

**Scotland's National Human Rights Action Plan:
Getting it Right for Looked after Children, Young People and Care Leavers**

March 2013

1. Overview

In 2012, the Scottish Human Rights Commission launched a national consultation to develop Scotland's first National Action Plan on Human Rights. We strongly support the development of Scotland's National Action Plan to improve the realisation of rights for all, especially the most marginalized in our society. On Wednesday 13th March 2013, the Centre for Excellence for Looked after Children in Scotland (CELCIS) hosted a roundtable event to consider the key areas of concern and develop actions specifically for looked after children, young people and careleavers. Developed in collaboration with Scottish Throughcare and After Care Forum (STAF), Includem, Clan Child Law and others, this paper sets out our response identifying human rights issues that require urgent action and proposing specific actions. We specifically acknowledge the detailed responses provided by Together (Scottish Children's Rights Alliance) and Scotland's Commissioner for Children and Young People (SCCYP) addressing an overarching range of human rights issues for children and young people.

2. Why focus on looked after children, young people and careleavers?

There are many human rights issues highly pertinent for children and young people who are 'looked after' by the state. As of 31st July 2012, there are 16 248 children and young people who are 'looked after' in Scotland (this equates to 16 children per 1000 under 18s) (see Appendix One for more detail).¹ Children and young people who may at some stage of their lives be 'looked after' are not a homogenous group. Their own individual and familial experiences and associated reasons for state intervention can be diverse. As set out principally in the Social Work (Scotland) Act 1968, Children (Scotland) Act 1995 and Adoption and Children (Scotland) Act 2007, there are a range of legal mechanisms by which children and young people can, through voluntarily or compulsory measures, become 'looked after' by the state. We also consider children and young people who may become 'looked after' by the state who may be 'at the edge' of the care system, children and young people who may become adopted (hence no longer legally 'looked after' by the state) and young people who cease to be looked after as they move into adulthood.

We would continue to advocate for the full incorporation of the United Nations Convention on the Rights of the Child (UNCRC) in Scots law. As identified in Table One, there are specific risks of human rights violation for this group of children and young people. The incorporation of the European Convention on Human Rights (ECHR) in the Human Rights Act 1998 (as embedded through the Scotland Act 1998) also provides key articles for 'looked after' children and young people: Article 6 – The right to a fair hearing and Article 8 – The right family and private family life which can be used directly in Scottish Courts. As set out in the Children (Scotland) Act 1995, there is also a duty to work in partnership with parents where it is in the child's best interest.

Table One

<i>UNCRC: Key Articles relevant for Looked after Children, Young People and Care Leavers</i>	
Article 9	<i>Children must not be separated unless it is in their best interests. Every child has the right to stay in contact with parents, unless this might harm them</i>
Article 12	<i>Every child has the right to express their views in decisions affecting their lives and for these views to be taken seriously</i>
Article 16	<i>Right to privacy</i>
Article 19	<i>Governments should ensure children are protected from all forms of violence, abuse, neglect and mistreatment by their parents or anyone else that looks after them</i>
Article 20	<i>If a child cannot be looked after by their family, they must ensure they are looked after properly by people who respect the child's religion, culture and language</i>
Article 25	<i>If a child is placed away from home, they have the right to a regular check of their treatment or care</i>
Article 34	<i>Governments should protect children from sexual abuse and sexual exploitation</i>

3. Reflections on the SHRC Evidence Review

We are in broad agreement with the framing of human rights issues through the eight thematic areas. Although we recognise there are many human rights issues for different groups in Scottish society to consider, we are keen that children and young people are fully acknowledged across Scotland's National Action Plan. Three urgent human rights areas were identified at our roundtable event:

- Entitlement of rights for **young people leaving care** with a specific focus on the provision of a safe and affordable home;
- Meeting the **mental health needs** of all looked after children, young people and care leavers;
- Improvements in the infrastructure up to and including **full incorporation of the UNCRC** are needed for rights to be fully realised.

The Scottish Human Rights Commission consultation on the Scottish National Action Plan (SNAP) poses two questions:

1. *Based on the evidence presented in the report **Getting it right? Human rights in Scotland, or your own experience, what do you consider to be the most urgent human rights issues** which should be addressed in Scotland's National Action Plan for Human Rights?*
2. *What **specific and achievable actions** do you consider would best address the concerns?*

To respond fully to these questions, we consider the eight areas identified in the evidence review with our collective reflections on gaps in evidence and proposed actions. More details are provided in each section with a set of proposed actions. As indicated we use a SMART model of actions (Specific, Measurable, Achievable, Realistic and Time specific) to support the development of a realistic road map for human rights in Scotland.

Table Two: Overview of Evidence, Gaps & Proposed Action

Thematic Areas	SHRC Evidence Review Identified	Summary of Key Gaps Identified by Roundtable	SMART Actions
Dignity & Care	High numbers of looked after children; provision of support for careleavers; multiple disadvantage.	Expanded on the right to care for looked after children, young people and care leavers. Specific concern about the age of leaving care.	<ul style="list-style-type: none"> • Addressing the stigma and discrimination that some looked after children, young people and care leavers face in Scottish society • Legal recognition of the role of corporate parent underpinned by a human rights based approach • Improved monitoring of outcomes of looked after children, young people and careleavers • National monitoring of the age of leaving care • Extending the right of support to care leavers up to the age of 25 and monitoring rates of request, process of refusal and provision of redress.
Health	Poor health outcomes; higher pregnancy rates; unnecessary restrictions on play due to health & safety; mental health & suicide (not specific for children and young people).	Mental health & suicide for Looked after children, young people and careleavers. Right to access health information through a variety of means. Consideration of the rights of looked after disabled children and young people.	<ul style="list-style-type: none"> • All looked after children, young people and care leavers have access to low intensity, relationship based counselling in combination with high intensity CAMHS intervention • Mental Health Assessment completed for all looked after children (as already indicated in the CEL 16 Letter but not implemented) • Taking a human rights based approach, mental health training is provided for all those working with, or caring for, looked after children, young people and care leavers • All children and young people have timely access to CAMHS services • National guidelines and monitoring of provision of mental health services for children, young people and care leavers who move across different health board areas.

			<ul style="list-style-type: none"> • National collation of data and analysis of Significant Case Reviews of looked after children, young people and careleavers. The SCR process and separate process for review of the deaths of LAC should be better aligned. • Amendment to Looked after Children Regulations 2009 (Part 6) to require reporting of all careleavers deaths to Scottish Ministers, Care Inspectorate and relevant bodies • Recording of pregnancy rates of looked after children, young people and careleavers in Scotland (currently no national data)
Where we live	Contact with birth families, specifically an issues for island and rural communities. Right to housing (not spec for children and young people).	Multiple placement moves. Specific issue to address of contact with siblings. Right to a home for care leavers. Inadequate provision in unsafe areas for care leavers.	<ul style="list-style-type: none"> • Quality assurance of provision of housing for care leavers • Access to legal and quasi-legal remedies for contact with birth families, including sibling contact • The Care Inspectorate should consider this development and the accountability of Community Planning Partnerships on children's rights reporting.
Education & Work	Poorer educational outcomes; exclusions from school.	Poor employment and training opportunities for care leavers. Additional barriers to accessing opportunities.	<ul style="list-style-type: none"> • Right to education – exclusion rates of looked after children to be addressed • Education (Additional Support for Learning) (Scotland) Act 2009 implemented to assess additional support needs of looked after children & equitable access to tribunals • Equitable access to Additional Support for Learning tribunals for looked after children and young people • Review of disclosures and the operation of the PVG scheme to ensure young people are not unduly penalised from future work opportunities due to misdemeanours or charges at younger ages.
Private & Family Life	Nothing specific identified (Some relevance - Parental & children's	A vital area to consider for this group. Right to family life, including for those within the care system to feel loved and nurtured. Concern that often the	<ul style="list-style-type: none"> • Recognition of particular human rights violations for looked after children, young people and care leavers. • Article 6 (ECHR) – Right to a fair hearing – for young looked after/care leaving parents whose children are at risk of removal

	rights/parents with learning disability/domestic abuse & imprisonment).	care system does not convey these qualities. Specific concern about safeguarding rights of young people in care who become parents.	<ul style="list-style-type: none"> • Provision of accessible information, advice and support for young parents – including legal advice when children are at risk of being removed.
Safety & Security	Unaccompanied asylum-seeking children; LGBT; child trafficking.	Some concerns about safety during contact. Safety issues for young people living care.	<ul style="list-style-type: none"> • Provision of independent advocacy support and access to complaints procedures in a range of formats (see Access to Justice) • Amend Section 51 of the Criminal Justice (Scotland) Act 2003 that allows ‘justifiable assault’ on children as it is clearly incompatible with ratification of the UNCRC 1989.
Living in Detention	Less children detained in Scotland – concern about 16 & 17 year olds; high proportion with care background; 106 secure care places (can be appropriate to meet needs); Importance of managing transition.	Physical restraint of children and young people.	<ul style="list-style-type: none"> • Reconsidering Regulation 4 of the Regulation of Care (Requirements of Care) (Scotland) Standards on physical restraint having regard to article 37 of the UNCRC • National monitoring of the use of restraint in care settings and investigation of complaints • Transitional planning for young people leaving secure accommodation – specifically address cross local authority placements
Access to Justice	Legal advice and Legal Aid (not specifically highlighted for children though); child witnesses & suspects; Children’s Hearings; survivors rights; historic child abuse.	Children and Young People’s access to legal advice and legal aid. Equitable access to justice for historic abuse. Access to advocacy for all children and young people – including younger children, disabled children, children ‘looked after’ at home and in kinship care placements.	<ul style="list-style-type: none"> • Full ratification of UNCRC Optional Protocol 3 on complaints procedures for children and young people • Ensuring access to legal assistance and advice for children and young people – specifically addressing legal aid applications • Implementing and monitoring of National Advocacy Standards for Children and Young People

3.1 Dignity and Care

Dignity and care is relevant for all looked after children and young people and can impact on all aspects of their lives. We welcome the acknowledgement in the SHRC evidence review of looked after children and young people as a specific group. We highlight the multiple disadvantages facing many children and young people with care experiences and would encourage further consideration of their human rights. For example, there can be specific issues relating to respecting the privacy of children and young people in care² and the inappropriate sharing of information amongst professionals with a disregard to a child's right to privacy.³ There is specific concern about the stigma and discrimination surrounding children and young people with care experiences these must be challenged.

We strongly agree with the recognition of unmet care needs for care leavers in Scotland and remain concerned that the rights of this group of young people are particularly vulnerable. Despite the current legislation and guidance, there has been little progress on the average age at which young people leave care.⁴ Although there is a legal duty to support care leavers up to the age of nineteen under the Children (Scotland) Act 1995 and a right to request assistance up to the age of twenty-one, the implementation of this legislation across Scotland is inconsistent. We would strongly encourage the inclusion of a duty to support care leavers up to the age of twenty-five to be part of the new legislation proposed in the Children and Young People (Scotland) Bill. The specific challenge is ensuring current and new legislation actually translates into a meaningful difference for young people. Therefore, we recommend the duty to inform care leavers of their rights, the provision of advocacy and channels by which to challenge decisions and seek redress.

Looked after disabled children and young people remain a hidden group. In a recent programme of work, we heard directly from a group of young people using forum theatre about their experiences of not being heard.⁵ We are particularly concerned that article 12 of the UNCRC is overlooked for children who use a range of communication strategies to express their views and presumptions are made about their competency. For looked after disabled children and young people, we highlight the importance of respecting their right to be assisted in appropriate ways. As highlighted in the work of Scotland's Commissioner for Children and Young People Children and young people described feeling embarrassed, humiliated, undignified and excluded due to moving and handling difficulties.⁶ All looked after disabled children and young people have a right to respectful and appropriate medical treatment in any contact with health services.

Furthermore, in the development and delivery of services, we would welcome a human rights based approach to involve children and young people in design, delivery and evaluation of a wide range of services. The legal definition of the role of the corporate parent may provide a helpful framework if consistently implemented.

Actions

- Addressing the stigma and discrimination that some looked after children, young people and careleavers face in Scottish society
- Legal recognition of the role of corporate parent underpinned by a human rights based approach
- Improved monitoring of outcomes of looked after children, young people and careleavers
- National monitoring of the age of leaving care

- Extending the right of support to care leavers up to the age of 25 and monitoring rates of request, process of refusal and provision of redress.

3.2 Health

Suicide and mental health are key areas to address for looked after children and young people, as well as careleavers. Children and young people who are looked after have experienced difficulties in their lives. We know that a significant number of looked after children will have suffered abuse and neglect which is highly detrimental to their mental health and wellbeing. We also know that looked after children can overcome adversity in childhood and lead successful adult lives.⁷ Whilst there has been recognition of the poor mental health of looked after children in comparison to their peers, there is still considerable work to be done to ensure that all looked after children, young people and care leavers across Scotland have their mental health needs met. We strongly advocate that all looked after children, young people and care leavers have access to low intensity, relationship based counselling in combination with high intensity CAMHS intervention.

The key findings of the first national survey of the mental health of young people looked after by local authorities in Scotland⁸ found:

- 45% of children and young people (aged 5 – 17) looked after by a local authority has a diagnosable mental disorder;
- Amongst children aged 5- 10 years, 52% of children had a mental disorder compared to 8% of children living in private households;
- 44% of children placed with birth parents, half of children placed in foster care and two fifths of children in residential care had a mental disorder;
- Children with mental disorders were more likely to be boys and aged between 5 and 10 years old;
- A quarter of children had been in touch with a specialist in child mental health;
- A third of all children had sought help because they were worried or unhappy;
- **Over a fifth (22%) of looked after children surveyed had tried to hurt, harm or kill themselves;** this rate was higher for children living in residential unit (39%) compared to those with birth parents (18%) or foster carers (14%).

This study highlights the scale of the challenge in meeting the mental health and well-being needs of children and young people who are looked after. In a briefing on looked after children, the confidential counselling service ChildLine highlighted that 1 in 26 looked after children phoned ChildLine and many of them felt 'completely alone'. Compared to their peers, looked after children were five times more likely to talk about running away and twice as likely to be self-harming.⁹ We should also be aware that children and young people who are 'looked after' may have a parent or carer who experiences mental health problems.

The *Mental Health Strategy for Scotland 2012-2015* included a section on looked after children and young people. However, we should remember that previous commitments have been given and may not have been fully implemented; in *Delivering for Mental Health* (Scottish Government, 2006), the Government made a commitment to provide basic mental health training to all those working with, or caring for, looked after and accommodated children and young people. The Strategy also committed to:

Commitment 9: We will work with a range of stakeholders to develop the current specialist CAMHS balanced scorecard to pick up all specialist mental health consultation and referral activity relating to looked after children.

Commitment 11: We will work with NHS Boards to ensure that progress is maintained to ensure that we achieve both the 2013 (26 week) and the 2014 (18 week) access to CAMHS targets.

There are specific challenges for looked after children and young people accessing CAMHS. A recent report on the Mental Health Care Needs Assessment of Looked after children in residential special schools, care homes and secure care was commissioned due to concerns about the health needs, and more specifically mental health care needs, of children in these placements.¹⁰ The Scottish Directors of Public Health had raised a specific concern about this group of children's access to CAMHS. The report concluded that the picture was complex where 'children may not receive timely care because of the lack of clarity about which Health Board is responsible for their health care'. The report found looked after and accommodated children may be four times higher than the general population to need a specialist intervention, such as psychotherapy (Lachlan et al., 2011:40). The report concluded there is a need for specialist CAMHS for children who are looked after and accommodated. A key challenge that is not identified in the strategy is the delivery of services to successfully facilitate the transition between CAMHS and adult mental health services. Across research studies, these transitions have been identified as a particularly challenging time for young people, parents and carers.

One of the challenges for a proportion of looked after children and young people are ensuring a continuity of mental health care when there are changes in placements. This has been highlighted as particularly problematic when children move to a different health board area. In some cases, children are awaiting a CAMHS service and during a move begin the referral process again in a new health board area. A further concern raised has been the discontinuation of a service because a child moves out with a specific health board area. We have very specific concerns about these children and young people who may have some very serious mental health needs that remain unmet.

Actions

- All looked after children, young people and care leavers have access to low intensity, relationship based counselling in combination with high intensity CAMHS intervention
- Mental Health assessment completed for all looked after children (as already indicated in the CEL 16 Letter but not enacted)
- Taking a human rights based approach, mental health training is provided for all those working with, or caring for, looked after children, young people and care leavers
- All children and young people have timely access to CAMHS services
- National guidelines and monitoring of provision of mental health services for children, young people and care leavers who move across different health board areas.

Almost one fifth of Significant Case Reviews conducted for children who die or are seriously injured were conducted for children who were looked after or formerly looked after. There are anomalies in the reporting of deaths of looked after children, young people and care leavers. The only national audit of Significant Case Reviews found that some deaths of looked after children did not proceed beyond Initial Case Reviews (ICRs) and this may be due to a separate process led by the Care Inspectorate; however, there was inconsistency in decision making of whether a SCR was conducted in these cases. The authors recommend these anomalies are remedied at a national level.¹¹

Actions

- National collation of data and analysis of Significant Case Reviews of looked after children, young people and care leavers. The SCR process and separate process for review of the deaths of LAC should be better aligned

- Amendment to Looked after Children Regulations 2009 (Part 6) to require reporting of all care leavers deaths to Scottish Ministers, Care Inspectorate and relevant bodies
- Recording of pregnancy rates of looked after children, young people and careleavers in Scotland (currently no national data).

3.3 Where we live

Young people who have care experiences have a right to housing. In our roundtable discussion, we identified that this is beyond 'bricks and mortar' but should be a right to a *home* that also includes emotional and practical support. There was a specific concern about the quality, suitability and safety of accommodation being offered to young people leaving care. As identified in a recent study with young people in the care system entitled 'Young People Creating Belonging', a positive living environment was central to their sense of self-worth.¹² Four young people in the study were living independently and 'hated where they lived, but felt obliged to stay due to housing law provisions on intentional homelessness. One respondent reported panic attacks when alone in her flat; another was on medication for anxiety' (Milne and Wilson, 2013:8). David provided this illustration to show arriving at his new flat:



Figure One: Arriving at my new flat, David. Illustrated in Milne, EJ. & Wilson, S (2013) *Young People Creating Belonging: Spaces, Sounds & Sights*, Stirling: University of Stirling (Pg7).

In the National Audit of Significant Case Reviews, housing was a significant issue in 29 (out of 56) cases and a specific issue highlighted for looked after young people; for example, one young person who died at 17 from a possible drug intoxication had been looked after and accommodated since the age of four and had moved continually. At the time of her death she was living in Bed & Breakfast accommodation. It was found a number of looked after young people died at a time of considerable uncertainty about where they were going to live.¹³ In our roundtable discussions, the limited options for young people were highlighted with concern that they had few opportunities to

challenge the decision-makers. Some young people returned to families where there were concerns about their safety. This has also been highlighted commissioned by SCCYP where transitional planning for disabled young people was found to be poor.¹⁴

Drawing on the experience of cl@n childlaw in providing legal advice and assistance for looked after children and young people in Edinburgh, contact with birth families including siblings and extended kin is a very common human rights issue. Multiple placement moves and geographical distances can present many challenges to remaining in contact with families for children. Furthermore, many children and young people may be unaware anything can be done to maintain or establish contact and may not have access to legal advice and advocacy to help them do this (discussed in Section 3.8). There was also a significant concern for the wellbeing of children and young people who experience multiple placement moves.

There is a specific role of the Care Inspectorate in ensuring looked after children and young people are living in appropriate accommodation to meet their needs. Given the development of new inspection processes, we encourage the consideration of a human rights approach and the specific role of Community Planning Partnerships on children's rights reporting.

Actions

- [National quality assurance of the provision of housing for care leavers](#)
- [Access to legal and quasi-legal remedies for contact with birth families, including sibling contact](#)
- [The Care Inspectorate should consider the accountability of Community Planning Partnerships on children's rights reporting](#)

3.4 Education & work

There are significant inequalities in the educational attainment and opportunities for looked after children and young people. The low attainment of looked after children in Scotland persists and therefore it remains an important cause for concern. Only a small proportion of looked after children progress to higher education - around 3% of all looked after children, compared with 36% of non-looked after children - and the high proportion who are neither in education nor in employment upon leaving school - 36% compared to 11% of non-looked-after children.¹⁵

There is a direct correlation between attendance at school and educational attainment. The attendance at school of looked after children in Scotland overall is poorer than average: 88.6% compared with 93.1% for all pupils in 2010-11.¹⁶ The figures show that the attendance of children in foster placements (95.9%) is above average while the attendance of children in local authority residential homes (90.3%) is below average. But it is the very low attendance of children looked after at home with parents (79.1%) which contributes significantly to the low overall average attendance of looked after children. Furthermore, the attendance figures do not show the extent of part-time education among looked after children; for example, it may have been decided that a child should attend school or an out of school alternative education project.

The Education (Additional Support for Learning) (Scotland) Act 2009 gives legal force to the entitlement of looked after children and young people through the assessment of additional support needs. However, there is a need for advocates who are independent of the local authority in

relation to the appeals process. We remain concerned that looked after children and young people's rights are limited in accessing the Additional Support for Learning Tribunal process. Anecdotally we are not aware of any cases involving looked after children and young people. As parents are often the key advocate in instigating the process, we are concerned that the conflict of interest arising for looked after children may severely limit their equal right to a fair hearing.

Another matter of concern is the delays associated with out of authority placements. This appears to be a particular problem where the child has additional support needs and the respective placing and host authorities have not reached agreement about funding arrangements. There is a clear need for a more explicit protocol in relation to this group of looked after children who may be denied their right to education in the interim.

There is a key role of the corporate parent in ensuring that looked after children, young people and care leavers have access to work and training opportunities. A particular human rights issue is the impact of criminal behaviour at a young age limiting work opportunities when disclosures are later required for working with children and young people. Many young people will not be aware of the future consequences of police records and without access to legal advice, may not make an appropriate challenge. In recent English Case Law this issue has been raised:

“He was 11 when he received warnings in connection with the two stolen bicycles. He was and remains otherwise of good character. Some 7 years later, he wanted to enrol on a sports course. It is difficult to see what relevance the fact that, as a young child, he had received these warnings could have to the question whether he was suitable to be enrolled on a sports course and have contact with children when he was 18 years of age. The disclosure regime was introduced in order to protect children and vulnerable adults. That objective is not furthered by the indiscriminate disclosure of all convictions and cautions to a potential employer, regardless of the circumstances.”

English Court of Appeal case R (T) v Greater Manchester Chief Constable & others.

Notwithstanding the forthcoming “alternatives to prosecution” following admissions or findings in respect of offences committed by children and referred to a children's hearing, concerns remain about the potential impact of disclosure many years on. Furthermore, we need to ensure that response to PVG and guidance on the revealing of ‘soft information’ is proportionate in the aim of protecting children and young people.

Actions

- [Right to education – exclusion rates of looked after children to be addressed](#)
- [Education \(Additional Support for Learning\) \(Scotland\) Act 2009 implemented to assess additional support needs of looked after children](#)
- [Equitable access to Additional Support for Learning tribunals for looked after children and young people](#)
- [Review of disclosures and the operation of the PVG scheme to ensure young people are not unduly penalised from future work opportunities due to misdemeanours or charges at younger ages.](#)

3.5 Private and Family Life

We recognise the themes of domestic abuse, parents with learning disabilities and imprisonment specifically highlighted in the evidence review. However, we would like to raise the possibility of looked after children, young people and care leavers as meriting greater consideration given the complex interplay of human rights issues surrounding the rights of children, rights of parents and right to family life for this group. Specific issues to consider are:

- Right to have views heard and experience effective participation in decision making processes;
- Right to family life being supported through appropriate services;
- Access to legal advice and assistance and right to a fair hearing;
- Contact with birth family and extended family (where safe);
- Role of independent advocacy;
- Opportunities to challenge decisions and make a complaint.

Young people with care experiences are more likely to have children at a younger age.¹⁷ This can be a positive experience and as corporate parents, every level of support should be provided. It can also pose significant challenges with young parents due to limited financial support, lack of informal support from the wider family, having poorer educational outcomes and a reluctance to trust and engage with professional services. Young parents have an equal right to information, advice and support to meet their and their children's needs. These rights are enshrined in the United Nations Convention on the Rights of the Child 1989 and specific regard must be given to article 17: the right to appropriate and reliable information, including public health education, article 24: the right to good quality health care and article 28: the right to education. Article 12, often described as the 'linchpin' on the Convention, states that due account is taken of the views of children and young people in matters affecting their lives. Specific adherence should be given to General Comment no 4 of the UNCRC on Adolescent Health which provides excellent guidance on the support that should be provided to address sexual health needs and to young parents.¹⁸

Actions

- **Recognition of particular human rights violations for looked after children, young people and care leavers.**
- **Article 6 (ECHR) – Right to a fair hearing – for young looked after/care leaving parents whose children are at risk of removal**
- **Provision of accessible information, advice and support for young parents – including legal advice when children are at risk of being removed.**

3.6 Safety and Security

Key human rights areas for the safety and security of looked after children and young people relate to their mental health and wellbeing in a range of placements (as discussed in Section 3.2). Another consideration is ensuring the safety of children through regular checks on their standard of care as clearly outlined in article 25 of the UNCRC. An audit of Significant Case Reviews found four children had been abused in a long term foster care placement where there had been concerns about the standard of care; concerns included: 'rigid approaches to control behaviour including prolonged

periods of grounding, locked doors, controlled diet, rigid bathroom routines, removing bedroom lighting, use of CCTV'.¹⁹ Although a rare example, this illustrates the importance of regular checks by adequately resourced Children and Family Social work teams to ensure regular monitoring and accountability of all involved and responsible for care of children is required. Too often if actions were taken at an earlier stage, many situations could be alleviated or resolved appropriately before reaching crisis, or indeed before abuse permeates. It is also important to provide various ways in which children and young people can disclose abuse. For many children, foster care provides a place of safety and security following abuse within families. Furthermore, there can be physical safety concerns for young people living in inappropriate independent living accommodation.

Action

- Provision of independent advocacy support and access to complaints procedures in a range of formats (see Access to Justice)
- Amend Section 51 of the Criminal Justice (Scotland) Act 2003 that allows 'justifiable assault' on children as it is clearly incompatible with ratification of the UNCRC 1989.

3.7 Living in Detention

For young people living in detention, there are specific human rights issues. As provided in our response to Together's (2012) State of Children's Rights in Scotland report, we identified the use of physical restraint to be an area where vigilance is required.²⁰ There is a gap in knowledge between the use of *Holding Safely* guidance (for example, using physical restraint as a 'last resort') and knowing what might be happening on the ground.²¹ The National Care Standards: Care homes for children and young people (2005; revised 2008) refers to restraint in *Standard 6 – Feeling Safe and Secure* (Point 11):

You can be assured the care home has a written policy and procedures on the conditions where restraint may be used. Staff are fully trained and in the use of restraint. If it is necessary to restrain you at any time, this is written in your care plan. Records are kept of any incidents involving your restraint. You can expect to be supported after any episode of restraint.

These standards are central to the care inspection process now led by the Care Inspectorate. Although aimed at adult services, the Care Commission (2010) Guidance on the regulation and use of restraint may be useful as reporting duties are in place.

In developing national guidance on the roles and responsibilities of the external manager for residential care, we know the importance of external management in monitoring any use of restraint. This should be considered in a responsibility to monitor the experiences of children and young people; meeting the training needs of staff and creating a positive culture. The Kerelaw Inquiry specifically highlighted the inappropriate use of restraint on children and the absence of effective external managers in a safeguarding role.²² One of the recommendations of the Kerelaw Inquiry to the Scottish Government related to the national collation of complaints from residential units to identify patterns of complaints and allegations. The provision of accessible advocacy services to ensure all children and young people have an opportunity to raise any concerns should also be highlighted.

There have also been specific concerns raised about transitional planning from young people in secure settings. There should also be consideration of the appropriate placement of young people at risk or with experience of sexual exploitation and self-harming behaviours in secure or ‘close support’ accommodation.

Actions

- [Reconsidering Regulation 4 of the Regulation of Care \(Requirements of Care\) \(Scotland\) Standards on physical restraint and having regard to article 37 of the UNCRC](#)
- [National monitoring of the use of restraint in care settings and investigation of complaints](#)
- [Transitional planning for young people leaving secure accommodation – specifically address cross local authority placements](#)

3.8 Access to Justice

This is an area of considerable concern for looked after children and young people, as well as care leavers. Under a Freedom of Information request, cl@n childlaw has acquired information illustrating the extent to which fewer and fewer children and young people are able to obtain legal aid. From 31 January 2011 the way that a child is assessed for civil and children’s legal assistance was altered by the Advice and Assistance (Scotland) Amendment Regulations 2010 and the Civil Legal Aid (Scotland) Amendment Regulations 2010. Previously, a child would be assessed in the same way as an adult, on the basis of their own personal disposable income and capital. Many children and young adults would therefore easily qualify for both A&A and legal aid on the basis of being in full time education and being supported financially by their parents. Since January 2011, a solicitor assessing a child or young person who applies for any civil or children’s legal assistance must take into account the financial circumstances of anyone who owes a duty of aliment to that child or young person. This duty to aliment a child does not just fall on parents, but can extend to anyone who has accepted the child as a child of their family, such as step-parents, or in some case grandparents, aunts, uncles etc. This could have consequences for children and young people in kinship care arrangements. There is an exception: where it would be “unjust and inequitable” to assess the financial circumstances of someone who owes the child a duty of aliment then that person’s finances can be disregarded. However, it is not always straightforward to persuade the Scottish Legal Aid Board that the exception should apply.²³

The numbers of children and young people applying to the Scottish Legal Aid Board and for legal aid to be granted have fallen considerably. This will impact on the ability of children and young people, including those who are looked after, to obtain legal advice and assistance to ensure a fair hearing.

Table Three: cl@n childlaw (2013) FOI request: Legal Aid for children and young people

Percentage of applications granted by the Board	Under 16s	16-17 year olds
	2009/10	68%
2010/11	62%	48%
2011/12	57%	32%

Another area of concern is access to advocacy for looked after children and young people and care leavers. The role of advocacy for looked after children and young people is vitally important. Quality advocacy services can provide a key role in empowering children and young people to fully participate in decisions that affect their lives. For some children, these decisions may involve living in a new place, changing schools, accessing specialist health services and making choices about the future. Often there can be many different and divergent views of families and professionals; the views of children and young people may be at risk of not being heard. Elsley's (2010) scoping study of advocacy services for children and young people across Scotland specifically highlighted gaps in provision for:

- Children and young people 'looked after' at home
- Children and young people with disabilities
- Children attending Children's Hearings
- Provision for younger children and young people aged over 16
- Black and minority ethnic children and young people.²⁴

Looked after children and young people face particular challenges; for some, expressing their views can be incredibly difficult. Advocacy can support and facilitate children's understanding and involvement in decision-making processes (such as at Children's Hearings). A key role of advocacy is providing an opportunity to raise comments and complaints about their care. We know that this has been recognised as an important safeguard for children, especially for those children living away from home. For example, a specific recommendation of the Kerelaw Inquiry (2009) was to improve avenues for listening to children through easily understood and accessible complaints procedures; effective monitoring and review of complaints; and adequately resourced children's rights and children's advocacy services.²⁵

Actions

- [Full ratification of UNCRC Optional Protocol 3 on complaints procedures for children and young people](#)
- [Ensuring access to legal assistance and advice for children and young people – specifically addressing legal aid applications](#)
- [Implementing and monitoring of National Advocacy Standards for Children and Young People: Principles and Minimum Standards](#)

Conclusion

We welcome the opportunity to contribute to Scotland's first National Action Plan on Human Rights. Throughout this paper we have raised many human rights issues raised on behalf of looked after children, young people and Careleavers. We hope that this is a valuable contribution and would be delighted to assist in further development of this work.

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Appendix One

Children and young people can live in a variety of placements and have a wide range of needs:

- 5 153 children are 'looked after' at home with parents (31.7%);
- 5 279 children live in foster care (32.5%);
- 4 076 children are in formal kinship care placements (25%), although many more children are in informal kinship care are not legally 'looked after' by the state;
- 1 433 children live in residential accommodation (including residential schools, secure accommodation, local authority and voluntary homes, crisis care and other) (almost 9%);
- Over 2012-2012, there were 237 admissions to secure care with an average of 87 children; 93% of children had at least one additional support need;
- Just over one quarter (27%) of children on Child Protection Registers are 'looked after'.

Endnotes

¹ Scottish Government (March 2013) *Children's Social Work Statistics Scotland 2011-2012*, Edinburgh: Scottish Government.

² Together (2012) *State of Children's Rights in Scotland 2011-2012*, Edinburgh: Together.

³ Hill, L & Wales, A (2011) *Finding the Balance: Children's right to confidentiality in an age of information sharing*, Glasgow/Edinburgh: ChildLine Scotland & Centre for Learning in Child Protection, University of Edinburgh.

⁴ Duncalf, Z, Hill, L. and McGhee, K (2013) [Still Caring? Supporting Care leavers in Scotland](#), Glasgow: CELCIS.

⁵ As part of a knowledge exchange programme, Getting it Right for Looked after Disabled Children and Young People 2012-2013.

⁶ Scotland's Commissioner for Children and Young People (2008) *A Report on the Moving and Handling of Children with Disabilities*, Edinburgh: SCCYP.

⁷ SWIA (2006) *Extraordinary Lives: Creating a positive future for looked after children in Scotland*, Edinburgh: Social Work Inspection Agency.

⁸ Meltzer, H, Lader, D, Corbin, T, Goodman, R and Ford, T (2004) *The mental health of young people looked after by local authorities in Scotland*, London: TSO.

⁹ NSPCC (2011) *ChildLine Casenotes: Looked after children talking to ChildLine*, London: NSPCC.

http://www.nspcc.org.uk/Inform/publications/casenotes/clcasenoteslookedafterchildren_wdf80622.pdf

¹⁰ Lachlan, A, Millard, A, Putnam, N, Wallace, A, Mackie, P and Conacher, A (2011) *Mental health care needs assessment of Looked after children in residential special schools, care homes and secure care*, Glasgow: ScotPHN.

¹¹ Vincent, S & Petch, A (2012) *Audit and Analysis of Initial and Significant Case Reviews*, Edinburgh: Scottish Government.

¹² Milne, E.J. & Wilson, S (2012) *Young People Creating Belonging: Spaces, Sounds & Sights*, Stirling: University of Stirling.

¹³ Vincent, S & Petch, A (2012) *Audit and Analysis of Initial and Significant Case Reviews*, Edinburgh: Scottish Government (pg 54).

¹⁴ Stalker, K and Moscardini, L (2012) [Critical Review and Analysis of Research and Policy Relating to Disabled Children](#), Edinburgh: SCCYP.

¹⁵ Scottish Government, 2009. *Destinations of leavers from Scottish schools 2008/09*. Edinburgh: The Scottish Government.

¹⁶ Scottish Government, (2012). *Educational outcomes of looked after children 2010/11*. Edinburgh: The Scottish Government.

¹⁷This draws on English research. See for example, Knight, A., Chase, C & Aggleton, P (2006) *Teenage pregnancy among young people in and leaving care: Messages and implications for foster care, Adoption & Fostering* 30(1):58-69; Chase, E., Warwick, I., Knight, A. and Aggleton, P. (2009) *Supporting Young Parent: Pregnancy and Parenthood among Young People from Care*. London: Jessica Kingsley Publishers.

¹⁸United Nations Committee on the Rights of the Child (2003) [Adolescent health and development in the context of the Convention on the Rights of the Child: General Comment 4.](#)

¹⁹ Vincent, S & Petch, A (2012) *Audit and Analysis of Initial and Significant Case Reviews*, Edinburgh: Scottish Government (pg 59).

²⁰ Together (2012) *State of Children's Rights in Scotland 2011-2012*, Edinburgh: Together.

²¹ Davidson, J., Steckley, L., McCullough, M. & Warren, T (2005) *Holding Safely: A guide for residential child care managers and practitioners about physically restraining children and young people*, Glasgow: SIRCC.

²² Scottish Government and Glasgow City Council (2009) *Jointly commissioned report by the Scottish Government and Glasgow City Council of the Independent Inquiry into Abuse at Kerelaw Residential School and Secure Unit*, <http://www.scotland.gov.uk/Publications/2009/05/08090356/0> [Accessed 26.03.13]

²³ Results of a Freedom of Information request by cl@n childlaw and kindly shared to inform this response.

²⁴ Elsley, S. (2010) 'Advocacy makes you brave': Advocacy support for children and young people in Scotland, Edinburgh: Scottish Government.

²⁵ Scottish Government and Glasgow City Council (2009) *Jointly commissioned report by the Scottish Government and Glasgow City Council of the Independent Inquiry into Abuse at Kerelaw Residential School and Secure Unit*, <http://www.scotland.gov.uk/Publications/2009/05/08090356/0> [Accessed 26.03.13]