



The Bulletin



The Bulletin

Edition 10
October 2023

Contents

P2 President's Foreword

P7 HEC Update (Elaine Forbes) & Contact Details

P10 The Promise and Education – An Overview

P13 A Promising Network: Virtual Schools

P17 Creating Communities that Care: A Whole School Approach

P20 Exclusions, Looked after Children and the Law

P23 Each and Every Child

P26 A Promise that we all must keep

P29 The HEC and Care Experienced Children

P36 Health and Education Chamber Guidance



Foreword

May Dunsmuir

Chamber President

Dear members,

Welcome to our first 2023 Bulletin! Our Guest Editor for this edition is Collette Gallagher and I am grateful to her for all her energy and creativity in designing this edition. It rightly focuses on The Promise – Scotland's commitment to ensuring that all children and young people will grow up loved, safe and respected which followed the Independent Care Review.

You can read more about this in Kenneth Fleming's article, which explores The Promise in the context of school education.

Exclusions

Kenneth points out that part of the right to education for care experienced children and young people includes not excluding them and being responsive to the needs and challenges they face.

These points arise in one of our cases, a disability discrimination claim, raised by the child. Here, the tribunal found that the child had been discriminated against by being excluded from the school and from being provided with a lack of full time education [ASN D 22 01 2021 | First-tier Tribunal for Scotland \(Health and Education Chamber\)](#). The tribunal did not accept the school's attempts to call this anything other than an exclusion:

'The responsible body deny that their decision to stop the claimant from attending classes in the school, which included moving all of her learning opportunities outwith the school building, amounted to an exclusion. We are not clear what the responsible body think the difference is between their decision and an exclusion. The decision had the purpose and effect of bringing the claimant's attendance at the school to an end. The letter explaining the decision to the claimant states, "We have decided that it would be best for you not to come to school at all." and acknowledges, "This decision will probably seem unfair to you." When pressed on this, witness B said that although the claimant remained on the school roll she could not come back to school. If she had turned up at the school after September 2020 she would have been met by witness B who would have contacted the claimant's social worker and foster carer to discuss next steps. Witness A thought the school would probably have called the police. There was a clear intention that the claimant should not attend school and not access any classes. On any reasonable interpretation this amounts to exclusion. [para 36]'

Following on from this, I am sure that you will find Ian Nisbet's article on formal and informal exclusions very informative. And we may have to have all tools to hand if his prediction comes to fruition - that we may begin to see more cases on exclusion from 31 March 2024.....

What are we doing in the HEC?

I am proud of our work here in the HEC but we are on a journey — and we can always improve. It has long been a commitment of mine to learn directly from the experiences of children and young people. We do this by listening. By stepping into their world and by inviting them to help us to make things better.

Listening and learning

This is best illustrated in the work we did to develop our sensory hearing suites. To do this I and other staff met with groups of children and individual children and young people, including those who were care experienced.

One group of residential special school pupils chose the colour palate and the furnishings for our hearing and waiting rooms. We called them our young architectural consultants. We took blank floor plans, furniture catalogues, material swatches and lots and lots of felt tip pens when we met them. One child drew a plan for us showing us what an ideal hearing suite would look like and we are proud to display this in the sensory hearing corridor in the Glasgow Tribunals Centre.

My Guidance on the *Child, Young Person and the Tribunal* has been directly influenced by the views of children and young people. There is appended to this the words of the *Young Ambassadors for Inclusion* (who included care experienced children) on “what works/good” and “what doesn’t work/bad” and we take to heart the ‘bad’ comment—“*Not really being included - adults can take over the meeting.*”

Keeping the child or young person at the centre

In the HEC the child or young person sits at the centre of our proceedings. We must not lose sight of this—we don’t want them to feel that adults are taking over the hearing. Care experienced children or young people may have been exposed to multiple processes, meetings, reviews, case conferences and different types of legal hearings (including the sheriff court) and we must do our very best to make sure our HEC hearings do not add to any trauma. That is why our All Members’ Conference in 2024 will explore our understanding of trauma.

I was told once by a special school teacher that listening to the children had helped them to feel valued. We can’t undo what has happened in their lives but we can show them that they matter, that they are important, that in the HEC they are the most important person in the hearing.

We will always endeavour in the HEC to wrap the system around the child, tailoring it to their needs, rather than expecting the child to adapt to us.

Who are we talking to?

We have reached out to agencies supporting care experienced children and young people, explaining the work of the Additional Support Needs jurisdiction. And we have received training from those who are care experienced. Those of us who attended training a few years ago may remember Chloe, from Who Cares? Scotland. Chloe explained to us how traumatising her children's hearing experiences were. She said then that when she walks past the place where her children's hearings were held "I was physically sick."

A strong reminder to us that our own hearings need to be as tailored as possible to the child or young person to reduce the potential for re-traumatisation.

Looked after children—references and claims

We have seen a steady rise in the number of reference and claims which involve 'looked after' children, some of these raised by the child themselves. The highest number was recorded in the year 2022-2023 and this year is on target to exceed that. However, these numbers are still far fewer than I would expect to see in light of the challenges we know care experienced children and young people face in their school education.

School education and onwards

Kenneth Fleming mentions that Scotland's responsibility for care experienced young people's education does not end at 18 and that Scotland must ensure that care experienced young adults are (practically, emotionally, and financially) supported in continuing education and attending university. This has to begin during their school education. It is not enough to wait until school is over and then see what happens.

I sit on the Advisory Board of the **Hub for Success**, which supports care experienced people into further and higher education. I have the opportunity here to learn from student ambassadors who support our work. When I heard one say, "I am more than a social work file", it reminded me again of the importance of always keeping the child front and centre of our proceedings.

We make decisions about a child or young person, not a case, and each one is unique.

Virtual Schools

I am sure you will enjoy reading about 'virtual schools'. I was fascinated to read that Scotland currently has 19 Virtual School Head Teachers or equivalent senior education leaders, supporting approximately 70% of Scotland's 'looked after' children. And I love the concept of a 'brave space'.

Stigma and Discrimination

Lynsey Emery's article on a 'Whole School Approach' addresses the stigma and discrimination that care experienced children and young people experience in schools and their communities, leading to poorer educational outcomes than their peers. She highlights key themes from the work of Who Cares? Scotland which includes requests for additional support in school; requests to remain in their current school when their living arrangements were altering; and requests to change school – sometimes in response to feeling lonely, being bullied, or being misunderstood by teaching staff.

I saw this in the life of one of our young architectural consultants (involved in developing the sensory hearing suites) whose repeated request to remain in the current school when the living arrangements were changed was ignored, causing the child considerable distress.

I hope that this child knows one day that they have a waiting room in the colour they picked and that he is not forgotten.

The language of care and the language of inclusion

Michael Wiels article on the language of care is timely. He speaks about not just changing specific words, but making choices whenever we are communicating about care experience – in reports, in conversations, via email.

We agree that our own decisions need to be drafted using the “language of inclusion” - to be transparent, respectful and to improve inclusion. I must credit Collette Gallagher for this—she suggested that this be a principle of excellence when we draft decisions and I agree.

We must always work hard to make sure that we are not unintentionally using language that is stigmatising or traumatising. I quote the example of the word, “vulnerable”, one I often used until I realised it was considered unhelpful and stigmatising. A suggested alternative to this is, “cherished” - if you speak both words aloud, which sounds more respectful and inclusive.... ?

Michael also reminds us what can happen when we get it right—I recall being very moved when I saw that John Lewis Christmas ad last year and I was proud to see Who Cares? Scotland had partnered in this.

Here are some links to language guides:

[includem Language Guide by includem2000 - Issuu](#)

[Stigmatising Labels | OHOV Feedback Project](#)

All behaviour is communication

We already know ‘difficult behaviours are just communication in young people who have experienced trauma’, and Iain MacRitchie's article is very informative and topical here. The impact one consistent adult can have in a care experienced child or young person's life is immense. The mentoring programme he describes does just that—and it only involves one hour a week, at school. But I imagine that one hour is precious to the child or young person being mentored.

Working together

There is a wealth of information in this edition of the Bulletin and I commend it to you for your learning and education. It brings us up to date with the work of The Promise. I remain committed to doing all that we can in the HEC to make access to justice for care experienced children and young people as easy and inclusive as possible.

We will keep listening, we will keep learning and with their help, we will try to join those who are leaders in positive, inclusive, compassionate and caring practice.

We won't forget that the expert in a child or young person's life is the child or young person themselves.

We care in the HEC. We will keep caring.

With every good wish,

May



Health and Education Chamber Update

Elaine Forbes, Operations Manager

Scottish Courts and Tribunals Service (SCTS)

Elaine Forbes, Operations Manager for Glasgow with the Scottish Courts and Tribunal Service, highlights developments and staffing changes within HEC.

Since the last bulletin it has been a very busy but exciting time for the team. The receipt of applications has continued to grow.

Following the departure of one of our case officers Amy Richardson, we have welcomed two case officers to the team, Margaret Scally and Carly Netherway (temporary) who joined the team in March 2023.

The team are now working in a hybrid way, splitting their time between the office and working remotely.

Team and performance

During the first half of this reporting year, the Chamber has again experienced a rapid increase in the receipt of applications. Between 1 April 2023 to 30 September 2023 we have received 151 applications. This can be broken down into 147 references and 4 claims. This is 15 more than our highest rate received last year in 2022/2023 (132).

The hearings structure is now fully embedded. During the above period we had 14 hearings held remotely, 3 hybrid hearings held within the sensory hearings suite of the GTC and 2 hearings due to take place as full in-person in the near future. We continue to seek feedback from our hearings clerks and stakeholders to ensure we continue to make the necessary improvements to the service we provide to our tribunal members and stakeholders.

HEC Venue Expansion

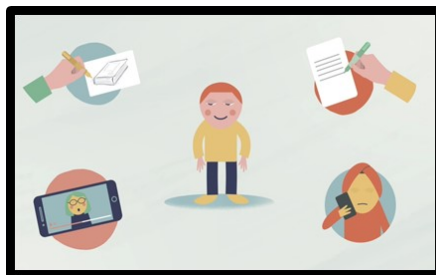
In recent months a short life working group has been created to identify suitable venues across Scotland for the HEC. The priority of the group is to identify venues that may be used for our hearings where children and young people can attend.

We are also working hard to ensure the sensory suite within the Inverness Justice Centre is available for hearings.

HEC Video Animations

Following on from my last bulletin update, I am pleased to say that we have four videos, including BSL and subtitles editions. You can find them on our website [here](#).

These animations will assist children and young people with additional support needs to learn about the Tribunal process and bring the concept of a tribunal to life using *needs to learn* imagery.



HEC Continuous Improvement - Website Decisions Database

Following feedback from our stakeholders, we have made improvements to our decisions database. At last year's Forum, our casework team leader – Sarah Tracey demonstrated the new search box function and has now developed a recorded demonstration that sits within the website to support anyone using the database. We have also launched a Needs to Learn guide on how to find and read any of the published decisions. The database can be found via the following link: [Decisions | First-tier Tribunal for Scotland \(Health and Education Chamber\)](#)

Senior Operations Manager—Arlene Shearer

I first joined the Chamber in January 2023 as Senior Operations Manager on a temporary basis and have recently secured this position permanently.

I joined SCTS in January 2009 and before progressing to my current position, I have worked in a variety of roles across casework, clerking and scheduling for the Mental Health Tribunal for Scotland. I am enjoying my new role within the Health and Education Chamber and I look forward to supporting the President, members and the administration going forward. I also look forward to meeting with the membership at future training events.



Outside of work I enjoy spending quality time with friends and family, including my 18 month old son Dylan. In our spare time together we enjoy trips to the park, swimming and soft play.

DATES FOR YOUR DIARY

Member Reviewer Training (in-person) **1 February 2024**
(new member reviewers)

Complex Case Training (online) (remaining legal members)
15 February 2024

All Members' Conference (in-person) **21 March 2024**

Clayton Hotel, Clyde Street Glasgow



Health and Education Chamber Contact Details

0141 302 5863 President's Office

Lynsey Brown, EA to the Chamber President

Member Liaison Officer

HEChamberPresident@scotcourttribunals.gov.uk

0141 302 5904 Elaine Forbes, Operations Manager

eforbes@scotcourttribunals.gov.uk

0141 302 5860 Casework Team

Sarah Tracey, Team Leader/Senior Case Officer

Megan Wilkinson, Case Officer

Margaret Scally, Case Officer

ASNTribunal@scotcourttribunals.gov.uk

0141 302 5999 Member Scheduling

GTCScheduling@scotcourttribunals.gov.uk

0141 302 5999 Glasgow Expenses

glasgowexpenses@scotcourttribunals.gov.uk



The Promise and Education – An Overview

Kenneth Fleming, The Promise Scotland

The Promise and Education: An Overview

Overview

Between 2017 and 2020, the Independent Care Review heard the experiences of over 5,500 care experienced infants, children, young people, adults and members of the paid and unpaid workforce of Scotland's 'care system'. They shared their vision for what needed to change in the care system. This vision was set out in '[The Promise](#)' which reflected what was heard and detailed the foundations that Scotland's care for its children and families must be built on.

When the Independent Care Review published its conclusions in February 2020, the support and commitment publicly demonstrated by the care community, organisations, and politicians of all parties indicated how important keeping the promise was to Scotland. The Promise Scotland then came into being with the remit to drive and support the work of change demanded by the Independent Care Review. For Scotland to realise its vision of becoming a country that cares, made up of services that work, then everyone must understand and play their part. The Promise Scotland will continue to support, collaborate and challenge until the promise is kept.

What the Independent Care Review was told about education

The Promise highlighted that for care experienced young people, schools are about much more than just educational outcomes. They are critical to building relationships, friendships and aspirations. They can also provide day-to-day continuity and a safe and predictable environment in the lives of care experienced children. They can provide a sense of normality and – if uninterrupted – provide a chance for them to progress and realise their potential.

The Independent Care Review heard that all care experienced children and young people must have a range of individual in-school relationships that they can trust and rely on – with school staff being trauma informed and using nurture practices, and school moves avoided.

However, **The Promise** highlighted that there is a system disconnect between the education system and the rest of a child's life and wellbeing; the 'system' needs to be focused on the child's wellbeing holistically (the Independent Care Review wrote 'system' quite deliberately as the status quo does function as one). The review found that support and best practice were not mainstreamed or consistent, with a

‘postcode lottery’ for who receives good support. An overarching barrier to all of this was resourcing challenges in schools and other settings. Based on this feedback, **‘The Promise’** issued a series of conclusions relating to education.

Ambition

The Promise was clear that schools in Scotland must be ambitious for care experienced children and ensure they have all they need to thrive, recognising that they may experience difficulties associated with their life story. In particular, it stated that the formal and informal exclusion of care experienced children from school must end.

Right to Education

The Promise recognised that education is a right for all children and must be prioritised, with no barriers to participation. Schools must never exclude care experienced students and must be responsive to the needs and challenges faced by care-experienced pupils. Ensuring participation also includes not removing students from school due to contact with the ‘care system’, support meetings, or placement in Secure Care. It also means providing for additional support needs and supporting engagement in education. Education is not the sole responsibility of schools, and the entire workforce must be joined-up and responsible for children’s wellbeing and educational attainment.

Children’s rights

The Promise states that schools need to have a clear understanding of children’s rights, and that children must learn about what their rights are, whatever their educational setting.

Relationships with the workforce

The right to education, as with all other rights, is upheld through consistent, ongoing relationships. These relationships cannot be limited by system barriers. Schools must, therefore, be a place that provides and supports stable, nurturing, ongoing relationships, and offers mentoring for a wide range of students. Scotland must also properly support and resource the workforce to put theory into practice by supporting and building relationships with children.

Education for care-experienced adults

Furthermore, just as parenting does not end at 18, Scotland’s responsibility for care experienced young people’s education does not end at 18. Scotland must ensure that care experienced young adults are (practically, emotionally, and financially) supported in continuing education and attending university.

Education for families and the workforce

Stretching education even further beyond schools, the Promise highlights the positive value of parenting education and education of the workforce. Regarding

the workforce, it calls for flexible and accessible learning pathways, taking into account the workforces' own lived experiences and potential prior disrupted education. The same values that are called for in children's education therefore should also apply to education for young people and adults.

Progress so far

The Promise Oversight Board, which exists to monitor Scotland's progress on implementing the Independent Care Review, considered the issue of education as a theme in [REPORT Two](#). It highlighted the persistent challenges in educational outcomes for care experienced pupils and young people, but recognised positive examples of change, including the virtual school model, referred to in this bulletin. It suggested that further necessary action was needed to improve practice in schools, including school improvement plans explicitly including Promise commitments. There was a suggestion that the Scottish Government should legislate for a definition of care experience and that this could be reflected in greater detail within data collection. The Promise Scotland has also committed to making ending exclusions an area of focus in its recently published [Strategic Work Programme](#).

In keeping with much of the broader Promise agenda there remains widespread commitment and interest in implementing the education related conclusions of the independent care review. However, there remains much still to do to deliver on these and see Scotland keep the Promise made to Scotland's children and families.

Kenneth works with his colleagues at The Promise Scotland so that decision makers in Scotland make choices that will help #KeepThePromise. This means providing them with the information and insights generated by his colleagues at The Promise Scotland, and helping to highlight positive stories of change across Scotland.

A Promising Network: Virtual Schools

Linda O'Neill, Michael Bettencourt and Larissa Gordon

The [Virtual School Head Teacher](#) (VSHT) model in Scotland has been cited by the most recent [Promise Oversight Board](#) report as an example of good practice. Three years on from creating the Scottish VSHT Network in 2019, the Education Team at [CELCIS](#) reflect on how it is helping Scotland to Keep The Promise for children and young people with care experience.

Improving the system

Scotland has been on an improvement journey in recent years, with several significant policy and practice drivers aimed at creating 'equity and excellence' in our education system. Like many other countries around the world there has been investment in resource to understand what is required at both a system and practice level to create the change that children and young people tell us they want to experience.

Virtual Schools

In 2018 when Scottish Government announced the [Care Experienced Children and Young People's Fund](#), as part of the [Scottish Attainment Challenge](#), a number of local authorities began to use the Virtual School (VS) model and develop VSHT roles. The role was not widely known in Scotland, with only one local authority (Aberdeen City) having a VSHT until 2018. The VSHT role has been statutory in England since 2014 and was created to support the education of care experienced learners.

A Virtual School is an organisational framework that offers an additional layer of support for the education of care experienced learners through one person (a VSHT) or team. Virtual Schools are responsible for providing support to all the care experienced learners that live within, and outwith, the local authority; they collect, monitor, and track data on care experienced children and young people's attendance, attainment and progress and work with a range of partners to improve learners' educational experience. The term 'virtual' can at times cause confusion as it conjures images of remote online learning but it in no way reflects the reality of the role. Virtual Schools are made up of individuals and teams who work in a variety of different ways directly with a range of different people and services to provide the support that children and young people need, when they need it.

The Scottish VSHT Network

The Scottish VSHT Network was established by CELCIS, in collaboration with the VSHT from Aberdeen City, in 2019 to support and connect those working in the role,

to share good practice and research evidence, and drive progress towards better educational experiences for all care experienced children and young people¹.

Scotland currently has 19 VSHTs or equivalent senior education leaders, supporting approximately [70%](#) of Scotland's 'looked after' children.

Part of the role we fulfil at CELCIS is to develop an understanding of what a VSHT is in Scotland and how it can be most effective. We are still on this journey but what we know now is that the role is most effective when:

- **it is located at a strategic level within the local authority;**
- **it is responsible solely for supporting care experienced children and young people;**
- **it has access to robust data;**
- **there is a strong relational approach.**

The Network meets monthly and has been involved in driving the creation of a number of evidence-based outputs. Over the past three years we have undertaken work on each of the five recommendations within [Change Programme ONE](#). We have also produced a series of [evidence based case studies](#) and blogs to promote understanding of the role and raise awareness of the positive impact that VSHTs are having.

Keeping The Promise

At CELCIS we are intentional about our facilitation and like everyone, we have had to adapt to working effectively and collaboratively online. We have found ways of moving our conversations from discussion to action to ensure that children and young people are experiencing the change we are aspiring to create. We place value on the shared principles that we have developed as a group over the past three years which is encapsulated in our [vision statement](#). This sets out how we agree to work together and what impact we hope to have for children and young people with care experience.

Our ambition is aligned with the aspirations of The Promise and the [Additional Support for Learning Review](#) in that we want to create a consistency of high quality experiences for care experienced learners, regardless of where they live or where they receive their education. We have worked together to find effective ways of bringing together evidence, practice, and knowledge of the 'system' to move into creating solutions and changes in practice. The relationships that we have built together are key to making this possible and we have an agreement to work together in a '[brave space](#)' which invites curiosity and challenge, where we learn from each other and collaborate.

¹ 'Looked after' children are those currently in the care of the local authority, while 'care experienced' children are those who have at any time been in the care of the local authority. Scotland does not currently collect or hold data on the number of care experienced children in Scotland.

One of the strengths of the Network is the people in it and the passion and commitment they have for the children and young people they support.

The services they deliver are all rightly different to ensure they meet the individual needs of the children and young people in their areas. However, we also recognise the importance of consistency in the key activities that VSHTs undertake; for VSHTs themselves and for those they support. Over the next year we will continue to work on articulating the core activities and strategic functions of a VSHT in Scotland.

Next steps

To us, this Network is beginning to feel like the Networked Learning System (NLS) that the [International Council of Education Advisors \(ICEA\)](#) has highlighted as important in creating and sustaining positive change. The purpose of an NLS is to support the development of more equitable education systems that improve outcomes for all learners.

In their report covering 2018-2020, the ICEA proposed that one way of realising the changes we want to see in our education system is for Scotland to move beyond aspiring to be a 'self-improving' system, and instead shift to creating and sustaining an NLS. They state that this is:

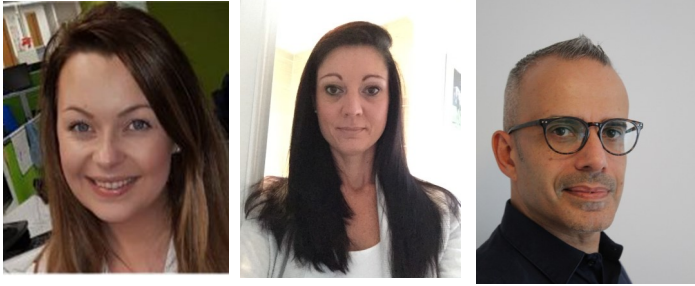
Connected through networks across physical, professional and virtual boundaries; and

Driven by design-based research and collaborative inquiry to innovate, test and refine practice and build leadership capacity through practice-based professional learning.

We believe that our ways of working within the Network, moving beyond conversation and into action through collaboration; bringing together best evidence and collective wisdom and aspiring to fulfil the recommendations within The Promise in a meaningful way, is helping us to influence and change systems and practice for the better.

We will continue to work together to turn our vision for care experienced children and young people into reality and to challenging ourselves and supporting others to Keep The Promise:

'We make a difference by working alongside those with care experience to turn the ambitions of The Promise into the reality of practice'.



The CELCIS Education Team is led by Linda O'Neill, Education Lead and comprises Michael Bettencourt, Education Consultant and Larissa Gordon, VSHT in Aberdeen City and CELCIS' National Advisor to the VSHT Network. The Network is made up of several organisations and individuals who make this work possible including local authorities, Scottish Government, Education Scotland and wider CELCIS colleagues.

If you'd like to find out more about this work, or get in touch with the team, please [visit our website](#).



Creating Communities that Care: A Whole School Approach

Lynsey Emery

Who Cares? Scotland

The United Nations Convention on the Rights of the Child (UNCRC) states that all young people have both the right to an education, and more specifically an education that enables them to develop their talents and interests to reach their fullest potential. The Who Cares? Scotland 'Communities that Care' whole-school approach creates the conditions for care experienced children and young people to be nurtured and supported in their schools and communities across Scotland through local training and awareness-raising activities. The programme is replicable and sustainable, and it is our vision that in the future this will be implemented in all Scottish school communities.

Care experienced people can experience stigma and discrimination within their schools and communities due to a lack of public knowledge and understanding of care experience, perpetuated by media stereotypes and depictions of care experienced people as 'damaged'. This can lead to negative school experiences and in turn, contributes to care experienced learners having disproportionately poorer educational outcomes than their peers.²

Our advocacy workers often support children and young people with issues pertaining to education, and in 2022, 13.9% of all advocacy issues raised related to this broad category. Within this, key themes included requests for additional support in school; requests to remain in their current school when their living arrangements were altering; and requests to change school – sometimes in response to feeling lonely, being bullied, or being misunderstood by teaching staff.

We know, however, that when all groups in society are given the tools and support they need to thrive, the whole community does too.

In an attempt to create more equitable educational outcomes, the Education (Additional Support for Learning) (Scotland) Act 2009 provides for care experienced learners, looked after by the local authority, to be automatically deemed to have additional support needs for the purposes of the legislation. In addition, the Independent Care Review's publication of 'The Promise'³ has a strong focus on educating communities on care experience and the key roles of schools within the lives of care experienced people.

¹ United Nations. 1989. [*Convention on the Rights of the Child*](#). Geneva, Switzerland: United Nations.

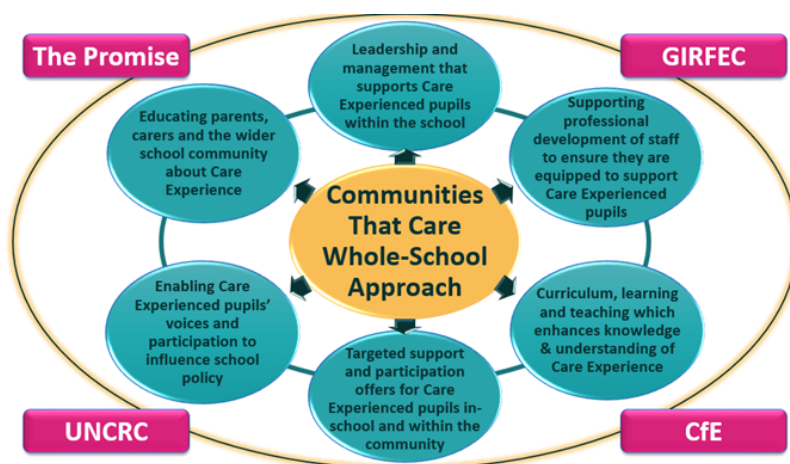
² Scottish Government. 2021. [*Children's social work statistics*](#): 2019 to 2020

³ Independent Care Review. 2020. *The Promise*. Edinburgh

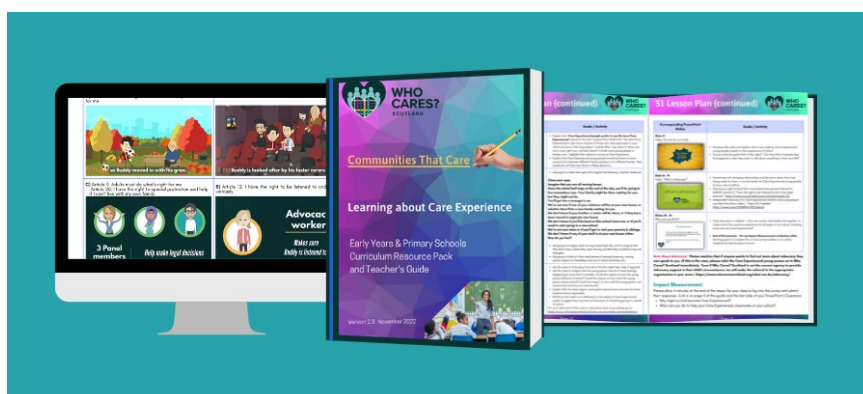
Communities that Care whole-school approach

The 'Communities that Care' project began in Renfrewshire in 2016 as a 5-year project funded by the STV Children's Appeal. Based on the impact of the original pilot project, we have now created a robust and replicable whole-school approach which has already extended its reach to Edinburgh and Clackmannanshire.

The Communities that Care whole-school approach ensures that care experienced children and young people are nurtured and supported in their schools by educating entire school communities (pupils, staff, parents and carers) about what care experience is and creating an ethos of empathy and understanding towards their care experienced pupils. The programme provides fun opportunities for care experienced pupils to be together, learn about their rights and care identity and to use their voice to influence change within their school.



At the heart of our whole-school approach are the “Learning About Care Experience” Personal and Social Education curriculum resource packs which contain lessons for children and young people to learn about care experience in a developmentally appropriate way from early years through to S6. The packs were co-produced by Who Cares? Scotland staff and volunteers, care experienced people of all ages and teachers from a range of Scottish local authorities. The resources are currently being piloted within Renfrewshire alongside the other elements of the whole-school approach.



Short-term impact

"I think it's good for wee ones from P1 right the way up to S6 to be learning about care experience. I think everybody should be learning about it and every school should know... so, people understand more about how we feel and not to laugh." (care experienced Young Person)

The 'Communities that Care' whole-school approach is improving pupil and staff knowledge and understanding of care experience and shaping more positive attitudes towards care experienced pupils. Pupils have been able to give examples of how they have behaved in a more supportive way towards their peers. Most importantly, care experienced pupils are reporting that they feel more understood and supported at school.

"It's making a massive difference to the wellbeing of care experienced pupils and even the ones who aren't, having them understand that everybody's got a different life, everybody's got different families and always you have to be kind and understanding." (Teacher)

Creating school environments which are more supportive and inclusive provides the scaffolding required to ensure that care experienced learners have the opportunity to realise their educational aspirations and reach their fullest potential.

Anticipated long-term impact

"I think Communities that Care should be in every community." (care experienced Person)

Schools provide an ideal setting to improve attitudes, understanding and perceptions of care experienced people amongst the next generation, and to support a ripple effect from that learning within the wider school community. School pupils will grow up to become adult community members. They are the future employers, future workforce and future Corporate Parents. The longer-term consequences of this programme will create the conditions for communities to embrace and support care experienced people, through this, we will build stronger communities for everyone.

Lynsey Emery, Schools Coordinator at Who Cares? Scotland, is passionate about creating empathic and inclusive school communities. Lynsey leads on the development and evolution of the Communities that Care whole-school approach and the implementation of this within schools.

Who Cares? Scotland is Scotland's national organisation for Care Experienced people. We aim to create more inclusive and caring communities for Care Experienced people to live in, by educating Scotland about care through awareness raising activity in local communities and in the media.



Exclusions, Looked after Children and the Law

Iain Nisbet, Solicitor, Cairn Legal

Exclusion from school is a feature of school life. While it may once have been unapologetically viewed as a serious sanction for serious misconduct and / or a deterrent to further unwelcome behaviour, such a 'crime and punishment' model of exclusion is not widely held within education circles nowadays.

The same view can be found within the courts as well, with Lord Menzies in the case of *Glasgow City Council, Petitioners* [2004] ScotCS 12 (**GCC case**) noting that "a decision to exclude is not a disciplinary sanction but rather a management tool."

That management tool is principally concerned with order and discipline at the school and educational wellbeing of the pupils there. Regulation 4 of the *Schools (General) (Scotland) Regulations 1975* effectively forbids the use of exclusion other than in circumstances where a pupil's continued attendance at school is likely to be seriously detrimental 'to order and discipline in the school or the educational well-being of the pupils there'.

Lord Menzies, in the GCC case also confirmed the approach of Sheriff A L Stewart, QC, in the case of *Wallace v City of Dundee Council* [2000] SLT (Sh Ct) 60:

'It is not a case of the sheriff being required to refuse the appeal merely because he is satisfied that the education authority (as represented by the head teacher) was entitled in the exercise of its discretion to reach the conclusion which it did. Rather, before he can refuse the appeal and confirm the order, he must be satisfied that the decision of the education authority was, in all the circumstances of the case, justified.'

So, particularly in the context of an appeal, an exclusion from school must be justified (in all the circumstances of the case). This inevitably requires some consideration of the current policy and practice in relation to exclusions.

Each education authority should have its own policy on exclusions, and there is national guidance as well: [Included, Engaged and Involved Part 2: A Positive Approach to Preventing and Managing School Exclusions](#) (Scottish Government, 2017) (**the national exclusion guidance**). The national exclusion guidance, in particular, is very good. Local guidance may vary, and in my experience too many still make reference to exclusion as a sanction, punishment or disciplinary measure.

The national exclusion guidance is careful to note the harmful impact that

exclusions have on children, especially for vulnerable pupils, such as looked after children. The damage that an exclusion does to relationships at school “can often exacerbate the negative consequences that earlier traumas have had on their lives”. Exclusions have also been linked to poor academic attainment, non-attendance, offending behaviour in later life, substance abuse and suicide.

Despite this, school exclusion is disproportionately used on vulnerable pupils. If you are looked after, you are over six times more likely to be excluded from school than if you are not ¹.

What’s more, exclusions in Scotland are often accompanied by a compounding failure to provide alternative education. There is a legal duty to provide alternative education to pupils who have been excluded (Section 14(3), Education (Scotland) Act 1980) “without undue delay” – or within 3 days, according to the national exclusion guidance.

However, in 86% of cases no alternative education is provided – not even work sent home. These statistics are from the academic year 2020/21 ² – when providing education to pupils who were at home was something schools were highly practiced at!

In England, “suitable full-time education” must be provided after five days of an exclusion, no such requirement applies for pupils in Scotland.

When [The Promise](#) was made, in February 2020, it included this clear commitment:

‘Scotland must not exclude care experienced children from education or reduce their timetable to such an extent that they are denied their rights to education. The formal and informal exclusion of care experienced children from school must end.’

The phrase “informal exclusion” is vital, because there is a long history of schools positioning exclusions as other things. One of my first exclusion appeal cases involved a permanent exclusion which the education authority insisted was ‘a management transfer’ (*Proudfoot v Glasgow City Council* [2003] SLT (Sh Ct) 23).

More recently I represented a looked after child who had been excluded from school. Throughout, the education authority denied that she had been excluded, stating instead that they had taken a ‘decision to move all [the child’s] learning opportunities outwith the [school] building’. The Tribunal didn’t accept this attempt to rebadge an exclusion, and The Promise isn’t on board with attempts to do so either.

¹ [School exclusions - Education Outcomes for Looked After Children 2020/21 - gov.scot \(www.gov.scot\)](#)

² [School exclusion statistics - gov.scot \(www.gov.scot\)](#)

In March 2021, [“Plan 21-24”](#) was released, detailing the first stage. Plan 21-24 included as part of the outcomes to be achieved by 31 March 2023 a commitment that: ‘The formal and informal exclusion of care experienced children from education will end.’”

In my opinion, these repeated attempts to rebrand exclusions as other things are almost exclusively used in relation to vulnerable pupils – looked after pupils, disabled pupils etc. They are usually presented as being motivated by what is in the child’s best interests – an act of care, altruism even.

In practice it tends to mean that mainstream pupils who are excluded are out of school for a limited period, and entitled to a right of appeal – while looked after and disabled pupils are similarly out of school, but often for much longer periods (with no right of appeal) while meetings take place, plans are drawn up, and hands are wrung.

Earlier this year, [The Promise Oversight Board's second report](#) was published. It's justifiably critical on exclusions - ‘the exclusion rate for care experienced pupils remains stubbornly higher than that for all pupils and the official statistics do not capture the full picture. Persistent absence from education is a major challenge post-pandemic for all young people. Reduced and alternative timetables risk becoming another form of exclusion for care experienced young people.’ And, as it points out, there is no way of knowing the scale of informal exclusions - which by definition are not recorded.

It also remains, commendably, implacable on the timescales adopted. By the time they report next year they have a clear expectation that ‘the formal and informal exclusion of care experienced children from education will have ended.’

A promise has been made. Will it be kept? Scotland’s care experienced children will be watching.

And legally, can an exclusion which directly contradicts The Promise (which every education authority in Scotland has enthusiastically signed up to) ever be regarded as justified? Or reasonable? Or proportionate?

As of 31 March 2024, this is a question the Tribunal may well be called upon to answer...

Iain Nisbet is a solicitor with Cairn Legal, and part of the My Rights, My Say service. Iain also blogs on additional support needs law and policy: www.additionalsupportneeds.co.uk



Each and Every Child - Changing the story to shift how the public think about care experience, and to tackle stigma and discrimination.

**Michael Wield,
Each and Every Child**

‘Scotland must change the language of care. Language must be easily understood, be positive and must not create or compound stigma.’¹

How we speak about care experience matters. For far too long, people with experience of care have dealt with negative and incorrect stereotypes about who they are, their lived experiences, and what their lives are like and will be like in the future. There is a commonly held view that children who experience trauma will be forever damaged, that children end up in care due to the bad choices of their parents, and that the ‘care system’ is fundamentally unable to care for children – that it is cold and unfeeling².

These viewpoints are deeply fatalistic, and often focus in on assumptions about individual families rather than understanding the wider circumstances. They do not make space for the changes we know can and must happen to support all children in Scotland who need support in times of adversity. These views and assumptions are reinforced by how care experience is portrayed in the media, such as in newspaper articles, headlines, and opinion pieces. This happens through representations of people with care experience in popular culture such as film, TV and literature.

In 2017, at the same time when Scotland was conducting the Independent Care Review, The Robertson Trust, Life Changes Trust and CELCIS commissioned FrameWorks UK to conduct research into how the public think about care and care experience – what the common assumptions people hold are – but also how organisations and the media were speaking about care experience. This research helped us to understand how stigma and discrimination are created and how they can be challenged most effectively. From this research we know that members of the public have a limited understanding of the experiences facing people with lived experience of care, what the ‘care system’ is and, importantly, what the ‘care

¹ The Independent Care Review, *The Promise*, 2020 pg 87, <https://thepromise.scot/resources/2020/the-promise.pdf>

² Busso, D; O'Neill, M; Down, L and Gibbons, C, *Slipping Through the Cracks*, FrameWorks Institute, 2018 (<https://eachandeverychild.co.uk/wp-content/uploads/2021/05/Slipping-through-the-Cracks.pdf>)

³ Gerstein Pineau, M; Kendall-Taylor, N; L'Hote, E and Busso, D, *Seeing and Shifting the*

system' can and should be³. In addition to this, the ways in which organisations and the media had been speaking about care and care experience was feeding into fatalistic and often stereotypical mindsets, reinforcing stigma and discrimination – often inadvertently.

In 2020, the culmination of the Independent Care Review resulted in the publication of *The Promise* – Scotland's commitment to ensuring that all children and young people will grow up loved, safe and respected⁴. *The Promise* detailed a radical rethink of the 'care system' to address what needs changed, based on the experiences of people with experience of care. A foundation to this vision, outlined in Plan 21-24, is a requirement that people, organisations and services that support children and young people in Scotland must use language that does not stigmatise children and families:

'Organisations that have responsibilities towards care experienced children and young people will be able to demonstrate that they are embedding destigmatising language and practices across the way they work.'⁵

Each and Every Child is an initiative that aims to shift public attitudes around care and care experience by sharing a new narrative that challenges this stigma and discrimination. By using robustly tested evidence based framing recommendations we can radically change how people think, feel and act. This helps people understand the issue better, draws attention to wider factors that are impacting on children, young people and families across Scotland and, crucially, direct people to the solutions that are needed to improve lives.

We all need to be intentional with how we present information around care experience and the 'care system' to avoid activating unhelpful ways of thinking – the common assumptions that are already held by the general public, that further compound stigma. This research is new but confirms what many of us already understood - that the public hold stereotypical views of care experience and are deeply fatalistic about the 'care system'. People think that the system is broken and can never be fixed, that blame is on individual parents for coming into contact with the care system and that stigma will always exist. We know change can and must happen, and that by drawing attention to systems, solutions and external factors that are facing families across Scotland we can combat these ways of thinking to make real improvements to the lives of children, young people and families.

However, we need public support to ensure this change is achieved and sustained

Roots of Opinion, FrameWorks Institute, 2018 (<https://eachandeverychild.co.uk/wp-content/uploads/2021/05/Seeing-and-Shifting-the-Roots-of-Opinion.pdf>)

⁴ The Independent Care Review, *The Promise*, 2020, <https://thepromise.scot/resources/2020/the-promise.pdf>

for future generations. To do this, we need to avoid feeding into inaccurate and damaging stereotypes, or to ways of thinking that do not make space for change. We now know through the FrameWorks UK research what these pitfalls are and, crucially, how to avoid them. This is not just about changing specific words, it's about the choices that are made whenever we are communicating about care experience – in reports, in conversations, via email.

The Each and Every Child toolkit⁶ has been developed to support anyone who works with children, young people and families who [come into contact with](#) the 'care system' or who are on the edges of care. The eight recommendations are designed to be flexed, adapted and used in different ways for different areas of work, different communication methods and different audiences. The recommendations tackle fatalism and highlight our collective responsibility to improve the lives of children and young people across our society.

Since 2021, Each and Every Child has been working intensively with early adopter organisations Who Cares? Scotland, The Promise Scotland and The Scottish Government to embed framing across their work. The team has also been working with their Voices of Experience reference group of people with lived experience of care to co-design sessions to share the framing recommendations. We have now delivered 130 sessions to over 2000 people. There is a movement for change, one that is growing everyday. Just look at the 2022 John Lewis Christmas Advert⁷, which focussed on a family adapting their lifestyle to provide a child with a safe, loving home. This campaign was about what all children need to thrive, and is an example of how telling a different story can shift how care experience is discussed and understood across society. It showed how we all gain when children get the support they need.

To support individuals and organisations to explore framing, and how they can use it in their work, Each and Every Child has a variety of free support available. We deliver an Introduction to Framing session that covers the theory about why we know framing works to shift public thinking and to challenge stigma, and how to use each of the eight recommendations. This can be accessed as an open session, available to book on our website, or delivered in-house to your organisation. To find out more, please contact the team at enquiries@eachandeverychild.co.uk.

Michael Wield is a Programme Officer at Each and Every Child. He has a keen interest in equality, diversity, inclusion and participation, having previously worked as a Senior Programmes Officer at Stonewall Scotland supporting public sector, third sector and educational organisations across Scotland understand how they can ensure their workplace and services are inclusive of all LGBT+ identities.

⁵ The Promise Scotland, *Plan 21-24*, The Promise Scotland, 2021 (<https://thepromise.scot/resources/2021/plan-21-24.pdf>)

⁶ Each and Every Child, *Each and Every Child Framing Toolkit*, Each and Every Child and FrameWorks UK, 2020 (accessed 1 August 2023) (<https://eachandeverychild.co.uk/the-toolkit/>)

⁷ 'The Beginner', John Lewis Partnership, 2022, <https://www.youtube.com/watch?v=1z0ifP2gCIs>, (accessed 1 August 2023)



A Promise that we all must keep

**Iain MacRitchie,
Founder of MCR pathways**

What would you do if you knew of a young person living in a family unable to provide a regular meal or safe place to live. Someone under constant physical and emotional threat. Yet someone who desperately wanted a better life and had worked out that education was her way out.

I know the answer as I now do for countless adults across the UK. We would do everything we could do to help if we had a way to. Anything to make sure this young person doesn't have a lifetime defined by neglect or abuse, but determined by their talent and potential. It is this human and emotional commitment that we need to translate into our institutions, policies, government, communities, and culture. That is The Promise we made as a result of the Care Review that our young people would grow up loved, safe and respected so that they realise their full potential. Keeping it will transform the outcomes for our most disadvantaged young people and subsequent generations. There are thousands of young people in a under resourced care system that do not have what they need and deserve.

The challenge is to show how to in a safe and sustainable way that impacts. A way which learns difficult behaviours are just communication in young people who have experienced trauma. A way where everyone participating is supported. This is the reason MCR Pathways exists. A relationship focused mentoring model in a school setting, supported with dedicated staff.

Motivated by failure

MCR Pathways was formed from personal failure. In a prior business career I helped transform different organisations around the world. However it was a call to help sort out 90 residential children's homes, residential schools, and a foster agency that started this journey almost 20 years ago. The experience gave me a depth of understanding of the disconnect between policy and what we want to see happening with what in fact happens. There are some wonderful people that are passionately committed in our care system and we need to be very clear when we talk about the care system. It's about the system and not about the staff on the front line. I am inspired by what they do every day, their motivation, commitment and resilience. These are the words that make up the MCR name and what we want for our young people. A set of values for every change and development process.

The failure still motivates me as much today. Despite having transformed the organisation through improved operations, OFSTED ratings, training, management, and financial stability, it made absolutely no difference to the outcomes of the young people. I could correlate the better the organisation became the quicker the

young people were moved on for budget reasons. That was considered progression. Of course when you think on a human level you very quickly understand that's another change of acting parent, change of school and loss of friendships. A massive amount of instability, lack of control and voice. Even the most educated and experienced adult would struggle. The system can build trauma on trauma and many unintended consequences.

Impact of trusting relationships

The only thing I saw that was effective was when trusting relationships were established and maintained with each young person. It was a simple truth and one we all recognise. Building a better future through trusting relationships was the focus and basis of MCR Pathways. Although living in London, my birth city Glasgow was the ideal place for the charity to start. Radically improving education outcomes, job choices and life chances was the vision. Education is the most powerful way to build confidence and the self-esteem that allows and powers each of us to realise our potential.

With the goal of effecting system change, mainstream schools was the target. Initial approaches were rejected by the system until one headteacher and school took the risk. Providing relationships in the form of a volunteer mentor for each young person had a transformational impact on their education outcomes and progression. Not just in the stories but in the statistics. It's only statistics that change systems, the stories are not enough. In the first school just 31% of care experienced young people left school to university, college or employment. After 5 years 75% did. Now independently assessed it has become consistently over 80%. Statistics combined with the stories persuaded the many stakeholders to help us to get to where MCR is today. MCR supports over 5000 young people each week across Scotland and now the south-east of England.

An individual way to keep The Promise

At its heart the MCR model is human, a 'one good' adult in policy terms. It is the simplicity of carefully matching a young teenager with a volunteer adult who is there for no other reason than they care. They meet for an hour each week in school and focus on building a trusting relationship. This involves key skills essential for any organisation and personal development in active listening, effective communication, empathy, and coaching with values. You learn very quickly that the young person is not going to take advice from someone they don't know and trust. MCR now has independent evidence of the impact on the mentor as much as a young person in their well-being as well as personal development. Major benefits to mentors, their employers, to communities as well as the schools. Significantly, lived experience is at the centre of decisions and development.

Corporate parents are parents

What does that mean for our legal system and great institutions? Firstly we should drop the word corporate and ask our staff and professionals to think and act as a parent. To make and experience a life changing difference, become a mentor in its many forms to better understand a young person and the issues and systems they wrestle with. With volunteers there is no power dynamic but a young person with

agency and confidence. Creating genuine relationships means equality and a shared purpose. We gain understanding without our instant adult judgements on behaviours or emotional responses. Empathy is the foundation of the right decisions being taken. It allows us to go behind the behaviour and our perceptions to see the person and their potential. There is no place for any decision without lived experience and without the detailed understanding that you get from regular and systematic contact. Our institutional processes, thinking and culture will be made so much richer and effective.

One Promise kept

After 10 years as a full-time volunteer, I've now passed MCR onto the capable hands of the team. However I continue with the cause and support of our most disadvantaged young people. I can speak as someone who has led 20 organisations across the world, advised over 100 others and even a €1 billion investment fund. There is absolutely nothing I have done that comes close to being a mentor. The young person referenced at the beginning ended up in a homeless unit as the safest place for her to live whilst navigating her way through school. I witnessed the contradictions and the day to day challenges of the care system. However, despite the odds she fought her way through school, to medical school and has now started practising as a Doctor. All she remembers over our years together, is that I cared and kept turning up when no one else did.

We have The Promise to keep. It starts with each individual, it can scale to many and will be effective when we no longer need to use professional language to describe a basic right. That every young person should have at least one relationship in which they can trust to help them grow up loved, safe and respected to realise their full potential.

To become a MCR mentor and start the transformational journey simply register at www.mcrpathways.org

Iain MacRitchie is a social entrepreneur and philanthropist. He is Founder of MCR Pathways and holds a number of other public and private sector Board, mentor & Advisory roles. He is also a member of The Promise Oversight Board.



The HEC and Care Experienced Children

Professor Derek P Auchie, In-house Legal Member

‘There is a sense of a journey begun but with a long road to travel. Scotland’s future as a mature democracy is as much tied to social justice as to its economy. The commitment to improving the educational experience and raising the attainment of a minority of its youth who are in public care represents a significant test of the socially just society.’¹

In this article, the author considers the legal protection around care experienced² pupils in Scotland from a school education perspective, and how those protections can translate into a right to seek a remedy from the Health and Education Chamber (HEC) (Additional Support Needs) Tribunal.

Access to the HEC Tribunal

There are lots of rights and protections for children and young people³ in the law. This is in order that they are protected from harm, and that they can develop as young humans to be happy and fulfil their potential.

The rights of Scottish children are admirable and advanced and (on paper) mark out our society as a modern, developed and compassionate one.

So far, so good.

But it is one thing for children to have a right. It is another for them to see it in action.

On 31 July 2022, care experienced children and young people (up to and including the age of 17) made up 12.3% of the Scottish population of that age.⁴

¹ Connelly G and Chakrabarti C (2008) *Improving the educational experience of children and young people in public care: A Scottish perspective*. International Journal of Inclusive Education 12(4): 347–361, cited in Mercieca, Mercieca and Randall, [‘What about me?’ Stories of the educational experiences of care-experienced children and young people in a Scottish local authority](#) Adoption & Fostering 2021, Vol. 45(2) 173–190, page 174.

² The legal term is ‘looked after’, but the author uses the less paternalistic term ‘care experienced’ in this article, except where the term ‘looked after’ is necessary to explain certain legal rights and duties. The term ‘care experienced’ was used in the series of reports making up the conclusions of the [Independent Care Review](#), published on 5 February 2020. This terminology is used in [The Promise Scotland](#), where the point is made that ‘looked after’ ‘puts the focus on the people taking care of [children and young people]. *Care experienced* conveys it’s what happens to a child that matters, because what matters is the child themselves’. However, the terms are not interchangeable: ‘looked after’ has a technical legal meaning that ‘care experienced’ does not.

³ In this article, from now on and for convenience, ‘children’ and ‘child’ will be used instead of ‘children and young people’ and ‘child and young person’.

⁴ Children’s Social Work Statistics 2021–22, Scottish Government, 25 April 2023, pages 28–30.

For reasons explained below, the vast majority of these children have automatic additional support needs, giving them access to HEC Tribunal rights. Yet, since 2018, only between 4 and 6 percent of applications to the HEC Tribunal relate to care experienced children, less than half than would be expected given their representation within the community.⁵

This suggests that there may be a lack of understanding of the strong statutory protections for care experienced children and how these can be realised in an HEC Tribunal case.

Understanding of potential access to the Tribunal is important from a practical point of view, when one considers the powers of the Tribunal, for example:

- To order that a child attends a special provision within a particular education authority or independent school;
- To order that an education authority makes a co-ordinated support plan (**CSP**), setting out the support a child must receive in the school, including teacher contact, pupil assistant support, technology, curricular support and access to special facilities and equipment;
- To order that the wording of a CSP produced by an education authority is changed, to increase or further specify the support set out in it;
- To order that an education authority provides the support specified in the CSP;
- To order that an education authority complies with its duties to provide a proper transition arrangement when a child is moving from nursery to primary school; from primary school to secondary school; from one education authority area to another and from secondary school to adult life;
- To order that an education authority makes provision for a child without a CSP including in, for example: teacher contact, pupil assistant support, technology, curricular support and access to special facilities and equipment, via a discrimination claim under the Equality Act 2010;
- To order that an exclusion is removed from a child's school record and that an apology for this is provided;
- To conclude that a child has been unlawfully restrained or secluded in school, and that an apology for this is provided; and
- To order that an education authority carries out a review of its policies or conducts staff training following a claim under the Equality Act 2010, to avoid discriminatory conduct in future.

⁵ The 12.3% figure has been decreasing reasonably steadily from 15.7% in 2012, while the proportion of applications to the Tribunal has remained relatively static since 2018. These figures include references and discrimination claims. The figures for references only (which require a child to have additional support needs) is similar: between 3% and 6% across the same period.

To be clear, these are not theoretical outcomes; these are all examples of some of the orders the Tribunal makes on a regular basis.⁶

Given the practical impact that some of these outcomes could have for a group of children who are often disadvantaged in their schooling,⁷ it is important that care experienced children and their carers are aware that these rights can be exercised.

We need to consider how strong the statutory protection is for looked after children in Scotland.

‘Looked after’ children

A child is ‘looked after’ by a local authority (care experienced) when the child’s situation comes within one of the following categories, as set out in s.17(6) of the Children (Scotland) Act 1995 (**the 1995 Act**):

- (a) the local authority is providing the child with accommodation under s.25 of the 1995 Act;
- (b) the child is subject to a compulsory supervision order or an interim compulsory supervision and the local authority is the implementation authority;
- (c) the child is the subject of an order under which the local authority has responsibilities as respects the child; or
- (d) a permanence order made under s.80 of the Adoption and Children (Scotland) Act 2007 (which gives the local authority the right to determine where the child is to live) is presently in force.

On 31 July 2022, 12,596 children in Scotland were ‘looked after’. This is down 5% from 31 July 2021,⁸ but represents a significant number of children in our society.

Duties of a local authority towards a ‘looked after’ child

It is important to note that the statutory duties owed by a local authority as education authority are owed to all children, including those who are care experienced. However, in addition, there are some special duties that apply only to children who are care experienced. We will consider these additional duties now.

Some of these are set out in s.17(1) of the 1995 Act, and include safeguarding and promoting the child’s welfare.⁹

Regulations set out more specific duties upon a local authority that is responsible

⁶ See some published decisions in recent HEC Tribunal cases involving care experienced children here, on the HEC’s decision database: [FTS/HEC/AR/23/0004](#); [FTS/HEC/AR/22/0197](#); [FTS/HEC/AR/21/009](#); [ASN_D_22_01_202](#); [ASN_D_14_01_2021](#); [ASN_D_27_08_2020](#).

⁷ See the sources at footnote 1 above, and the many studies cited in those sources. See also the sources at footnotes 21 and 22 below.

⁸ [Children’s Social Work Statistics 2021-22](#), Scottish Government, 25 April 2023.

⁹ 1995 Act, s.17(1)(a).

for a 'looked after' child.¹⁰ The authority must carry out an assessment of the child.¹¹ That duty includes an assessment of the child's educational needs, the proposals for meeting those needs and the proposals for achieving continuity in the child's education.¹² The child's education history and current arrangements for provision of education must be taken into account during this assessment.¹³ This assessment must then feed into a wider written record of information about the child.¹⁴

Following this assessment, the local authority must prepare a child's plan.¹⁵ That plan must include the assessments and arrangements concerning certain matters, including details of any services to be provided to meet the education needs of the child.¹⁶

Further, local authorities are 'corporate parents'.¹⁷ As such parents, they carry parenting responsibilities towards, among others, 'looked after' children.¹⁸ These responsibilities are:

- (a) to be alert to matters which, or which might, adversely affect the wellbeing of 'looked after' children and young people;
- (b) to assess the needs of 'looked after' children for services and support it provides;
- (c) to promote the interests of 'looked after' children;
- (d) to seek to provide 'looked after' children with opportunities to participate in activities designed to promote their wellbeing,
- (e) to take such action as it considers appropriate to help 'looked after' children (i) to access opportunities it provides in pursuance of paragraph (d), and (ii) to make use of services, and access support, which it provides, and
- (f) to take such other action as it considers appropriate for the purposes of improving the way in which it exercises its functions in relation to 'looked after' children.¹⁹

Local authorities as corporate parents must also prepare a plan on how it proposes

¹⁰ The Looked After Children (Scotland) Regulations 2009, (SSI 2009/210) ('the regulations').

¹¹ Regulation 3(2)(a) of the regulations.

¹² Regulation 4(1)(j) of the regulations.

¹³ Schedule 1, paragraph 10 of the regulations, as applied by regulation 4(1)(j).

¹⁴ Regulation 3(3)(a), the topics for the information being listed in Schedule 1 of the regulations.

¹⁵ Regulation 5 of the regulations.

¹⁶ Regulation 5(3)(a) and (b) and Schedule 2, Part 1, paragraph 2.

¹⁷ Children and Young Persons (Scotland) Act 2014 (**2014 Act**), s.56(1), and Schedule 4, paragraph 2.

¹⁸ 2014 Act s.57(1)(a) and s.58.

¹⁹ 2014 Act, s.58(1).

to exercise these responsibilities and keep that plan under review.²⁰

Why are 'looked after' children protected as a special group?

From an educational development perspective, the Code of Practice to the Education (Additional Support for Learning) (Scotland) Act 2004 (**2004 Act**) puts it in this way:

'..there is considerable evidence that looked after children and young people can experience significant difficulties in more than one aspect of wellbeing which may impede their success in school education'.²¹

In 2007, the then Scottish Executive noted:

'..it is widely accepted that, as a group, looked after children and young people perform less well at school; when compared to the general school population their attendance rates are lower, their exclusion rates are higher and their academic attainment is lower.'²²

Recent statistics, published on 15 August 2023,²³ bear out these observations: in academic year 2021-22, 78.3% of care experienced school leavers attained 1 or more qualifications at SCQF level 4 or better, compared with 96.4% of all leavers. There were large gaps between care experienced and all pupils in important learning areas such as in reading (29.9% less for care experienced pupils); writing (32% less); listening and talking (27.2% less) and numeracy (32.5% less).

On leaver stage, 31.7% of care experienced school leavers left in S4 or earlier in year 2021-22, compared with only 12.4% of all leavers.

In 2021-22, 84.8% of care experienced leavers were in a positive initial destination compared with 95.7% of all leavers in the same year. This is down from 86% in 2020-21. This figure drops to 70.4% in a positive follow-up destination (compared to 93.5% of all leavers).

Additional support needs and looked after children

Children who have additional support needs acquire a range of rights and protections in law. These can make a significant practical impact on how education is delivered for children with those needs.

(a) Additional support needs: children who are not 'looked after'

Where a child is not 'looked after', a legal test must be met before the child has

²⁰ 2014 Act, s.59(1).

²¹ [*Supporting Children's Learning: Statutory Guidance on the Education \(Additional Support for Learning\) \(Scotland\) Act 2004 \(as amended\), Code of Practice \(Third Edition\) 2017*](#) (**Code of Practice**), page 18, paragraph 6.

²² [*Looked after children & young people: we can and must do better*](#), Scottish Executive 2007, page 24.

²³ [*Education Outcomes for Looked After Children 2021-22*](#), Scottish Government.

additional support needs, namely: the child is (or is likely) to be unable to benefit from school education without the provision of additional support. The reason for this inability is irrelevant.²⁴

The concept of 'additional support' is defined: support that is additional to or different from the educational provision made generally for children of the same age by the education authority in mainstream schools.²⁵

In considering what 'school education' means, the definition in the Education (Scotland) Act 1980 (**1980 Act**) applies:

'progressive education appropriate to the requirements of pupils, regard being had to the age, ability and aptitude of such pupils.'²⁶

But that is not all. 'School education' includes (as a sub-part of the definition above²⁷):

'education that is directed to the development of the personality, talents and mental and physical abilities of the child or young person to their fullest potential.'²⁸

Indeed, education authorities have a duty to secure that the education is directed in this way for all pupils.²⁹

(b) Additional support needs: children who are 'looked after'

There is a statutory presumption that a looked after child has additional support needs.³⁰ This means that the test for additional support needs (discussed above) need not be applied to a looked after child: the fact that the child is looked after is enough for the law to provide the protections and rights that having additional support needs brings.

There is an exception to this presumed protection. Where an education authority (in the course of identifying the additional support needs of a looked after child) forms the view that the child is (or is likely) to be able to benefit from the provided school education without any additional support, the presumption does not apply.

However, two important (and related) points arise:

²⁴ 2004 Act, s.1(1).

²⁵ 2004 Act, s.1(3).

²⁶ 1980 Act, s.1(5), as applied in that Act by s.135, and as applicable to the 2004 Act by s.29(2).

²⁷ The phrase is 'the reference to school education includes, in particular..' in s.1(2) of the 2004 Act: this provision does not provide a definition of 'school education' for the purposes of s.1 of the 2004 Act. Rather, it is, in essence, a clarification of the wider definition (set out above) from the 1980 Act.

²⁸ 2004 Act, s.1(2), which applies to the whole of s.1(1), including s.1(1A) and (1B)).

²⁹ Standards in Scotland's Schools etc. Act 2000, s.2(1).

³⁰ 2004 Act, s.1(1A).

- (a) This does not mean that the child does not have additional support needs; only that the presumption that the child has these needs does not apply – the child may still meet the regular additional support needs test in s.1(1) (discussed above)³¹;
- (b) Where a case is raised in the Tribunal in relation to a child who is ‘looked after’, it is the Tribunal’s decision on whether the child has additional support needs either as a result of the presumption or as a result of meeting the test.³²

Relevance of care experienced children duties

Where a care experienced child takes a case before the Tribunal, the eligibility question is not the only one. Parties may refer to the duties of education authorities towards care experienced children. Where it is argued that these duties have not been complied with, this can be relevant to the ‘appropriateness in all of the circumstances’ test in placing request references.³³ A failure to comply with these duties could, in itself (or in combination with other factors), be the foundation for a finding of discrimination as part of a claim under the Equality Act 2010, leading to an order that these duties are met.

Conclusion

Beverly Paterson, a Principal Teacher of Pupil Support in a mainstream secondary school was quoted in 2008 as making this observation:

‘The [care experienced] child can go through quite a traumatic time. There can be all sorts of feelings of rejection, which can lead to disruptive behaviour in school. However, for a lot of these kids, school is the one stable thing in their lives. They know where they are and what they are doing. They often feel safe in school because things stay constant and they know how we will react.’³⁴

The aim of a care experienced child feeling safe in the stable environment of their school is one to which we can all subscribe. The HEC Tribunal plays an important part in giving care experienced children the right to access to the curriculum, resources and support to which they are legally entitled.

[A right is no good if it is not used: I hope that in future we see more awareness of the HEC’s jurisdiction among the care experienced community.](#)

³¹ The wording of s.1(1B) leads to this conclusion: where it applies, it dis-applies s.1(1A) (containing the presumption) only, not s.1(1) (containing the test).

³² Although s.1(1B) of the 2004 Act applies where ‘an education authority form the view’ about the test, this does not mean that this view is unchallengeable. The local authority (just like the courts) do not ‘sit under a palm tree’, Warner J. in *Re J E Cade & Son Ltd.* [1991] B.C.C. 360 at 227, a comment in the context of a very wide test for the court as applied by the House of Lords in the context of the phrase “may make such order as it thinks fit”: *O’Neill v Phillips* [1999] 1 W.L.R. 1092 at 1098.

³³ 2004 Act, s.19 (4A)(a)(ii).

³⁴ [These Are Our Bairns: a guide for community planning partnerships on being a good corporate parent](#), Scottish Government, 2008, page 42.

HEALTH AND EDUCATION CHAMBER GUIDANCE

[To Members](#)

PGN 03 2018	Independent Advocacy
PGN 04 2018	Adjournments
PGN 05 2018	Postponements, Suspensions and Procedure
PGN 06 2018	Case Management Calls (Revised October 2021)
PGN 01 2021	The Child, Young Person and the Tribunal
PGN 01 2023	Hearings in the HEC

[To Administration and Parties](#)

PGN 01 2022	Documentary Evidence
-------------	----------------------

[Information Notes](#)

01 2023	Parties, Representatives, Witnesses and Supporters
02 2018	Claiming Expenses - Representatives
03 2018	Making a Disability Discrimination Claim
04 2018	Making a Reference

[Children's Guide to Making a Claim](#)

[Children's Guide to Making a Reference](#)

[Guide to the Glasgow Tribunals Centre Sensory Floor](#)

Member Contributions to the Bulletin

Members are encouraged to contribute to the Bulletin and should contact Lynsey Brown at HEChamberPresident@scotcourtsribunals.gov.uk if they wish to contribute. Contributions must be typed in Arial, font size 12, with justified margins, two spaces after each full stop and with all necessary references set out as a footnote.

Please note that contributions may be subject to editing.



Disclaimer

The Health and Education Chamber (HEC) seeks to ensure that the information published in the Bulletin is up to date and accurate, however, the information in the Bulletin does not constitute legal or professional advice and the HEC cannot accept any liability for actions arising from its use.

The views of individual authors are theirs alone and are not intended to reflect the views of the HEC.