establishing clean and clear legal rights and responsibilities over the interests of the adopted person in having access to and control over a complete and congruent life history.

David similarly reflects that his experience of engaging with record holders, while well supported, also generated a feeling of shame inasmuch as being asked pointedly what his purposes were in accessing the records communicated suspicion and a lack of trust. Similar experiences were had by several other campaign group members, who felt that record holders wrongly assumed or entirely misread their purposes. For David, this experience compounded an internalised sense of shame or guilt which made the decision to access his records difficult and one which took weeks — he questioned why he was requesting this information and why he should have a right to burden the local authority to satisfy his own curiosity. Further, David identifies a profound sense of shame as inhering in the very fact of not knowing who you are and having to apply to people you don't know, working in an office you've never seen, to understand your life story. David felt ashamed that strangers knew things about

his life which he did not, were empowered to take decisions about that information and were able to question his reasons for seeking to access it.

## **Identity and memory**

While many of our campaign group sought to access their records in order to address existential deficits — pressing questions around their childhood, relationships with family and early development — often the content of the received records presented barriers to understanding and integration. A key recurring matter was that of redaction, which was applied very inconsistently and almost never explained or justified. In David's case, he received records without any redaction whatever, yet for others the paperwork had essentially been coloured in with permanent ink. This latter experience, of being 'handed files rendered virtually meaningless by the thick black lines of redaction, with no explanation of the deletions' has also been recorded in England (Williams, 2014). In group discussions, it emerged that three members had all submitted subject access requests to the same local authority yet had had markedly different experiences both in terms of interactions with employees and the approach to redaction which seemed to have been applied. This creates the impression that requests are being processed on an individual basis and without a uniform process grounded in relevant legislation and policy.

In Laura's case, the receipt of information from the adoption agency revealed a specific way in which information about her life had been curated — romanticised — which she believes speaks to the prioritisation of avoiding disappointment or distress, at the cost of authenticity and transparency, the latter having potentially longer-term impacts. Laura grew up with a handwritten letter from her mother, which contains several sombre soliloquies about why she could not keep Laura and had to give her away. This letter was extremely significant for Laura, both on account of its content and in view of the paucity of information she had about her life before care and adoption. However, when Laura received her agency information, she realised that there was a section at the head of the letter which had been removed in her copy. The section contained a prompt written by someone else — presumably a social worker — which read, 'Why I am giving my child up for adoption'.



Laura does not mind that her mother was encouraged to write the letter and was provided with a prompt to support the process — she is thankful to the kindly professional who recognised her mother may not have been able to write without help. Laura was however disappointed to learn that the unvarnished truth was kept from her — this had given the false impression that her mother had sat down to write a heartfelt letter to her daughter of her own volition. For Laura, this was inappropriate and did not accord her the respect she deserved. Laura and David both agree that adoptees and indeed all care experienced people should be provided with an honest and unedited account of their childhoods.

A further difficulty which members of the group, including Laura and David themselves, encountered relates to the language, tone and general accuracy of the presented information. Laura and David both encountered judgemental or pejorative remarks which seemed at best irrelevant and at worst unprofessional; David's records containing discussion of his being 'a goth' and Laura's files referring to her mother as 'plain' and 'unmarried' and to her as 'illegitimate'. Other members of the group have spoken to their parents and relatives being unhelpfully depicted as two-dimensional 'villains'. While it is understood that social work records are functional documents, with professionals often effectively writing to recommend or justify specific decisions, such material is not always conducive to reconstructing coherent narrative. Unfortunately, for those care experienced people who do not have strong relationships with family and who were not supported to reflect on and truly understand the course of their lives, this may be the only material with which to work.

## **Loss**

Loss is a generational issue for care experienced people and many care experienced people dwell on losses in their life. Some of these are unavoidable and indeed are the result of vital state interventions, yet others are the result of failings in the care and protection system itself. Who Cares? Scotland members have complained of the infrequency and poor quality of contact with family, while there are examples of contact being suspended as punishment. Further, successful campaigning around the separation of brothers and sisters has led to

promised introduction of a legal duty for local authorities to place siblings together when looked after away from home, when it is in their best interests (Scottish Government, 2019).

For Laura, the adoption system compounds loss insofar as it gives discretion to adoptive parents about when and how much to tell children, while many continue to be alienated from their family heritage due to their names being changed. When a child is adopted, they cannot obtain a copy of their own birth certificate until they are 16 years old. Until then, they live effectively in a witness protection programme, hidden from their own family.

The loss of connection, knowledge and understanding ensuing from unnecessary decisions to separate (and limit or prevent meaningful relationships between) family members is redoubled when records are redacted in accordance with a narrow conception of 'personal data' which effectively atomises individuals and removes them from their family and social context. Further, for both David and Laura, the terms 'birth parents' and 'natural family' feel jarring and have caused significant embarrassment when used in discussion about their childhoods.

David and Laura are both keen to emphasise that loss is not confined to a specific moment in time, but continues to have a powerful impact in adult life. David often feels awkward and ashamed when building new relationships due to the fact that he struggles to define who he is and cannot recall key moments from his childhood — he experiences as loss his inability to pass along family stories or generational anecdotes. Laura similarly feels at a 'disadvantage' in being disconnected from her family history and heritage.

## **Vision of the future**

Laura and David welcome the reports of the Independent Care Review in Scotland (2020, Chapter 2) inasmuch as they are ambitious and forward looking, speaking to fundamental questions of meaning-making power and information ownership and envisaging creative use of digital tools to enhance care experienced people's control over their own stories. Care records should be as far as possible co-produced, while the resulting information should be readily available throughout an individual's care journey, such that there is removed the

need to request access to information of which you have limited or no prior knowledge. This should be part of a broader process within which children and young people are supported to shape, reflect upon and understand their lives, alongside loving carers and supportive professionals.

The Independent Care Review reports are however disappointing on account of the relative lack of discussion or concrete proposals on how to improve experiences for very many people who have left care and whose records have already been written. There is a great deal to be done to ensure that care experienced people have an effective right to access the information necessary to understand their childhood and early personal development and that requests to do so are met with genuine care and understanding by a trauma-informed workforce equipped to provide (or to signpost to) a meaningful support offer. David and Laura, together with the other members of the Who Cares? Scotland care records group, are keen to work with any and all interested persons to achieve this.

Laura is further keen to emphasise that in her view, many of the deficits experienced by adoptees in relation to information, memory and identity are structured fundamentally by an adoption system which is not fit for purpose. Insofar as adoption severs legal ties with family members and hands significant control over narrative and life story to adoptive parents, adopted people are frequently alienated from elements of their childhood, disconnected from their family history and unable to challenge decisions preventing contact with relatives. For Laura, the framing of the Independent Care Review (2020) reports (see especially *The Promise*, p. 75) reinforce this dysfunction inasmuch as they explain that 'adoption *provides* children with a family'. Laura believes that permanence should be sought where possible without adoption, while even in the latter case adults should not be able to make for a child a decision with permanent and *irreversible* legal effects. Adoptees should be able to apply to discharge an adoption order where it is in their best interests, as is the case in other jurisdictions.

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## About the authors

Laura is an adopted person and works as a paralegal for a Glasgow law firm. She is a keen runner and hopes to maintain a sub-30 minute 5km time whilst in lockdown. She has been through cycles of reunion with both sides of her family, and finds most peace and happiness at home with her husband and their two cats.

David is a care experienced member and a social work student. His background has been steeped in the world of care, being raised between foster, residential and kinship care. He has worked and volunteered with varying organisations across the sector to work for positive outcomes for his peers in care experiencing a similar upbringing to his own. As well as a student, David is also a poet, artist and occasional blogger.

Gregor is a National Development Coordinator at Who Cares? Scotland, where he facilitates participation and influencing work alongside care experienced members. Gregor holds a PhD in law and has interests in the fields of state theory, political economy and social reproduction theory.