

# NAVIGATING THE WORLD OF RIGHTS

Views from our Care Experienced  
membership

December 2020



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# 1. WHY WE DID THIS: INTRODUCTION

## THE ANNUAL PARTICIPATION PROGRAMME

In August 2020, Who Cares? Scotland launched the first [Annual Participation Programme \[the Programme\]](#). The Programme, refreshed annually, creates themes for participation activity across the year. These themes are based on analysis of our advocacy and participation evidence, alongside relevant external influencing opportunities.

We have three key objectives for this work:

- 1. Ensure members are connected to influencing opportunities**
- 2. Ensure member experiences inform what we say out loud**
- 3. Ensure those in power hear what they have to say**

Due to the impact of Covid-19, the 2020/21 Programme was reduced to three important themes, allowing members time to share their views digitally.

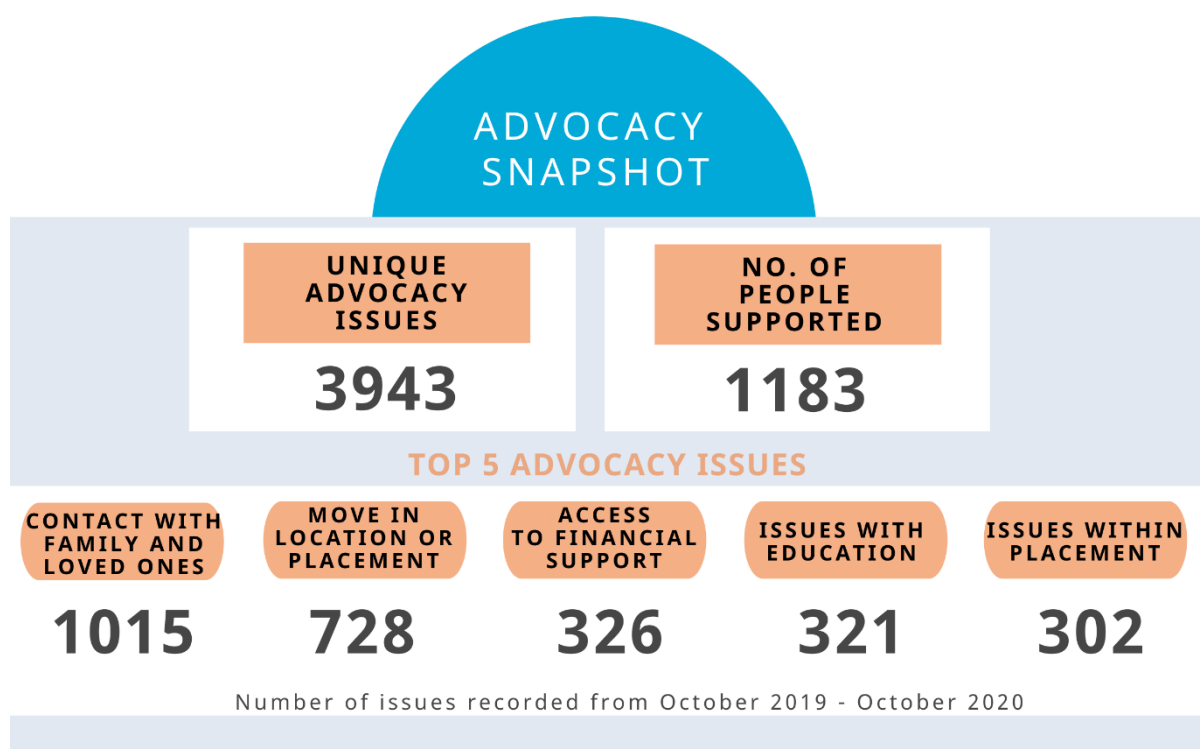


The first participation theme on Child and Human Rights ran from August to October 2020.



## WHY CHILD AND HUMAN RIGHTS?

Our first theme on Child and Human Rights was an important one. Since 1978, Who Cares? Scotland has provided Independent Advocacy to Care Experienced people navigating their rights. Our contemporary advocacy and participation evidence demonstrate how Care Experienced people continue to face challenges in having their rights respected, protected, and fulfilled, during care and into adulthood.



The pandemic has had a significantly negative impact on many Care Experienced people's lives and has resulted in creating an even greater need to discuss the protection of human rights<sup>1</sup>. By sharing the views of our Care Experienced members with decision-makers, we hope Scotland can 'build back better' and ensure that

<sup>1</sup> To read in more detail about the impact of the pandemic on the Care Experienced community, please see our impact reports here: [Impact of Covid-19 on Scotland's Care Experienced Community – May 2020](#); [Impact of Covid-19 on Scotland's Care Experienced Community – April 2020](#)



marginalised groups are not disproportionately affected by any future pandemic or crisis again.

In addition to this, the Scottish Government is currently considering how Scotland can be a world leader in upholding and protecting all rights by ensuring Scots law contains specific protections for both children and adults. This is especially important in light of the UK's upcoming exit from the European Union, which may change the way our human rights are protected.

We know that Care Experienced people of all ages can face barriers to realising even their most basic rights. As an organisation, our work providing individual and collective advocacy focuses on protecting Care Experienced people's rights and actively confronts rights abuses. Therefore, it is important that any changes to the way child and human rights are enforced in Scotland fully recognises the specific challenges of the Care Experienced community. Outlined below are two vital influencing opportunities, which we will ensure are presented with the views of Care Experienced people on child and human rights.

## 1. The Incorporation of the UNCRC into Scots Law

Child and human rights are currently protected by something called the 'International Human Rights Framework'. Many countries have signed up to treaties and conventions in this framework, which include the [United Nations Convention on the Rights of the Child \(UNCRC\)](#) and the [Universal Declaration of Human Rights](#), amongst others. However, the only UK law which exists for us to defend human rights using the courts is the [Human Rights Act 1998](#), which incorporates the rights set out in the [European Convention on Human Rights \(ECHR\)](#) into UK law. The Human Rights Act means that UK citizens can take their case to the UK Supreme Court, after going through lower courts. Just recently, a Care Experienced young person took their legal case to the [Supreme Court to challenge the way their sibling relationships were impacted by the Children's Hearing System in Scotland](#), as they felt it impacted on their 'Right to Family Life' which is protected by Article 8 of the ECHR.

Scotland is in a unique position as it has introduced legislation that could provide legal protections of children's rights in Scots Law - this process is called 'incorporation'.

On 2nd September 2020, the 'United Nations Convention on the Rights of the Child (Incorporation) (Scotland) Bill' was introduced to the Scottish Parliament and is now undergoing scrutiny by MSPs to



work out the details of this new law. The aim of the Bill is to provide binding rights to children. The issues the Bill considers range from what 'redress' in the courts could look like for children and young people, how the Scottish Government can change laws to make sure they are compatible with the UNCRC and how the Children and Young People's Commissioner in Scotland would have power to take legal action if children's rights under the UNCRC are breached. [Full details about the Bill are on the Scottish Parliament's website here.](#)

So far, we have created [a written response to Stage 1 of the Bill](#), which includes initial findings from the participation work carried out with our members.

## **2. National Taskforce for Human Rights Leadership**

[The National Taskforce for Human Rights Leadership \(Taskforce\)](#) was set up in 2019 to address the human rights and equality impacts of *Brexit* in Scotland and to design and deliver proposals for a new statutory framework for human rights in Scotland. These proposals will be created in consultation with the public, but with a focus on learning from those who work to protect and uphold rights day to day. The Taskforce are also very keen to hear about the lived experience of communities who are more likely to experience challenges in having their rights upheld, such as Care Experienced people.

To begin with, the Taskforce are focusing on developing their thinking across three areas: An Act of the Scottish Parliament which provides human rights leadership; a public participatory process to be developed as part of preparation the Act and its implementation; and capacity-building to enable effective implementation of the proposed Act.



## 2. THE SHORT VERSION: EXECUTIVE SUMMARY

This section provides an overview of the report's findings by detailing the headline messages from Who Cares? Scotland's Care Experienced membership on Child and Human Rights.

### RIGHTS KNOWLEDGE

- Children experience barriers in understanding their rights. Both in identifying what a rights abuse looks like in their lives and knowing how to challenge it.
- The role of organisations and advocacy is extremely important to support Care Experienced people to understand their rights.
- Care Experienced members felt the public did not understand what human rights are and that this impacted how well their own rights could be upheld.
- Rights information and education for the public must be wide-ranging, varied in medium and be accessible to all groups – including child-friendly material.

### RIGHTS EDUCATION

- Children must learn about rights in school and this should focus on how to practically uphold rights and recognise what rights mean in their own lives.
- Understanding 'Care Experience' was seen as a vital part of learning about rights in school and for individuals to self-identify as part of the community.
- Members identified a large range of professionals who should get rights training, with particular focus on frontline staff, carers, and parents as the most involved in children's lives. Training should not just be for managers and senior staff – learning from potential gaps in the corporate parenting approach.
- Professional training must focus on the practical implications of upholding rights and be tailored to individual job roles.

### LIFELONG RIGHTS PROTECTION

- Members unanimously supported the need for Care Experienced people to have rights protections throughout their lifetime.



- Many members spoke about the limitations of current support in place for Care Experienced adults, and how age cut-offs did not recognise existing need.
- Many older members shared personal accounts of rights abuses they continued to experience throughout their adult lives. This has created a compelling evidence base demonstrating the large gaps in service provision and support leading to lifelong rights breaches for Care Experienced people.
- Clear message that for Care Experienced adults there must be the ability for redress and accountability from the state for the legacy of childhood in care.

## **ACCESSING RIGHTS PROTECTION**

- Members strongly support the need for court intervention to be available as an option for challenging rights breaches, however, there was significant focus on softer, alternative approaches to be available as a priority.
- The use of Independent Advocacy and accessible, child-friendly complaints mechanisms were supported as alternative routes to court action.
- Members supported the need for Care Experienced people to be able to bring their own cases to court concerning rights breaches, as well as organisations being able to bring cases on behalf of individuals.
- For all forms of rights challenges, members stressed the need for support to be available for Care Experienced people – especially if interacting directly with the legal system.
- The types of support that could be required were wide-ranging, from formal legal advice to having moral support available in the form of a supportive, trusted professional or adult. The role of Independent Advocacy was again put forward as an option that should be available.
- Creating routes for remedy and redress must include commitment to resourcing education and training about how these solutions can be used to support Care Experienced people. There must also be investment in specialist support organisations and professionals who can support individuals to raise rights challenges.





## ENSURING RIGHTS ARE UPHELD

- Members want robust accountability mechanisms to be in place to ensure that commitments made to uphold rights are followed through, by both public bodies and individuals responsible for protecting child and human rights.
- An independent body checking on rights commitments was most widely supported to ensure accountability. Independence will ensure reporting is meaningful and accurate to the perspectives of Care Experienced people affected.
- Members feel consequences should be in place for those failing to uphold rights and that there should be a national standard for organisations to work towards. This was stressed as important to prevent a 'postcode lottery.'
- There was support for organisations responsible for upholding rights to regularly report on how they are upholding rights.
- Members think that children and young people should be a part of the process of holding organisations to account on rights promises, to ensure transparency.
- Members made clear that significant financial investment and commitment of resources both national and locally will be required to realise child and human rights pro-actively across services, to prevent court action for rights failings.

**Please note prior to reading this report, it is important to acknowledge the challenging and sensitive nature of its content. The nature of Who Cares? Scotland's work means that our evidence will understandably point to the challenges that Care Experienced people face. As a result, the contents of this report may be emotionally challenging to engage with. Please be conscious of how you feel before reading the rest of the report.**



### 3. HOW WE DID IT: METHODOLOGY

We collected new evidence from our members by providing digital participation methods throughout August and September 2020:

1. Online Survey<sup>2</sup>
2. National workshops for members across Scotland
3. Local workshops led by pre-existing participation groups across Scotland

It is worth noting that engagement levels across all participation activities has been greatly impacted by the pandemic. There has been reduction in attendance to many groups and membership spaces, which were forced to move online.

Many of our local participation groups discuss rights regularly and so in addition to creating digital opportunities for members to share their views, we also provided members with the chance to share pre-existing evidence created by local groups. Including pre-existing evidence from participation groups and individual members ensures that previous work carried is respected and heard. In response to the theme of Child and Human Rights, we received existing participation work from Champions Boards in Highland, Moray, Aberdeen City and Aberdeenshire local authority areas.

Across all methods, we covered the following themes:

- **Rights knowledge and education:** explored how confident participants felt talking about rights and if there needs to be more education about child and human rights in Scotland.
- **Understanding rights and their impact:** looked at how child and human rights are more than just promises on paper and how if protected in Scottish laws, the courts could be involved in helping young people challenge when they are not respected.

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<sup>2</sup> See Appendix 1 for full survey.



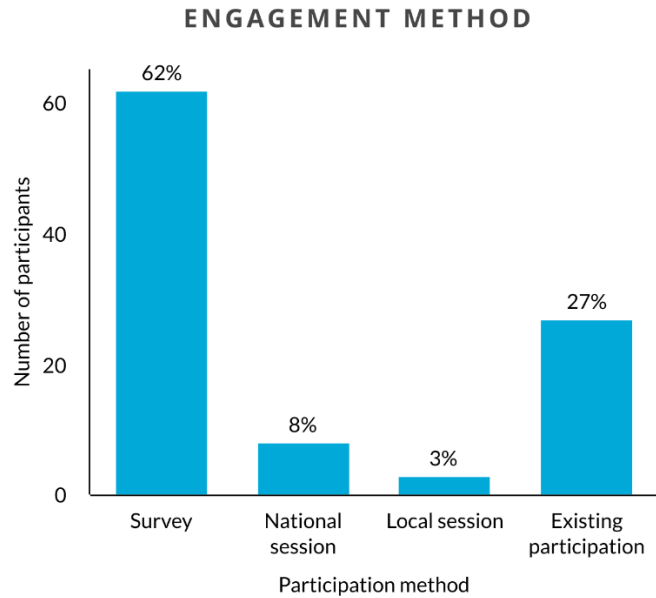
- **Protecting rights in practice:** explored how there might be specific duties on certain organisations to protect the rights of young people, if child and human rights become part of the law in Scotland.
- **Lifelong rights protections:** asked members about the need for rights to extend beyond childhood for Care Experienced people and gave opportunity for older members to share personal reflections about the legacy of being in care.

## CO-DESIGNING WITH THE WHO CARES? SCOTLAND COLLECTIVE

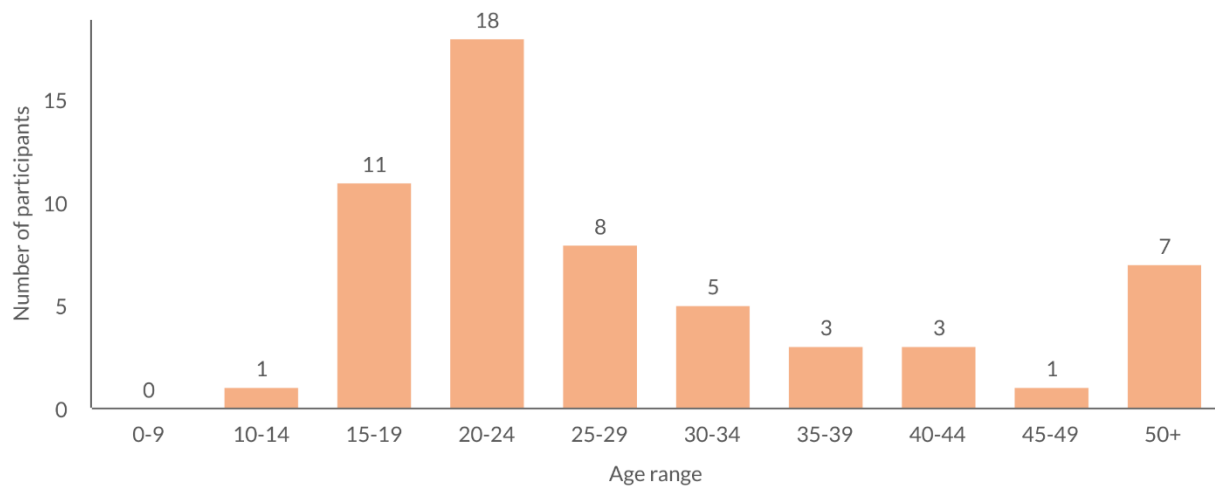
The design and delivery of these participation methods were co-designed with our [National Representative Body \(NRB\) aka The Collective](#). The NRB is made up of Care Experienced members of Who Cares? Scotland, who act as Member Representatives of the broader membership. To fulfil this role, it is important that Member Representatives are supported to be fully informed about what our wider membership thinks. NRB members co-designed session plans, survey questions, and co-facilitated national engagement sessions where they could meet and speak to members of Who Cares? Scotland directly.



## 4. WHO TOOK PART: PARTICIPANT DEMOGRAPHICS



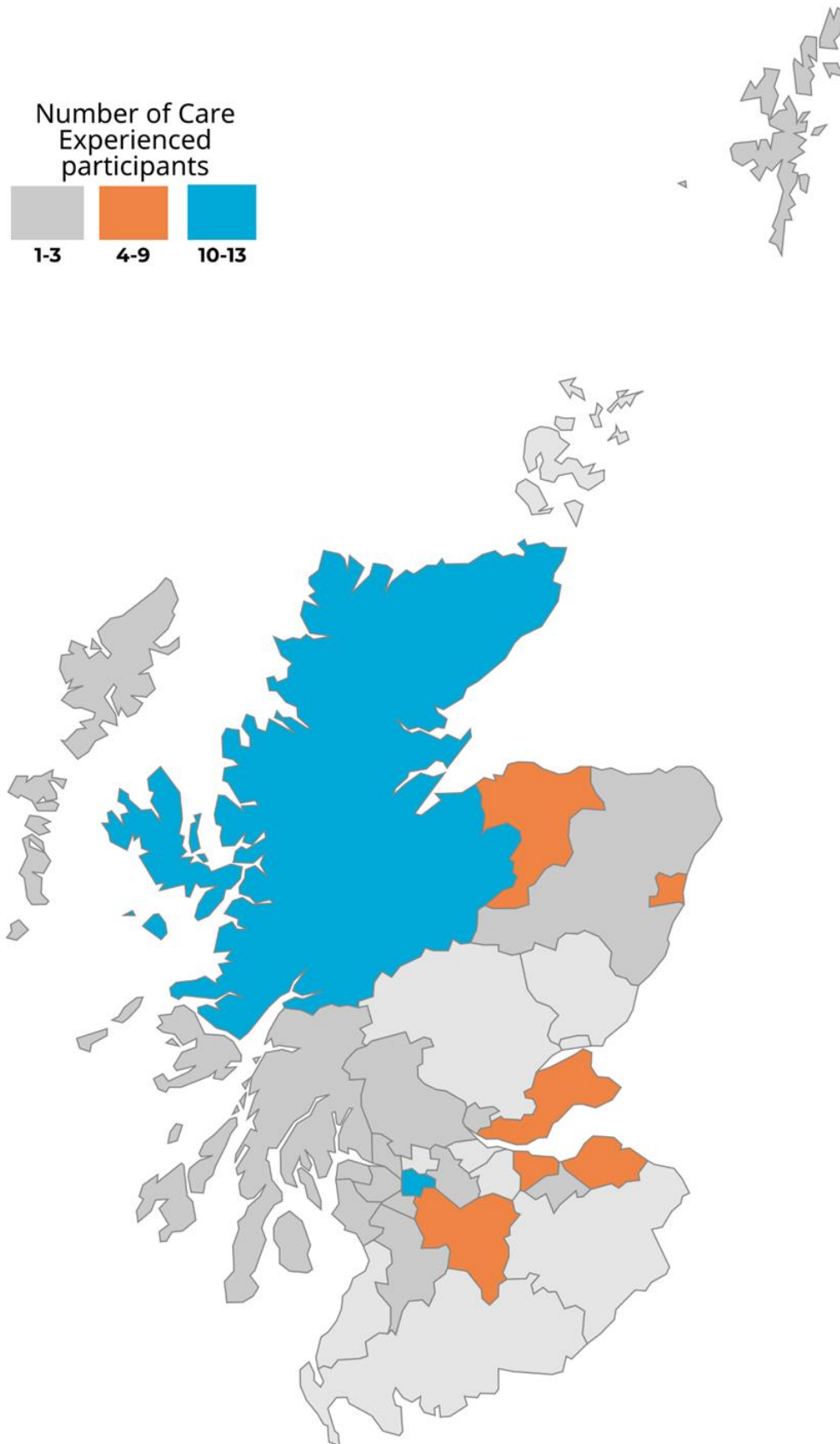
### AGE OF PARTICIPANTS\*



\*57 participants chose to provide their age



## LOCAL AUTHORITY AREA



## 5. WHAT WE FOUND OUT: DISCUSSION

### 5.1. RIGHTS KNOWLEDGE

Do you feel like you understand what human rights are?

**81%**  
SAID YES

Care Experienced participants felt they mostly understood what human rights are. This could be due to the older demographic of members choosing to take part – rather than being fully representative of our broader membership's confidence in understanding human rights across all age groups. However, participants did reflect that they often did not know their rights when they were younger and that their rights knowledge came from receiving advocacy and engaging with organisations such as Who Cares? Scotland and other youth work organisations. Others shared that it was through attending college or school that they learned about human rights.

Many shared barriers that have prevented them fully understanding their rights in the past:

'I knew about it when I was younger but didn't have that much understanding.'

'I believe I know them now, but not as a child or until I was 17 and with WCS.'

'With human rights I thought I knew a lot about them, I remember when I was little, I would go to social work meetings and I would see the posters, but I never understood what they really meant until I was about 15... these things are about my life and about me... it was never diluted down to a level that I could understand... I never knew the terminology and stuff.'

'Your rights are not yours – they're other people's until you're informed of them. Gatekeepers of rights. It's not young person friendly. Nobody taught me WHY I felt different – I knew I was different but not



why, as nobody told me that living in different circumstances was OK!'

Participants shared that they felt there was a difference between knowing what human rights are and understanding the detail of what they mean in practice. A person may know they have rights in an abstract sense but be unsure of how to recognise what a rights breach looks like in their own context and then how to speak up when they are breached:

'I don't think we're aware of our rights, we know we have rights but don't know what they are.'

'What rights are and how they should be upheld - people may know the gist of them but they need concrete examples and put into context so it can be applied in ways they may come across it.'

We know as an organisation that ensuring people in care understand the practical implications of their rights and entitlements is vital and it is evident that this is also something our members feel strongly about. For example, the Highland Champions Board's new Leadership Group invited Care Experienced people to come together and share their stories to identify priorities for change to care in Highland. One of the key priorities identified was under the theme of 'Rights and Participation' and stated that the group wanted to see positive changes to their 'understanding and education about the care journey.'<sup>3</sup>

Do you think enough people in Scotland understand what human rights are?

76%  
SAID NO

Care Experienced participants mainly felt that the general public do not understand enough about child and human rights and what they mean in practice. There was variation in responses to this question, however, most participants felt that particular

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<sup>3</sup> [Highland Champs Leadership Group Report 2020: Our Experience, Our Voice.](#)



groups experienced active exclusion and experienced barriers to understanding their rights:

'I think it is quite calculated, if the masses are not aware of their rights then there are less challenges due to a lack of understanding. This ensures that the majority are not aware as their human rights are regularly infringed, reinforcing the individualised infringement as opposed to connecting with others experiencing similar infringements and challenging.'

'Raising awareness in certain groups, as it can affect different groups differently. Combat stigma, people that are at risk by not knowing they have rights and think they deserve a bad or negative life. People with disability or lifelong health condition... there are loads of barriers there, even down to how they access buildings...there are people whose rights have been totally taken away from them.'

'Many barriers on accessing information about human rights'

Teenagers and younger children were identified as age groups who do not have enough knowledge about rights, and participants felt strongly that rights education should be part of childhood from an early age. However, older people were also identified as a group who may be less engaged and aware of their rights – showing that lack of education on rights is perceived by members as affecting all ages:

'Your rights relate to every aspect of your life, to your finances, to poverty, to housing, it needs to be part of life skills that you know what your human rights and how Scotland works. Physically open your eyes, take children to a courtroom, to open their eyes.'

'Everyone should be aware of their rights at each stage that applies to them so they can recognise them and when they can use them.'

'I think people are more aware of the UNCRC, less so on the wider human rights. And you should know about all of these at an early age and which ones are age-dependant.'





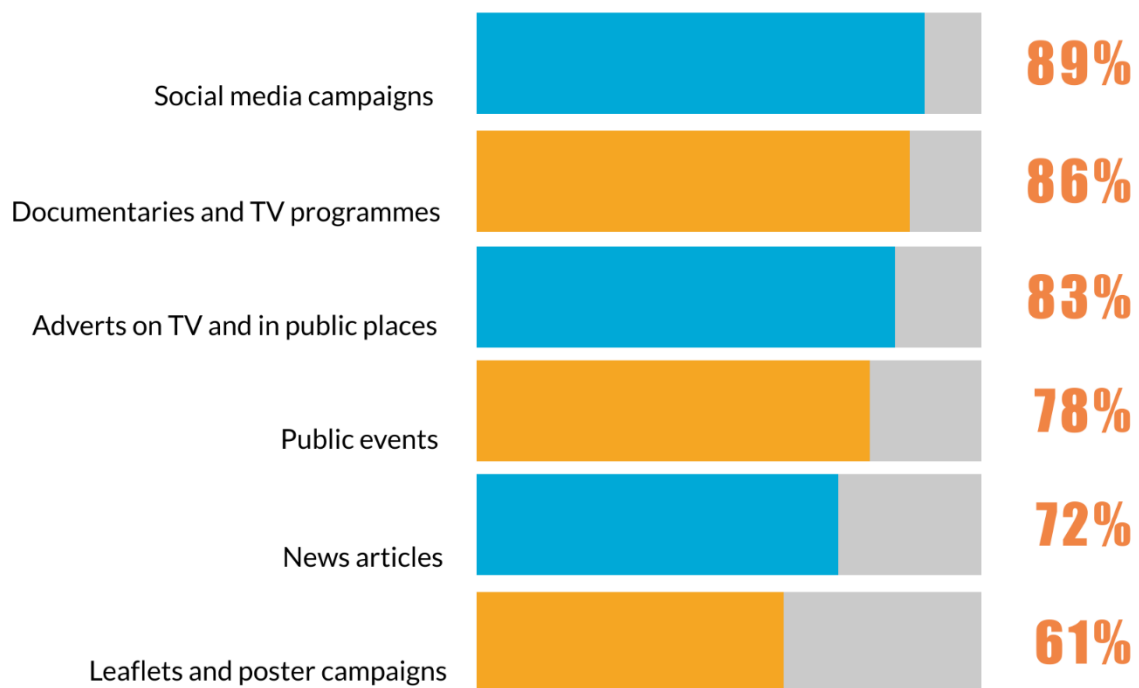
‘Might not think about rights until you hear about human rights breaches.’

‘Hopefully one day, everyone can become an expert on rights’

The need for proactive public education initiatives about child and human rights was a consistent message from our members. However, it was pointed out by one participant that the need for public education on rights showed a failure of our current society to uphold them:

‘Why should you have to campaign for your rights, they should be automatic.’

We asked participants to select which methods they think could be used to educate the general public:



Other suggestions provided for how public education could be carried out included:

‘Reach out to Corporate parents and see if they could also do some advertising’

‘Involving young people in these activities will give them more relevance and power’



‘When I was in Italy, in the shop window they had a gondola with all the sustainable development goals, so it was eye catching and a good example of how to make things appealing to a wide variety of the public, there needs to be a variety of approaches.’

‘Creative ways from nursery rhymes and cartoons to films. It’s about the story, the effectiveness of how well it will be learnt, understood, experienced.’

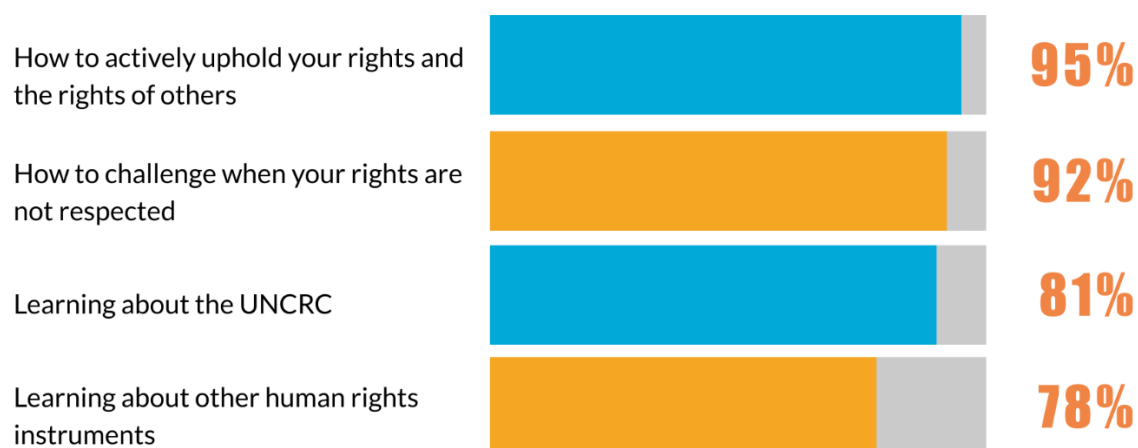
Members shared why pro-actively educating the public, at all ages and stages of life, was an important part of rights being better protected:

‘If everybody universally knows about their rights, then everyone can take responsibility in helping others when theirs aren’t upheld.’



## 5.2. RIGHTS EDUCATION

Ensuring children have access to rights education in school was widely supported by participants as an important part of public education. We asked members what rights education in schools could cover:



The top results of understanding how to uphold and challenge rights, speaks to the broader evidence base – as members continually tell us that awareness of rights is not enough without the practical knowledge of how to put them into action:

‘We get taught like maths and English, but we don’t get taught life skills, and I think rights are life skills.’

‘We need to be bringing professionals into schools, not just talking to schoolkids about what human rights are within society, but even like even different organisations can help them uphold their rights if there is a breach. Teaching how you uphold.’

Participants also stressed that rights education must be accessible for all children:

‘If you are doing rights education in school you need to do it in a way that all ages will understand it and you need to give the responsibilities that come along with rights too.’



'It would need to be done differently for those with complex needs so that they can properly understand it.'

'Everyone should have that knowledge. It is different for each child – it can be tricky to teach them in a general way, but children should know what channels of support they have. Practical things - to challenge and uphold your rights. Giving examples and context can help the learning – make it meaningful and relevant.'

Some participants also added that 'Care Experience' should be a distinct part of rights education for all children, to help people self-identify that they have specific rights and protections. They added that children may not know they are Care Experienced, and this could impact their ability to access and understand their rights – with this lack of understanding potentially lasting well into adulthood.

One participant who had experience working in education commented that a very small number of children they worked with knew they were Care Experienced, and many children did not know what the term meant. An older participant also shared that they only found out they were Care Experienced by accident, from attending their local college as an adult re-engaging with further education. They had lived their whole life not knowing they had specific rights.



### 5.3. RIGHTS TRAINING

Participants told us that they want a large range of different professionals to undergo rights training. The list below shows a selection of the answers given to this question:

- Social work
- Police
- Health workers (like doctors and nurses)
- Teachers and education staff
- Foster and kinship carers
- Parents
- Residential children's home staff
- Mental health workers
- Panel members
- Criminal justice
- Support workers
- Youth workers
- All people who work with young people
- Employees in private sector organisations
- Corporate
- Parents

Participants also stressed that training must involve jobs at every level in an organisation and that relevant professionals should know about their duty to uphold human rights as soon as they start their job. One participant reflected that it was the dinner ladies, lollipop lady and janitor that would have noticed her rights were being breached at school, not necessarily the management of the school or head teacher.

'I feel like everyone who works with Care Experienced people should know our human rights so they can help and support us.'

'If any person or organisation is involved in dealing with children and young people it is important that they are fully aware of young people's rights in order to make sure that those rights are recognised, respected and protected.'



'If the school and teachers knew about my experience, I think it would have helped, they would have understood why I was late for school, why I needed more support to stop getting into trouble. My actions were part of my circumstances, not justifying it but they played a role in my emotions and school was probably the only place I could get away with it. I didn't know my rights to express how I feel...'

'EVERYONE should know the rights and especially... important people who are involved with young people, so if a young person isn't sure of their rights and asked a foster carer for example then they should be able to give them the answer.'

There are important lessons to be taken from the implementation of Corporate Parenting duties under Part 9 of the Children and Young People (Scotland) Act 2014, which has a list of public bodies who can access tailored training. Some participants felt that corporate parenting training given to senior staff did not always translate into changes in frontline practice for Care Experienced people relying on support:

'Many people "at the top" know exactly what corporate parenting is but are doing nothing about it. We need to stop asking and start demanding that they do what they're supposed to!'

'For some, corporate parenting is a tick-box. They do a 3-hour training session, and nothing changes, they just tick the box.'

Corporate parents are required to report every three years and many public bodies have been pro-active in taking forward their corporate parenting duties.<sup>4</sup> However, as an organisation that has experience training and influencing corporate parents, we know the existence of legal duties alone does not always compel action from the full list of public bodies named as Corporate Parents in the 2014 Act. This is partly due

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<sup>4</sup> [Scottish Government, 2018, Corporate parenting - turning legislation into practice together: report.](#)



to the lack of legal enforcement of the duties and consequences for not adhering adequately to those duties – the requirement to report every three years has focused understandably on the positive practice taking place, but without opportunity for redress of gaps in duties being upheld. Participants stressed the importance of accountability mechanisms being in place alongside training, to ensure it is translated into tangible action.

We also asked participants to choose the topics which rights training for professionals should cover:



Compared to the answers given about the content of rights education in schools, there was even stronger support for professionals to understand how to implement rights in practice:

'They wield power over young people. They must understand how this power can be used.'

It was felt that rights training for all professionals across different organisations, such as the Police, would prevent there being varied practice:

'Police officers - feels like the luck of the draw of what police officer you get, and they should all be educated on rights, should be less aggressive and authoritarian.'

It was also important to participants that rights training was kept up-to-date and that professionals had the opportunity to refresh their knowledge:

'May hold assumptions from years ago and so they should have their knowledge updated regularly.'



## 5.4. LIFELONG RIGHTS PROTECTION

Do you think older Care Experienced people who have left care and are now adults should have their human rights protected?

**100%**  
SAID YES

We asked our members about whether rights protections for Care Experienced people should be lifelong and received a strongly supportive response – with agreement across engagement methods. This confirmed our organisational knowledge from working with an almost 3000-strong membership which varies widely in age range and who have consistently told us how the impact of care is felt lifelong. Participants told us how the care and protection systems create different cliff-edges of support for Care Experienced people.

'I'm old now in terms of care experience, I think yeah, I want to still be included. Your parents don't just say you're too old, goodbye, it doesn't happen to other people why should it happen to me? You don't stop experiencing care, trauma, financial support, parenting in general. It would be nice to know if I fall on hard times, or I feel lonely, then that door is open.'

'Everyone deserves their rights to be protected all through life.'

'There's lots of research work of scarring effects of poverty - being in care is similar in that it shapes your outcomes - why shouldn't you be protected?'

'It shouldn't matter if you have left [care] or not, your human and still deserve to have rights.'

'Available if and when required, care meaning care for life in all areas of life. The impact of the state intervening in your life as a child or young person has consequences, some positive and some negative, too often negative! A shift is required to move from surviving care and its impact and creating increased opportunity to thrive post care and throughout life.'





'I would really like to bring previously looked after to the table, I feel they are being failed and excluded under Care Experienced... Include previously looked after in the definition of Care Experienced regardless of when the supervision is terminated and focus on needs over timescale.'

A couple of participants made the point that lifelong human rights protections should be available to all in society, and that this would then cover Care Experienced adults who experience rights breaches.

We also asked in both the survey and the online sessions about any examples of rights breaches which occurred for Care Experienced adults. Many older members chose to share difficult experiences and rights abuses they have encountered as adults:

'I've genuinely just had to take my local authority to court at aged 25 for not protecting my rights.'

'I went through an incident that happened in my home, I was in a bit in denial of exactly how bad it was, I never shared it with anyone... my first port of call was to my aftercare worker, but when I went there, they told I was too old, and I felt so lonely. I didn't know what my rights are, who I take this up with, who will support me through the process. I just needed a little bit of help to maintain my full-time job, raising a child, going through a court case. I guess at that time if that door had been left open, that process would have been so much easier because I would have had a parenting role. My rights weren't respected because of my age, and then I thought how many young people have a breakdown after that age and they don't have anywhere to turn to, because it states that that's your cut off point. Even mental health referrals, it took me two years to have that done, the letter only came today. I've had to battle that myself, I've tried 7 different counselling organisations. If I just felt I wasn't going through this alone... this is where I feel rights aren't respected for older Care Experienced people. You don't have anyone else to turn to, I needed legal advice, I needed emotional advice, financials, I guess. I didn't have anyone to turn to.'



‘As a Care Experienced adult, I often feel like I’m different somehow. I have no family as I didn’t manage to maintain a... relationship and was scared to have children of my own in case I turned out like my mother, which was often repeated to me as a young child in care. I am now alone and getting older, which was something I’d never envisaged or expected.’

‘Having to prove I was a looked after child to the college, and to do all the leg work for the college. As mother had been in care, I was judged from the midwife staff as if I was daft and ever since then I have... [been] looked down on by so many people.’

‘Housing - I don’t feel safe and have asked for a move but I’m still waiting. My right to a family life in terms of contact with my daughter being limited and out of my control. I don’t feel respected by social work or housing.’

‘Often survival strategies will kick in and your view of services and people in authority is skewed which influences all areas of life, increasing vulnerability for yourself & possibly others, increased risks to develop toxic relationships, unplanned pregnancies, poor housing, lack of social supports, poverty, lack of life skills, education impacted upon due to care exp, judgements and lack of aspirations for you, individuals internalising and creating emotional harms. Relationships with biological family can also be really complex and create greater risks more opportunities to have been traumatised in childhood and also into adulthood.’

Participants also commented on the need for Independent Advocacy to be available for Care Experienced adults:

‘Everyone should be able to access lifelong advocacy, they all have the rights to have their rights upheld all CEYP should have their right protected and always have support.’

One participant shared that it was later in life they realised many of the rights abuses they had experienced during their time in care. They



tried to access their care records to find evidence of this and underwent a difficult bureaucratic process, only to find their files were gone:

'As an adult I feel that I have been adversely affected due to traumatic childhood experiences within the Local Authority care system and there's no redress for me because the information has gone/disappeared - quite convenient for them but I now have no proof I was in their care.'

Participants told us how rights abuses which occur in childhood can be directly linked to the rights abuses experienced in adulthood. The lifelong consequences of these experiences may only start to be understood and addressed by Care Experienced individuals once they have distance from an event or period in their life:

'In my experience it was only when I left the care system that I was able to fight for my rights because there was no other person to interpret and put their slant on things rather than my actual views and opinions i.e., parents.'

'Older members rights were not upheld when they were in local authority care, and this has had a knock-on effect, and so the LA is still responsible for the legacy they have to live with – poor mental health, poor education and employment opportunities that affects them throughout their life.'

'There's not an understanding of Care Experienced older people and there isn't an understanding that it's a lifelong thing, and there's lifelong implications. It can stem sometimes with the relationship you have with your children, even my son sometimes is like 'why do you always tell me you love me?' and I'm like because you need to know it, you need to be told every day.'

The strong message from our members about the need for lifelong protection of Care Experienced people's rights also links to what we know as an organisation, that later in life individuals may want to piece together their past. This can involve seeking redress for experiences they had and for the continued impact it may be having on their lives.



## 5.5. ACCESSING RIGHTS PROTECTION

Participants explored how Care Experienced people could practically challenge and uphold their rights, with a particular focus on how the court system could support action for redress and remedy. A clear message was given by participants of the need for a variety of options to be available to Care Experienced people to challenge rights breaches, which do not always involve formal legal intervention in the courts.

Ideas were shared by participants about how Care Experienced people could create challenge when recognising that their rights were not being upheld:

'I think there should be a designated person to deal with rights not being respected in each local authority and their contact details would be available to all.'

'Going to local politician.'

'I would speak to an advocacy worker, social worker, someone from the council or my local MSP.'

'A consultation service, possibly a helpline for anyone who has any kind of query regarding rights.'

'I don't believe it should always have to go to court and always have to be that formal - it should be a softer approach in the first instance and what can be done at this stage to uphold their rights.'

'You should be able to talk to someone who you trust and be taken seriously. This should be chased up by professionals and the person involved should be a part of every step of this process.'

'Speak to children's rights officer. Check to see if they are corporate parents as they have a responsibility for Care Experienced young people.'

'Start by making a complaint and take it from there and keep it up till you are listen to and action is taken to rectify the problem.'



An important option included is the ability to make a formal complaint. We know from our members that existing complaints procedures are often not fit for purpose or accessible unless proper support is in place. Participants spoke about barriers such as long waiting times, potential consequences after raising a complaint and a lack of satisfaction with outcome.

Access to independent, formal complaints processes are vital in creating opportunity for rights abuses to be addressed before formal intervention of the court is required to protect rights. Members have shared with us the issues which exist for Care Experienced people speaking out about their care:

'Complaints procedures don't work – organisations tend to protect their staff (CAMHS, mental health, education).'

'I made a couple of complaints about my experience of through care, but it was detrimental that I did. I had some issues brought it up, but I got punished for it. They started not returning my calls or would know I needed to get a document in on a certain date and would intentionally wait until it was too late to tell me.'

'Yeah, I was made to feel like I was in the wrong for making a complaint, I'm sorry but this is my life, those decisions you make directly affect my life. I have to deal with the consequences where they can switch off at night.'

'I think the process needs to be easier to challenge, waiting for a response for an email for 3 weeks is still quite long.'

'Sometimes I'll do a petition, I'm like a dog with a bone I will see my rights to the end! I will not give up on my rights! You are my corporate parent. In corona times I need to go through this whole process with printing the form, fill it out, send it, scan it, it's such a long process on why you want to be listened to. Why is the process so long? I'll make time for it, but a young person or child, will they understand that process and have that patience? It's so long. There needs to be a child friendly way to



challenge things, it's very tailored to adults who make the rules and not the ones who experience them.'

Another participant reflected on a personal experience of how important it was to create safe conditions for young people to be honest about how they felt about their rights, without there being negative personal consequences:

'I was 8 and used to go to children's panels and I didn't understand my rights. It was all adults talking, using words I didn't understand. The environment wasn't child friendly, I felt that I couldn't talk about if my human rights weren't being met, I couldn't say anything about my home with that person I live with sitting next to me, can I really express what my rights are without causing offence and damaging my childhood home any further than it already is?'

Independent Advocacy was identified by participants as an important resource to be available to support individuals to challenge how their rights are upheld and that advocacy workers could help navigate formal processes, such as complaints mechanisms:

'An Advocate or adult supporter would help young people to be more able to be aware of their rights, help them to express themselves and then also explain anything that was discussed that they don't understand.'

'When young people have an advocate there is opportunities for them to be listened to and their rights to be upheld.'

'Advocate was essential to me holding corporate parents to account! I would never have been able to do that otherwise. My advocate told me I could change things, could speak up against the bad things happening in my unit, etc.'

One participant stressed the importance of the independence of those providing support to individuals challenging their rights:



'It must be independent advocacy – if it's attached to the council, their carers, etc., children and young people won't use or trust it.'

Although many participants strongly supported the need for softer approaches to be available for challenging rights breaches, there was still recognition of the need for there to be the option for cases to go to court.

'All society's decisions must be open to challenge and scrutiny.'

When asked about interacting with the courts, participants were supportive of different routes which could be taken:

Do you think children should be able to go to court about their rights not being respected?

88%  
SAID YES

'This should be an option for all, though should be influenced by the child or young person and what they request. As long as the child or young person has access to info and has been able to make an informed decision and has capacity this should be supported and respected.'

'I should be able to go to the highest court in the land if my rights are not being upheld. I deserve the same choices as everyone else.'

'Only if they want to, shouldn't be mandatory. Also, should be accessible for those that do.'

Participants also agreed that Care Experienced children would need support:

Would children need someone to support them to speak to a judge or go to court?

91%  
SAID YES

Participants recognised that courts could be difficult places for children and young people to share their views. A participant reflected on their own experiences of this:



‘When I was younger, I went to court with a different case, and I didn’t like talking in front of people, I couldn’t open up, it was too adulty. But then at the breaktime I spoke everything I wanted to speak, so the second day I just did my part separately and did it first and I think that makes a big difference. Making sure the child’s got a safe space. It’s important to give the child the chance to speak where they’re comfortable, give them the chance to speak when they want to speak... a separate space, the setting itself, the timing could change the outcome for young people. It’s more tailored to them, it’s about including them in every aspect not just the end result.’

A wide range of different professionals and organisations were identified as able to help children and young person navigate the court process:

‘Advocates, Social Workers, Teachers - all corporate parents.’

‘Advocates, Clan Childlaw, MPs, Children and young people themselves, or essentially anyone that they want there.’

‘Parents or legal guardians, social workers.’

‘Lawyers and maybe a community nurse.’

‘Mental health experts. People involved in advocacy. Teachers, social workers, other people who knew the young person.’

‘Perhaps older teenagers who’ve been through the process?’

Legally qualified professionals were most suggested as the best support for children to take court action, however, many other professionals were also identified as potential sources of support. For example, Independent Advocacy was also another commonly suggested option for support with the court process.

Participants also spoke about the type of support that would be needed for a child to take a case to court, such as moral support, explanations of decisions and ensuring the child feels listened to. Specific organisations such as Clan Childlaw and the Children and Young People’s





Commissioner for Scotland were also cited, showing support for tailored and child-friendly legal support.

Several participants also stressed the need for children to be able to choose who supports them through a legal process and that a trusting relationship should exist:

'Someone who knows them well. Not someone appointed for them.'

'They should be allowed to take someone with them who they feel comfortable with.'

'In an ideal world I would want to think that it would be the person that I had a positive relationship with. That I could share, and I would be supported.'

'I think I agree you need to have someone who's trained in law. But it's important to have someone the child trusts and who they can open up to. Court can be intimidating. The voice of a child isn't always captured by someone like a schoolteacher, it can be someone like a youth worker or someone they feel able to open up to... sometimes I've worked with young people and they've talked to me because I think it's about trusted relationship, I can be the person to pass it on their behalf.'

'The child might have written something in advance to hand over, or someone to talk on their behalf, or do the best to take away the factors that may intimidate the child/ young person, to ensure that their views are being articulated properly and not just in the way adults think it should be done. The child should have the right to say what they want to say in the way they want to say it. They should feel like they are in control of this.'

Additionally, participants supported there being an option for others to take cases about rights breaches to court on behalf of Care Experienced people:



If a child's rights are not respected, should adults or organisations be able to take this to court on their behalf?

85%  
SAID YES

'Knowing it can be taken further by the commissioner, that's a good way, they're really going to push on the rights of the child, and we will challenge this, it's quite good having a third-party person who will press their issues.'

When discussing access to justice and the different options for redress and remedy, participants highlighted that one of the biggest barriers was knowledge and information about rights and how to challenge them. They linked the ability to access justice, with the need for education about rights. Participants communicated that creating routes to protect legal rights must come with resources for robust training and education offers, alongside provision of specialised support from organisations and professionals who can support Care Experienced people to navigate legal and formal processes. Otherwise, rights breaches will remain unchallenged:

'I didn't know what my rights are, who I take this up with, who will support me through the process...'

'Young people never say if they are unhappy about stuff e.g., family life, education, life situations, this should be explained in case they want to make a complaint or if their rights aren't being upheld.'

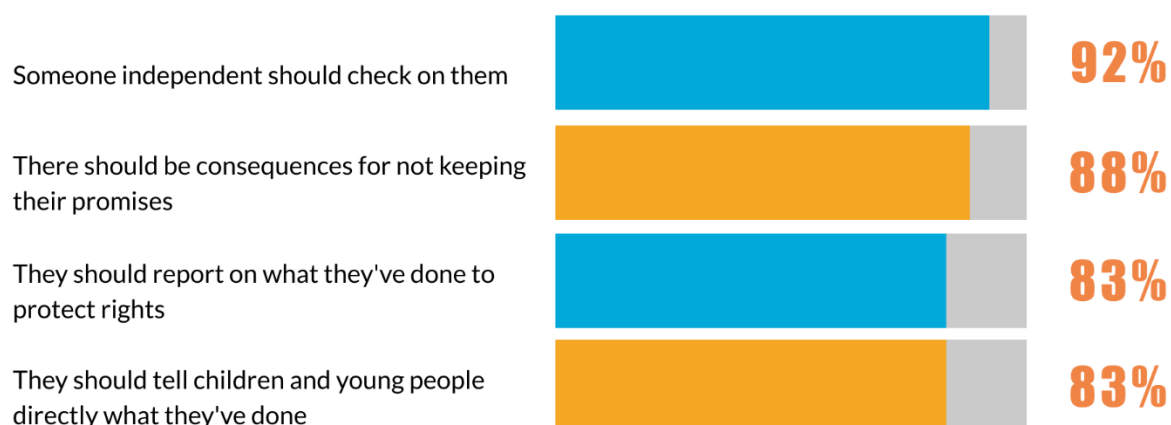
Participants also spoke about the need for flexibility in when rights abuses could be identified, including personal reflections about how being in 'survival mode' in chaotic and traumatic periods of life led to being unable to challenge rights abuses at the time they were happening. This links strongly with the argument made by participants that rights protections must be lifelong:

'My treatment at times when accessing various services when in need has been awful, however, due to being in survival mode I often did not challenge for myself. However, as a parent I was much more assertive and increased my knowledge base with the fear of state intervention always around.'



## 5.6. ENSURING RIGHTS ARE UPHELD

Members recognised the need for there to be pro-active steps taken by services and organisations to uphold child and human rights, which could prevent rights abuses needing to be escalated to the courts. This was explored by participants looking at how public bodies responsible for upholding rights could be held to account and encouraged to change the way their services are funded.



Participants communicated clearly that any duties or responsibilities to uphold rights should come with requirements to report and consequences for inaction, to prevent the need for individuals to take organisations to court over rights breaches:

'They should send reports to Scottish gov like they do with corporate parenting plans.'

'There needs to be a methodology, evaluation and probably best to celebrate cases of good practice.'

'Force organisations to report on how they are meeting rights- and ensure that in every organisation (like HR) there is a rights officer to ensure rights are uphold and positive action taken.'

Scottish government was identified as playing a key role in setting national-level expectations on local bodies and services. Participants also highlighted that the government should create consequences for local authorities who do not implement protocols or do not prioritise the rights of Care



Experienced young people in their area. Participants also felt there should be a *'National standard for organisations to work towards.'*

*'...could come down to a post code lottery, there needs to be a clear mandate from the government to make sure everyone gets the same in each local authority and they need to be held accountable if they don't adhere to them.'*

Participants also supported the need for children and young people to be part of holding organisations to account for rights promises:

*'I think it would look like young people and children being involved in the process and deciding on rights, involving young people documenting it and recording it, seeing if it's really being upheld and how they're doing it.'*

*'We should have young people involved in the government committees within parliament to ensure that young people's voices are heard.'*

*'It would be good to have young people involved in the decision-making process, the evaluating process and the consultation. I think it happens sometimes, but they're not carried all the way through. They might have a different outlook on a problem that an adult might think is happening.'*

*'Ensuring transparency, sharing the process so people feel informed and involved.'*

*'Care Experienced people should be able to go into organisations who talk the talk to see if they also walk the walk! Like a mystery shopper/undercover boss. The Care Experienced community should be able to award a gold standard for organisations and corporate parents who support Care Experienced people. Different gradings. Individuals should be held accountable, not just bodies.'*

This is also reflected in the work of champions boards in local areas, who already work on holding local corporate parents to account. As



one report describes<sup>5</sup>: 'These young leaders are occupying a really powerful and exciting space and service providers, corporate parents, and many others are realising that having young people alongside decision making is not only best practice but is imperative when making changes and developments to services involving or affecting young people with care experience.'

Several participants highlighted the need for there to be independence when scrutinising the actions of public bodies and those responsible for upholding rights. This was seen as necessary to make sure reporting on progress is accurate. It was also suggested there should be consequences if rights failings are identified:

'Definitely need to have an independent body to oversee and regularly review and report locally and nationally. Feed directly back to children in a multitude of ways and this would also create an on-going opportunity to raise awareness of rights directly with children and create on-going opportunities for peer education progressing development of practitioners too. Definitely have consequences in place usually anything relating to finances will ensure that areas are prioritised. Something in place that would exclude organisations from future tendering processes for services etc.'

'I think reviewing them is good, like people who do inspections in schools, I think that will be really good. Giving deadlines, you have to give them timelines and base that around pulling funding if they don't mean it, because money talks, this is how you should be spending your money on young people and going in the right way.'

One participant also identified that representatives for Care Experienced people could play a role in holding decision-makers to account for rights breaches, referencing their experience with their local Scottish Youth Parliament representative:

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<sup>5</sup> [Highland Champs Leadership Group Report 2020: Our Experience, Our Voice.](#)



'By speaking to the decision makers who were involved in that process. A good example recently was me and my local MSYP, when the schools went back the water fountains weren't working, and we challenged the chief exec of education for the council to ask what is being done to make sure that young people are getting access to water to fill their water bottles up. It's good having a group of young people like MSYP or MYP and representing our young people.'

The way budgets are designed, and financial resources invested in certain services were also commented on as an important way rights could be embedded proactively by local and national public bodies.

'I personally think that if children's rights and human rights were enshrined in scots law it would be more equal, we wouldn't have like budget cuts to vital services for young people.'

'I don't see how you can say you're a right respected local authority while delivering austerity cuts.'

'Budgets have been taken away from youth work and this is an important part from young people/community services that affects young people and adults.'

Participants also submitted a wide range of ideas about a where they would want to see money spent locally to improve how child and human rights are upheld in practice.

'Training people - such as housing staff to have more awareness and understanding about rights.'

'Children's rights qualification could be more widely required for staff across Scotland. Mandatory modules which will have a positive impact on services, people, society.'

'Spend more money on educating residents in different areas, to educate them on rights.'



'Better provision of advocacy, available to a wider range of Care Experienced people.'

'More advocacy support and life coaches and mentors would be beneficial to all young people but particularly Care experienced young people.'

'Funding more local champions boards.'

'Resourcing education for young people to show them how to make complaints.'

'Long term funding so services have a good sense of autonomy and can meet the needs of their community.'

'Identifying training needs related to rights and identifying clear pathways to support child and young people to be able to access the most appropriate supports in a timely manner, there needs to be significant and long-term investment into professional development in order to ensure a high quality of support available in every local authority.'

'Creating safe spaces which are accessible drop-in services almost like surgeries, a one stop shop with relevant people and supports available.'

'Phone supports such as helplines (freephone ideally).'

Members have clearly communicated the need for a wide range of support and services to be made available, demonstrating that significant investment and commitment of resources will be required from national and local budgets in order to pro-actively uphold child and human rights.



## 5.7. HOPES AND DREAMS FOR THE FUTURE

As part of engaging members of Who Cares? Scotland we asked participants to tell us their hopes and dreams for what the world might look like where rights were upheld for all:

'A just and fairer world, poverty would not exist, increased happiness, decrease in crime. Lovely communities, great local areas.'

'We'd have a world where children don't become traumatised or marginalised adults.'

'Equality and equity of family love and educational opportunity.'

'In an ideal world everybody would be treated the same and we would all be equal. People wouldn't be judged for their differences. If you are Care Experienced you don't get treated the same as other kids, and people in prison or low-income families don't get treated well and are judged and this makes life really hard for people who are already struggling.'

'An ideal world would be a world where everyone has easy access to food, water, shelter, education, healthcare and clothing.'

'Shared wealth - NO deprivation or poverty, increasing opportunities and life chances for all - we all have a right to a safe, secure and comfortable home, with access to food and hygiene products. Free education for all, including higher education and university. Every child going through the 'care system' has access and support where requested from an independent advocate to ensure they are at the centre of all decision-making processes about them and their life. Free legal representation for all, regardless of age, wealth, status. Stigma is challenged by all and not tolerated by society. Difference is celebrated and embraced, with respect for all races, religions, backgrounds, and ethnicities with equal opportunities for all.'





'The world would be a much happier safer place.'

'Mental health access for all Care Experienced people. Level one and two services which means whatever kind of care placement you are in; you receive the type of support you need and want. Personalised and lifelong support/service. Support for carers through supporting a young person but also their own mental health.'

'On the run up to having a baby, how well are the adults surrounding the parents supporting them to understand their rights and the support they can access? How great would it be if we had a Scotland doing more about this!'

'It would mean there would be no barriers and no more injustice. Every person respected and treated fairly and able to live life to the fullest and do what they want to!'

'I think it would be a fairer and equal society if rights were being upheld, more children and young people would be a lot happier and be a lot more willing to share when something has gone wrong.'



## 6. WHAT THIS TELLS US: RECOMMENDATIONS

### RIGHTS KNOWLEDGE

- Create a rights-focused public education initiative that reaches all corners of society, with practical information on how child and human rights can be upheld.
- Ensure child and human rights are part of the national curriculum for all children and young people in Scotland, focusing on how to practically uphold rights and recognise what rights mean in their own lives.
- Create tailored training for services that have legal duties to uphold child and human rights, ensuring understanding of how to uphold right in practice.

### LIFELONG RIGHTS PROTECTION

- Ensure rights protections in law protect Care Experienced people of all ages.
- Ensure Care Experienced adults can seek redress from the state for the legacy of rights not being protected while in care.

### ACCESSING RIGHTS PROTECTION

- Invest in a wide spectrum of options to allow access to justice, with a focus on creating child-friendly complaints mechanisms.
- Invest in Independent Advocacy and specialist support for all individuals, prioritising groups who may need additional support such as the Care Experienced community.

### ENSURING RIGHTS ARE UPHELD

- Ensure children and young people are involved meaningfully in how progress reports are created on the effectiveness of human rights legislation, such as the incorporation of the UNCRC.
- Commission an independent body to report robustly on the effectiveness of child and human rights in Scotland, with a focus on improving the outcomes for the most marginalised groups of the population, including specific reference to the Care Experienced community.



## APPENDIX 1 - Survey Questions

### SECTION 1: Rights knowledge and education

1. Do you feel like you understand what child and human rights are?
2. Do you think enough people in Scotland understand what human rights are? Think about all ages.
3. If there was to be rights education in schools, what kinds of things should it cover?
4. What professionals and adults should get rights training?
5. Why do you think the adults you've picked in the last question should get rights training?
6. If there was to be rights training for these professionals, what kinds of things should it cover?
7. How do you think the Scottish public should be educated on why rights are important?

### SECTION 2: Understanding rights and their impact

8. What would an 'ideal world' look like where child and human rights are always respected and upheld?
9. What would need to change in Scotland for this 'ideal world' to happen? (think about what services would be needed, where money needs to be spent, which groups of people would need to be treated better, etc)
10. If your rights were not being protected, what do you think you should be able to do to challenge this?
11. If your rights were not being protected, who would you want to help you challenge this?
12. If a child or young person's rights are not respected, should adults or organisations be able to take this to court in certain situations?
13. Do you think children and young people should be able to speak to a judge or go to court directly about their rights not being respected?
14. Would children and young people need someone to support them to speak to a judge or go to court and how would that happen?
15. Do you think older Care Experienced people who have left care and are now adults should also have their human rights protected by local councils and by the Scottish Government?
16. If you are a Care Experienced adult, do you have examples of when your rights have not been respected since you left care?

### SECTION 3: Protecting rights in practice

17. Are there particular people you think should be protecting child and human rights as part of their job?
18. Pick one of the job roles you selected in the previous question. In what ways do you think that professional could protect child and human rights?
19. Do you have ideas about how professionals can find out about the types of rights that are sometimes not respected for you and other Care Experienced people?
20. How do we make sure that organisations follow through on any promises made to protect child and human rights?
21. In your local area, do you have any ideas about how money should be spent to better protect the rights of Care Experienced people?
22. Can you share any good practice of organisations spending money in a way which helps protect and promote child and human rights?





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