



Response to Scottish Government consultation on Section 70 of the Education (Scotland) Act 1980

November 2017

CEL CIS (Centre for excellence for looked after children in Scotland), based at the University of Strathclyde in Glasgow, is committed to making positive and lasting improvements in the wellbeing of Scotland's children living in and on the edges of care.

As of July 2016, there are 15,404 looked after children in Scotland (1.5% of the 0-18 population), 5,659 of whom are primary school aged (5-11), and 6,330 are secondary school aged (12-17). Over half of all looked after children live with their own family – either in kinship care or 'at home' – and approximately 35% live with foster carers. Nearly 10% (1,477) live in residential homes or schools.¹ Like every child in Scotland, looked after children are all unique individuals, with their own strengths, vulnerabilities and needs. However, many looked after children have experienced multiple and serious adversities, including socio-economic disadvantage, parental drug and alcohol misuse, domestic violence, trauma and neglect.² Inevitably, such experiences impact on children's ability to attain and achieve in school, and looked after children face multiple barriers to addressing such difficulties. Educational outcome indicators show that, taken as a whole group, the gap between looked after children's attainment, attendance and achievement, and that of all children, remains unacceptably large.³

The [Education \(Additional Support for Learning\) \(Scotland\) Act 2009](#) promotes the interests of looked after children by stating that they are presumed to have additional support needs unless assessed as otherwise. Unfortunately, as data released by local authorities via Freedom of Information requests shows, such duties towards looked after children are being unevenly implemented across Scotland, with some councils only assessing a tiny proportion of eligible children.⁴ Through our own work in schools and education authorities, and wider consultation with individuals working with children (teachers, carers, social workers, advocates, etc.), we understand that it is very rare for cases relating to looked after children to be referred to the Additional Support Needs Tribunal. This is surprising, given the complexity of the individual circumstances of looked after children, and the fact that every looked after child is considered to have additional support needs (and must be assessed for a coordinated support plan). Indeed, it is reasonable to expect that, on this basis, looked after children would

be significantly over-represented in Tribunal statistics (in relation to the proportion the 'looked after child' population represents of all children).

Whilst we recognise that Section 70 complaints are differentiated from complaints that fall under the jurisdiction of the Additional Support Needs Tribunals for Scotland, or another legal body, there is good reason to believe an inequality and inconsistency of provision, and exercise of rights to complain, would be present for all looked after children, throughout the education system regardless of which reparation or decision making body exists to ensure diligent discharge of legal responsibilities. We strongly encourage Scottish Ministers and other relevant parties (such as local authorities) to take appropriate steps to draw children, parents, carers, teachers and other professional's attention to the rights of looked after children in respect of Education law, including their right to make a complaint where they feel that a responsible body has failed to discharge a duty imposed on them by or for the purposes of any enactment relating to education.

We would encourage research into the reasons that looked after children and their families are significantly under represented within the complaints and tribunals process within education. Whilst Freedom of Information requests provide the raw data around the numbers of children and families involved in this process, the data alone does not provide any context or rationale as to the cause of this under representation. Without a sound understanding of the cause, suitable provisions cannot be made to ensure equity of access for looked after children and their families to exercise their rights.

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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¹ Scottish Government (2017). [Children's Social Work Statistics Scotland 2015/16](#). Edinburgh: Scottish Government.

² SWIA (2006). *Extraordinary Lives: Creating a positive future for looked after children in Scotland*. Edinburgh: Social Work Inspection Agency.

³ Scottish Government (2017) [Education Outcomes for Looked After Children 2015/16](#), Edinburgh: Scottish Government

⁴ Iain Nisbet (2016) *Looked After Children: Additional Support Needs data by local authority*, Govan Law Centre, p.2 [<https://www.celcis.org/knowledge-bank/search-bank/education-forum-additional-support-learning-asl/>]