



## **RESPONSE TO THE SCOTTISH GOVERNMENT'S CONSULTATION ON PROTECTION OF VULNERABLE GROUPS AND THE DISCLOSURE OF CRIMINAL INFORMATION**

**July 2018**

CELGIS is committed to building brighter futures for children in need of care and protection. As an intermediary organisation between research, policy and practice, we strengthen the skills and capacities of people who care for children and young people. We take an evidence-informed approach to implement lasting and positive change, across the services and systems that affect the lives of children and families. CELGIS is part of the Institute for Inspiring Children's Futures, based at the University of Strathclyde.

We welcome the opportunity to respond to the Scottish Government's consultation on proposals for change: 'Protection of Vulnerable Groups and the Disclosure of Criminal Information'. Taken together with other proposals, such as raising the age of criminal responsibility and reforming the rehabilitation of offenders legislation, the Scottish Government is demonstrating its commitment to avoid the criminalisation of children, and to realign the balance between disproportionately punitive responses and supportive rights-based responses to past and childhood offending behaviour, whilst continuing to protect vulnerable groups. The PVG scheme and disclosure system play an important role in the protection of children and young people, which is absolutely welcome and fully supported. Our response concentrates on a consideration of how the disclosure system could be improved to uphold the rights of children and young people with care experience, and remove barriers it can contribute to throughout their lives, whilst meanwhile upholding its primary purpose of protection.

This response is informed by engagement with representatives from the care experience and youth and criminal justice workforce, including representatives from local authorities, the Scottish Government, third sector organisations, SCRA, Police Scotland, the Scottish Prison Service, secure care centres, and academics, the office of the Children and Young People's Commissioner Scotland (CYPCS), and Disclosure Scotland. This engagement was facilitated by the conference 'Debating Disclosure: Improving life chances through awareness and understanding', co-hosted by the Centre for Youth and Criminal Justice (CYCJ) and the Scottish Care Leavers Covenant in April 2018.

## Key messages

- The disclosure of criminal information disproportionately affects young people and adults with care experience. Care experienced children and young people are more likely than to have contact with the police, and be involved in formal processes which lead to recording of behaviour. They are more likely to be criminalised, and accrue convictions for minor matters which, in other circumstances, would likely be dealt with by parental sanctions. <sup>1,2,3</sup>
- The complexity of the current disclosure system can exacerbate existing barriers faced by young people with care experience when seeking to access opportunities such as volunteering, education and employment.
- Fundamental reform and simplification of the system for children and young people is required; the system must reflect an understanding of the developmental needs of children and young people (particularly those who have experienced trauma and other adverse childhood experiences); understanding of the distinction between offences committed by children and adults; and the need for individualised responses and consideration of contextual information.
- For Scotland to be truly the best place in the world to grow up, a specific system for children's and adolescents' criminal records must be established, which recognises the distinctions between childhood and adult offending behaviour, and enables children and young people to move on from past mistakes and experiences.

## Background

As of July 2017, there were 14,897 looked after children, and 5,653 young people eligible for aftercare in Scotland.<sup>4</sup> These are children and young people living (or previously living) with foster carers (35%), with friends or family in formal kinship care arrangements (28%), in residential accommodation (10%), in secure care (<0.5%), or at home with their birth parent(s), with compulsory social work supervision (25%). These individuals all have care experience, as do many more thousands who have care experience in their past, and are now adults. Children and young people with care experience are not a homogenous group. Their own individual and familial experiences, and associated reasons for state intervention and support, can be diverse, as are their needs, views and individual experiences within the care system. While the circumstances of these children and young people are rich and varied, all have experienced major difficulties in their lives. Many have experienced trauma, abuse, neglect, and other adverse childhood experiences, the impact of which can be felt across an individual's life course.

The reasons for the overwhelming majority of children and young people becoming looked after are related to their welfare and protection, not due to offending behaviour. Of the 15,118 children and young people referred to the Scottish Children's Reporters Administration (SCRA) in 2016/17, 87.7% were care and protection (non-offence) referrals.<sup>5</sup> Of the children and young people

who were referred to SCRA as a result of offending behaviour, more than a third were also referred on care and protection grounds. Whilst low level offending is a common feature of ordinary childhood, a small number of children become involved in a pattern of offending, or more serious offending. These are not exclusively care experienced children, but it is well established that these children are amongst the most vulnerable, victimised and traumatised children in society, and their offending behaviour is indicative of an unmet wellbeing need.<sup>6</sup>

There is a recognition that the disclosure of information from incidents of harmful behaviour can limit the future opportunities of children and young people, such as access to college/university and employment options.<sup>7</sup> Looked after children and care leavers already face multiple, complex barriers to their access to such opportunities.<sup>8</sup> Indeed, looked after children are structurally disadvantaged in comparison, as due to their involvement in the care system they are much **more likely than other children to have contact with the police, and be involved in formal processes which lead to recording of behaviour.**<sup>9</sup> Young people in care are **more likely to be criminalised** than their non-looked after peers,<sup>10</sup> and research identifies that young people living in residential care are **more likely to accrue criminal convictions for minor matters** which, in other circumstances, would likely be dealt with by parental sanctions.<sup>11</sup>

Not only are care experienced children and young people disproportionately likely to be affected by disclosure processes, they are also more vulnerable to stigma. Individuals are often stigmatised purely as a result of their care experience. In addition, the process of disclosure is also experienced as stigmatising and embarrassing; and can result in the avoidance of accessing opportunities.<sup>12</sup> This leads to a situation where care experienced individuals are doubly stigmatised and disadvantaged, as articulated by the national advocacy organisation, Who Cares? Scotland.<sup>13</sup>

Due to the multiple levels of disadvantage those with care experience are faced with, and the state's responsibilities to safeguard their rights and promote their wellbeing, [Part 9: Corporate Parenting of the Children and Young People \(Scotland\) Act 2014](#) requires Scottish Ministers and a range of other public sector bodies (including Disclosure Scotland, Police Scotland, SCRA and Children's Hearings Scotland) to uphold particular duties across all areas of their work. All corporate parents must be alert to matters which adversely impact on these individuals, promote their interests, and enable them to make use of supports and services they provide. Given the relevance of this subject, and these explicit legal duties, it is imperative that particular attention must be paid to these individual's needs and views when considering changes to the disclosure system in Scotland.

**Q1. Do you agree that reducing the disclosure products would simplify the system? (Yes/No)**

Yes

**Q1a: If you have answered no, what do you think will simplify the system?**

**The complexity of the current disclosure system can exacerbate existing barriers faced by young people with care experience when seeking to access opportunities such as volunteering, education and employment.**

Reducing the number of disclosure options would certainly contribute to developing a more simplified system, however considerably more is needed to produce a system which is rights based, simple and accessible. Far greater clarity is required for individuals to be able to understand, from the outset: what information must be disclosed; how long it must be disclosed for; what 'other relevant information' may be disclosed in addition; how to appeal such decisions; and what the implications of disclosure are.

At the 'Debating Disclosure' conference in April 2018, there was vocal acknowledgment of the complexity of the current system of disclosure, recognition that few professionals appear to understand the system, and a backdrop of a lack of consistent, accessible information and individualised, case-specific support. In this context it is difficult to imagine how young, often vulnerable, people are able to understand and navigate the system easily. This raises issues for children and young people's rights, particularly whether the system holds the best interests of children as a primary consideration (Article 3, United Nations Convention on the Rights of the Child, 1989 (UNCRC)), and whether children's rights to privacy (Article 16, UNCRC) and a fair trial (Article 6, European Convention of Human Rights, 1998 (ECHR)) are respected.

A number of suggestions which could simplify the system and make it easier for care experienced young people to navigate include:

- Building on the current provision of information, such as the guidance pack developed by [Scotland Works for You](#), to develop explanatory resources for children and young people, in understandable language and user-friendly formats. Information should include what an individual needs to disclose, for how long, and their rights regarding appeals and the removal of information;
- Providing information, guidance and support to employers and other providers of opportunities;
- Building the knowledge of understanding of the paid and unpaid workforce (including foster carers, kinship carers, residential care workers, social workers, advocacy workers, panel members, Reporters, police, and employers) through training and ongoing coaching, to ensure they can practice in an informed way, advising and supporting children and young people to the highest possible standards; and
- Establishing recourse to individualised, in-person information and support from a suitably qualified legal representative or advocate. This support should be accessible from the beginning of the young person's journey, from being charged or accepting grounds of referral at a Children's Hearing.

However, we are concerned that whilst these options may support individuals in navigating the complexity of the system, **what is actually required is a more fundamental reform and simplification of the current system for children and young people.** Such reform requires an understanding of the developmental needs of children and young people (particularly those who have experienced trauma and other adverse childhood experiences); understanding of the distinction between offences committed by children and adults; and the need for individualised responses and consideration of contextual information, rather than applying one-size-fits-all rules.

**Question 10: Do you agree with the proposal to remove certain kinship carers and all foster carers from a membership scheme? (Yes/No)**

Information from Disclosure Scotland is only one source of information gathered as part of a substantial process in the comprehensive assessment and review of kinship carers and foster carers, as set out in the [Looked After Children \(Scotland\) Regulations 2009](#). Social workers demonstrate considerable skill and professional judgement in ensuring that foster carers and kinship carers are able to provide children and young people with the quality care they need to grow and flourish. The histories of carers can be varied and careful consideration should be given to past convictions and/or concerns with contextual information. Misdemeanours in the past should not preclude individuals from a caring role for a child or young person, and experiencing adversities that have been overcome can show resilience and strength of character. As part of the assessment, an ability to reflect on past experiences is essential. However, it should also be recognised that in a minority of cases, these checks may reveal concerning behaviours that would place a child or young person at risk of harm. Therefore, there is a role for appropriate criminal record checks to ensure the suitability of foster carers and kinship carers under the level two check. We would welcome a greater understanding of the experiences of kinship carers and foster carers on current procedures, and whether they have had any impact on recruitment and retention to the detriment of the provision of care for children and young people.

**Question 11: Do you think that the two types of kinship arrangements should continue to be treated differently under the future arrangements? (Yes/No)**

No. We believe that the distinction between the two types of kinship arrangements is unhelpful, due to the complexity of kinship care arrangements in Scotland and the different practices across local authorities. As stated in Question 10, there is a robust assessment process in place for children who are looked after in kinship care placements as set out in the [Looked After Children \(Scotland\) Regulations 2009](#). It should always be recognised that disclosure checks are one part of a much more comprehensive process.

The national practice guidance for private fostering in Scotland [Be Safe, Be Sure](#) (2013) states that disclosure checks will be carried out on all adult members of

the carer's household, and that carers can be disqualified from privately fostering a child if they have been, for example, convicted of any offence involving a child.<sup>14</sup> Private fostering is where a parent is making an arrangement to have their child cared for by someone who is not an approved foster or kinship carer or guardian of the child and who is not a close relative of the child (i.e. not a grandparent, brother, sister, uncle or aunt whether by blood or by affinity (i.e. by marriage), for more than 28 days. There is a legal obligation of the parent to notify the local authority about a private fostering arrangement. However, as highlighted by the Care Inspectorate, there is generally a lack of awareness about private fostering in local authorities and some concerns that children may be at risk.<sup>15</sup> Hence knowledge of the arrangement by a local authority includes meeting the child, the carers and completion of criminal record checks to provide important safeguards for children.

**It is proposed that any member of the fostering/kinship household aged 16 or over will be required to have a Level 2 check. This also includes any members of the fostering/kinship family, friends or relatives who regularly stay overnight in the foster home.**

**Question 12: Do you agree with this proposal? (Yes/No)**

No (on balance). There are challenges in seeking a proportionate and balanced response in ensuring children and young people are safe, whilst also recognising that criminal records checks can impact on feeling stigmatised and treated differently than what would be considered a reasonable response in family decision making. This is an important area to recognise the professional judgement and skills of a social worker, alongside other professionals, in understanding fostering and kinship care households. As stated, the comprehensive assessment and review of kinship carers and foster carers will consider all those involved in the family as set out in the [Looked After Children \(Scotland\) Regulations 2009](#). In using this judgement, criminal record checks could be requested if any concerns of other family members are raised in the assessment process.

Requiring those aged over 16 to have a Level 2 check before or instead of engagement with a social worker and/or wider protection processes, such as, holistic foster and kinship care assessments, MAPPA and looked after children reviews, may lead the young person to feel stigmatised. However, this means that the assessment and review processes themselves have to be of high quality in order to establish, as far as possible, any issues with the proposed care arrangements.

Friendships are important to all children as they grow and develop and can continue into adulthood. There is national guidance regarding overnight stays, [Getting it right for every child: guidance on overnight stays for looked after and accommodated children](#) (2008) which recognises relationships with friends as an essential part of a child's development.<sup>16</sup> This guidance does not mention criminal record checks, but recognises the collective decision making role of children, young people, foster carers, residential workers and social workers and

sets out that risk assessments (if required) should be conducted within a context which “recognises the importance and benefits to the child promoting friendships and social contact”.<sup>17</sup> We do not agree with the premise of the Level 2 check being conducted on children and young people’s friends. Our concern is that this could be highly stigmatising for children and young people and could prevent the development of friendships.

**It is also proposed that a Level 2 check can be undertaken on anyone in the foster/kinship carer’s network who supervises or care for the children.**

**Question 13: Do you agree with this proposal? (Yes/No)**

No.

As stated, a robust assessment and review processes for kinship and foster carers should be undertaken that will consider the support available around a family. There are many strengths within extended families and communities that should be part of a child’s life as growing up. The use of criminal record checks on such a wide network is undesirable, as well as unachievable. There is a risk that a reliance on a bureaucratic procedure may limit who a child may spend time with, and contribute to children feeling stigmatised and ‘different’ from peers. Again there is a critical role for the judgement of the primary carers and the oversight of social workers via review processes and being able to offer practical advice and support.

As mentioned, an enhanced PVG may evidence information that may not be wholly relevant to care yet still exclude a potential foster/kinship carer or person in their network from having a valued role in a child or young person’s life.

**Question 13a: Do you think that anyone else in the foster/kinship carer’s network needs to be checked? If so, who and why?**

No, for the reasons set out above.

**Question 57: Do you agree the age threshold for the shorter prescribed period for a removal application to be made should be raised? (Yes/No)**

Yes

Where Disclosure Scotland have information about an individual’s past convictions or cautions, or other information provided by the police, they may decide it is appropriate to bar the individual from regulated work with children and/or protected adults. This is called ‘listing’. If an individual is listed under the age of 18, they can apply for removal from the list after 5 years. Those listed at age 18 or over can apply after ten years.

We fully support proposals to raise the age threshold to 25 for the shorter (5 year) period to apply for removal from the list. This change would reflect what we now know about neurological development of children and adolescents. The brain continues to develop until individuals are in their mid-twenties, and

significant changes take place in early adolescence, often leading to individuals engaging in impulsive and risk taking behaviours.<sup>18</sup> Such behaviours should be met with a response which understands and supports young people's positive development rather than a punitive response which could impact on the life chances of the individual.

For some young people with care experience, issues such as disrupted care placements, disrupted education, loss, mental health difficulties and other adverse childhood experiences can compound to leave individuals struggling to cope on a daily basis. Experience of neglect, abuse and exposure to domestic violence (for example) all impact on how a child develops emotionally and psychologically, and how they learn to adapt and survive. Care experienced children and young people may communicate their needs through disruptive or offending behaviour. These individuals require a supportive response which helps build on protective factors and increases resilience, rather than one which inappropriately criminalises them or threatens their access to opportunities later in life.<sup>19</sup> Resilience is more likely to develop when young people are supported to do well in ways which are meaningful to them, including participating in volunteering, education or employment. Any structural barriers to building such resilience should be removed at the earliest possible stage.

**Question 58: Which option do you prefer? (Option a, b, or c)**

- a) no change to the age threshold
- b) raise the age threshold to under 21 years
- c) raise the age threshold to under 25 years

Option C is preferable. The legal duties and responsibilities of corporate parents apply to all eligible children and young people up to the age of 26. We would support greater reflection of this in the age threshold. Given the acknowledgement in other policy and legislative drivers (such as the Children and Young People (Scotland) Act 2014, and the 2013 Scottish Government guidance [Staying Put Scotland](#)) which take account of young peoples' developmental trajectories, it would helpful to ensure these were all appropriately aligned and congruous with other legislation which has a direct bearing on how we engage and support young adults, particularly those with care experience.

**Question 65: Do you agree with the categorisation of the new offences? (Yes/No)**

No

**Question 65a: If no, please state how they should be categorised**

The use of two lists with different rules applying to each is confusing for individuals. A lack of readily available, clear information compounds this confusion and can lead to individuals disclosing matters which they are not obliged to, or avoiding the process altogether.

Moreover, we are fundamentally concerned about the use of simple lists which categorise offences to determine the future treatment of information about offending behaviour by children and young people. Taken in isolation from any other contextual information, these lists are blunt instruments and should not be applied to care experienced children and young people's cases in this way. Article 40 of the UNCRC states young people should receive child-friendly justice. The UNCRC and the 2010 [Guidelines of the Committee of Ministers of the Council of Europe on Child-friendly Justice](#) both state those under 18 years of age should be treated as children. **What is required is an approach which recognises the distinction between offences committed in childhood and adolescence, and those committed by adults; in addition to consideration of other relevant contextual information.**

Scotland's Children's Hearings System is uniquely placed to consider the safety and wellbeing of children and young people, with the same child-centred approach taken regardless of the reasons for which individuals come to its attention. Through this system, decisions are made in the best interests of children and young people, to help and protect them. We fully support the ethos of the Children's Hearings System, and ongoing efforts to ensure it is child friendly. However, it must be remembered that interactions with the Children's Hearings System can lead to a child or young person acquiring a criminal record, even in a setting designed to be informal. Where relevant grounds of referral are accepted, or established through proof, these become convictions which appear on a child or young person's disclosure/PVG. These convictions are subject to the same categorisation for disclosure as if the offences were committed by adults and dealt with through criminal courts, albeit with shorter disclosure periods. It is extremely concerning that children and young people are routinely placed in such a position, without being fully informed of their rights or the long term consequences of accepting grounds, and often without the advice of a solicitor (a 2016 study found 90% of legal aid work in hearings was undertaken on behalf of parents, not children and young people).<sup>20</sup>

**Question 69: Do you think the application process to seek removal of a spent conviction should be reviewed? (Yes/No)**

Yes

**Question 71: Do you think any of the options [for seeking removal of spent convictions] offer viable alternatives to an application to the Sheriff? (Yes/No)**

Yes

**Question 71b: If not, do you have any other suggestions?**

The suggested option to introduce an Independent Reviewer has greater advantages than other options. It offers opportunities to ensure the context of the conviction are fully taken into account by an independent person, and for the development of an accessible, informal process which enables individuals to be

heard without having to go through lengthy, complicated and expensive court proceedings. Such an approach will only be successful in its aims if properly resourced and implemented.

In considering new approaches to policy and practice, the needs of care experienced children and young people must be considered at every stage, to ensure their particular needs are met. This is known as the 'care-proofing' of policy.<sup>21</sup> Of the options listed, the introduction of an Independent Reviewer has the greatest potential to ensure the needs of care experienced children and young people are met.

Whilst the options presented have some positives, more fundamental changes would go further to ensuring a right-based system, whilst continuing to protect children and vulnerable adults. **Rather than the onus being placed on care experienced people being required to seek the removal of spent convictions, a preferable system would be one in which this information was automatically removed unless judicial review found clear reasons for the information to remain.**

**Question 72: Do you agree that Ministers should have a power to issue statutory guidance to Police Scotland on the processes governing the generation and disclosure of Other Relevant Information (ORI), including seeking representations from the individual before issuing it for inclusion on an enhanced disclosure or PVG scheme record? (Yes/No)**

Yes. Under the current arrangements, prospective employers are more likely to receive ORI before the applicant is even aware of what has been included. This is unacceptable, and also renders any appeal by the applicant largely redundant, as the information has already been disclosed. We fully support the intention of Ministers to rectify this, in order to uphold individuals' rights under Article 8 of the ECHR. We support the proposals for police to seek representation from applicants regarding any ORI before it is included, and the rights of applicants to appeal decisions through an independent person before any information is released.

It is critical that this process takes place timeously, as any built-in delay could prejudice the application.

We have more fundamental concerns about the use of ORI. Whilst it is recognised that Scottish Ministers are confident that Police Scotland exercise utmost rigour before deciding to include ORI, the situation remains that it is possible for non-conviction information (i.e. information which is not necessarily accepted or proven to true) about an individual to be disclosed, indefinitely. The onus remains on the individual to appeal against the release of this information, rather than a system whereby the police make an application to retain the information. Published guidance which clarifies the types of ORI likely to be shared is lacking, making it impossible for individuals to foresee any

consequences. These are rights issues which this review must address, and are of particular relevance to care experienced individuals who, as noted earlier, are more likely to have contact with formal systems where their behaviour and histories are recorded.

It is extremely concerning that information about the behaviour of children under the age of 12 can be disclosed to prospective employers as ORI, despite the raising of the age of criminal responsibility. We are concerned that this could breach the rights established in Articles 6 (right to a fair trial) and 8 (right to private and family life) of the ECHR; and in Article 40 (juvenile justice) of the UNCRC, as it would enable the indefinite disclosure of information regarding circumstances for which a child is not criminally responsible, has not been proven, and may be refuted. Where there is the possibility of alleged behaviour restricting an individual's opportunities later in life, there is a need for the safeguards which are afforded to children above the age of criminal responsibility to be available at the time, such as the advice of a solicitor.

We support the argument made by Clan Childlaw in their [consultation response](#) to the Scottish Government's consultation on the Minimum Age of Criminal Responsibility in 2016, that if a child is involved in harmful behaviour under the age of 12, but refrains from that behaviour through their teenage years (when they are considered criminally responsible), it should be accepted that the behaviour was the likely result of trauma or difficulties in childhood. If the behaviour has not continued then it should be accepted that they are unlikely to be a risk to the public, therefore the disclosure of ORI in relation to behaviour under the age of 12 should never be necessary. It is vital in the interests of natural justice that childhood behaviour must be seen in the context of childhood development, particularly for care experienced young people. Inappropriate and disproportionate adult responses must not be applied.

**Question 73: Do you agree with Ministers' proposals to allow for representations to the chief constable before disclosure of ORI to a third party and for providing the individual with the option to appeal to an independent reviewer before ORI is disclosed? (Yes/No)**

Yes – see Q 72

**Question 75: Should there be specific provisions reducing the possibility of the state disclosure of criminal convictions accrued by young people 12 years or older on all types of disclosure? (Yes/No)**

Yes

**Question 75a: If there should, what age range should the special provisions apply to?**

1. 12 – 14 years
2. 12 – 15 years
3. 12 – 16 years
4. 12 – 17 years

5. 12 – 18 years
6. **12 – 21 years**

**Question 75b: Please tell us why you have selected an age range or given your answer**

As articulated in our response to Q57, child and adolescent offending behaviour is different to that of adults, is often an expression of an unmet wellbeing need, and requires a different response. Criminal convictions accrued and recorded during childhood and adolescence can have be significant barriers to care experienced individuals taking up opportunities through which they can fulfil their potential. The irony that criminal records only become a barrier when a child or young person is trying to make positive changes to their life, such as going to university or getting a job, is noted by Sands in her 2017 report for the Standing Committee for Youth Justice.<sup>22</sup> **Reform of the treatment of children’s criminal records must be a priority if vulnerable children and young people are to be properly supported to move on from their past.**

The Kilbrandon Report<sup>23</sup>, the principles of which still underpin the Children’s Hearing System in Scotland, made clear that the focus should be on children’s needs, not deeds. The fact that children who come into contact with the care system and Children Hearings process can still be disproportionately criminalised, accrue offences and thus be disadvantaged into adulthood for childhood behaviour which otherwise may well have been dealt with by way of parental sanction is a cause for great concern. Scotland’s welfare based system recognises the primacy of upholding children and young people’s rights and wellbeing, and responding to their needs in a supportive, holistic manner. This is reflected in overarching policies such as [Girfec](#), and the [Whole Systems Approach](#) to young offending. It is possible for Scotland to progress still further, and learn from international jurisdictions where children’s and adult’s criminal records are treated separately. For example in various US states, children’s records are ‘sealed’ so they can no longer be disclosed (with specific exceptions); and in Germany, only childhood offences which resulted in custody are disclosed.<sup>24</sup> **For Scotland to be truly the best place in the world to grow up, a specific system for the treatment of children and adolescents criminal records must be established, which recognises the distinctions between childhood and adult offending behaviour, and enables children and young people to move on from past mistakes and experiences.**

**Questions 76: Should there be a presumption against the disclosure of all convictions accrued between 12 and a specified upper age, with the only possibility being police disclosure as ORI after ratification by the Independent Reviewer on the Level 2 and PVG Level disclosures? (Yes/No)**

Yes.

This is the preferred option, given other options continue to rely on the use of schedules 8A and 8B. As detailed in our answer to Q65 and 65a, these lists are

not fit for purpose when considering offending behaviour of young people generally, and particularly those with care experience.

It is recognised that provisions may be required in order to disclose convictions for very serious offending by individuals who are under the specified upper age limit, for purposes of protection. These provisions should be clearly articulated, and any process to establish whether such convictions are to be disclosed should involve dialogue with the individual concerned, their advocate or other representatives; take full account of the context of the offending behaviour; and consider the relevance of the behaviour to the specific purpose of the disclosure application. This process should be undertaken timeously so as not to adversely affect the individual's opportunities by introducing delays, and by a suitably qualified and truly independent person.

**Question 80: When including ORI on any disclosure about conduct between the age of 12 and the upper age limit should the police only be able to refer to matters they reasonably considered to be serious? (Yes/No)**

Yes. Any other matters would not be appropriate to disclose, and to do so would violate the rights of the child or young person under Article 8 of the ECHR. As such, it must be both absolutely necessary and proportionate to a legitimate aim (such as protecting a vulnerable person) for 'other relevant information' to be disclosed.

**Question 94: Please tell us about any potential impacts, either positive or negative; you feel the proposals in this consultation document may have on children?**

Our response articulates a number of concerns over some proposals in this consultation document, in terms of their impact on children and young people with care experience; and identifies some areas in which the proposals could better support these individuals.

In order to embed children's rights and interests into decisions and policymaking, a Children's Rights and Wellbeing Impact Assessment (CRWIA) should be considered at the earliest possible stage.<sup>25</sup> There does not appear to be a CRWIA accompanying (or mentioned within) the consultation. This is concerning, given the potential impact of policy change in relation to the matters within this consultation on children and young people in Scotland.

We hold serious concerns about the nature of the consultation document (particularly in terms of its accessibility, its complexity, and the limited opportunity to express nuance or 'partially agree/disagree' to questions). We are concerned about the impact of these issues on response rates and how meaningful conclusions can be drawn as a result. These concerns are set out in detail in a joint letter which has been submitted by partner organisations.

**Thank you for providing us with this opportunity to respond. We hope the feedback is helpful; we would be happy to discuss any aspect in further detail.**

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