

November  
**2013**

*State of  
Children's  
Rights in  
Scotland*

Together





## About Together

Together (formerly known as the Scottish Alliance for Children's Rights) seeks the full implementation of the UN Convention on the Rights of the Child (UNCRC) in Scotland. With over 240 members throughout Scotland, our aims are to:

- Promote the importance of children's rights in order to highlight issues of concern to policy makers, the media and the general public, and to disseminate information on the UNCRC;
- Establish links with statutory agencies and other bodies to promote of the full implementation of the UNCRC, through policy and legislative mechanisms and good practice;
- Provide a focal point for non-governmental organisations on children's rights issues, and in the preparation of reports to the UN Committee on the Rights of the Child on the progress of the UK governments in implementing the UNCRC.

## Glossary of Terms

**Child / children** refers to those under 18 unless otherwise stated

**Children's organisations** refers to non-governmental organisations in Scotland unless otherwise stated

**CJSW** – Criminal Justice Social Work report

**CoSLA** – Convention of Scottish Local Authorities

**CPP** – Community Planning Partnerships

**CRIA** – Child Rights Impact Assessment

**CSP** – Co-ordinated Support Plan

**ECHR** – European Convention on Human Rights

**EYC** – Early Years Collaborative

**GIRFEC** – Getting It Right For Every Child (a Scottish Government programme that aims to improve outcomes for all children)

**LGBT** – lesbian, gay, bisexual and transgender

**NGOs** refers to non-governmental organisations in Scotland unless otherwise stated

**SCCYP** – Scotland's Commissioner for Children and Young People

**SMART outcomes** – outcomes that are Specific, Measurable, Achievable, Realistic and Timely.

**UKBA** – United Kingdom Border Agency

**The UN Committee** – United Nations Committee on the Rights of the Child

**UNCRC** – United Nations Convention on the Rights of the Child

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# Executive Summary

<sup>1</sup> Together (2012).  
*State of Children's  
Rights in Scotland*

The *State of Children's Rights* report 2013 provides a non-government perspective on the extent to which children in Scotland are able to enjoy their rights enshrined in the United Nations Convention on the Rights of the Child (UNCRC). It reflects on the past year since the publication of Together's 2012 *State of Children's Rights* report,<sup>1</sup> discussing what progress has been made and where further efforts are needed.

The report was compiled and produced by Together following wide consultation with children's organisations across Scotland. The consultation involved gathering views and opinions from 135 professionals working with and for children through seminars held in Fife, Edinburgh and Aberdeenshire. This was followed by an online survey completed by fifty-three children's organisations working across a wide range of issues including health, play and child poverty. The *State of Children's Rights* report 2013 is a culmination of the feedback received throughout the consultation alongside further desk research into issues that were highlighted as being of particular priority.

## Background

<sup>2</sup> Committee on the  
Rights of the Child  
(2008). *Concluding  
Observations: United  
Kingdom of Great Britain  
and Northern Ireland*

<sup>3</sup> Scottish Government  
(2009). *Do the  
Right Thing*

<sup>4</sup> Scottish Government  
(2012). *Do the Right  
Thing progress report*

<sup>5</sup> Scottish Government  
(2013). *The 5th UK  
Government Report  
to the UN Committee  
on the Rights of  
the Child: Scottish  
Government Submission*

In 2008, the UN Committee on the Rights of the Child examined the UK Government's progress in implementing the UNCRC, making a series of recommendations (known as *Concluding Observations*<sup>2</sup>) to set out where the UK was falling short. In response, in 2009, the Scottish Government published a UNCRC action plan, *Do the Right Thing*<sup>3</sup>, which provided a list of twenty one priority actions. This was subsequently followed by a progress report in May 2012<sup>4</sup>. More recently, in June 2013, the Scottish Government published its submission to the *5th UK Government Report to the UN Committee on the Rights of the Child*<sup>5</sup>. This report outlines the steps taken to further children's rights in Scotland since the 2008 *Concluding Observations* and provides the Scottish Government's contribution to the next UK periodic report to the UN Committee (to be submitted in January 2014).

## Aim

The aim of the *State of Children's Rights* report 2013 is to reflect on the progress outlined by the Scottish Government in its submission to the *5th UK Government Report to the UN Committee* and highlight what children's organisations see as being the current key issues. Specifically, the report:

- recommends the next steps that should be taken to improve children's rights in Scotland;
- and
- provides a point of referral against which future efforts can be assessed.

## Key Findings

There have been a number of welcome legislative and policy developments taken by the Scottish Government to further children's rights. These developments show a clear commitment from the Scottish Government to further the UNCRC and to improve its implementation across Scotland. Examples of these developments include:

- The Early Years Collaborative (EYC) aims to ensure the high level principles set out in GIRFEC and the Early Years Framework are turned into practical action. These principles include reducing inequalities, delivering tangible outcomes for children and moving public services towards prevention and early intervention. Children's organisations welcome the EYC and have identified it as a key opportunity through which the Scottish Government can promote awareness and understanding of children's rights among practitioners.

<sup>6</sup> Scottish Government (2013). *Play Strategy for Scotland: Our Vision*

<sup>7</sup> Scottish Government (2013) *Play Action Plan*

<sup>8</sup> UK Government (2013). *State of the Nation 2013: social mobility and child poverty in Great Britain*

<sup>9</sup> Scotland's Commissioner for Children and Young People (2013). *It's All About the Money*

<sup>10</sup> Coalition for Racial Equality and Rights (2012). *Racist Incident Reporting in Scotland's Schools* (Pg 35)

<sup>11</sup> Article 12 in Scotland (2013). *Young Gypsy Travellers' Lives (YGTL): Discrimination and On-Line Media [Analysis focused on Scotland] 2nd report*

<sup>12</sup> LGBT Youth Scotland (2012). *Life in Scotland for LGBT Young People – Education Report*

<sup>13</sup> Scottish Government (2012). *Do the Right Thing progress report*

<sup>14</sup> Scottish Government (2012). *Do the Right Thing Progress Report 2012*

- In June 2013, the Scottish Government published its first national Play Strategy.<sup>6</sup> This was followed up in October 2013 with the national Play Action Plan.<sup>7</sup> Both the strategy and the action plan have been welcomed by Together's members, who are now urging the Scottish Government and CoSLA to provide sufficient resources to ensure their effective implementation.
- The Children's Hearings (Scotland) Act 2011 came into force on 24th June 2013 and aims to strengthen the mechanisms that ensure a child's views are heard and taken into account in the Hearings System. The intention of the new Act has been welcomed by children's organisations although it is too soon to know in practice the extent to which it is achieving its policy intention.
- The Victims and Witnesses (Scotland) Bill was introduced to the Scottish Parliament in February 2013. Children's organisations have broadly welcomed many of the Bill's provisions, including those which change the definition of 'child witness' to all those under 18 and the amendment to the definition of vulnerable witnesses to include victims of sexual offences, domestic abuse, human trafficking and stalking.

This report also finds that there is still much more to be done to ensure that all children in Scotland are able to realise their rights. For example, it highlights that child poverty in some geographical areas of Scotland is amongst the highest in the UK<sup>8</sup>; children with disabilities do not have equal access to recreation and play opportunities<sup>9</sup>; many children regularly face discrimination and exclusion, including minority ethnic<sup>10</sup>, Gypsy/Traveller<sup>11</sup> and LGBT children<sup>12</sup>; and the current legality of physical punishment within Scots law means that children do not have the same level of protection from violence under the law as adults.

The report also finds that there is still a need to embed the UNCRC into the policy and practice of all those working with and for children. All the rights enshrined in the UNCRC need to be explicit within GIRFEC to ensure that children's rights are at the heart of the planning, delivery and reporting of services at a national and local level. There is still a need to ensure that children are able to have their views taken into account in all matters that affect them, from national legislative developments through to individual decisions affecting their daily lives. More needs to be done to ensure that children from marginalised groups, such as children with a disability, living in poverty and minority ethnic children, have their views and experiences listened to and taken into account.

## Opportunities

The *State of Children's Rights* report 2013 assesses a number of legislative, policy and strategic opportunities that offer potential to improve the implementation of the UNCRC. A key opportunity is the *Children and Young People (Scotland) Bill*, which was introduced to the Scottish Parliament in April 2013 and is currently nearing the end of its Stage 1 scrutiny. Whilst welcoming the Scottish Government's intention to legislate to further the UNCRC, children's organisations have identified a number of steps that should be taken through the Bill to ensure meaningful change in furthering children's rights.

Other legislative developments include the *Criminal Justice (Scotland) Bill* which is going through Stage 1 scrutiny in the Scottish Parliament. In the *Do the Right Thing*<sup>13</sup> progress report, the Scottish Government gave a welcome commitment to give consideration to raising the age of criminal responsibility from eight to 12, with a view to bringing legislative change within the lifetime of this Parliament.<sup>14</sup> Children's organisations are calling on the Scottish Government to take forward this commitment through this Bill.

The Scottish Government is currently developing guidance for the *Social Care (Self Directed Support) (Scotland) Act 2013* which will come into force in 2014. Children's organisations are urging the Scottish Government to ensure that the guidance reflects the needs of children, young people and families throughout and is clear on how children and young people can and should participate in shaping their support.

<sup>15</sup> Scottish Government (2013). *Developing an Outcomes Model for Disabled Children in Scotland*

The Scottish Government published *Developing an Outcomes Model for Disabled Children in Scotland* in September 2013. It makes a number of recommendations that will enable a greater shared understanding of outcomes models for disabled children.<sup>15</sup> Many of these recommendations, covering issues including supporting and involving parents and carers; disabled children and technology; involving disabled children and collaboration and sharing, have been welcomed by children's organisations who are urging the Scottish Government to take them forward as a matter of urgency.

## Together's recommendations

The *State of Children's Rights* report 2013 identifies a number of steps that should be taken to strengthen the implementation of the UNCRC across Scotland. These are referred to in the report as 'Together's recommendations'. Although they are targeted at a number of agencies, the majority are specifically for the Scottish Government. A number of these recommendations are repeated from previous *State of Children's Rights* reports. The overarching recommendations are:

- The *Children and Young People (Scotland) Bill* should be strengthened to ensure it provides an overarching legislative child rights framework that embeds the UNCRC into the planning, implementation and monitoring of national and local government. Incorporation of the UNCRC would embed clear and robust measures of accountability and provide the transparency needed to ensure key bodies understand the impact their work is having on protecting and promoting children's rights. In the absence of full incorporation, Together recommends that the Bill introduces a strong, meaningful duty on Ministers, extended to public bodies, to implement the UNCRC. This duty should be accompanied by an implementation scheme included on the face of the Bill that provides a strategic and comprehensive approach to executing and resourcing all duties on Ministers and public bodies in relation to the rights of children. In order to ensure the UNCRC influences future legislation, policy and practice, Together also recommends that the routine use of Child Rights Impact Assessments to inform government decision-making is included on the face of the Bill.
- Together recommends a number of non-legislative measures that should be taken to further the UNCRC. These include taking further steps to promote the Common Core<sup>16</sup> more widely through GIRFEC guidance, the *Early Years Collaborative* and by integrating it into the recruitment and training of all those working with and for children.
- Finally, Together supports a number of recommendations made by other bodies including the Equal Opportunities Committee report '*Where Gypsy/Travellers Live*'<sup>17</sup>, LGBT Youth Scotland's education report '*Life in Scotland for LGBT Young People*'<sup>18</sup>, Enable's '*Bridging the Training Gap*'<sup>19</sup>, the Scottish Government's report '*Developing an Outcomes Model for Disabled Children in Scotland*'<sup>20</sup>, recommendations made by a number of children's organisations in the paper '*Putting the Baby in with the Bath Water*'<sup>21</sup> and the Scottish Transitions Forum's '*Big 9*' solutions to transitions.<sup>22</sup>

<sup>16</sup> Scottish Government (2012). *Common Core of Skills, Knowledge & Understanding and Values for the "Children's Workforce" in Scotland*

<sup>17</sup> Scottish Parliament (2013). *Equal Opportunity Committee 1st Report session 4: Where Gypsy/travellers live*

<sup>18</sup> LGBT Youth Scotland (2012). *Life in Scotland for LGBT Young People - Education Report*

<sup>19</sup> Enable Scotland (2011). *Bridging the Training Gap*

<sup>20</sup> Scottish Government (2013). *Developing an Outcomes Model for Disabled Children in Scotland*

<sup>21</sup> Putting the Baby in the Bath Water: Give priority to prevention and the first 1,001 days. Supplemental evidence submitted to the Scottish Parliament in 2013 by a coalition of 50 relevant organisations and distinguished individuals.

<sup>22</sup> ARC Scotland (2013). *Principles of Good Transitions*

# Introduction

Together (formerly the Scottish Alliance for Children's Rights) works to secure the rights and needs of all children living in Scotland as enshrined in the UN Convention on the Rights of the Child (UNCRC). Our members range from leading national and international non-governmental organisations to local playgroups and individuals, all sharing a commitment to promote and advocate for children's rights in Scotland. In the past year, we have seen our membership increase significantly from 199 to 241 children's organisations and professionals.

A key role of Together is to hold the Scottish and UK Governments to account on their implementation of the UNCRC. This report, our fourth annual *State of Children's Rights* report, examines how well the UNCRC is being implemented in Scotland and what more could be done to ensure that children in Scotland are able to access their rights. We look at developments made in implementing the UNCRC in Scotland over the past year, and look forward to forthcoming legislative opportunities at a Scottish Government level. This report makes particular reference to the progress outlined by the Scottish Government in the *5th UK Government Report to the UN Committee on the Rights of the Child: Scottish Government submission*.

The purpose of the *State of Children's Rights* report 2013 is to provide a non-government perspective on the extent to which the UNCRC is being successfully implemented in Scotland. It provides a means through which progress can be monitored and evaluated, ensuring that the momentum gathered through the last UNCRC reporting round is not lost and that children's rights are at the heart of the policy agenda.

## The UN Convention on the Rights of the Child

The UNCRC sets out the basic human rights that children everywhere must have: the right to survival; to develop to their maximum potential; to protection from harmful influences, abuse and exploitation; and to participate fully in family, cultural and social life. The four core principles of the UNCRC are non-discrimination; the best interests of the child; the right to life, survival and development; and the right of all children to have their views respected and heard.

In 1991, the UK Government ratified the UNCRC, undertaking to implement its principles in UK policy and legislation. Although the UK Government holds overall responsibility for the implementation of the UNCRC, the Scottish Government has devolved responsibility for many of the areas covered – specifically health and social care, education, housing, and youth justice.

States Parties to the UNCRC are required to submit reports approximately every five years to the UN Committee on the Rights of the Child. State Party reports enable the UN Committee to review the measures taken by the reporting country to ensure the rights enshrined in the UNCRC are enjoyed by all children. The reporting process encourages children's organisations, such as Together, to submit reports setting out their assessment of the government's record in implementing the UNCRC.

The UN Committee last examined the UK Government in 2008; making a series of recommendations (*Concluding Observations*) setting out where they believe the UK is falling short of fully implementing the UNCRC. The *Concluding Observations* make 142 separate recommendations that cover many aspects of children's lives and are referred to throughout this report. The next examination of the UK by the UN Committee is likely to take place within the next two years.



## 5th UK Government Report to the UN Committee on the Rights of the Child

In June 2013, the Scottish Government published the *5th UK Government Report to the UN Committee on the Rights of the Child: Scottish Government submission*. It was sent to the UK Government as Scotland's input to the next UK periodic report to be sent to the UN Committee on the Rights of the Child in January 2014. The submission sets out the progress made in Scotland to implement the UNCRC since the UN Committee last examined the UK in 2008. Throughout this report, we reflect on the progress outlined by the Scottish Government in its submission to the 5th UK Government Report to the UN Committee on the Rights of the Child.

### Legislative developments

The consultation phase for a *Children and Young People (Scotland) Bill* which set out a range of proposals for taking forward the Scottish Government's ambitions for children's rights and services finished in September 2012. There was broad support for the proposals that were outlined yet children's organisations felt that an overarching child rights framework that embedded the UNCRC throughout national and local governments was absent. In our response, Together made clear that the Bill was a missed opportunity for Scotland to realise its ambitions by incorporating the UNCRC into Scots law. The *Children and Young People (Scotland) Bill* was introduced to the Scottish Parliament on 17th April 2013 and a call for written evidence on the general principles of the Bill was issued by the Education and Culture Committee on 8th May 2013. Children's organisations welcomed the policy intentions behind the Bill but felt that the provisions represented a significant step back from the Scottish Government's original commitment in the consultation for the Rights of *Children and Young People (Scotland) Bill* in 2011. There was concern that the duty on Ministers had been significantly weakened and that children's rights had not been systematically considered throughout the Bill. Oral evidence for the *Children and Young People (Scotland) Bill* began on 3rd September and Together gave evidence on 1st October 2013. A report will be released by the Education and Culture Committee in mid-November to consider the evidence received before Stage 2 of the Bill's Parliamentary process begins. In the past year the Scottish Government has also launched a *National Parenting Strategy* and a *National Play Strategy* and consulted on *Better Measures of Child Poverty and Independent Advocacy: Guide for Commissioners*. *The State of Children's Rights* report 2013 reflects on the opportunities these developments offer in terms of improving the implementation of the UNCRC in Scotland.

### International developments

On 1st February 2013, the UN Committee on the Rights of the Child adopted four new General Comments to the UNCRC: the best interests of the child (Article 3); the right to the highest attainable standard of health (Article 24); the right to rest, leisure, play, recreational activities, cultural life and the arts (Article 31) and the impact of business on children's rights. There are now 17 General Comments to the UNCRC.

Since Together's *State of Children's Rights* report was published in 2012, 8 States have ratified Optional Protocol 3 to the UNCRC on a complaints mechanism for violations of children's rights. A further 2 States must ratify Optional Protocol 3 before it can enter into force and be used as an international procedure. The UK Government has not yet signed up to the Optional Protocol.



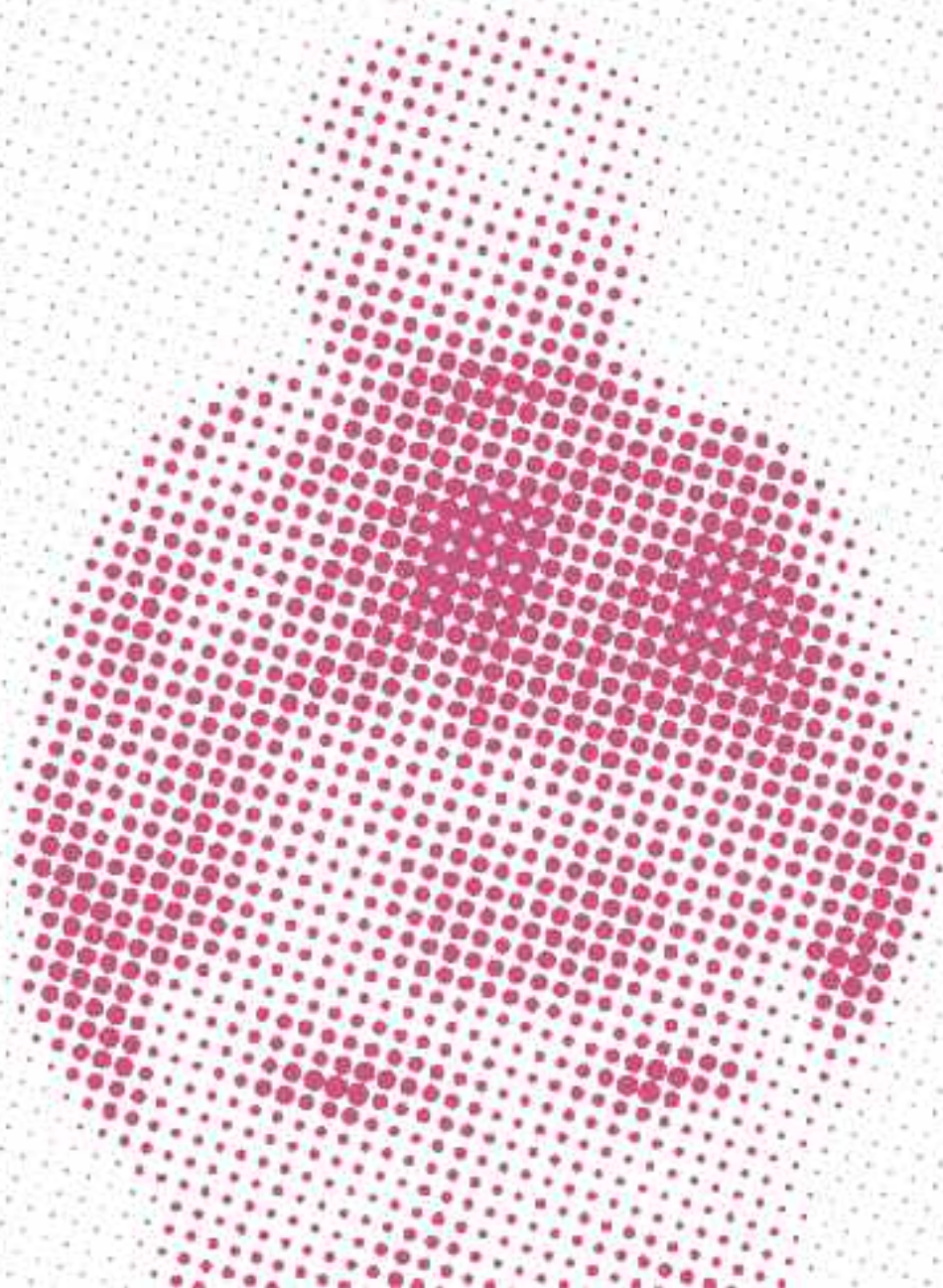
## Consultation for the State of Children's Rights report

As a coalition of 241 members, most of whom work directly with children in Scotland, Together is well placed to develop a report on the *State of Children's Rights*. To begin the research process, we held a series of seminars across Scotland through which we consulted with a range of children's organisations. The seminars were particularly targeted at regions where representation in Together's membership was low.

The seminars were held in Aberdeenshire, Fife and Edinburgh, and were attended by 135 delegates from across the children's sector. Delegates were from voluntary organisations (49% of delegates), and local authorities (40%), alongside other professionals from education, health and academics. The seminars provided a forum for professionals to discuss policy and services at a local and national level from a child rights perspective and particularly focussed on the *5th UK Government Report to the UN Committee on the Rights of the Child: Scottish Government submission*. The discussions that took place have played a key role in prioritising issues for further desk research and for inclusion in this report. Following the seminars, Together ran an online consultation throughout October 2013 through which children's organisations were asked to comment on specific issues highlighted at the seminars and through the UN Committee's 2008 *Concluding Observations*. A total of 53 children's organisations responded (see appendix 3 for more information).

Throughout the *State of Children Rights* report 2013 we have included case studies shared by our members that illustrate particular developments in the past year, good practice or concerns, and show how taking a rights-based approach when working with children can improve children's daily lives.

This report is a culmination of the issues raised through our *State of Children's Rights* seminar programme and an online consultation with our members and supporters. Together has been successful in building links with a wider range of children's organisations throughout 2013, particularly with organisations working with children with disabilities and minority ethnic children. We still recognise that there are many areas where further research into the implementation of the UNCRC is needed, including juvenile justice and education. We hope that this report will help the Scottish Government to identify and prioritise the key steps needed to embed children's rights into legislation, policy and practice and promote the culture change needed to 'make rights real' for all children across Scotland.



Chapter

**1**

# General measures of implementation

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## Case study: *Modern apprentices at Scottish Children's Reporter Administration*

The UNCRC is clear that all available measures must be taken to make sure children's rights are respected, protected and fulfilled. This includes reviewing the laws relating to children and assessing the planning and delivery of services and, in reflection of the UNCRC's guiding principles, involving children and young people in the review process where possible. The Scottish Children's Reporter Administration (SCRA) operates the Reporter service which sits at the heart of the Children's Hearings System.

In October 2010, SCRA recruited four young people aged 16-19 as Modern Apprentices (MAs). The intention was to empower them to use their first-hand knowledge to identify and drive improvements in the System.

The scheme was developed in collaboration with Who Cares? Scotland and Glasgow City Council, and undertaken with the support of the Scottish Government. Applications were restricted exclusively to children and young people who had been looked after and who had experience of the Children's Hearings System.

The four MAs agreed, based on their own experiences of the Children's Hearings System, that going to a Hearing can be difficult to deal with and make young people feel uncomfortable and anxious. They therefore decided to inspect SCRA's facilities and standards of service from a child or young person's point of view. SCRA had never done this before.

The MAs sat down with the Research Team and looked at SCRA's Property Standards. They then thought about what was important for children and young people and developed an office inspection form. They thought that the reception, waiting room and Hearing room were the most important areas, and also wanted to look at how children and young people were treated when coming to a Hearing Centre or when contacting SCRA by phone.

*'We wanted to see how children and young people were treated and how they were spoken to as this can make such a difference to their experience of their Hearing.'*  
(Zoie Montgomery, former MA and now Trainee Research Assistant with SCRA, 2013)

23 offices across Scotland were inspected and the report – Fit for Us<sup>23</sup> – made 16 recommendations for SCRA to take forward, raising issues including:

- Redecorating the Hearing centres to make them more colourful and child friendly
- Making sure that leaflets and children's rights posters were available and prominently displayed
- Encouraging staff to always give their names when answering phone calls and to be respectful and helpful at all times

SCRA's Board and Executive Management Team have stressed the importance of progressing the report's recommendations via the agreed Action Plan and a follow-up inspection has recently been conducted by the new intake of MAs to evaluate progress.

*'There's lots of things we would like to do, but we know we need to be realistic. Some of the recommendations relate to property and we know not everything can be achieved overnight, but there's lots of things we can do now to make things better.'*  
(Zoie Montgomery, 2013)

<sup>23</sup> Scottish Children's Reporter Administration (2011). *Fit for us... Making our System fit for children and young people*

## Measures taken to harmonise national law and policy with the provisions of the UNCRC

### UN Concluding Observation

- The Committee remains concerned that the principles of the Convention are not duly taken into account in all pieces of legislation throughout the country and that the State party has not incorporated the Convention into domestic law nor has ensured the compliance of all legislation affecting children with it. The Committee recommends that the State party continue to take measures to bring its legislation in line with the Convention.<sup>24</sup>

<sup>24</sup> Committee on the Rights of the Child (2008). Concluding Observations: United Kingdom of Great Britain and Northern Ireland (CRC/C/GBR/CO/4). No.11,12

<sup>25</sup> United Nations (1989). Convention on the Rights of the Child. Article 4 (pg 2)

<sup>26</sup> Scottish Government (2013). The 5th UK Government Report to the UN Committee on the Rights of the Child Scottish Government Submission (pg 8)

<sup>27</sup> Scottish Government (2013). The 5th UK Government Report to the UN Committee on the Rights of the Child Scottish Government Submission (pg 8)

<sup>28</sup> Contact a Family (2012). Counting the Costs.

<sup>29</sup> Together (2013). Children and Young People (Scotland) Bill. Stage One Written Evidence.

<sup>30</sup> <http://www.scotland.gov.uk/Publications/2012/02/8619/download> s (accessed July 2012)

<sup>31</sup> Scottish Government (2013). Children and Young People's experiences of, and views on, issues relating to the Implementations of the United Nations Convention on the Rights of the Child.

<sup>32</sup> <http://www.scottish.parliament.uk/parliamentarybusiness/CurrentCommittees/66626.aspx> (accessed September 2013)

<sup>33</sup> Education and Culture Committee, Official Report, 25 June 2013, Col. 2648

Article 4 requires States parties to take 'all appropriate legislative, administrative and other measures' for implementation of the rights contained within the UNCRC.<sup>25</sup> In its progress report to the UK Government, the Scottish Government recognises the importance of 'having robust structures and processes in place to ensure the effective realisation of children's rights'<sup>26</sup> and refers to a number of steps that it has taken to strengthen how legislation gives effect to the UNCRC. This includes changes made through the Children's Hearings (Scotland) Act 2011, Patient Rights (Scotland) Act 2011 and Social Care (Self Directed Support) (Scotland) Act 2013<sup>27</sup>. The gradual reform of legislation in Scotland in different areas has led to inconsistent implementation of the UNCRC across local and national government and across a range of public bodies. In turn, this has led to uneven and inconsistent outcomes for different groups of children. Examples of this include children with a disability being disproportionately affected by funding cuts within local authorities and inconsistent access to advocacy for looked after children.<sup>28</sup>

### Incorporation of the UNCRC into Scots law

Support for the incorporation of the UNCRC into Scots law continues to be widespread across Scotland, across children's organisations,<sup>29</sup> many public bodies<sup>30</sup> and children and young people themselves.<sup>31</sup> Throughout the consultation for the *Children and Young People (Scotland) Bill* and the evidence given to the Education and Culture Committee, a wide range of organisations have stated their support for full incorporation of the UNCRC.<sup>32</sup> However, the Scottish Government has informed the Education and Culture Committee it has had to 'weigh up the benefits against the potential risks' of incorporation and that 'Ministers would prefer not to see the emphasis being on pursuit of litigation through the courts on rights that, in their view, should more properly be developed through education and through a change of culture.'<sup>33</sup>

A recent UNICEF UK study revealed that the incorporation of the UNCRC not only influences the development and implementation of legislation, but is also crucial in fostering a children's rights culture.<sup>34</sup> International experience that shows that the primary value of incorporation is not only of a legal nature but in the message it conveys about the status of children and children's rights. This results in a culture change that then directly impacts on the application of children's rights principles in national law and policy.<sup>35</sup> The Norwegian Government committed to incorporate the UNCRC because '...incorporation is assumed to give the strongest signal that the Norwegian authorities take the Convention seriously... and will strengthen the legal position of children.'<sup>36</sup>

<sup>34</sup> Lundy, L., Kilkelly, U., Byrne, B. & Kang, J. (2012). *The UN Convention on the Rights of the Child: A study of legal implementation in 12 countries*. Queen's University Belfast for UNICEF UK

<sup>35</sup> Including Belgium, Norway, Cyprus, Finland, France, Portugal, Spain, Japan and Argentina.

<sup>36</sup> Government of Norway. (2004). *Third Periodic Report of State Party* (UN Doc: CRC/C/129/Add.1), para 22

<sup>37</sup> Scottish Government (2011). *Children's Hearings (Scotland) Act 2011* (pg 29, Part 8)

<sup>38</sup> Any parent (whether or not they have parental rights or responsibilities) or any other person who has parental rights and responsibilities (obtained through the courts) is automatically considered to be a Relevant Person. For others, the test for being deemed a Relevant Person is that the individual has, or recently has had, significant involvement in the upbringing of the child.

<sup>39</sup> <http://www.childrens.parliament.org.uk/new-assets/hearings/cp-childrens-hearings-report.pdf> (accessed March 2010)

<sup>40</sup> Scottish Government (2013). *The 5th UK Government Report to the UN Committee on the Rights of the Child – Scottish Government Submission* (pg 8)

<sup>41</sup> Scottish Government (2012). *Charter of Patient Rights and Responsibilities*.

An important consequence of putting children's rights into Scots law would be the culture it would help to create. It would provide a strong signal from the Scottish Government that all levels of government – and society at large – must take the UNCRC seriously. It would lead the culture change needed to ensure the rights of children are always a paramount consideration.

## Children's Hearings (Scotland) Act 2011

The Children's Hearings (Scotland) Act 2011 came into force on 24th June 2013. It aims to strengthen the mechanisms that ensure a child's views are heard and taken into account in the Hearings System.

Provisions included in the Act include giving children and their parents or carers the right to attend a Pre-Hearing Panel to give their views, or to request a Pre-Hearing Panel if one has not already been arranged.<sup>37</sup> There is concern among some children's organisations that there is no monitoring mechanism within the Act to assess the extent to which these provisions are being used, and if so, to what effect.

A further provision ensures that all parents are now automatically Relevant Persons,<sup>38</sup> unless a Sheriff has decided otherwise. This means that they are automatically able to attend the Hearing and receive information about it. Children's organisations raise concerns that this can result in information about the child being sent out to birth parents even when the child has had no contact. The child has no control over this. It is a worrying breach of a child's right to privacy that details of their life could be sent out without their knowledge to someone who may be a stranger to them.

The Children's Parliament was commissioned to undertake research with children about their experiences of Children's Hearings to inform guidance for the Act.<sup>39</sup> Where this material has been used, for example in training for Panel members, there is anecdotal feedback that it has raised awareness of the experience of children within Children's Hearings. However, this can be patchy between different geographical areas. Overall, children's organisations agree that there has been a gradual improvement over recent years in ensuring the views of the child are at the centre of decision-making within the Children's Hearings System. The intention of the new Act is welcome but it is too soon to know in practice the extent to which it is achieving its policy intention. Further monitoring and evaluation will need to take place before its impact can be fully assessed.

## Patient Rights (Scotland) Act 2011

In its progress report to the UK Government, the Scottish Government refers to the Patient Rights (Scotland) Act 2011 as a step taken to '*strengthen how Scottish legislation gives effect to the UNCRC*'.<sup>40</sup> The Act gives all patients the right that the health care they receive will consider their needs, consider what would most benefit their health and wellbeing, and encourage them to take part in decisions about their health and wellbeing (and provide them with the information and support to do so). It also gives patients a right to give feedback, comments, and raise concerns or complaints about the care they have received.

The Act required Scottish Ministers to publish a Charter of Patient Rights and Responsibilities which summarises the existing rights and responsibilities of patients using the NHS in Scotland and of people with a personal interest in such patients' health care.<sup>41</sup> However, neither the Act nor the Charter explicitly relate to children. Children's organisations state that there needs to be a specific charter for children to ensure they are able to access their rights under the Act. Without this, there is concern that the Act will have little impact in giving 'effect' to the UNCRC and that children's right to be involved in decisions relating to their care may not be fully met.



## Social Care (Self Directed Support) (Scotland) Act 2013

The Social Care (Self Directed Support) (Scotland) Act 2013 will come into force in 2014. It will allow people to choose how support to meet their agreed health and social care outcomes is provided, and will give them as much control of their individual budget as they would like, empowering them to decide how much ongoing control and responsibility they want over their own support.

<sup>42</sup> Self-directed Support newsletter (2013). Children in Scotland

Children's organisations welcome the principles behind the Act and that children will have a voice in their own support plans. The practical reality of self directed support might prove challenging for some children and families and this needs to be addressed in the guidance accompanying the Act. Children and families need independent support and information to help them to understand their options. There is currently no central resource through which those working with and on behalf of children and families can direct them for such advice<sup>42</sup>. There is also a lack of information for children and families about the opportunities that are available at local level.

The Scottish Government are currently working on guidance and regulations to accompany the Act and are funding a wide range of organisations to build the capacity of advice and support provision. In order to give better effect to the UNCRC through this Act, the guidance must reflect the needs of children, young people and families throughout. It must also ensure it is clear on how children and young people can and should participate in shaping their support.

## Children and Young People (Scotland) Bill

### Part 1 – Rights of children

<sup>43</sup> Scottish Government (2013). Children and Young People (Scotland) Bill Policy Memorandum (para 3)

The *Children and Young People (Scotland) Bill* provides a crucial opportunity for the Scottish Government to take forward its international obligations under Article 4 of the UNCRC. Children's organisations welcome the Bill's policy intention to '*ensure children's rights properly influence the design and delivery of policies and services by placing new duties on Scottish Ministers and the public sector*'.<sup>43</sup> However, there is concern that the provisions included in the Bill fall far short of providing the meaningful child rights framework needed to achieve this aim.

<sup>44</sup> Scottish Government (2013). Non-Confidential Responses to Children and Young People Bill

Children organisations have been clear throughout the consultation for the Bill and its passage through Stage 1 of the parliamentary process that the Scottish Government should use the Bill to fully incorporate the UNCRC into Scots Law (see page 10). The Bill as it stands lacks a coherent child rights framework through which the Scottish Government's policy intention to 'make rights real' can be achieved. The duty on Ministers to '*keep under consideration...*' furthering the UNCRC and to act '*if they consider it appropriate to do so*' is weak and ambiguous. The Scottish Government has disregarded responses from NGOs, academics and public bodies to the original Bill consultation in which they called for a stronger duty on Ministers.<sup>44</sup> The new duty is a real step back from the '*due regard*' duty proposed in 2011 through the *Rights of Children and Young People Bill*<sup>45</sup> and provides no mechanism through which Ministers are accountable in their decision-making.

<sup>45</sup> Scottish Government (2011). Consultation on Rights of Children and Young People Bill

<sup>46</sup> Together (2012).  
State of Children's  
Rights in Scotland

<sup>47</sup> Children and Young  
People (Scotland)  
Bill [as introduced]  
Part 1 section 2

Children's organisations are concerned that there is no equivalent duty placed on public bodies. The decisions and actions of public bodies have significant impact on the ability of children to realise their rights under the UNCRC. As evidenced previously by Together,<sup>46</sup> implementation of the UNCRC across public bodies in Scotland is patchy and inconsistent. Although the Bill places a reporting duty on public bodies<sup>47</sup>, it is questionable whether placing a duty on public bodies to report without an accompanying implementation duty will make any tangible difference.

<sup>48</sup> Text tbc

Children's organisations welcome the duties on public bodies to prepare, review, implement and report on children's services plans included in Part 3 of the Bill. However, to successfully realise the policy intention of ensuring '*children's rights properly influence the design and delivery of policies and services*'<sup>48</sup> there needs to be an overarching child rights framework that embeds the UNCRC into the planning, implementation and monitoring of children's services. There is a disjoint between the provisions in Part 1 of the Bill around children's rights and the provisions in Part 3 around children's wellbeing. The UNCRC should be explicitly embedded into children's services planning to ensure children's services are provided in a way that best safeguards, support and promotes both the UNCRC requirements and the wellbeing of children.

<sup>49</sup> Text tbc

In the absence of full incorporation, children's organisations would like to see amendments to the Bill that systematically embed the UNCRC into decision-making, policy and practice and support the effective realisation of children's rights. These would include:

- A stronger, meaningful duty on Ministers, extended to public bodies, to implement the UNCRC.
- Incorporation of the general principles of the UNCRC (Non-discrimination, Protection, Development & Participation).<sup>49</sup>
- The routine use of Child Rights Impact Assessments on the face of the Bill to inform government decision-making (see 1.3).
- Embedding the UNCRC into the aims of children's services planning to ensure the planning, delivery and reporting of children's services planning takes account of both children's rights and wellbeing (see 1.3 and 2.2.).
- A duty on Ministers to prepare, publish and report on an implementation scheme that provides a strategic and comprehensive approach to executing and resourcing all duties on Ministers and public bodies in relation to the rights of children (see 1.5).

#### **Part 4 – Named person**

A number of children's organisations are seeking amendments to the Bill with regard to 'Named Person' provisions. The Bill, as introduced to Parliament, is vague regarding Named Person provision for young people who are not engaged in formal education, and would result in young people who remain in full-time education continuing to have Named Person provision whereas a 16 year-old who is unemployed and not in any form of training or education would not. Those who leave full-time education at the age of 16 include many vulnerable and disadvantaged young people who may be most in need of Named Person provision.

<sup>50</sup> Education (Scotland) Act 1980

<sup>51</sup> Scottish Government (2013). Report on the Requirements for Community Learning and Development (Scotland) Regulations

## Part 6 – Early learning and childcare

Another amendment being considered by children's organisations relates to entitlement to youth work. The Bill makes provision for early learning and childcare but does not take account of the needs of older children. Older children need safe, age-appropriate out-of-school activities and, at present, provision across Scotland is patchy. In some areas of Scotland, young people are able to access a range of informal educational activities whereas in other areas there is little or no choice. The Education (Scotland) Act 1980<sup>50</sup> and the Report on the Requirements for Community Learning and Development (Scotland) Regulations 2013<sup>51</sup> confer power on local authorities to deliver youth work activities, but children's organisations believe that the legislative basis still needs strengthening as these powers fall short of a statutory duty.



## Recommendations

- The Scottish Government should set out a roadmap towards the full incorporation of the UNCRC into Scots law.

The Children and Young People (Scotland) Bill should:

- Incorporate the general principles of the UNCRC (Non-discrimination, Protection, Development & Participation).
- Include a stronger, meaningful duty on Ministers, extended to public bodies, to implement the UNCRC.
- Include a duty on Ministers to prepare, publish and report on an implementation scheme.
- Include a duty on Ministers to undertake child rights impact assessments (CRIA) on the face of the Bill.
- Develop the SHANARRI indicators to encompass all children's rights and accordingly refer to them as 'children's rights and well-being indicators'.
- Be accompanied by statutory guidance supporting the reporting duties on Ministers and public bodies containing a clear set of indicators within a robust right-based monitoring framework.



### UN Concluding Observation

- Reinforce adequate and systematic training of all professional groups working for and with children, in particular law enforcement officials, immigration officials, media, teachers, health personnel, social workers and personnel of child-care institutions.<sup>52</sup>

The Scottish Government refers to the publication of the Common Core of Skills, Knowledge, Understanding and Values for the Children's Workforce<sup>53</sup> as a way in which it is raising knowledge and understanding of the UNCRC. In addition, the Scottish Government notes the *Early Years Collaborative* and its role in 'identifying, developing and delivering practical actions which make real the principles of *Getting it right for every child*' (GIRFEC), and to training in GIRFEC being rolled out through Community Planning Partnerships (CPP).<sup>54</sup>

Children report the need for services to treat them with greater respect, fairness, justice and equality. In a consultation undertaken by the Children's Parliament, children stated that every professional working with children should know and understand children's rights.<sup>55</sup> Participants at Together's seminars highlighted that practitioners need to understand how incorporating children's rights into their practice can bring improved outcomes for children. In relation to health and education services in particular, much more needs to be done to ensure that children's rights are embedded in professional practice. Children's organisations state a need for more multi-agency training on the UNCRC and that children's rights should be embedded in initial staff training and all subsequent professional development. Training programmes should draw from case studies and evidence-based research in order to fully engage practitioners.

### Early Years Collaborative

The Scottish Government's Early Years Framework is a partnership between the Scottish Government and CoSLA to deliver a shared commitment to give children the best start in life and to improve the life chances of children, young people and families at risk. The Early Years Collaborative (EYC) aims to ensure the high level principles set out in GIRFEC and the Early Years Framework are turned into practical action.

Children's organisations welcome the EYC and its drive to put the child at the centre by involving a range of children's services agencies. It is providing a focus through which CPPs can focus on the key STRETCH<sup>56</sup> aims and is bringing together examples of good practice which can be replicated across other CPPs. However, concerns are raised that many CPPs are still underdeveloped. As a result, GIRFEC training often excludes key partners, such as third sector organisations. In addition, training that takes place at a CPP level often does not filter down to practitioner level.

<sup>52</sup> Committee on the Rights of the Child (2008). *Concluding Observations: United Kingdom of Great Britain and Northern Ireland* (CRC/C/GBR/CO/4). No. 21.

<sup>53</sup> Scottish Government (2012). *Common Core of Skills, Knowledge & Understanding and Values for the 'Children's Workforce' in Scotland*

<sup>54</sup> Scottish Government (2013). *The 5th UK Government Report to the UN Committee on the Rights of the Child Scottish Government Submission* (pgs 6, 10)

<sup>55</sup> Scottish Government (2013). *Children and Young People's experiences of, and views on, issues relating to the Implementations of the United Nations Convention on the Rights of the Child* (9).

<sup>56</sup> The STRETCH aims include: ensuring that women experience positive pregnancies which result in the birth of more healthy babies, ensuring that 85% of all children within each CPP have reached all of the expected developmental milestones at their 27-30 month child health review (by end 2016), and ensuring that 90% of all children within each CPP have reached all of the expected developmental milestones at the time the child starts primary school (by end-2017).

Although many of the issues that have been covered by the EYC relate to children's rights, children's organisations report that little or no reference has been made to the UNCRC at EYC events. The events are promoting an approach to change on a practical level and therefore focus on practical measures such as increasing maternal uptake of ante-natal vitamins. Children's organisations state that this is a missed opportunity for Scottish Government to promote awareness and understanding of children's rights among practitioners. A number of children's organisations are keen to become more involved in the EYC to ensure that the UNCRC underpins work areas from child health rights through to play, and ensures that children's voices are central to discussions.

### Common Core of Skills, Understanding, Knowledge and Values

As highlighted in Together's 2012 *State of Children's Rights* report<sup>57</sup>, the Common Core explicitly references the UNCRC and has been welcomed by many children's organisations. However, children's organisations are extremely disappointed that the Scottish Government has not promoted the Common Core more widely. As a result, there is a very low level of awareness of the Common Core.<sup>58</sup> This has been a missed opportunity to raise awareness and understanding of the UNCRC. The Common Core needs to be embedded into the recruitment and training of those working with children as a matter of routine.

<sup>57</sup> Together (2012). *State of Children's Rights in Scotland*

<sup>58</sup> Together (2013). *State of Children's Rights Seminar Report*



### Recommendations

The Scottish Government should take steps to promote the Common Core more widely through GIRFEC guidance, Early Years Collaborative and by integrating it into the recruitment and training of all those working with and for children.

## Monitoring and reporting on the implementation of the UNCRC

### UN Concluding Observation

- The Committee reiterates its previous recommendation that the State party ensure effective coordination of the implementation of the Convention throughout the State party, including locally, especially where local authorities have significant powers to determine their priorities and allocate budgets.
- Adopt a comprehensive plan of action for the implementation of the Convention in cooperation with public and private sectors. Ensure adequate budget allocations and follow-up evaluation mechanisms for the full implementation of the plan to regularly assess progress achieved and potential deficiencies.
- Child Rights Impact Assessments should be regularly conducted to evaluate how the allocation of budget is proportionate to the realisation of policy developments and the implementation of legislation.<sup>59</sup>

### Child rights impact assessments

A children's rights impact assessment is an essential tool for measuring the potential impact of new policies and legislation on children and their rights. The UN Committee on the Rights of the Child states that a '*continuous process*' of child rights impact assessment needs to be '*built into government at all levels and as early as possible in the development of policy and legislation*'.<sup>60</sup> In 2009, the Scottish Government made a commitment to 'consider trial of Child Rights Impact Assessments in a section of the Scottish Government'.<sup>61</sup>

Despite the Scottish Government's commitment to the use of CRIA, the clear impact they have on supporting child-rights focussed legislation and repeated calls from children's organisations to instil CRIA at the heart of government<sup>62</sup>, the Scottish Government chose not to undertake a CRIA on the *Children and Young People (Scotland) Bill*. As a result, the Bill lacks a coherent child rights framework and there is concern that some of its current provisions could result in certain violations of children's rights being embedded in legislation.<sup>63</sup>

As a result of the Welsh Rights of Children and Young Persons Measure,<sup>64</sup> introduced in 2012, CRIA are now used as a matter of routine to systematically consider the UNCRC throughout the development of policy and legislation in Wales. This has included work on the Climate Change Commission, Housing White Paper and End Violence and Domestic Abuse Against Women White Paper. As a result, more guidance documents in Wales are making reference to the UNCRC and influencing how public bodies comply with the guidance issued. The Welsh Government believes that children, young people and their families will soon see the positive impact this is making, as organisations and those working with and for children become more aware of the UNCRC and its implications for their work.<sup>65</sup>

<sup>59</sup> Committee on the Rights of the Child (2008). *Concluding Observations: United Kingdom of Great Britain and Northern Ireland* (CRC/C/GBR/CO/4). No. 12, 13, 15, 19.

<sup>60</sup> Committee on the Rights of the Child (2003). *General Comment no. 5. General measures of implementation of the Convention on the Rights of the Child* (CRC/GC/2003/5).

<sup>61</sup> Scottish Government (2009). *Do the Right Thing* (pg 10, action 2)

<sup>62</sup> Together (7th July 2013). Letter to Stewart Maxwell re CRIA on the *Children and Young People (Scotland) Bill*

<sup>63</sup> NSPCC (2013). *Briefing: Confidentiality, information sharing and the Children and Young People (Scotland) Bill*

<sup>64</sup> National Assembly for Wales (2011). *Rights of Children and Young Persons (Wales) Measure 2011*. The Measure places a duty upon the Welsh Ministers and the First Minister to have due regard to the rights and obligations in the UNCRC and its Optional Protocols, initially when making policy decisions of a strategic nature, and from May 2014 when fully in force, in exercising any Ministerial function.

<sup>65</sup> Welsh Government (2013). *Report on the compliance with the duty under section 1 of the Rights of Children and Young Persons (Wales) Measure 2011*.



In order to ensure the UNCRC influences future legislation, policy and practice, the Scottish Government must build on the Welsh Government's lead and include the routine use of CRIA on the face of the *Children and Young People (Scotland) Bill*. This will enable Ministers and officials to systematically consider the impact of policy and legislation on children's rights, and ensure that Ministers can be held accountable for the actions they choose – or choose not – to take to further implement the UNCRC.

## UNCRC reporting

The Scottish Government refers to its Do the Right Thing action plan<sup>66</sup> and subsequent update<sup>67</sup> as a means through which it plans, monitors and reports on its implementation of the UNCRC. It states a commitment to develop and publish similar documents in the future. This commitment is enshrined in the Children and Young People Bill through a welcome provision that places a duty on Scottish Ministers to report to the Scottish Parliament every three years.

However, as Together has stated in previous *State of Children's Rights* reports,<sup>68</sup> for UNCRC reporting to have meaning, it must be able to demonstrate strategic progress made in implementing the UNCRC and how this has led to improved outcomes for children. Guidance supporting the reporting duty must take account of the UN Committee's General Comment No.5, in which it is stated that '*collection of sufficient and reliable data on children, disaggregated to enable identification of discrimination and/or disparities in the realization of rights, is an essential part of implementation*'. The guidance must contain a clear set of indicators within a robust monitoring framework to enable Scottish Ministers to report on how policies and initiatives are improving outcomes for children.

The UN Committee also states that '*only children themselves are in a position to indicate whether their rights are being fully recognized and realized*'.<sup>69</sup> Recent research conducted for the Scottish Government has concluded that '*overall, children and young people have little direct involvement in the implementation and monitoring of the UNCRC*'.<sup>70</sup> Guidance developed to support the reporting duties must ensure that the views of children are clearly reflected within the reports.

As well holding Ministers and public bodies to account with regard to UNCRC obligations, it is essential that the reporting duties in both Parts 1 and 3 of the Bill are used to evaluate and assess progress in implementing the UNCRC. The reports on UNCRC implementation and children's services planning must be used to identify difficulties in UNCRC implementation and inform future policy development. Future UNCRC action plans should be informed by the reports and set out specific goals, targeted implementation measures, allocation of financial and human resources, and information about timelines. In turn, this will allow subsequent progress to be monitored and scrutinised through the reporting duties over time.

<sup>66</sup> Scottish Government (2009). *Do the Right Thing*

<sup>67</sup> Scottish Government (2012). *Do the Right Thing – a progress report*

<sup>68</sup> Together (2010, 2011, 2012). *State of Children's Rights in Scotland*

<sup>69</sup> Committee on the Rights of the Child (2003). *General Comment no. 5. General measures of implementation of the Convention on the Rights of the Child (CRC/GC/2003/5)* (para 48, 50)

<sup>70</sup> Scottish Government (2013). *Children and Young People's experiences of, and views on, issues relating to the Implementations of the United Nations Convention on the Rights of the Child* (Pg 12).

## UN Concluding Observation

<sup>71</sup> Committee on the Rights of the Child (2008). *Concluding Observations: United Kingdom of Great Britain and Northern Ireland* (CRC/C/GBR/CO/4). No 17, 23.

- Ensure that all established Commissioners be independent, in compliance with the Paris Principles and mandated to receive and investigate complaints from, or on behalf of, children concerning violations of their rights. Encourage the active and systematic involvement of civil society in the promotion and implementation of children's rights.<sup>71</sup>

There is currently no legal method of ensuring that all the rights contained in the UNCRC are being upheld. The *Children and Young People (Scotland) Bill* will not change this as it provides no means of legal redress for children facing violations of their rights.

<sup>72</sup> Scottish Government (2013). *Children and Young People's experiences of, and views on, issues relating to the Implementations of the United Nations Convention on the Rights of the Child* (Pg 12).

Part 2 of the Bill does take forward a Concluding Observation from the UN Committee in that it provides for new powers for Scotland's Commissioner for Children and Young People (SCCYP) to investigate cases or complaints brought by or on behalf of individual children. This will be a useful and important tool to resolve alleged violations of children's rights and has been welcomed by children.<sup>72</sup> Children's organisations have been clear that this new power must be adequately resourced if it is to be meaningful. Steps must be taken to ensure the new power is known about and understood by children.

<sup>73</sup> UK Government (2013). *Draft Periodic Report to the UN Committee on the Rights of the Child* (pg 6/7)

The third Optional Protocol to the UNCRC enables children and their representatives to bring complaints to the UN Committee on the Rights of the Child if their rights have been violated. In 2012, the Scottish Government welcomed the Optional Protocol in principle and 'would be minded to offer measured support for its signature and ratification in the future'. In its 2012 *State of Children's Rights* report, Together recommended that the Scottish Government urge the UK Government to sign up to the optional Protocol with immediate effect. However, the UK Government has still not signed or ratified the Optional Protocol and has stated that '...the State Party is still considering how this Optional Protocol might add practical value for people in the UK. The UK already has strong and effective laws under which individuals may seek enforceable remedies in the courts or tribunals if they feel that their rights have been breached'.<sup>73</sup> In failing to recognise the importance of the Optional Protocol to children, the UK is lagging behind the international community: at the time of writing, eight States have already ratified the Optional Protocol and a further 44 other States have signed up, indicating their intention to ratify.<sup>74</sup> The Scottish Government must clearly state its full support to sign and ratify the Optional Protocol with immediate effect to highlight its importance to the UK Government.

<sup>74</sup> States that have ratified OP3 CRC: Gabon and Thailand (2012); Spain, Portugal, Montenegro, Germany, Bolivia, Albania (2013).

## Rec

## Recommendation

- The UK Government should ratify the Optional Protocol with immediate effect (as per 2012 *State of Children's Rights* report)

### UN Concluding Observation

- The Committee is concerned that there is no systematic awareness-raising about the Convention and that the level of knowledge about it among children, parents or professionals working with children is low. Furthermore, the Committee regrets that the Convention is not part of the curriculum in schools.<sup>74</sup>

<sup>75</sup> Committee on the Rights of the Child (2008). *Concluding Observations: United Kingdom of Great Britain and Northern Ireland* (CRC/C/GBR/CO/4). No 20, 21.

<sup>76</sup> Scottish Government (2013). *The 5th UK Government Report to the UN Committee on the Rights of the Child* Scottish Government Submission. (pg 10)

<sup>77</sup> Together (2013). *Incorporation of the UNCRC and the Children & Young People (Scotland) Bill*

<sup>78</sup> Scottish Government (2013). *Children and Young People's experiences of, and views on, issues relating to the Implementations of the United Nations Convention on the Rights of the Child* (Pg 9).

<sup>79</sup> UN Committee on the Rights of the Child (2005). *General Comment 2, the role of independent human rights institutions* (para 66)

The Scottish Government states that it has *'taken a number of steps to increase public knowledge and understanding [of the UNCRC], including amongst children and young people.'*<sup>75</sup> These steps include issuing child-friendly leaflets on the UNCRC and developing a set of resources for learning professionals through Education Scotland. In addition, Part 1 (Section 2) of the *Children and Young People (Scotland) Bill* includes a further duty on Scottish Ministers to *'promote public awareness and understanding (including appropriate awareness and understanding among children) of the rights of children'*.<sup>76</sup>

In general, children's organisations believe that there have been some improvements in raising awareness and understanding of the UNCRC amongst those working with children and among children themselves. However, much more needs to be done. Together's seminar participants raised concerns that practitioners and children continue to have a low level of awareness of the UNCRC. This was highlighted in recent research commissioned by the Scottish Government which stated that *'evidence indicated that awareness of the UNCRC amongst children [...] could be significantly improved'*.<sup>77</sup>

The child-friendly leaflets produced by the Scottish Government are welcomed, but children's organisations state that more needs to be done to ensure that adults are informed about and engaged in implementing the UNCRC. As highlighted by the UN Committee: *'If the adults around children, their parents and other family members, teachers and carers do not understand the implications of the Convention, and above all its confirmation of the equal status of children as subjects of rights, it is most unlikely that the rights set out in the Convention will be realised for many children.'*<sup>78</sup>

<sup>80</sup> Scottish Government (2012). *The National Parenting Strategy: Making a positive difference to children and young people through parenting.*

## National Parenting Strategy

The National Parenting Strategy's<sup>80</sup> explicit references to the UNCRC have been welcomed by children's organisations. This is a positive steps towards raising awareness of the role of Scottish Government support for parenting in enabling children to realise their rights. For example, the Strategy specifically names parents in prison as needing extra support. This initiated discussions between the Scottish Prison Service and the Children and Families division of Scottish Government and resulted the meeting of a joint working group focussing on children of prisoners. Children's organisations are keen that the Scottish Government underpins the National Parenting Strategy with a comprehensive monitoring programme to establish the impact it is having on outcomes for children and families. It is particularly important to assess the difference the strategy is making for the most vulnerable families.

## Children and Young People (Scotland) Bill

The Scottish Government states that the duty on Ministers to raise awareness and understanding of the UNCRC has the effect of transposing Article 42<sup>81</sup> into Scots law. Children's organisations welcome this provision and recognise the impact it could have if properly implemented. However, there is concern that no additional resources have been allocated to implement this duty as Scottish Ministers consider that this duty is already being implemented<sup>82</sup>. The duty alone does not encourage others within local and national government to proactively ensure they are aware of and understand the UNCRC. There is still great concern among children's organisations that existing initiatives to raise awareness and understanding of the UNCRC appear to have had little impact on promoting a better understanding of the needs and rights of more vulnerable groups, such as Gypsy/Traveller children. There is also concern that these initiatives concentrate on some rights more than others, and that particular rights – such as Article 31 (the right to play)<sup>83</sup> – are seen as less important as a result. If this duty is to achieve the policy intention of '*highlighting the important role that professionals and communities must play*'<sup>84</sup> in empowering children to exercise their rights, it must be adequately resourced and included within a stronger, overarching child rights framework that draws on the experience and expertise of children's organisations and children themselves (see 1.1).

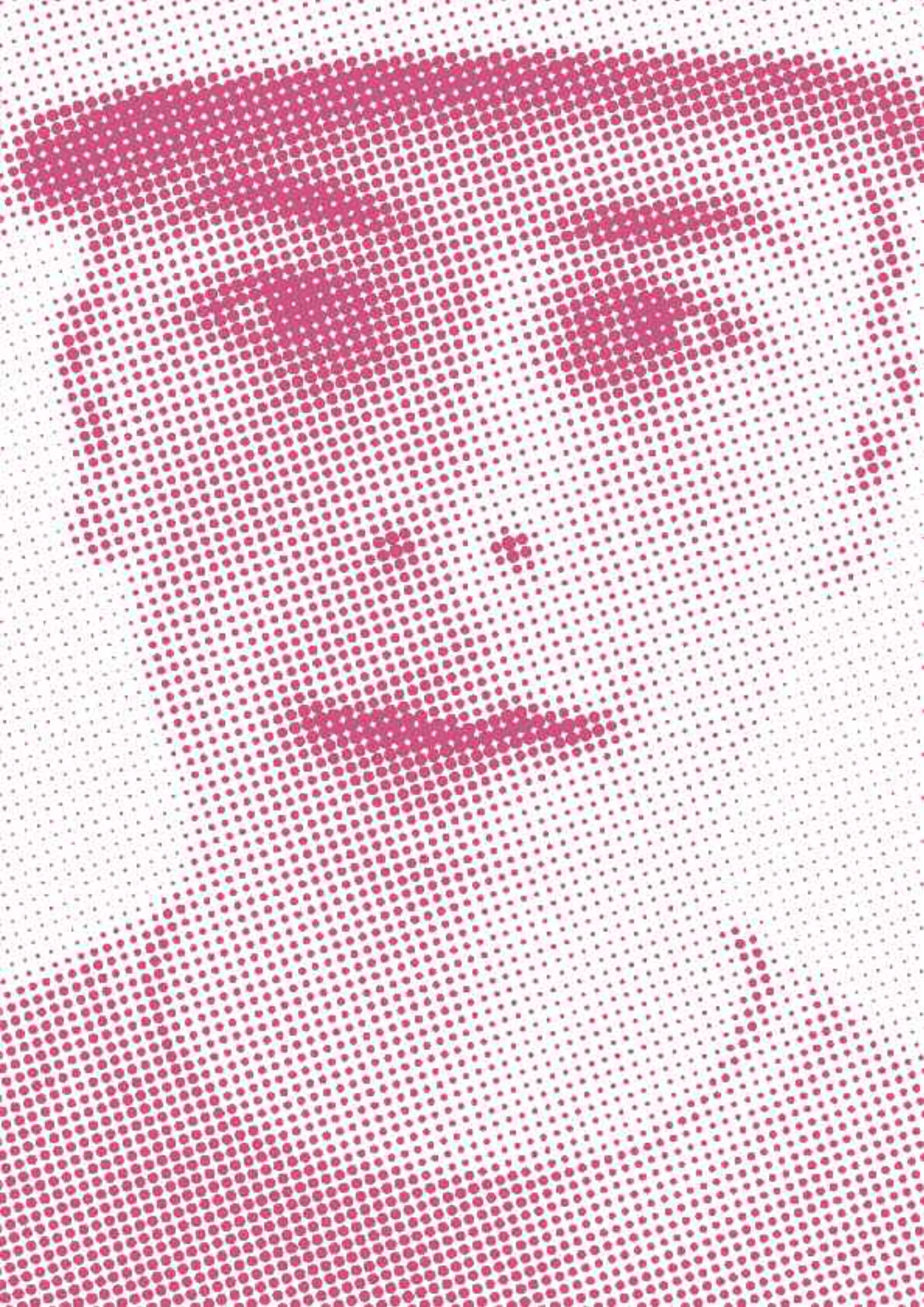
<sup>81</sup> Children and Young People (Scotland) Bill, Part 1 Section 1 (2)

<sup>82</sup> Children and Young People (Scotland) Bill Financial Memorandum

<sup>83</sup> UNICEF (2005). *Fact Sheet: A summary of the rights under the Convention on the Rights of the Child. 'Article 31 (Leisure, play and culture): Children have the right to relax and play, and to join in a wide range of cultural, artistic and other recreational activities.'*

<sup>84</sup> Scottish Parliament (2013). *Children and Young People (Scotland) Bill Policy Memorandum (para 45)*







### Article 3:

"The best interests of children must be the primary concern in making decisions that may affect them.

All adults should do what is best for children. When adults make decisions, they should think about how their decisions will affect children. This particularly applies to budget, policy and law makers."

Chapter

2

# General principles

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## Case study: *The young people's organising and campaigning group*

Participation is a guiding principle of the UNCRC and Article 12 is clear about the need for children and young people of all ages and backgrounds to have the right to say what they think should happen in decisions affecting their lives, to be listened to and to have their opinions taken into account.

The Young People's Organising and Campaigning (YPOC) Group is a reference group of children who are looked after away from home, and care leavers. It has around six to eight members, aged 12+, at any one time, with a changing population and some who have been there from the start. It was set up in 2009 by Aberdeenshire Council's Children's Rights Team to support this group of young people to exercise their UNCRC Article 12 rights by giving them a voice in the wider planning, practice and policy development of the council and its partners. The YPOC Group is led by young people and runs campaigns to promote the voice of looked after children and care leavers. They try to include other young people and keep them informed through a bi-annual 'Rights Matters' newsletter.

The aims of the group were set out by the young people and are:

- to try and get across to councillors and decision makers what it's like to be looked after;
- to improve things for other looked after children and young people;
- to find ways to get the views of other looked after children, young people and care leavers; and
- to find ways to inform looked after children and young people about things they need to know.

The YPOC Group began by organising and running a 'Tell it like it is' Event for looked after young people aged 12+. From the issues identified they set out their first campaign priority, to improve meetings for looked after children. They sent out questionnaires to all looked after children and care leavers and from the 54 responses, they designed a 'Guide to Meetings' booklet for the adults who are involved with children at their meetings.

They launched this with professionals and carers at a series of three workshops around Aberdeenshire, which they organised and ran with some support from the Learning and Development Service and from the Children's Rights Team. The YPOC Group then produced a 'Guide to Meetings' DVD which is used within the council and has been accessed widely by a range of other authorities and children's organisations.

The young people have participated in a range of other training and development activities within and outwith the council.

*'In launching our guide I've learned how to make changes in the world, and how to inspire others to be on our side, and then in turn, see the positive consequences it has had on peoples'lives.'*

*'Doing the guide has helped me know that we can do more to help young people like us. It has helped me be more confident talking in front of people.'*



## UN Concluding Observations

<sup>85</sup> Committee on the Rights of the Child (2008). *Concluding Observations: United Kingdom of Great Britain and Northern Ireland* (CRC/C/GBR/CO/4). No 25a, b, c, d.

- ...ensure full protection against discrimination on any grounds, including... taking all necessary measures to ensure that cases of discrimination against children in all sectors of society are addressed effectively, including with disciplinary, administrative or – if necessary – penal sanctions... In accordance with article 27 of the Convention, Government should reintroduce a statutory duty for local authorities to provide safe and adequate sites for Travellers.<sup>85</sup>

<sup>86</sup> United Nations (1989). *Convention on the Rights of the Child*. Article 2.

<sup>87</sup> Scottish Government (2013). *The 5th UK Government Report to the UN Committee on the Rights of the Child* Scottish Government Submission (pg 13)

<sup>88</sup> Scottish Government (2013). *Children and Young People's experiences of, and views on, issues relating to the Implementations of the United Nations Convention on the Rights of the Child* (Pg 13).

<sup>89</sup> Together (2013). *State of Children's Rights Seminar Report*

<sup>90</sup> Coalition for Racial Equality and Rights (2012). *Racist Incident Reporting in Scotland's Schools* (Pg 35).

Article 2 of the UNCRC is clear that the rights enshrined in the Convention apply to all children, 'whatever their ethnicity, gender, religion, abilities, whatever they think or say, no matter what type of family they come from'.<sup>86</sup> The Scottish Government states a commitment to ensure 'all children have the support and opportunities they need to succeed in life' and outlines a number of steps it has taken to promote equality of opportunity. This includes partnerships with Young Scot and the Scottish Youth Parliament alongside work with a number of LGBT organisations, the Truth About Youth project<sup>87</sup> and funding for minority ethnic organisations.

Despite this commitment, children and young people still state that they are discriminated against.<sup>88</sup> Children's organisations state that there needs to be more work to inform and support children to understand their legal rights to non-discrimination. More needs to be done to promote a long-term culture shift in the way both the media and the wider public view children and young people. Participants at the *State of Children's Rights* seminars stated that that children are still not valued, respected and involved as equal members of society.<sup>89</sup> It is clear that there is still much more to be done to tackle the discrimination of children in their daily lives.

## Minority ethnic children

Minority ethnic children face discrimination in various ways, particularly in relation to school life. Racist incidents in schools are poorly reported and accepted by many as 'part of life'.<sup>90</sup> A lack of evaluation of current efforts to tackle race equality issues in schools makes it difficult to assess their effectiveness. Minority ethnic organisations raise concerns that these efforts can be ineffective or tokenistic. For children with English as a second language, language support can be patchy in many schools. Asylum seeking children face particular challenges and discrimination as a result of their family's immigration status (see chapter 8.1)

<sup>91</sup> Scottish Government (2013). *Children and Young People's experiences of, and views on, issues relating to the Implementations of the United Nations Convention on the Rights of the Child*

<sup>92</sup> Scottish Parliament (2013). *Equal Opportunity Committee 1st Report session 4: Where Gypsy/ Travellers live (Para 1)*.

<sup>93</sup> Scottish Human Rights Commission (2012). *Submission to the Equal Opportunities Committee inquiry - Where Gypsy/ Travellers live*.

<sup>94</sup> Article 12 in Scotland (2013). *Young Gypsy Travellers' Lives (YGTL): Discrimination and On-Line Media [Analysis focused on Scotland] 2nd report*

<sup>95</sup> Scottish Parliament (2013). *Equal Opportunity Committee 1st Report session 4: Where Gypsy/ travellers live*.

<sup>96</sup> LGBT Youth Scotland (2012). *Life in Scotland for LGBT Young People - Education Report*.

## Gypsy/Traveller children

Young Gypsy/Traveller children experience a high level of discrimination.<sup>91</sup> As noted by the Equal Opportunities Committee *'the settled community, local authorities and service providers tend towards making negative assumptions about Gypsy/Travellers' needs'*<sup>92</sup>. There are well-documented concerns around the educational outcomes of Gypsy/Traveller children in Scotland.<sup>93</sup> Concerns have been raised by children's organisations that learning and support still does not take into account children's culture and lifestyle and this can significantly affect outcomes for Gypsy/Travellers.

Discrimination, driven by some sections of the mainstream media, remains a critical issue for the Gypsy/Traveller community.<sup>94</sup> Article 12 Scotland's ongoing research on how the media reports on the Gypsy/Traveller community highlights a need for a 'positive images' campaign to counter this. Awareness raising amongst practitioners and members of the settled community (young people and adults alike) will be central to future inclusion of the community in mainstream services.

The recommendations from the Equal Opportunities Committee report *'Where Gypsy/Travellers Live'* should be taken forward with immediate effect to tackle the discrimination of Gypsy/Traveller children. Recommendations include the need for a powerful ministerial voice to tackle discrimination and for work to be carried out both at a local level to encourage the settled community to accept the Gypsy/Traveller way of life, and at a national level, through a Government-led public awareness campaign, to establish a zero-tolerance approach to discrimination against Gypsy/Travellers.<sup>95</sup>

## Sexual orientation

Lesbian, gay, bisexual and transgender (LGBT) young people in Scotland still experience homophobia, biphobia and transphobia in education. As a result, they can develop lower self-esteem or problems with mental health, become isolated from their peers, have limited social interactions and leave school without any qualifications. This can lead to long-lasting negative impacts in many areas of life, including employment. It is crucial that LGBT young people do not experience discrimination and are safe, included and respected so that they can enjoy the same education and employment chances as their peers. Together endorses recommendations made by LGBT Youth Scotland that set out a number of practical measures to ensure the experience of LGBT young people in education is as positive as those of other students.<sup>96</sup>

## Recommendation

- The recommendations from the Equal Opportunities Committee report *'Where Gypsy/Travellers Live'* and from LGBT Youth Scotland's education report *'Life in Scotland for LGBT Young People'* should be taken forward with immediate effect.

Rec

## Best interests and the right to life, survival and development

<sup>97</sup> Committee on the Rights of the Child (2008). Concluding Observations: United Kingdom of Great Britain and Northern Ireland (CRC/C/GBR/CO/4). No. 27, 29, 31.

<sup>98</sup> United Nations (1989). Convention on the Rights of the Child. Article 3.

<sup>99</sup> Committee on the Rights of the Child (2013). General Comment No. 14: The right of the child to have his or her best interests taken as a primary consideration

<sup>100</sup> United Nations (1989). Convention on the Rights of the Child. Article 3.

<sup>101</sup> Scottish Government (2013). The 5th UK Government report to the UN Committee on the Rights of the Child – Scottish Government submission

<sup>102</sup> Scotland's Commissioner for Children and Young People (2013). Child Contact Proceedings for Children Affected by Domestic Abuse (Pg 4).

<sup>103</sup> Children Act 1989. (Section 1(2): Family actions in Court); Children (Scotland) Act 1995. (Section 11 (7): Children's Hearing proceedings; Children (Scotland) Act 1995. (Section 11 (7): Children's Hearing proceedings; Adoption and Children (Scotland) Act 2007 (Section 14(3) and 84(4))

<sup>104</sup> Together (2013). State of Children's Rights Seminar Report

<sup>105</sup> Scottish Government (2012). Analysis of Responses to Children and Young People Bill Consultation.

### UN Concluding Observations

- ...take all appropriate measures to ensure that the principle of the best interests of the child, in accordance with article 3 of the Convention, is adequately integrated in all legislation and policies which have an impact on children, including in the area of criminal justice and immigration.
- Use all available resources to protect children's rights to life, including by reviewing the effectiveness of preventive measures.<sup>97</sup>

Article 3 of the UNCRC states that *'the best interests of the child shall be a primary consideration in all actions affecting children'*.<sup>98</sup> In January 2013, the UN Committee adopted General Comment no 14<sup>99</sup> which aims to strengthen the understanding and application of the best interests principle and to promote a real change in attitudes leading to the full respect of children as rights holders. It provides a framework for assessing and determining the child's best interests and does not attempt to prescribe what is best for the child in any given situation at any point in time.

With regard to implementing the best interests principle and the rights to life, survival and development,<sup>100</sup> the Scottish Government refers to the GIRFEC approach of shifting *'away from the concept of ensuring a child's welfare to focus on considering the child's need in a more holistic way, looking at their whole wellbeing.'*<sup>101</sup>

No sharp legal distinction has been made between the concept of a child's 'best interests' (as defined in the UNCRC) and a child's 'welfare' (used in Scots law).<sup>102</sup> Children's organisations report that, in general, there is a clear understanding in law that the welfare of the child is paramount.<sup>103</sup> There are concerns that the emphasis in the *Children and Young People (Scotland) Bill* on 'wellbeing' might 'muddy the waters' around the paramountcy of the best interests principle in Scots Law. The Scottish Government should use the new General Comment from the UN Committee to define the requirements needed to consider the best interests of the child at all stages of the development of legislation, policies and strategies as well as guidance for all those working with and for children.

Children's organisations widely agree that GIRFEC offers a positive opportunity through which services that can take a child-centred approach to working together.<sup>104</sup> However, there are concerns that the Scottish Government approach to focusing on a child's wellbeing within GIRFEC does not necessarily explicitly embed a child-rights approach. A number of children's organisations have recommended that the GIRFEC SHANARRI indicators should be developed to encompass all children's rights and are accordingly referred to as 'children's rights and well-being indicators'.<sup>105</sup> This would help to raise awareness and understanding of the UNCRC and provide an overarching child rights framework across GIRFEC.

## Domestic abuse

Children's organisations report that there is still a strong presumption that contact with both parents is in a child's best interests even where there has been domestic abuse. This attitude reflects a lack of understanding about coercive and abusive behaviours that can continue beyond the end of a relationship; child contact is known to be a method through which perpetrators may continue abuse of children and their mother.<sup>106</sup> Child contact in cases involving domestic abuse need careful consideration, proper risk assessment and monitoring to ensure that it is in children's best interests and promotes their well-being. Although the Scottish Government made steps to address this concern through the development and implementation of the *National Domestic Abuse Delivery Plan for Children and Young People*, this remains an area of great concern. Recent research suggests that much more needs to be done to ensure children's rights are recognised and met in child contact cases. It recognises that this is a challenging area of work as discretion is inherent in making judgements about what is in a child's best interests.<sup>106</sup> The Scottish Government needs continue its work to ensure that professionals, children and their parents are supported effectively in contact disputes to ensure that the best interests of the child are the paramount consideration in all processes and decisions.

## Criminal Justice (Scotland) Bill

Section 42 of the *Criminal Justice (Scotland) Bill* places a duty on constables to consider the best interests of the child when holding, arresting, interviewing or charging a child.<sup>108</sup> The wording of the duty in section 42(2) is to '*treat the need to safeguard and promote the wellbeing of the child as a primary consideration*'. Children's organisations are seeking assurance that the use of the word 'wellbeing' would achieve the policy intention of considering the 'best interests' of the child.

Rec

## Recommendations

The Scottish Government should:

- ensure that all children's rights are fully embedded across GIRFEC.
- assess the impact of GIRFEC to ensuring the best interests principle is at the heart of practice in work with all children from all backgrounds living in all local authority areas. (repeated from Together's 2011 and 2012 State of Children's Rights reports).

<sup>106</sup> Scottish Government (2008). *National Domestic Abuse Delivery Plan for Children and Young People* (Pg16).

<sup>107</sup> Scotland's Commissioner for Children and Young People (2013). *Child Contact Proceedings for Children Affected by Domestic Abuse*.

<sup>108</sup> *Criminal Justice (Scotland) Bill* [As introduced] section 42



### UN Concluding Observations

- Promote, facilitate and implement, in legislation as well as in practice, within the family, schools, and the community as well as in institutions and in administrative and judicial proceedings, the principle of respect for the views of the child.
- Continue to collaborate with civil society organizations to increase opportunities for children's meaningful participation, including in the media.<sup>109</sup>

<sup>109</sup> Committee on the Rights of the Child (2008). *Concluding Observations: United Kingdom of Great Britain and Northern Ireland* (CRC/C/GBR/CO/4). No. 32, 33.

<sup>110</sup> Scottish Government (2013). *The 5th UK Government Report to the UN Committee on the Rights of the Child* Scottish Government Submission (pg 16).

<sup>111</sup> Scottish Government (2013). *Children and Young People's experiences of, and views on, issues relating to the Implementations of the United Nations Convention on the Rights of the Child* (Pg20).

The Scottish Government states its commitment to ensure that children play a central role in all matters that affect them, from national legislation through to individual decisions affecting their lives.<sup>110</sup> It admits that children feel that there are insufficient opportunities to influence decisions that affect their lives and that this is a particular issue for more vulnerable groups of children including Gypsy/Travellers and children with a disability. Children's organisations also highlighted that the views of children affected by imprisonment are rarely heard. On occasion, their views may be actively discouraged where a family is trying to hide the fact of imprisonment from the children or from people outside the family. Research shows that positive experiences of participation are heavily dependent upon the attitudes of professions towards children and the quality of the relationships established.<sup>111</sup> Children's organisation note that good practice is often reliant on the ethos, skills and commitment of an individual worker.

Children's organisations stress the importance of not only seeking the views of children, but also taking them into account and acting on them. This rights-based approach is not embedded throughout the *Children and Young People (Scotland) Bill* and children's organisations are seeking a number of amendments to ensure it provides a coherent child-rights framework (for example around children's services planning, an individual child's plan, and information sharing).

<sup>112</sup> Scotland's Commissioner for Children and Young People. *7 Golden Rules for Participation* – <http://www.sccyp.org.uk/resources/golden-rules>

Children's organisations highlighted as good practice the Golden Rules of Participation cards produced by SCCYP, which are designed to help anyone working with children to understand participation from a child's perspective.<sup>112</sup> SCCYP has also published the *Children and Young People's Views on Participation and Principles for Practice*, which summarises key findings on good quality, successful, participative experiences, and identifies possible barriers from a child's perspective.

### Children with additional support needs

Children's organisations highlighted the importance of using a variety of methods to establish children's views and engage their participation. Anyone working in a setting where children and young people's views should be listened to must be able to access training in how to involve children of different ages, with specific needs and preferred methods of communication<sup>113</sup>. Children and young people with complex additional support needs, particularly when there is a communication difficulty, can face particular difficulties in getting their views heard as professionals are often unaware of to elicit and interpret their views. For example, research shows that children in hospital are still not

<sup>113</sup> Scotland's Commissioner for Children and Young People (2013). *It Always Comes Down to Money*

<sup>114</sup> Action for Sick Children Scotland (2013). Parental Access and Family Facilities Survey, 2012-13

<sup>115</sup> <http://www.cen.scot.nhs.uk/how-do-you-want-me-to-talk-to-you> (Accessed August 2013)

<sup>116</sup> [http://www.ndcs.org.uk/about\\_us/campaign\\_with\\_us/scotland/campaign\\_news/become\\_an\\_ndcs\\_young.html](http://www.ndcs.org.uk/about_us/campaign_with_us/scotland/campaign_news/become_an_ndcs_young.html) (Accessed September 2013)

<sup>117</sup> Scottish Government (2013). Children and Young People's experiences of, and views on, issues relating to the Implementations of the United Nations Convention on the Rights of the Child (Pg62).

<sup>118</sup> Young Scot (2011). Access All Areas (Pg27).

being given the choice of whether they are treated in a children's or adult ward.<sup>114</sup> Action for Sick Children Scotland has collaborated in the development and roll out of the National Managed Clinical Network for Children with Exceptional Healthcare Needs' Communications Module.<sup>115</sup> This project has been highlighted as an area of good practice that addresses the anxieties, insecurities, or lack of experience that some professionals might have in communicating with children who do not use speech. National Deaf Children's Society Scotland's new Young Campaigner project<sup>116</sup> was highlighted as a new development through which young deaf children will be able to learn about their rights and gain the skills and confidence needed to influence policy development.

## Minority ethnic children

Minority ethnic organisations report that children from minority ethnic backgrounds not well represented in the majority of engagement processes. The Scottish Government research into children's views of UNCRC implementation notes that the views of minority ethnic children are underrepresented in research across all cluster areas of the UNCRC.<sup>117</sup> Young Scot's Access All Areas project highlights that more needs to be done to tackle discrimination, bullying and racism towards minority ethnic children and that minority ethnic children would like to be more involved in developing opportunities and services to address these issues.<sup>118</sup> Minority ethnic organisations report that there is a lack of organised effort to bring the voices of minority ethnic children together or to ensure they are adequately represented in mainstream youth engagement structures. There are some areas of good practice in terms of promoting the participation of minority ethnic children, including Article 12 in Scotland's advocacy work with Gypsy/Traveller children and the Young Scot Access All Areas project. However, the majority of organisations working with minority ethnic children do not have advocacy or engagement as part of their remit. More funding and support is needed to allow good practice to build on specific involvement and engagement for minority ethnic young people. Mainstream engagement needs to focus more on getting adequate representation of young minority ethnic voices.

## Looked after children

Children's organisations highlighted that there is some very good practice around in listening to looked after children and making sure their views are heard (see, page 42). A number of children's organisations reported that when children can have the support of a children's rights officer or other advocate, they say it helps them to feel better prepared, more in control and able to participate more fully in reviews, Hearings and other meetings.

## Rec

## Recommendation

The Scottish Government should:

- use appropriate methods of communication and a realistic timeframe to engage with all children, including those from marginalised groups. All consultations on matters that affect children should be made available in child-friendly, easy read formats with sufficient time allowed to ensure they understand the concepts in the consultation (repeated from Together's 2012 State of Children's Rights report)





Chapter

3

# Civil rights and freedoms

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## Case study: “Eighteen and Under”

Children and young people have a right to privacy under the UNCRC and the European Convention on Human Rights (ECHR). Children have the same rights to confidentiality as adults and confidentiality is of fundamental importance to children and young people. Through consultation exercises, children and young people in Scotland have been clear that their permission should always be sought in sharing information where they have capacity to understand, and only passed on without permission if necessary to prevent harm. ‘Eighteen And Under’ is a unique organisation based in Dundee, offering confidential support and information to any young person, aged 18 and under, who has experienced sexual, physical or emotional abuse. Eighteen And Under is committed to constant consultation with young people to identify their needs and provide them with the means to empower themselves and survive their personal traumatic experiences. They offer face-to-face support, telephone support, a 24-hour answering machine and a message board.

*Karin (name changed), age 15, was brought to Eighteen And Under by a friend. We explained our high confidentiality policy and let her know how we work. Karin was abused physically, sexually and emotionally by both parents. At 14, she had run away and gone to stay with a friend. The friend’s mother slowly built up a relationship to become her carer but when Karin eventually trusted her enough to tell a little about the abuse, the carer was so horrified that she contacted police and social work. Karin refused to talk to them so no action could be taken.*

*Karin lost trust in the carer, became depressed and began self-harming. The carer called the doctor and arranged for Karin to see a psychiatrist. Karin refused appointment, refused medication and would not talk. The relationship with the carer broke down and Karin left to stay with another friend. This friend lived with an older man who gave Karin drugs and introduced her to prostitution. This was the point when she came to us.*

*We told Karin she could contact us by phone, e-mail, text or could drop in any time we were open. She would be in charge of services she received and we would just listen and offer support. It took time and patience to prove to Karin that we really were there for her on her own terms.*

*We suggested options such as police, social work and health but she did not want these. She came to see us when she chose and slowly began to build trust with one worker. She started to talk and constantly tested the worker to see if she could be trusted and always asked to see her notes to check what was written down. We let her know that her carer phoned us regularly to ask after her but also explained that we would not tell the carer anything without Karin’s permission. Karin eventually gave permission and we gradually supported Karin to move back in with her carer. With Karin’s permission, we provided support for the carer. We also encouraged and supported Karin back into education.*

*Karin still uses us for emotional support. She is now 17 and in full-time education. Karin says, “When I first started to say about the abuse, my carer cried and ran around telling everyone, I felt betrayed. I just needed someone to trust and listen.”*

<sup>119</sup> Committee on the Rights of the Child (2008). *Concluding Observations: United Kingdom of Great Britain and Northern Ireland (CRC/C/GBR/CO/4)*. No 37a,b,c.

<sup>120</sup> United Nations (1989). *Convention on the Rights of the Child*. Article 16.

<sup>121</sup> Council of Europe (1953). *European Convention on Human Rights*. Article 8.

<sup>122</sup> Wales, A. and Hill, L. (2011). *Roundtable report: Finding the balance: children's right to confidentiality in an age of information sharing*

<sup>123</sup> NSPCC (2013). *Briefing: Confidentiality, information sharing and the Children and Young People (Scotland) Bill*

<sup>124</sup> Scottish Youth Parliament (2013). *A Scotland for Children: A consultation on the Children and Young People Bill*

<sup>125</sup> Office of the Children's Commissioner (2006). *'I think it's about trust': the views of young people on information sharing*

<sup>126</sup> Together (2012). *The State of Children's Rights in Scotland*

<sup>127</sup> The current threshold is: where a child is thought to be 'at risk of significant harm.'

<sup>128</sup> Scottish Government (2013). *Children and Young People Bill Policy Memorandum* (para 76)

<sup>129</sup> NSPCC (2013). *Briefing: Confidentiality, information sharing and the Children and Young People (Scotland) Bill*

### UN Concluding Observations

- Ensure in both legislation and practice that children are protected against unlawful or arbitrary interference with their privacy including by introducing stronger regulations for data protection;
- Intensify efforts, in cooperation with the media, to respect the privacy of children in the media, especially by avoiding messages publicly exposing them to shame, which is against the best interests of the child.<sup>119</sup>

Children have a right to privacy under the UNCRC<sup>120</sup> and the European Convention on Human Rights (ECHR).<sup>121</sup> Confidentiality is important for all children and builds trust between them and the professionals they engage with.<sup>122</sup> Children's organisations recognise that sharing information that is relevant and proportionate about children who are at risk of harm, is fundamental to keeping children safe.<sup>123</sup> Consultation for the *Children and Young People (Scotland) Bill* highlighted concerns among children around confidentiality and information sharing.<sup>124</sup> Although children recognise that information may need to be shared in situations where they are at risk, they raised concerns that information could be shared without their permission. A number of participants had direct personal experience of information being shared about them between services without their consent and of sensitive information about them discussed in front of family members. Research carried out with children indicates information sharing may deter children from using services if they are not completely confident of confidentiality.<sup>125</sup>

In Together's 2012 *State of Children's Rights* report,<sup>126</sup> concerns were raised around the potential impact that the *Children and Young People (Scotland) Bill* might have on a child's right to privacy. The Bill, as introduced to Parliament, places two duties on practitioners in relation to information sharing.

Sections 26 and 27 have the effect of giving a power to professionals and the Named Person to share information about concerns which fall short of the current child protection threshold.<sup>127</sup> The policy intention is that '*information on less critical concerns about a child's wellbeing must be shared if a full picture of their wellbeing is to be put together and if action is to be taken to prevent these concerns developing into more serious issues.*'<sup>128</sup>

Children's organisations agree that the best interests of the child should be paramount in all decisions to share information. The core GIRFEC principle of sharing information that is relevant and proportionate is welcome. There is recognition that, at present, information sharing is not consistent across services or local authority areas. However, a number of children's organisations have raised concerns that these provisions could result in an unnecessary and disproportionate sharing of information. In addition, children may be reluctant to access and engage with confidential services if they feel that information is likely to be shared without their consent and without protection of their right to confidentiality. Concerns have also been raised that information about vulnerable children could be lost among the large quantities of information being shared and could lead to vulnerable children being placed at risk.<sup>129</sup>

<sup>130</sup> NSPCC (2013). *Briefing: Confidentiality, information sharing and the Children and Young People (Scotland) Bill*; Scottish Parliament (2013). *Official Report: Education and Culture Committee, session 4; cl@n childlaw* (2013). *Information Sharing Provisions: Clauses 26 & 27 Children and Young People (Scotland) Bill*

<sup>131</sup> Information Commissioner's Office (Scotland) (2013). *Education and Culture Committee: Children and Young People (Scotland) Bill*



There is ongoing debate across those working with and for children as to whether sections 26 and 27 of the Children and Young People Bill are needed, or whether there is a need for improved guidance that operates within existing information sharing legislation. Several organisations have raised concerns that the procedures followed by the Scottish Government to assess the impact of clauses 26 and 27 were not robust and do not fully assess the impact of the provisions on children's rights.<sup>130</sup> The Information Commissioner has stated that the Bill as currently drafted '*does not comply with [data protection] principles*' and has recommended redrafting section 26 and the removal of section 27<sup>131</sup>.

Amongst children's organisations, there is general agreement that there is a need for clear, robust guidance to support professionals in sharing information accompanied by widespread training and support. This guidance needs to explore not only information sharing but also when to act on information received. Practitioner confidence underpins good professional judgements on when to share information about children and young people and it is important that practitioners are able to show what has informed their decision to share information.

## Recommendation

- Any information-sharing provision within the Children and Young People (Scotland) Bill must be underpinned by the best interests of the child and be robustly impact assessed. The provision must be accompanied by clear, robust guidance to support professionals in sharing information and widespread training and support.

### UN Concluding Observations

- Prohibit as a matter of priority all corporal punishment in the family, including through the repeal of all legal defences.
- Ensure that corporal punishment is explicitly prohibited in schools and in all other institutions and forms of alternative care.
- Actively promote positive and non-violent forms of discipline and respect for children's equal right to human dignity and physical integrity, with a view to raising public awareness of children's right to protection from all corporal punishment and to decreasing public acceptance of its use in child-rearing<sup>132</sup>

<sup>132</sup> Committee on the Rights of the Child (2008). *Concluding Observations: United Kingdom of Great Britain and Northern Ireland* (CRC/C/GBR/CO/4). No.42a,b,c,d.

<sup>133</sup> *Children (Scotland) Act 1995*

<sup>134</sup> *Together (2012). State of Children's Rights in Scotland*

Children's organisations are clear that the continued acceptance of hitting children is detrimental to attempts to protect children from physical abuse. The current legality of physical punishment within Scots law means that children do not have the same level of protection from violence under the law as adults. Section 12(i) of Children and Young Persons (Scotland) Act 1937 preserved the rights of parents, teachers and others with lawful charge of or control over the child to administer punishment. The Children (Scotland) Act 1995 requires that, in exercising this right, adults must act in 'the interests of the child'.<sup>133</sup> While outlawing the assault, ill-treatment or neglect of a child, the 1937 Act permitted the physical punishment of children as 'reasonable chastisement'. In 2003, the Scottish Parliament passed the Criminal Justice (Scotland) Act. Section 51 of that Act prevents adults using implements, delivering blows to the head and shaking children as a physical punishment. While these specific practices are now prohibited, parents are still protected by the law when they physically punish a child.

<sup>135</sup> <http://www2.ohchr.org/english/bodies/cat/cats50.htm> (para 27)

As outlined in *Together's 2012 State of Children's Rights* report, Scotland is coming under increasing international pressure to give children equal protection from violence.<sup>134</sup> Most recently, in May 2013, the UN Committee Against Torture recommended that 'the State party prohibits corporal punishment of children in all settings...repealing all legal defences currently in place, and further promote positive non-violent forms of discipline via public campaigns as an alternative to corporal punishment.'<sup>135</sup> Despite such repeated calls, children in Scotland still do not have the same protection from assault as adults in law. Children's organisations continue to raise the need for the removal of the defence of 'justifiable' assault and for the promotion of positive, non-violent parenting methods.

The current 'justifiable assault' defence undermines the work that professionals are doing with families on positive parenting. Children's organisations are clear that the Scottish Government needs to promote positive approaches to discipline within their ongoing policy programmes and public information campaigns. Parents and carers need to be equipped with alternative forms of behaviour management techniques in order to allow them to support and manage difficult behaviour.

<sup>136</sup> Within the EU, 17 states have banned it completely and another 6 are committed to doing so. Only four countries in the EU have neither achieved this reform nor committed to it: France, Belgium, the UK and Malta.

<sup>137</sup> Scottish Government (2013). The 5th UK Government Report to the UN Committee on the Rights of the Child Scottish Government Submission (pg 21)

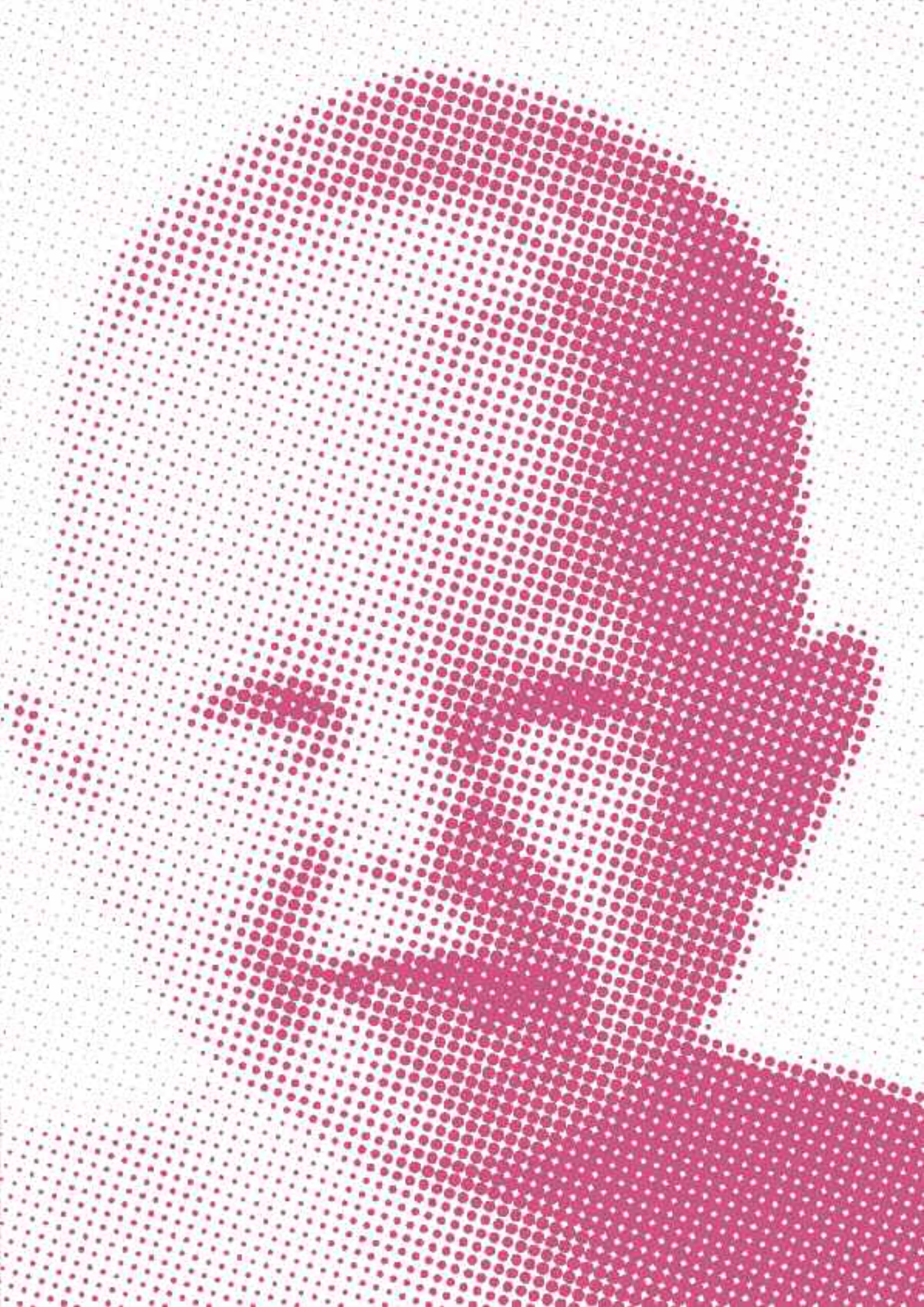


More than half of the Council of Europe's 47 member states have either achieved full prohibition of physical punishment of children or committed themselves to do so soon. Among the 27 EU states, just four – the UK among them – have neither prohibited physical punishment nor committed themselves to do so.<sup>136</sup> The Scottish Government states that it *'does not consider it appropriate to criminalise parents for lightly smacking their children'* and that there is *'currently no intention to change the law in this area'*<sup>137</sup>. Children's organisations are clear that if the Scottish Government is serious about its commitment to make Scotland *'the best place to grow up'*, it needs to give children equal protection from assault in law.

## Recommendation

- The Scottish Government should give children equal protection from assault in law. (as per Together's 2012 *State of Children's Rights* report)







Chapter

# 4

## Family environment and alternative care

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## Case study: *Family visits and the rights of children of prisoners*

The UNCRC seeks to secure for every child the right to know and maintain meaningful relationships with both parents, except where this is not in the child's best interest. During the UK's Universal Periodic Review in 2012, Slovakia recommended that where a child's parent is in prison, visits should be treated as the right of the child, rather than a privilege of the prisoner that can be withdrawn as a disciplinary measure. Recently, the Scottish Prison Service issued guidance and recommendations regarding family visits – they are about families having time together to interact with one another in as natural a way as possible. And they are first and foremost for the children; no longer are visits to be used as a reward for good behaviour, nor indeed is the withdrawal of visits to be a punishment for the prisoner.

Families Outside is the only national charity in Scotland that works solely to support the families of people affected by imprisonment. They work to mitigate the effects of imprisonment on children and families – and consequently to reduce the likelihood of reoffending – through support and information for families and for the people who work with them.

Zoe is three, and she loves playing with her dad on a bouncy castle. Afterwards, he might buy her sweets, which is a real treat. There is nothing unusual about this family scene except Zoe's dad is in prison. Zoe has directly benefited from this new approach to family visits. Prior to family visits, Zoe was drifting away from her dad; she wanted to play in the toy area of the visits room, while her dad had to sit in his seat. Visits were often an upsetting experience for everyone. Now, father and daughter can move about and play together building up a relationship that is meaningful.

*'I like sitting back and watching my daughter bond with her dad. He can be a parent, too, and that is good for me!'* (Zoe's mum)

The Scottish Prison Service is actively trying to facilitate different types of visits from face painting and bouncy castles to petting zoos and these kinds of activities make going to a prison a very different experience for children.

In Zoe's own words: *'I like going to daddy's big garden!'*

It's good for the prisoner, too; Zoe's dad returns to his cell after contact like this more determined than ever to rebuild his life after his sentence. In short, family visits are a welcome initiative, and Zoe's mum sums it up: *'Thank you! It's a great, great thing! Without this, I don't know where Zoe would be!'*

### UN Concluding Observations

- Avoid having children taken into alternative care as a result of low parental income.
- Take into account in all measures the views of children, and provide them with child-accessible complaint mechanisms in all parts of the country;
- Assess why so many children with disabilities are in long-term institutional care and review their care and treatment in these settings.
- Facilitate the initiation of contact proceedings for all children separated from their parents and siblings, including those in long-term residential care.
- Provide training and education programmes to prepare children for adult life.
- Take into account the Committee's recommendations issued at the day of general discussion on children without parental care, held on 16 September 2005.<sup>138</sup>

<sup>138</sup> Committee on the Rights of the Child (2008). *Concluding Observations: United Kingdom of Great Britain and Northern Ireland* (CRC/C/GBR/CO/4). No 33a, 45a-i.

<sup>139</sup> Scottish Government (2013). *The 5th UK Government Report to the UN Committee on the Rights of the Child* Scottish Government Submission (pg 21)

<sup>140</sup> Scottish Government (2013). *Children and Young People's experiences of, and views on, issues relating to the Implementations of the United Nations Convention on the Rights of the Child* (Pg25)

<sup>141</sup> <http://www.whocares.scotland.org/pledge/> (Accessed May 2013)

<sup>142</sup> Scottish Parliament (2013). *Education and Culture Committee – Report on decision making on whether to take children into care*

The Scottish Government's policy for supporting looked after children is based on the concept of corporate parenting. The Scottish Government is taking a number of steps through the *Children and Young People (Scotland) Bill* to strengthen corporate parenting.<sup>139</sup>

Looked after children state that they want to be listened to, respected and loved, and have positive relationships that provide them with adequate support.<sup>140</sup> Children's organisations have endorsed a campaign by *Who Cares? Scotland* – 'Pledge to listen'<sup>141</sup> – which is working to tackle the stigma and discrimination which children and young people in care and care leavers face.

### Decision-making – taking into care

Children's organisations are clear that there is a need for early intervention to avoid the escalation of difficulties that may result in a child becoming looked after. Throughout 2012-13, the Education and Culture Committee carried out an enquiry into decision-making around taking children into care.<sup>142</sup> Echoing reports from children's organisations, the Committee's final report concluded that too many children believe they should have been taken into care earlier and that children can find the Children's Hearings System 'intimidating' and 'stressful'. The report concluded that current decision-making processes do not always deliver the best outcomes for children and families. The Committee recognised that there are a number of steps being taken – including through the *Children and Young People (Scotland) Bill* – to improve decision-making processes. However, it made a number of recommendations that have been broadly supported by children's organisations. These include ensuring the Scottish Government provides clear leadership on how decision-making processes can be more closely aligned towards achieving greater consistency in outcomes for looked after children, alongside further work on early intervention and staff retention and training. Children's organisations are clear that the best interests of the child must be paramount in making decisions about taking children into care. This must be not only in the substance of decisions, but also in the speed, clarity and effectiveness of the processes by which they are reached.

<sup>143</sup> Scottish Government (2011/2012). *Education outcomes for Scotland's looked after children*

<sup>144</sup> Scottish Children's Reporter Administration (2011). *Care and Permanence Planning for Looked After Children in Scotland*

<sup>145</sup> Scottish Government (2013). *Children and Young People's experiences of, and views on, issues relating to the Implementations of the United Nations Convention on the Rights of the Child* (Pg25)

<sup>146</sup> NSPCC Scotland (2012). *Debate on the Education and Culture Committee, Inquiry into the educational attainment of looked after children*

<sup>147</sup> Scottish Government (2011/2012). *Education outcomes for Scotland's looked after children*

## Permanence

The fewer placements looked after children have during the year, the higher their educational attainment.<sup>143</sup> A report by the Scottish Children's Reporter Administration underlined the importance of securing decisions about permanent homes for looked after children, but found that there were delays in making such decisions. Over half (53%) of children in the study took more than four years to achieve permanence. Nearly half experienced at least three moves and over a quarter at least four moves before achieving permanency.<sup>144</sup> Looked after children have stated that they feel they experience too many moves. Their sense of belonging is affected by frequent moves and is influenced by the places where they lived.<sup>145</sup> Children's organisations have highlighted the need to provide stability and consistency once a child has entered the care system. There is a need for intensive work with the child to ensure that a stable long-term arrangement is made within their own wider family or in an adoptive, foster or residential placement. This work must take place within a timescale that helps, rather than further damages, the child.

## Educational attainment

Although there has been a slight year-on-year improvement, looked after children continue to have lower educational attainment than their non-looked after peers. The poor educational outcomes realised by looked after children must not be considered in isolation, but seen as symptomatic of a larger issue, often stemming from harmful early experiences and a lack of effective support. The cycle of poor outcomes will not be addressed via school or classroom-based initiatives on their own but rather require a focus on early intervention and investment in evidence-based therapeutic interventions.<sup>146</sup>

Looked after children who leave care are far less likely to successfully move into and maintain education, employment or training in comparison to non-looked after children. 75% of looked after children who left school during 2011/12 were in a positive destination at the time of the initial destination survey, compared with 90% of all school leavers. Six months after entering their positive destination, this percentage dropped to 67% for looked after children compared with 90% of all school leavers.<sup>147</sup>



<sup>148</sup> *Who Cares? Scotland* (2013). Education and Culture Committee submission – Children and Young People (Scotland) Bill

<sup>149</sup> Scottish Government (2013). *Children and Young People's experiences of, and views on, issues relating to the Implementations of the United Nations Convention on the Rights of the Child* (Pgs 25, 29)

<sup>150</sup> *Children and Young People (Scotland) Bill* [As introduced] Part 7

<sup>151</sup> Barnardo's Scotland, *Who Cares? Scotland, and Aberlour Childcare Trust* (2013). *Getting it right for young people leaving care*

<sup>152</sup> Barnardo's Scotland, *Who Cares? Scotland, and Aberlour Childcare Trust* (2013). *Getting it right for young people leaving care*

## Leaving care

The outcomes for young care leavers are extremely poor. Around 80% of young offenders in Polmont are from a care background.<sup>148</sup> Looked after children have highlighted the importance of ensuring their emotional, as well as practical, needs are addressed when leaving care. Children have highlighted the need for more support to prepare them for leaving care and for after they have left care. They have also highlighted the importance of advocacy through care workers. Projects led by looked after children have identified the challenges for young people leaving care, which includes dealing with major life transitions on their own.<sup>149</sup>

Children's organisations welcome the proposal in the *Children and Young People (Scotland) Bill* to increase from 21 to 26 the age limit for young people leaving care to have a right to be assessed for aftercare, and the proposal that corporate parents should also have a responsibility to those who have been in care.<sup>150</sup> However, it is broadly agreed that the Bill does not go far enough to improve outcomes for looked after children and a number of recommendations have been put forward by children's organisations.<sup>151</sup> These include:

- The normal minimum age of leaving care should be 18.
- There should be continuing care and support provided to careleavers up to the age of 26.
- Aftercare should be available to all care leavers who need it, regardless of the care setting they have been in.
- Children who have spent several years in care should have an entitlement for aftercare, even if they are not in care at school leaving age.
- There needs to be a disputes resolution process, with advocacy support, in cases where there is a difference between a local authority's assessment of the support it needs to give a young careleaver and the young person's own assessment of the support they need.
- The death of a young person receiving aftercare should trigger a significant case review, in the same way that it would for a child in care.<sup>152</sup>

Children's organisations are clear that these recommendations would help to ensure that aftercare is transformed into a much stronger form of continuing care, combining the continuation of support and strong relationships that young people in care rely on.

## Rec

## Recommendation

- The Children and Young People (Scotland) Bill must take forward the recommendations put forward by Barnardo's Scotland, Who Cares? Scotland and the Aberlour Childcare Trust to strengthen its provisions for looked after children.

### UN Concluding Observations

- Ensure that professionals working with children (including teachers, social workers, medical professionals, members of the police and the judiciary) receive training on their obligation to report and take appropriate action in suspected cases of domestic violence affecting children.
- Provide access to adequate services for recovery, counselling and other forms of reintegration in all parts of the country.<sup>153</sup>

Research clearly demonstrates that domestic abuse seriously compromises a child's right to be protected, to education, health care, a home, associations with others, leisure, play and to having their views taken into account.<sup>154</sup> A large proportion of children coming to the attention of social services have experienced domestic abuse.<sup>155</sup> Many women seek help and yet are either not believed or are without support until things are critical and interventions are needed. This can often lead to children being removed at a later stage because the real issues for the family were not addressed early enough. For children with other needs including disabilities and for those from ethnic minority groups, the barriers to safety are even greater. Leaving an abuser and relocating where there are health issues and care plans in place can leave women feeling trapped and managing increasing risks. For minority groups language barriers, community concerns and isolation are all additional difficulties and barriers to safety.<sup>156</sup>

Children have significantly influenced the domestic abuse policy agenda.<sup>157</sup> Initiatives such as Voices Against Violence<sup>158</sup> and Cedar (Children Experiencing Domestic Abuse Recovery)<sup>159</sup> have been strongly welcomed by children's organisations. The Scottish Government notes that children's organisations continue to call for greater links to be made between domestic abuse in the family home and the impact this has on children's rights.<sup>160</sup>

The needs and rights of children living with domestic abuse cut across many areas.<sup>161</sup> Local authorities, health, the police and the voluntary sector are at the forefront of work to prevent domestic abuse and provide services for children affected by the issue. Although GIRFEC is seen to be making steps towards encouraging a more joined-up approach, children's organisations report that there is often still a lack of direction and consistency in both prevention and service provision.<sup>162</sup> Children's organisations would like to see a strong message from the Scottish Government that domestic abuse is a significant rights issue.<sup>163</sup> This needs to be recognised in the design and delivery of children's services: awareness of and expertise in tackling domestic abuse needs to be mainstreamed within all relevant services. At the same time, specialist services must remain in place to offer a safety net to vulnerable families and advise the practitioners working with them.

<sup>153</sup> Committee on the Rights of the Child (2008). *Concluding Observations: United Kingdom of Great Britain and Northern Ireland* (CRC/C/GBR/CO/4). No 51a-d.

<sup>154</sup> Humphreys and Mullender (2000). *Research in Practice: Children and Domestic Violence*; Hester et al. (2006). *Domestic Violence Perpetrators: Identifying Needs to Inform Early Intervention*

<sup>155</sup> Scottish Government (2008). *National Domestic Abuse Delivery Plan for Children and Young People*

<sup>156</sup> Women's Aid Federation of England (2009). *The Survivors Handbook*

<sup>157</sup> Scottish Government (2013). *Children and young people's experiences of, and views on, issues relating to the implementation of the United Nations Convention on the Rights of the Child* (Pg 32)

<sup>158</sup> <http://www.voiceagainstviolence.org.uk/> (Accessed November 2013)

<sup>159</sup> <http://www.cedar-network.org.uk/> (Accessed November 2013)

<sup>160</sup> Scottish Government (2013). *The 5th UK Government Report to the UN Committee on the Rights of the Child* (Pg 109)

<sup>161</sup> Scottish Women's Aid (2010). *Information Briefing No. 3 - The impact of domestic abuse on children and young people*

<sup>162</sup> Together (2013). *State of Children's Rights seminar report*

<sup>163</sup> Scottish Women's Aid (2013). *Education and Culture Committee: Children and Young People (Scotland) Bill*

<sup>164</sup> Scottish Government (2011). *Violence Against Women Outcomes Framework*

<sup>165</sup> <http://www.scottishwomensaid.org.uk/policy-research/housing-support/violence-against-women-outcomes-framework> (Accessed April 2013)



Children's organisations welcome the Scottish Government's adoption of the Violence against Women (VAW) Outcomes Framework.<sup>164</sup> The framework can be used by local authorities and multi-agency partnerships to capture the links between the activities carried out locally and the long-term outcomes that this work relates to within their Single Outcome Agreements and the Scottish Government's National Performance Framework.<sup>165</sup> Further work is needed to integrate the VAW Outcomes Framework within local planning structures to ensure that the rights of children experiencing domestic abuse are fully recognised and addressed.

### Recommendation

- The Scottish Government should ensure that tackling domestic abuse remains high on the policy and funding agenda. Priorities of the three-year National Domestic Abuse Delivery Plan for Children and Young Peoples should be embedded into the core work of the Scottish Government, with adequate funding and resources provided to ensure its continued success.

## 4.3

## Young carers

<sup>166</sup> Scottish Government (2012). *Do the Right Thing progress report*

<sup>167</sup> Scottish Government (2013). *Children and Young People's experiences of, and views on, issues relating to the Implementations of the United Nations Convention on the Rights of the Child* (Pg24)



Children's organisations expressed concern that the Scottish Government periodic UNCRC report to the UK Government made no reference to the particular needs of young carers. Although issues affecting young carers were not specifically raised by the UN Committee in 2008, the Scottish Government recognised their needs by committing to an action in the Do the Right Thing action plan to '*improve support for young carers so they can become successful learners, confident individuals, effective contributors and responsible citizens*'.<sup>166</sup> Children and young people with caring responsibilities continue to want more support.<sup>167</sup>

### Recommendation

- The Scottish Government should ensure that the rights of young carers are recognised on the policy agenda and that they receive timely and appropriate support across all local authorities.

### UN Concluding Observations

- Ensure support to children with one or both parents in prison, in particular to maintain contact with the parent(s) (unless this is contrary to their best interests) and prevent their stigmatisation and discrimination).<sup>168</sup>

The Scottish Government has committed to a number of actions relating to children of prisoners. These include the establishment of minimum standards for family support within the Scottish Prison Service and a feasibility study linked to the establishment of family-friendly visitor centres.<sup>169</sup> These actions begin to progress some of the recommendations made in Together's 2012 *State of Children's Rights* report.<sup>170</sup> Studies show the profound impact that having a parent in prison can have on a child.<sup>171</sup> Children's organisations report that there needs to be much more recognition of this impact and that it should be assessed and supported by all agencies involved in working with prisoners as a matter of routine.

Support needs to be provided to ensure children are able to decide whether they want to maintain contact, in what way, and how often. Support also needs to be provided to ensure the child is then able to maintain a relationship with their parent in prison if it is in their best interests. This is still too often prevented by cost, distance from prisons, and the often negative experience of visits themselves. Breakdown in relationships between parents or other family members may also prevent children from seeing a family member in prison. The assumption from many professionals can be that parents in prison are by definition 'bad' parents. This can have serious implications for contact between children and their parents.

Recent progress has been made on child contact (highlighted as an issue in Together's 2012 *State of Children's Rights* report). Prison policy is changing and beginning to recognise the need not to use child contact as means of controlling prison behaviour. Family contact is being promoted more positively throughout prisons in Scotland. Further work is needed within prisons to support parents to continue in that role where appropriate (see case study, page 41).

The adult criminal justice system can often fail to acknowledge the wider impact that decisions can have on children.<sup>172</sup> For example, the decision to send a parent to prison has a tremendous impact on a child. The Criminal Justice (Scotland) Bill is currently being scrutinised by the Scottish Parliament's Justice Committee. Children's organisations are urging the Justice Committee to consider ensuring that the best interests of the child are also taken into consideration when holding, arresting, interviewing or charging a parent.

Rec

### Recommendation

Child & Family Impact Assessments should be conducted and acted upon throughout the criminal justice process, starting with arrest and continuing through the release of a prisoner (including impact assessments for non-custodial penalties) (as per Together's 2012 *State of Children's Rights* report).

The Criminal Justice (Scotland) Bill should include a provision to ensure that the best interests of the child is taken into consideration when holding, arresting, interviewing or charging a parent.

<sup>168</sup> Committee on the Rights of the Child (2008). *Concluding Observations: United Kingdom of Great Britain and Northern Ireland* (CRC/C/GBR/CO/4). No 45d.

<sup>169</sup> Scottish Government (2013). *The 5th UK Government Report to the UN Committee on the Rights of the Child* Scottish Government Submission (pg 20)

<sup>170</sup> Together (2012). *State of Children's Rights in Scotland* (pg 40)

<sup>171</sup> SCCYP (2011). *Not Seen. Not Heard. Not Guilty. The Rights and Statues of the Children of Prisoners in Scotland: Review 2011*

<sup>172</sup> Together (2012). *State of Children's Rights in Scotland* (pg 40)



### UN Concluding Observations

- Establish mechanisms for monitoring the number of cases and the extent of violence, sexual abuse, neglect, maltreatment or exploitation, including within the family, in schools and in institutional or other environments.
- Ensure that professionals working with children (including teachers, social workers, medical professionals, members of the police and the judiciary) receive training on their obligations to report and take appropriate action in suspected cases of domestic violence affecting children.
- Strengthen support for victims of violence, abuse, neglect and maltreatment in order to ensure that they are not victimised once again during legal proceedings.<sup>173</sup>

### Child sexual exploitation

Children's organisations note that it is very difficult to establish the prevalence of sexual exploitation and that there is a lack of research investigating this specific form of child sexual abuse. No national scoping or data gathering exercise regarding sexual exploitation has taken place in Scotland and there is very little evidence of data gathering regarding the scale and nature of child sexual exploitation at local level.<sup>174</sup> Available data indicates that both victims and professionals find it hard to recognise grooming and sexual exploitation.<sup>175</sup> Research identifies a number of ways through which children become vulnerable to sexual exploitation.<sup>176</sup> These include grooming by individual adults; online grooming; the use of drink, drugs and parties to befriend, then exploit, young people; exploitation via groups of other young people; and the targeting of residential units and places where young people socialise. There is also evidence showing the particular vulnerability of young people who are looked after to sexual exploitation.

The Scottish Parliament is currently undertaking an inquiry into the nature and extent of child sexual exploitation in Scotland. This is identifying the most persistent and serious issues which need to be addressed and examining the effectiveness of current measures aimed at tackling and preventing child sexual exploitation. It will make recommendations on what needs to be done to improve the effectiveness of those measures.<sup>177</sup>

<sup>173</sup> Committee on the Rights of the Child (2008). *Concluding Observations: United Kingdom of Great Britain and Northern Ireland* (CRC/C/GBR/CO/4). No 51 a-d.

<sup>174</sup> Scottish Government (2012). 'Exploring the scale and nature of child sexual exploitation in Scotland' <http://www.scotland.gov.uk/Resource/0040/00404853.pdf>

<sup>175</sup> NSPCC Evidence to the Home Affairs Committee inquiry into localised grooming for the purpose of sexual exploitation 2012

<sup>176</sup> Scottish Government (2012). *Exploring the scale and nature of child sexual exploitation in Scotland* <http://www.scotland.gov.uk/Resource/0040/00404853.pdf>

<sup>177</sup> <http://www.scottish.parliament.uk/parliamentarybusiness/CurrentCommittees/60242.aspx> (accessed 05/11/13)

<sup>178</sup> NSPCC Scotland (2013). *Public Petitions Committee written submission – Tackling child sexual exploitation in Scotland*

<sup>179</sup> Barnardo's Scotland (2013). *Public Petitions Committee written submission – Tackling child sexual exploitation in Scotland*

As part of this inquiry, children's organisations have identified that there is a need to raise awareness of child sexual exploitation amongst those working with and for children, including the police, social work, teachers, health and residential care staff. There is a need for these professionals to recognise the importance of listening to children and to take their disclosures seriously, as well as to increase the availability of support and therapeutic services for victims. At a strategic level, there needs to be improved local and national data recording systems to enable statutory services to risk assess against prevalence and to inform the development of policy and practice.<sup>178</sup>

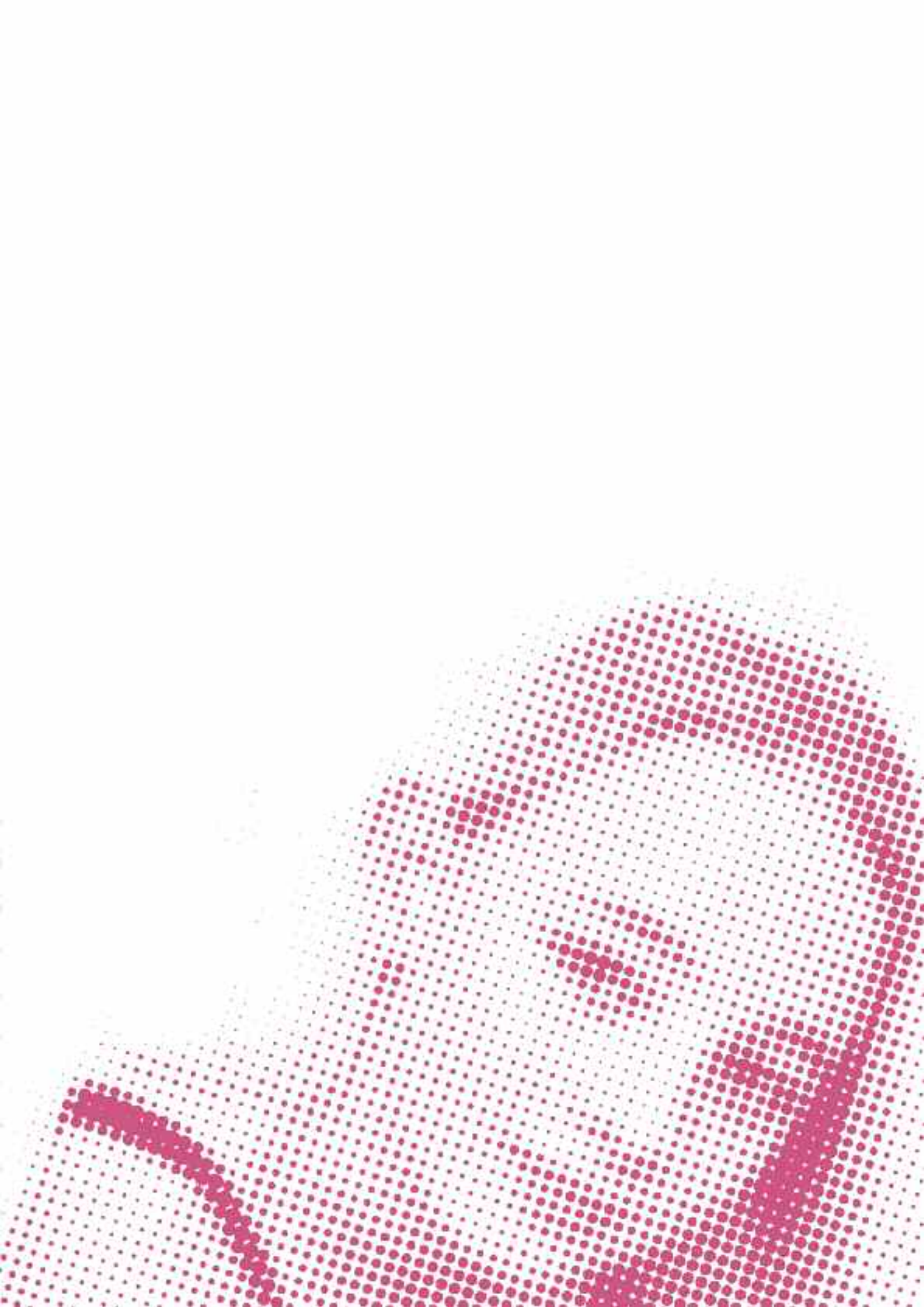
Many children's organisations support the call by Barnardo's Scotland for the Scottish Government to develop a national strategy for tackling child sexual exploitation and to put in place a framework for a coordinated national approach to prevent child sexual exploitation and to support victims.<sup>179</sup>

## Victims and witnesses

Children are significantly more likely to be victims of crime than the general population, yet get limited support in the aftermath of crime – their views are seldom sought and their needs not always met. Support afforded to child witnesses are also inconsistently applied and not always in the best interests of the child. The *Victims and Witnesses (Scotland) Bill* was introduced to the Scottish Parliament in February 2013. Children's organisations broadly welcome the key principles of the Bill which set out the ability of victims and witnesses to obtain information, the safety of victims and witnesses, access to appropriate support and the ability to participate in investigations and proceedings.<sup>180</sup> Children's organisations have also welcomed other provisions in the Bill, including the proposed change in definition of 'child witness' to be increased from those up to 16 to all those under 18 in line with the rest of the UK; the provision that all those under 18 will be automatically entitled to special measures to assist them in giving evidence; amendments to the definition of vulnerable witnesses to include victims of sexual offences, domestic abuse, human trafficking and stalking; and the creation of a presumption that a child witness will give evidence in the court room where they have expressed a wish to do so.<sup>181</sup>

<sup>180</sup> Scottish Parliament (2013). *Victims and Witnesses (Scotland) Bill Policy Memorandum (para 26)*.

<sup>181</sup> <http://www.scottish.parliament.uk/parliamentarybusiness/CurrentCommittees/62082.aspx> (accessed 05/11/13)



Chapter

5

# Basic health and welfare

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## Case study: *Children's Hospice Association Scotland and the EACH Charter*

The European Association for Children in Hospital (EACH) Charter relates in many respects to the rights enshrined in the UNCRC, including the right to life, the right to the enjoyment of the highest attainable standard of health and the right of the child to have their best interests and views taken into account in decisions affecting their lives. The Charter has 10 articles and Article 1 states 'Children shall be admitted to hospital only if the care they require cannot be equally well provided at home or on a day care basis.'

Children's Hospice Association Scotland (CHAS) is a charity that provides the only hospice services in Scotland for children and young people with life shortening conditions. CHAS runs two children's hospices and a home care service. The service support the whole family by offering short planned breaks, emergency support, care at home, end of life care and a range of bereavement services.

Last year CHAS nurses, social workers, chaplains and play workers travelled over thousands of miles to support families. CHAS works with professionals from other agencies, both statutory services and third sector organisations to ensure children and families receive support that is both timely and meaningful. Currently CHAS is supporting over 300 families across Scotland from the Borders to the Orkneys. CHAS is committed to providing an equitable service to children and their families wherever they need it in Scotland no matter how remote.

*'I don't like going to stay in the hospital but I love staying at the hospice. I don't feel the people at the hospital get me, and the amount of things I can do at the hospice take my mind off things'* (Young person using CHAS services)

All of CHAS services are underpinned by GIRFEC principles and are child centred. A holistic assessment is offered when families begin using the service which ensures the needs and aspirations of all children, their siblings and their parents are clearly understood. The assessment is a two way process and assists to empower children and families to feel more in control of their situation. Every child with a life shortening condition, accepted by CHAS, has a key worker who maintains regular contact with the child and their family and ensures they are supported in the way that best works for all of them.

*'We value staff who are experienced, know our child and believe us about how our child presents. Our precious child is so individual and doesn't know about common symptoms, she just is as she is.'* (Parent using the CHAS service)

Each child has individual needs and this is where our multi-disciplinary team comes into play. The chaplains can visit a young person at home and offer a listening ear. The nurses, social workers and play workers can all offer practical help or advice when asked. This may range from funding for special pieces of equipment, benefits advice, play ideas, answering a child's questions, and dealing with a change in a child's condition to end of life care.

### UN Concluding Observations

- Take all necessary measures to ensure that legislation providing protection for persons with disabilities, as well as programmes and services for children with disabilities, are effectively implemented.
- Develop early identification programmes.
- Provide training for professional staff working with children with disabilities, such as medical, paramedical and related personnel, teachers and social workers.
- Develop a comprehensive national strategy for the inclusion of children with disability in the society.
- Undertake awareness-raising campaigns on the rights and special needs of children with disabilities, encourage their inclusion in society and prevent discrimination and institutionalization.<sup>182</sup>

<sup>182</sup> Committee on the Rights of the Child (2008). *Concluding Observations: United Kingdom of Great Britain and Northern Ireland* (CRC/C/GBR/CO/4). No 53a,b,c,d,e.

<sup>183</sup> Scottish Government (2013). *The 5th UK Government Report to the UN Committee on the Rights of the Child* (pg 26)

As highlighted elsewhere in this report, children with disabilities continue to be at risk of exclusion and isolation. The Scottish Government states that it is continuing to take forward a programme of work implementing policy for children with a disability to follow on from its National Review of Services for Disabled Children in 2011. This includes participation work to increase the capacity of children with a disability to identify and influence decisions around their support (see Chapter 1.1) and work around capacity building and networking for parents.<sup>183</sup> Children's organisations welcome this commitment.

<sup>184</sup> Scottish Government (2013). *Children and young people's experiences of, and views on, issues relating to the implementation of the United Nations Convention on the Rights of the Child* (Pg 43)

Consultations with children with a disability shows that a large minority of children with a disability do not feel listened to by health professionals.<sup>184</sup> Participants at Together's *State of Children's Rights* seminars stated that there is a need for more training and guidance for health professionals to support them in communicating with and involving children with additional communication needs. Children's organisations continue to urge the Scottish Government to take forward Together's 2012 recommendation to complement the Common Core with the recommendations made in Enable's 'Bridging the Training Gap' to include mandatory training on basic behaviour management strategies, autism/learning disability awareness and communications strategies for all staff involved in a child's education.<sup>185</sup>

<sup>185</sup> Together (2012). *State of Children's Rights in Scotland*

<sup>186</sup> Scottish Government (2009). *Do the Right Thing* (Pg 14)

<sup>187</sup> Scottish Government (2013). *The 5th UK Government Report to the UN Committee on the Rights of the Child* (Pg 26)

<sup>188</sup> Scottish Government (2013). *Developing an Outcomes Model for Disabled Children in Scotland*

<sup>189</sup> *Together* (2012). *State of Children's Rights in Scotland* (Pg 47)

The Scottish Government is taking forward its action to 'develop an ongoing communications strategy that actively engages with disabled children, young people and their families'<sup>186</sup> through a cross-government network of Disability Champions.<sup>187</sup> The aim of this network is to ensure the needs of children with a disability are taken into account in the development of new policies and legislation. Children's organisations welcome this. To ensure this network is meaningful, it must be involved in the consideration of policy and legislation on a systematic and considered basis. This should be supported by the use of child rights impact assessments by the Scottish Government, NHS boards and local authorities to ensure that all policy and legislation ensures that the rights of children with a disability are considered as a matter of routine (see chapter 1.3.).

In September 2013, the Scottish Government published a report that provides an overview of how outcome models and approaches are being developed for disabled children and young people.<sup>188</sup> This report maps the work of the many different agencies and professionals across Scotland involved in identifying outcomes for disabled children and young people. It makes a number of recommendations that will enable a greater shared understanding of outcomes models for disabled children, that would support easier implementation of agreed outcomes and models. These include recommendations on data and information; supporting and involving parents and carers; disabled children and technology; involving disabled children; collaboration and sharing; piloting new models and evaluation. The recommendations have been broadly welcomed by children's organisations, particularly those that take forward the recommendation from *Together's* 2012 *State of Children's Rights* report to 'ensure that the Children and Young People (Scotland) Bill ensures the rights of children are at the centre of community planning'.<sup>189</sup>

## Rec

### Recommendation

The Scottish Government should:

- Complement the Common Core with the recommendations made in Enable's 'Bridging the Training Gap' to include mandatory training on basic behaviour management strategies, autism/learning disability awareness and communications strategies for all staff involved in a child's education (as per *Together's* 2012 *State of Children's Rights* report)
- Ensure the Disability Champions are involved in considering policy on a systematic and considered basis and their work is supplemented by the use of Child Rights Impact Assessments.
- Take forward the recommendations from 'developing an outcomes Model for Disabled Children in Scotland' with immediate effect.

## UN Concluding Observations

- Inequalities in access to healthcare should be addressed through a coordinated approach across all government departments and greater coordination between health policies and those aimed at reducing income inequality and poverty.<sup>190</sup>

In January 2013, the UN Committee published General Comment 15 on the right of the child to the highest attainable standard of health.<sup>191</sup> The General Comment clarifies a child's rights under Article 24<sup>192</sup> to health and healthcare. It explores the obligations placed on governments that have ratified the UNCRC and provides a framework and recommendations for concrete measures and actions that should be taken forward.

The Scottish Government has reiterated its commitment to address the inequalities in health between the most and least affluent areas in Scotland.<sup>193</sup> There is a link between child poverty during the early years and health inequalities. Poverty impacts on children's physical, psychological and wider development and increases their risk of adverse health outcomes. The opportunity to reduce the impact of these inequalities is likely to decline as children age.<sup>194</sup> Health inequalities among children are also heavily influenced by other factors – from parental physical and mental health and substance misuse to effective access to, and the quality of, preventative care services and the support available to parents, carers and children from pre-birth through early childhood.<sup>195</sup> There also evidence that children, particularly those from minority groups, continue to face barriers in accessing and using health services.<sup>196</sup>

Primary and early intervention are essential to give children the best start in life and tackle the underlying causes of health inequalities and poor wellbeing.<sup>197</sup> As highlighted by Professor Michael Marmot, '*The foundations for virtually every aspect of human development – physical, intellectual and emotional – are laid in early childhood. What happens during these early years (starting in the womb) has lifelong effects on many aspects of health and well-being*'<sup>198</sup>. Children's organisations recognise that tackling health inequalities requires input from a wide range of organisations. The importance of the Early Years Collaborative has been highlighted and its role in bringing together CPPs to promote interagency learning and understanding. Children's organisations support the efforts made by the early years programme at NHS Health Scotland<sup>199</sup> to promote evidence-based implementation of the Scottish Government's early years policies, including the National Parenting Strategy, GIRFEC and the Child Poverty Strategy.

At a legislative level, children's organisations have expressed disappointment that the *Children & Young People (Scotland) Bill* does not provide a robust statutory framework for positive action from pre-birth to age two.<sup>200</sup> Five areas for improvement have been put forward to give priority to preventing health inequalities from developing within the first two years of life. These include:

- Ensure the training and continuing education of those working with parents in the first two years of a child's life gives priority to developing effective, positive relationship-based support.

<sup>190</sup> Committee on the Rights of the Child (2008). *Concluding Observations: United Kingdom of Great Britain and Northern Ireland* (CRC/C/GBR/CO/4). No 55.

<sup>191</sup> UN Committee on the Rights of the Child (2013). *General Comment 14: The right of the child to the highest attainable standard of health*

<sup>192</sup> Article 24 states that children have the right to the best health care possible – to safe drinking water, nutritious food, a clean and safe environment, and information to help them stay healthy.

<sup>193</sup> Scottish Government (2013). *The 5th UK Government Report to the UN Committee on the Rights of the Child* (Pg 26)

<sup>194</sup> NHS Health Scotland (2013). *Briefing on Child Poverty*

<sup>195</sup> Scottish Government (2008). *The Effectiveness of Interventions to Address Health Inequalities in the Early Years*

<sup>196</sup> Scottish Government (2013). *Children and young people's experiences of, and views on, issues relating to the implementation of the United Nations Convention on the Rights of the Child* (Pg 45)

<sup>197</sup> Wave Trust (2013). *Conception to age 2 – the age of opportunity*

<sup>198</sup> Marmot, M. (2010). *Fair Society, Healthy Lives: Strategic Review of Health Inequalities in England post 2010*. Department of Health

<sup>199</sup> <http://www.maternal-and-early-years.org.uk/> (Accessed July 2013)

<sup>200</sup> Wave Trust (2013). *Putting the Baby in the Bath Water: Give Priority to prevention and the first 1,001 days*



<sup>201</sup> Wave Trust (2013). *Putting the Baby in the Bath Water: Give Priority to prevention and the first 1,001 days*

<sup>202</sup> Action for Sick Children Scotland (2013). *Parent Access and Family Facilities Survey 2012-13*

- Ensuring public bodies are required to promote and prioritise effective policies and actions that result in positive and secure attachment between very young children and their carers.
- Require robust assessments of the extent to which positive and secure attachment are being achieved.
- Integrating prevention explicitly into the aims of Children's Services Planning included in the Bill.
- Reinvent and reinvigorate the health visiting profession as an indispensable part of the early years workforce.<sup>201</sup>

At a local level, children's organisations have highlighted that health services need to be more accessible and welcoming to children. Children want to be involved, not only in decisions affecting their health, but in the type and form of health services provided.<sup>202</sup>

## Rec

### Recommendation

- The Scottish Government should take forward the recommendations made by a number of children's organisations in the paper *'Putting the Baby in with the Bath Water'* to prevent health inequalities that begin in the early years. These recommendations should be taken forward through the *Children and Young People (Scotland) Bill* and other legislative and policy measures.

### UN Concluding Observations

- Adopt and adequately implement the legislation aimed at achieving the target of ending child poverty by 2020, including by establishing measurable indicators for their achievement.
- Give priority in this legislation and in the follow-up actions to those children and their families in most need of support.
- When necessary, besides giving full support to parents or others responsible for the child, intensify its efforts to provide material assistance and support programmes for children, particularly with regard to nutrition, clothing and housing.<sup>203</sup>

The Scottish Government describes measures it has taken to maximise household resources and improve the life chances of children and young people, including increasing education, investing in the Early Years Change Fund, providing free school meals and establishing a third sector early intervention fund.<sup>204</sup> Despite these welcome efforts, it remains the case that too many children in Scotland live in poverty and there is a long way to go to meet the 2020 targets.<sup>205</sup> Child poverty in some geographical areas of Scotland – such as Glasgow and Dundee – is amongst the highest in the UK and half of the neighbourhoods in the UK where more than two-thirds of children are in poverty are found in Scotland.<sup>206</sup> Many analysts are projecting that child poverty is set to increase over the next few years and the Institute for Fiscal Studies projects that relative child poverty in Scotland will increase to 22.7 per cent by 2020/21.<sup>207</sup> Children's organisations are clear that child poverty must go beyond simplistic solutions such as providing employment and needs to focus on a range of issues including educational achievement, health equality, childcare and improving community safety.<sup>208</sup>

### Child Poverty Strategy for Scotland

The Scottish Government produces an annual progress report on the Child Poverty Strategy for Scotland<sup>209</sup> and published its second Annual Report in September 2013.<sup>210</sup> In Spring 2014 the Scottish Government will publish a revised child poverty strategy. As mentioned in Together's 2012 *State of Children's Rights* report, the Scottish Government's current Child Poverty Strategy<sup>211</sup> appears comprehensive, but it remains difficult to assess the progress made.

Delegates at Together's seminars commented that poverty reduction indicators for the strategy need to be more specific and meaningful.<sup>212</sup> This reflects an observation in the Social Mobility and Child Poverty Commission's annual report that there is currently no indicator framework that directly correlates to the ten key measures in the Strategy.<sup>213</sup> Children's organisations are supportive of the Commission's belief that future strategies would benefit from having a framework that directly correlated to the key measures in the strategy. This, for example, should include measures of:

<sup>203</sup> Committee on the Rights of the Child (2008). *Concluding Observations: United Kingdom of Great Britain and Northern Ireland* (CRC/C/GBR/CO/4). No 65a, b, c.

<sup>204</sup> Scottish Government (2013). *The 5th UK Government Report to the UN Committee on the Rights of the Child* Scottish Government Submission (pg 25)

<sup>205</sup> Child Poverty Act 2010

<sup>206</sup> UK Government (2013). *State of the Nation 2013: social mobility and child poverty in Great Britain*

<sup>207</sup> Institute for Fiscal Studies (2013). *Child and Working-Age Poverty in Northern Ireland from 2010 to 2020*

<sup>208</sup> Scottish Youth Parliament (2009). *Response to Ending Child Poverty: Making it Happen*

<sup>209</sup> Scottish Government (2012). *Do the Right Thing progress report* (pg 46)

<sup>210</sup> Scottish Government (2013). *Annual Report for the Child Poverty Strategy for Scotland*

<sup>211</sup> Scottish Government (2013). *Annual Report for the Child Poverty Strategy for Scotland 2013*

<sup>212</sup> Together (2013). *State of Children's Rights seminar report*

<sup>213</sup> UK Government (2013). *State of the Nation 2013: social mobility and child poverty in Great Britain; The Social Mobility and Child Poverty Commission is an advisory non-departmental public body established under the Child Poverty Act 2010 (as amended by the Welfare Reform Act 2012) with a remit to monitor the progress of Governments and others on child poverty and social mobility.*

<sup>214</sup> Scottish Government (2013). *Children and young people's experiences of, and views on, issues relating to the implementation of the United Nations Convention on the Rights of the Child* (pg 46)

<sup>215</sup> UK Government (2013). *State of the Nation 2013: social mobility and child poverty in Great Britain* (pg 115)

<sup>216</sup> The Poverty Alliance (2010). *Child Poverty Strategy Consultation*

<sup>217</sup> Save the Children (2012). *Local action to tackle child poverty in Scotland*

<sup>218</sup> Save the Children (2012). *Local action to tackle child poverty in Scotland* (pg 27)

<sup>219</sup> Scottish Government (2013). *The 5th UK Government Report to the UN Committee on the Rights of the Child Scottish Government Submission* (pg 26)

<sup>220</sup> Together (2013). *State of Children's Rights Seminar Report*

<sup>221</sup> CPAG (2013). *Any reduction in Scottish child poverty welcome, but overshadowed by forecasts of massive surge*

<sup>222</sup> The Poverty Alliance (2013). *Surviving Poverty: the impact of lone parenthood*

<sup>223</sup> Scottish Government (2013). *Children and Young People (Scotland) Bill as introduced* (Pg 24)

<sup>224</sup> Action for Children (2013). *Education and Culture Committee: Children and Young People (Scotland) Bill*

<sup>225</sup> Save the Children (2013). *Education and Culture Committee: Children and Young People (Scotland) Bill*

- Increasing employment and hours of work and in making work pay (for example worklessness, earnings and hours of work of families in poverty, working poverty).
- Reducing educational inequalities (for example indicators looking at trends in gaps between those from disadvantaged backgrounds and others in early child development, school attainment, post-16 destinations and access to higher education).
- Reducing inequalities in access to the labour market (for example indicators looking at trends in gaps between those from disadvantaged backgrounds and others in access to jobs, e.g. in access to the professions).

In addition, children's organisations have highlighted that it is important that these indicators are developed to reflect children's personal experiences of poverty and homelessness. Statistical measures of children and young people's standards of living – although critical – do not provide in-depth perspectives on children and young people's experiences.<sup>214</sup>

The Social Mobility and Child Poverty Commission notes that Scotland is the only country in Great Britain in which local authorities do not have a duty to publish child poverty strategies.<sup>215</sup> This is seen as a significant gap in ensuring that there is a mechanism in place to link up the Scottish child poverty strategy with local strategies.<sup>216</sup> While there is evidence that local authorities in Scotland have embraced the child poverty agenda, there are also indications that the practical action required to achieve this ambition still lags behind.<sup>217</sup> Research conducted by Save the Children has found that only half of local authorities in Scotland have examples of good practice in tackling child poverty. Furthermore, it found that almost one third of local authority officers regard the absence of a statutory duty to develop local child poverty strategies to be a barrier to progress.<sup>218</sup>

## Welfare reform

The Scottish Government reports that its approach to tackling child poverty is hindered by the UK Government's responsibility over Scotland's tax and social security systems.<sup>219</sup> Children's organisations are hugely concerned at the impact of the UK Government's welfare reforms on vulnerable families and the adverse impact on the health and wellbeing of children, which was highlighted throughout Together's seminars.<sup>220</sup> However, children's organisations have stressed that the Scottish Government must use its devolved powers to mitigate damaging UK policies and build on promises to widen free school meal entitlement, ensure working parents receive a Living Wage and improve access to childcare.<sup>221</sup>

## Childcare

Access to affordable childcare has been highlighted as a key barrier facing disadvantaged and lone parents trying to access the labour market.<sup>222</sup> Children's organisations are generally supportive of the commitment to increase hours of early learning and care in the *Children and Young People (Scotland) Bill*<sup>223</sup>, and have highlighted the importance of investing in high quality, flexible and accessible childcare as the most effective way to improve child outcomes over the long-term.<sup>224</sup> The provisions in the Bill to increase the amount and flexibility of funded early learning and childcare only go so far, and are limited in only supporting parents with children of a certain age. Children's organisations have stated disappointment that the Bill does not go further to drive the fundamental transformation in Scotland's childcare infrastructure that is required.<sup>225</sup>

<sup>226</sup> *Save the Children* (2013). *Education and Culture Committee: Children and Young People (Scotland) Bill*

<sup>227</sup> *Scottish Out of School Care Network* (2013). *Education and Culture Committee: Children and Young People (Scotland) Bill; Save the Children* (2013). *Briefing for the Education and Culture Committee: Children and Young People (Scotland) Bill*



Save the Children has urged the Scottish Government to set out its long-term vision and a timetable for delivering a universal and comprehensive system of early learning and childcare for all, which improves outcomes for children and meets the needs of families, and especially those living on the lowest incomes and helps to move families out of poverty.<sup>226</sup> Children's organisations have stressed that the need for childcare does not end when children attend school and have called for a firmer commitment in the Bill to include childcare for school age children.<sup>227</sup> School age childcare has a valuable role in supporting families in poverty if they have a chance for work or training.

## Recommendation

The Scottish Government should:

- produce an implementation plan for the revised 2014 Child Poverty Strategy that includes actions, targets, timescales, and robust monitoring, evaluation and reporting processes to assess the extent of success in improving the standard of living for children in poverty (as recommended in Together's 2011 and 2012 State of Children's Rights reports).



### UN Concluding Observations

<sup>228</sup> Committee on the Rights of the Child (2008). *Concluding Observations: United Kingdom of Great Britain and Northern Ireland* (CRC/C/GBR/CO/4). No 57.

- Additional resources and improved capacities be employed to meet the needs of children with mental health problems throughout the country, with particular attention to those at greater risk, including children deprived of parental care, children affected by conflict, those living in poverty and those in conflict with the law.<sup>228</sup>

<sup>229</sup> Scottish Government (2012). *Mental Health Strategy 2012-15*

The Scottish Government launched its new Mental Health Strategy in September 2012. It identifies child and adolescent health as one of its four key change areas. This has been welcomed by children's organisations, many of whom called for this priority to be given to child and adolescent health in their responses to the Scottish Government's consultation.<sup>229</sup>

<sup>230</sup> NSPCC Scotland (2012). *Infant Mental Health: The Scottish Context*

The strategy recognises the importance of infant mental health. Infant mental health has been recognised in research as the fundamental building block of child wellbeing. Its recognition in the strategy is seen as a welcome step forward by children's organisations who hope it will lead to improved provision for children and families. There are currently few mental health services for infants, and none aimed specifically at maltreated infants.<sup>230</sup>

<sup>231</sup> Scottish Association for Mental Health (2012). *Response to mental health strategy consultation*

There is concern that the strategy only focuses on the small numbers of children with diagnosed mental health problems that are eligible to access Child and Adolescent Mental Health Services (CAMHS). The vast majority of children are not able to access such specialised services because they are not diagnosed or not seen as needing that level of intervention. Children's organisations report that children in foster and kinship care are disproportionately affected by emotional, behavioural and mental health issues and yet are not being provided with CAMHS support. Children's organisations are clear that there is still a lot to be done in terms of children's mental health, including more work with young people who experience mild to moderate mental health problems,<sup>231</sup> sustained support to prevent relapses and access to psychological therapy.

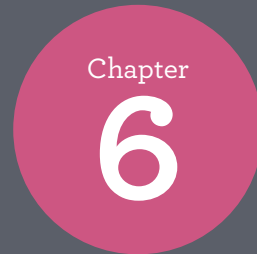
<sup>232</sup> Scottish Government (2013). *The 5th UK Government Report to the UN Committee on the Rights of the Child* (Pg 27)

The Scottish Government states that progress has been made in reducing the time children have to wait to access specialist CAMHS, with the latest data for the three month period up to September 2012 showing that 89% of children are seen within 26 weeks and the average waiting time is eight weeks. A target has been set to reduce the waiting time to 18 weeks by December 2014.<sup>232</sup> This has been welcomed by children's organisations, who have long had concerns about the 26 week target.<sup>233</sup>

<sup>233</sup> *Together* (2012). *State of Children's Rights in Scotland* (Pg 49)

Article 31:

Every child has the right to relax, play and join in a wide range of cultural and leisure activities.



# Education, leisure and cultural activities

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## Case study: Cyberbullying: what you need to know publication

The UNCRC endorses the promotion of values and policies conducive to human rights within schools and universities and the broader community. It provides a holistic description of a good childhood characterised by dignity, freedom and agency, with the right to express oneself freely whilst respecting other's right to express themselves and to protection against discrimination. Technology has enabled the internet to become a social space for children and young people to communicate and socialise, yet just like other social spaces, these values and rights are not always upheld.

respectme has responded to a rise in the online presence of young people by helping to raise awareness and understanding of cyberbullying. respectme's work is rooted in the belief that for children and young people the internet is a place, not a thing. To most, it is a social space that they spend time in and stay in touch with their friends and like all places children and young people go to, there are risks. Cyberbullying is bullying – it is still about relationships that are not healthy or being managed well. It is behaviour done by someone to someone else. The behaviour appears to be migrating, as children spend more time on-line, the behaviour they have always exhibited and experienced comes with them.

respectme's booklet 'Cyberbullying: What you Need to Know' was developed in response to their experience and research into children and young people's behaviour online. They consulted widely with children and young people to develop this. This publication is aimed at 9–13 year olds – as this was the age most children and young people begin to develop an independent online presence. It also covers the transition period between primary and secondary school. Children and young people did not want lists of do's and don'ts, they like options, choices and ones that are presented in a way that allows them to make their own choices. They want this information in a colourful and engaging way.

The publication makes the very clear distinction between criminal and sexually threatening behaviour and bullying – this was an area that had become less clear recently. This publication has a focus on specific rights that may be affected by bullying.

respectme sent two copies of 'Cyberbullying: What you Need to Know' to every school and registered children's service in Scotland and within the first five weeks it had distributed 55,000 copies. In total they have sent out 93,877 copies in just under 12 months and the Scottish Sun printed a further 50,000 copies and ran a three-day campaign on the subject. It has been requested from all other parts of the UK and been downloaded as far afield as China and the USA.

*'I used these booklets with P7 two years ago following a few incidents with text messaging and Facebook. They were really useful and gave a good structure to follow. I also sent the parent leaflet home at the end for parents.'*

*'These booklets were given out to upper classes two years ago. Teachers have been using them to support health and wellbeing lessons.'*



## UN Concluding Observations

- Continue and strengthen its efforts to reduce the effects of the social background of children in their achievement in school.
- Invest considerable additional resources in order to ensure the right of all children to a truly inclusive education which ensures the full enjoyment to children from all disadvantaged, marginalized and school-distant groups.<sup>234</sup>

<sup>234</sup> Committee on the Rights of the Child (2008). *Concluding Observations: United Kingdom of Great Britain and Northern Ireland* (CRC/C/GBR/CO/4). No 67a; 67b.

<sup>235</sup> <http://reformscotland.com/index.php/commission-on-school-reform/> (Accessed April 2013)

<sup>236</sup> Scottish Government (2013). *The 5th UK Government Report to the UN Committee on the Rights of the Child* (pg 29)

<sup>237</sup> Scottish Government (2009). *Curriculum for Excellence: building the curriculum 4 skills for learning, skills for life and skills for work*

<sup>238</sup> Scottish Government (2013). *Children and young people's experiences of, and views on, issues relating to the implementation of the United Nations Convention on the Rights of the Child* (pg 46)

<sup>239</sup> *Children in Scotland* (2013). *Member's Briefing: School Reform*

<sup>240</sup> Centre for Scottish Public Policy (2013). *By Diverse Means: Improving Scottish Education. The Commission on School Reform: Final Report*

<sup>241</sup> Centre for Scottish Public Policy (2013). *By Diverse Means: Improving Scottish Education. The Commission on School Reform: Final Report* (pg 7)

The Commission on School Reform,<sup>235</sup> set up by Reform Scotland and the Centre for Scottish Public Policy, published a report in March 2013 on whether the school system is meeting the current and future needs of children. It also makes recommendations on areas for improvement and those that need further research. The key findings of the report are that:

- Scottish education needs to be reformed if it is to become world-beating once again;
- Poorer-achieving young people are being let down;
- Greater powers need to be given to school to have control over their own affairs;
- There is a need for more diversity within Scotland's school system.

The Scottish Government states that the Curriculum for Excellence is designed to provide a coherent, flexible and enriched curriculum for children aged from three to 18.<sup>236</sup> Its aim is to help children to become '*successful learners, confident individuals, responsible citizens and effective contributors*'.<sup>237</sup> Consultation with children has shown support for these four capacities of the Curriculum for Excellence, stating that learning is improved by cross-curricular connections, motivated teachers and a conducive atmosphere.<sup>238</sup> Children's organisations also state their focus on supporting Scotland's education system through the Curriculum for Excellence.<sup>239</sup> The Commission on School Reform's report praises the Curriculum for Excellence but states that progress is being hindered by a lack of ambition.<sup>240</sup>

Children's organisations broadly support a number of the recommendations made in the report, including:

- School leadership must seek to improve personalisation and enhance the educational experience of every pupil;
- Schools must become more responsive to the realities facing the children depending on them and particularly to the communities in which the schools are located;
- Increase investment in the early years should support the transition into primary school and help secure better life chances for all children.<sup>241</sup>

### UN Concluding Observations

- Use the disciplinary measure of permanent or temporary exclusion as a means of last resort only, reduce the number of exclusions and get social workers and educational psychologists in school in order to help children in conflict with school.
- Ensure that children who are able to express their views have the right to appeal against their exclusion as well as the right, in particular for those in alternative care, to appeal to special educational needs tribunals.<sup>242</sup>

<sup>242</sup> Committee on the Rights of the Child (2008). *Concluding Observations: United Kingdom of Great Britain and Northern Ireland* (CRC/C/GBR/CO/4). No 67d; 67h.

<sup>243</sup> Scottish Government (2013). *The 5th UK Government Report to the UN Committee on the Rights of the Child* (para 143)

<sup>244</sup> As defined by the Scottish Index of Multiple Deprivation: <http://simd.scotland.gov.uk/publication-2012/> (Accessed January 2012)

<sup>245</sup> Scottish Government (2011). *National guidance for schools and local authorities in managing school exclusions*

<sup>246</sup> Public Inclusion Network Scotland (2012). *Exclusion in Scotland's schools: one year on, where are we now?*

<sup>247</sup> <http://www.apexscotland.org.uk/inclusion-unit-dunfermline-high-school/74-inclusion-unit-dunfermline-high-school> (Accessed July 2013)

Although exclusions from Scottish schools have decreased by 40% from a peak in 2006/07,<sup>243</sup> the situation for children from more vulnerable groups is not improving. Exclusion rates for pupils who have an additional support need are four times higher than those who have no additional support needs; exclusion rates for looked after children are eight times higher than their non-looked after peers; rates of exclusion among children living in the 20% areas of most deprivation are six times higher than those living in the 20% least deprived<sup>244</sup> More work is needed to examine the reasons for this and identify appropriate methods of support. Children's organisations report that informal exclusions are still an issue and remain "hidden" within official statistics.

Children's organisations stated that the Scottish Government's guidance on managing school exclusions<sup>245</sup> is very good but implementation is patchy.<sup>246</sup> Whilst Education Scotland produces resources, training and support available at local authority level, provision in schools is very much defined by the values, skills and commitment of teams on the ground.

Examples of good practice in preventing exclusions were given, such as the Inclusion Unit in Dunfermline High School. This is a support unit within the school run as a partnership between the local authority and Apex Scotland. It has significantly reduced exclusions and has been positively evaluated by the young people taking part, their school and local community.<sup>247</sup>

<sup>248</sup> Scottish Government (2013). *Children and young people's experiences of, and views on, issues relating to the implementation of the United Nations Convention on the Rights of the Child* (pgs 50, 51)

<sup>249</sup> Scottish Government (2012). *Doran Review*

<sup>250</sup> ARC Scotland (2013). *Principles of Good Transitions*

Children moving on from school into further education, training or employment want more information and preparation on post-school options. LGBT children face particular challenges with poor experiences of school leading to lower confidence, poor attendance and/or leaving early.<sup>248</sup>

As highlighted by the Doran Review,<sup>249</sup> a review of learning provision for children with complex additional support needs, effective transitions from one stage of education to another and onto life after school is a key component to effectively meeting the needs of children. The Scottish Transitions Forum has identified 'the big 9' – problems that arise with transition from school – and nine corresponding solutions to these problems.<sup>250</sup> The nine problems include:

- Person centred approaches are often lacking or inconsistent
- Lack of the voice of the child in transition planning
- Planning starts too late
- Lack of support for future transitions
- Lack of information for children and their carers
- Confusing legislative and policy framework
- Support is not coordinated between services
- Too many children are not regarded as eligible for support
- Confusing language

These problems were echoed by children's organisations and by delegates at Together's *State of Children's Rights* seminars. The importance of providing individual support that recognises the unique circumstances of the child was stressed, and the need to enable children to express their views and be involved in deciding the support and care they need. Children's organisations support the proposed 'big 9' solutions of early proportionate planning, dedicated local authority transition teams and employing an early intervention model with outcome-led assessment.

## Rec

### Recommendation

- The Scottish Transitions Forum's 'Big 9' solutions to transitions should be taken forward by various stakeholders with immediate effect.

## UN Concluding Observations

- Intensify its efforts to tackle bullying and violence in schools.<sup>251</sup>

The national approach to anti-bullying has been developed by the Scottish Government and the Scottish Anti-Bullying Steering Group to communicate and promote a common vision and aims, and to make sure that work across all agencies and communities is consistently and coherently contributing to a holistic approach to anti-bullying in Scotland.<sup>252</sup> 25 out of Scotland's 32 local authorities now have a policy framework that is in-step with the National Approach. The Scottish Government's support for Respectme, Scotland's anti-bullying service, is welcomed by children's organisations. Around 6,000 adults have been trained by respectme in the last six years across Scotland. Children's organisations involved in delivering this training report that there is always a positive response from professionals. The training is proving very useful in developing understanding and in tackling issues relating to bullying.

Bullying and online bullying needs to be viewed within the wider context of sexualisation and gender inequality. The current Relationships, Sexual Health and Parenthood Education (RSHP)<sup>253</sup> does not do this effectively and children's organisations are concerned that the recently-announced refresh of the RSHP guidance will also not suffice. There are wide concerns that the new draft guidance is not underpinned by the UNCRC and fails to convey the essential knowledge and skills needed by children to help them develop and maintain healthy and appropriate relationships, and to keep themselves and others safe.

Children's organisations maintain that more still needs to be done to raise awareness among professionals around the impact and signs of bullying. Particular attention needs to be paid to more vulnerable groups of children, including children with long-term conditions, young carers, looked after children, Gypsy/Traveller children, and LGBT children.

## Cyberbullying

Research evidence shows the prevalence of cyberbullying.<sup>254</sup> In a survey of almost 2,500 young people, 50% of respondents said they'd been cyberbullied; 29% told no-one about being cyberbullied; 73% said they knew who was sending them bullying messages and 11% admitted to being a cyberbully.<sup>255</sup> The Scottish Government does not explicitly refer effort to tackle cyberbullying in its UNCRC report.<sup>256</sup> Children's organisations are clear that the Scottish Government needs to further recognise cyberbullying and social media's effects on bullying outside of school. Parents and services for children have a huge role to play in educating children and young people about online safety. Respectme's campaign 'She's still going somewhere'<sup>257</sup> raises awareness of online safety among parents. This approach to building parental knowledge and capacity about how children use the internet has been very well received and evaluated.

<sup>251</sup> Committee on the Rights of the Child (2008). *Concluding Observations: United Kingdom of Great Britain and Northern Ireland* (CRC/C/GBR/CO/4). No 67f

<sup>252</sup> Scottish Government (2010). *A National Approach to Anti-Bullying for Scotland's Children and Young People*

<sup>253</sup> Missing TEXT

<sup>254</sup> Scottish Government (2013). *Children and young people's experiences of, and views on, issues relating to the implementation of the United Nations Convention on the Rights of the Child* (pg 49)

<sup>255</sup> Beat Bullying (2009). *Virtual Violence: Protecting Children from Cyberbullying*

<sup>256</sup> Scottish Government (2013). *The 5th UK Government Report to the UN Committee on the Rights of the Child*

<sup>257</sup> <http://respectme.businesscatalyst.com/videos.html> (Accessed August 2013)



<sup>258</sup> Equality and Human Rights Commission (2010). *Prevention and response to identity-based bullying among local authorities in England, Scotland and Wales*

<sup>259</sup> Equality and Human Rights Commission (2010). *How fair is Britain? Equality, Human Rights and Good Relations in 2010*

<sup>260</sup> Scottish Government (2013). *Children and young people's experiences of, and views on, issues relating to the implementation of the United Nations Convention on the Rights of the Child* (pg 50)

<sup>261</sup> LGBT Youth Scotland (2012). *Life in Scotland for LGBT Young People: Education Report* (pg 24)

## Minority ethnic children

Whilst much is being done to tackle bullying in Scotland, more should be done to align these initiatives with anti-discrimination work (see chapter 2.1). Identity-based bullying refers to any form of bullying related to the characteristics considered unique to a child's identity, such as their race, religion, sexual orientation or physical appearance. Young people in such groups may be more vulnerable to or at risk of experiencing bullying and can benefit from more targeted support.<sup>258</sup> Attempting to tackle bullying behaviour without challenging discriminatory attitudes will not be effective. Children's organisations involved in the EHRC project looking at approaches to monitoring identity based bullying are keen to press the Scottish Government to renew its guidance and approach to recording, monitoring and tackling identity based bullying.<sup>259</sup>

## LGBT children

LGBT children are particularly concerned about being bullied.<sup>260</sup> LGBT Youth Scotland developed a Toolkit for Teachers and ran the Challenging Homophobia Together project which provided intense policy support to professionals in the Education Authority, training to teachers to increase their confidence to challenge discrimination, lessons to pupils, and supported the development of student advisory groups to challenge homophobia within their schools. This multi-layered approach, looking at both policy and practice, has led to increased positive outcomes in these schools.<sup>261</sup> It is important that professionals are engaged in discussions around how the national educational frameworks promote inclusion and their responsibilities to all pupils, with an emphasis on clear leadership and inclusive approaches.

### Rec

## Recommendation

- The Scottish Government should continue to commit resources to raise awareness among professionals and children of the nature and impact of cyberbullying (as recommended in Together's 2012 State of Children's Rights report).

## UN Concluding Observations

- Strengthen efforts to guarantee the right of the child to rest and leisure, to engage in play and recreational activities appropriate to the age of the child and to participate freely in cultural life and the arts. The State party should pay particular attention to provide children, including those with disabilities, with adequate and accessible playground spaces to exercise their play and leisure activities.<sup>262</sup>

<sup>262</sup> Committee on the Rights of the Child (2008). *Concluding Observations: United Kingdom of Great Britain and Northern Ireland* (CRC/C/GBR/CO/4). No 66; 67 a-e.

<sup>263</sup> Committee on the Rights of the Child (2013). *General Comment No. 17 on the right of the child to rest, leisure, play, recreational activities, cultural life and the arts* (article 31)

<sup>264</sup> <http://www.article31.org.uk/> (Accessed March 2013)

<sup>265</sup> Scotland's Commissioner for Children and Young People (2013). *It's All About the Money*

<sup>266</sup> Scottish Government (2013). *Children and young people's experiences of, and views on, issues relating to the implementation of the United Nations Convention on the Rights of the Child* (pg 51)

<sup>267</sup> Scottish Government (2013). *Children and young people's experiences of, and views on, issues relating to the implementation of the United Nations Convention on the Rights of the Child* (pg 51)

<sup>268</sup> Youthlink (2012). *Review of Unified Voluntary Sector Fund and CLD HQ Funds consultation response*

In January 2013, the UN Committee launched a General Comment on Article 31.<sup>263</sup> The aim of the General Comment is to enhance understanding of the importance of Article 31 for children's well-being and development, and for the realisation of other rights in the Convention. It provides interpretation for governments with regard to the provisions and obligations associated with Article 31 and provides guidance on the legislative, judicial, administrative, social and educational measures necessary to ensure its implementation for all children. In March 2013, a number of children's organisations hosted a conference to mark the launch of the General Comment under the banner 'A Richer Understanding of Article 31'.<sup>264</sup> There was a general agreement among delegates that there is already a great deal of good practice in Scotland relating to the implementation of Article 31. The policy context was seen as positive although there needs to be more work across different portfolios – for example engaging planning, transport and environment departments as well as the arts, leisure and education.

Children's organisations report that there is still patchy implementation of Article 31 across local authorities. Local authorities need to have an increased awareness of children's right to leisure, cultural and play opportunities. There needs to be better communication between national and local agencies to promote collaboration, sharing of opportunities and the development of expertise. More physical spaces are needed, as well as the provision of unstructured opportunities for children. Parents and children need to be involved in working with local planners, designers and builders to ensure that child friendly communities are valued and visible across towns, cities and the countryside. Children's access to opportunities needs to be considered, including ensuring safe and affordable transport for children and young people to leisure, cultural and play opportunities in both urban and rural areas. There is wide concern that children with disabilities still do not have equal access to recreation and play and that current financial climate is having negative impact on the number of opportunities available to them<sup>265</sup>.

It is important to all young people that they are able to meet their friends and socialise.<sup>266</sup> Most young people want funding for youth projects and groups to be a priority for local authorities.<sup>267</sup> Youth work organisations report that they face considerable challenges in the current financial climate as they are being asked to deliver more services while at the same time sources of funding are declining, and competition for these limited resources is increasing.<sup>268</sup> Children's organisations state that there is a need for investment and support for appropriate informal leisure, cultural and recreational activities for young people. Delegates at Together's *State of Children's Rights* seminars were clear that leisure activities for young people need to be more accessible and less restrictive on cost.

## Play strategy and action plan

<sup>269</sup> Scottish Government (2013). *Play Strategy for Scotland: Our Vision*

<sup>270</sup> Scottish Government (2013). *Play Strategy for Scotland: Our Action Plan*

In June 2013, the Scottish Government published its first national Play Strategy.<sup>269</sup> This was followed up in October 2013 with the national Play Action Plan.<sup>270</sup> Both the strategy and the action plan have been broadly welcomed by children's organisations. The new strategy and action plan need to be adequately resourced and driven by an influential implementation group able to initiate and recommend engagement from local authorities, health boards, community planning partnerships and Education Scotland. The media also has a role to play in supporting the importance of children's play. The Scottish Government and CoSLA have a significant leadership role to play. Children's organisations were clear that a process of benchmarking is needed to accompany the action plan so progress can be monitored, evaluated and reviewed. There are also calls from children's organisations for every CPP to have its own Play Strategy action plan put together in consultation with local children.

### Rec

## Recommendations

The Scottish Government and CoSLA should:

- enable the play sector to thrive and develop through longer funding commitments and increased availability across all areas of Scotland (as per 2012)
- introduce a statutory duty for Article 31 of the UNCRC (the right to recreation, play and cultural activities) that ensures all local authorities have an implementation strategy in place (as per 2012)
- resource the Play Action Plan sufficiently to ensure effective implementation
- ensure positive action is taken to ensure that disabled children are able to exercise their rights under article 31, taking the UN General Comment no. 17 fully into account.

Chapter

7

# Special protection measures

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## Case study: *The proposed Human Trafficking (Scotland) Bill*

In 2011 the Equality and Human Rights Commission published its Inquiry into Human Trafficking in Scotland, which made a series of recommendations to progress Scotland's anti-trafficking response. Among those recommendations was the need for a comprehensive bill on human trafficking, which would improve Scotland's current legislation. This paved the way for the proposed Human Trafficking (Scotland) Bill, which was introduced on the 11th of September 2013. The Bill aims to make wide ranging changes, including introducing a single definition of human trafficking into Scots law for the first time, creating a comprehensive strategy against human trafficking, and creating a new Survivors' Service underpinned by minimum standards of care. Together they would form powerful guidance for practitioners and create a powerful advocacy body for children who have suffered severe breaches of their human rights.

The child specific rights created in the proposals include a presumption that a victim of trafficking be under 18 if the person's age is uncertain at the time of recovery. They provide each child victim with an individual assessment that will take account of the child's views, needs and concerns to shape their physical, psychological and social recovery. They will appoint each child victim of human trafficking with a guardian or formal representative in all matters relating to the child's trafficked status; and they will provide child victims of human trafficking with access to education. With these rights enshrined in law, it is hoped that child victims of human trafficking will have clear and unambiguous access to vital services that will aid them in their recovery. The importance of such services is highlighted in the case study below:

*'A 14 year old boy was trafficked to the UK from West Africa for the purpose of domestic servitude. Having managed to escape his trafficker he fled and sought assistance from a woman he met on the street that spoke his language. He told the woman that he had an uncle in the UK but did not know where. The woman took him to her local community church and they asked if anyone knew the uncle. Surprisingly someone knew his uncle and he was put on a bus to Scotland to be reunited with his uncle. The uncle and young person sought advice from the Scottish Refugee Council in regards to financial support and concerns were raised by the worker in regards to the 'story' that was given and the unlikely chances of a family member being tracked down so easily. An area social work team was contacted and child protection concerns were raised in relation to the trafficking, as to whether the uncle was actually a relative and whether the uncle was a suitable carer for this 14 year old child. The social work response was slow and there was a lack of awareness around the trafficking concerns. A referral was made to a specialist legal firm and to the Scottish Guardianship Service which ensured that pressure was put on the social work team to act, respond and assess the situation. The child was supported by a Guardian to ensure that services were linked up and that the child was receiving appropriate assistance. The Guardian helped the child to understand what was happening in his life, supporting him to legal appointments, planning meetings and Home Office interviews. The child was eventually removed from the care of the 'uncle' as he was found not to be his uncle.'*

## Unaccompanied refugee and asylum seeking children

<sup>271</sup> Committee on the Rights of the Child (2008). *Concluding Observations: United Kingdom of Great Britain and Northern Ireland* (CRC/C/GBR/CO/4). No 70c,b,d; 71b,c,e,f,g.

### UN Concluding Observations

- Ensure that the United Kingdom Border Agency (UKBA) appoints specially-trained staff to conduct screening interviews of children.
- Consider the appointment of guardians for unaccompanied asylum seekers and migrant children.
- Provide disaggregated statistical data in its next report on the number of children seeking asylum, including those whose age is disputed.
- Give the benefit of the doubt in age-disputed cases of unaccompanied minors seeking asylum, and seek experts' guidance on how to determine age.
- Ensure that when the return of children occurs, this happens with adequate safeguards, including an independent assessment of the conditions upon return, including family environment.
- Consider amending section 2 of the 2004 Asylum and Immigration (Treatment of Claimants etc.) Act to allow for a guaranteed defence for unaccompanied children who enter the United Kingdom without valid immigration documents.<sup>271</sup>

<sup>272</sup> Scottish Refugee Council (2013). *'She Endures with Me.'* An evaluation of the Scottish Guardianship Service pilot

<sup>273</sup> Scottish Government (2013). *The 5th UK Government Report to the UN Committee on the Rights of the Child* Scottish Government Submission (pg 31)

There is a shared recognition in Scotland that unaccompanied asylum seeking children and young people may be particularly vulnerable. The Scottish Guardianship Service (the SGS) is a non-statutory service there to work with this group. It was piloted from September 2010 to March 2013 and positively independently evaluated throughout.<sup>272</sup> The Scottish Government announced in February 2013 that it would fund a core guardianship service from April 2013 to April 2016.<sup>273</sup> It continues to be delivered in partnership by Aberlour Child Care Trust and Scottish Refugee Council.

The SGS' objectives for 2013-2016 are to:

- Deliver core guardianship service for separated children, building on learning in the pilot.
- Enhance the SGS' child-centred model and practice by continuous service user engagement.
- Contribute to policy development on statutory responsibility and instructive powers.
- Support transferable aspects of guardianship in Scotland to UK and beyond.
- Effectively demonstrate benefit of and need for longer-term, sustained guardianship models.
- The SGS is also seeking to increase its capacity to improve policy, internal and external practice in areas of anti-human trafficking, best interests' determination and returns of young people.

<sup>274</sup> In March 2013, UKBA was abolished and its work taken over by the Home Office. It is now split into separate parts focusing on the visa system and on immigration law enforcement.

<sup>275</sup> Scottish Refugee Council (2013). 'She Endures with Me.' An evaluation of the Scottish Guardianship Service pilot (pg 85-86)

<sup>276</sup> Scottish Refugee Council (2013). 'She Endures with Me.' An evaluation of the Scottish Guardianship Service pilot (pg 29-31)

<sup>277</sup> Scottish Refugee Council (2013). 'She Endures with Me.' An evaluation of the Scottish Guardianship Service pilot (pg 29)

<sup>278</sup> Scottish Refugee Council & Glasgow City Council (2012). Age Assessment Practice Guidance An Age Assessment Pathway for Social Workers in Scotland. Joint Committee on Human Rights (2013-2014). Human Rights of unaccompanied migrant children and young people in the UK (pg 31; 64)

<sup>279</sup> Working Group on Legal Representation of Vulnerable Children including Separated Children (2013). Education and Culture Committee submission – Children and Young People (Scotland)

<sup>280</sup> UK Parliament, Joint Committee on Human Rights (2013). The Human Rights of unaccompanied migrant children and young people in the UK (pg 51)

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The SGS works with separated children and young people under or presumed to be under-18, seeking asylum, or who may have been trafficked from outside the EU. It has assigned a Guardian to over 120 young people since September 2010. Users are diverse, spanning over 21 nationalities with almost  $\frac{3}{4}$  drawn from Afghanistan, Vietnam, Somalia, Iran, Nigeria, Gambia, and Eritrea. Guardians work with children and young people to ensure they are actively involved in decisions that affect their life and to get the help they need, when they need it, particularly in the overlapping domains of asylum, welfare, and integration/social networks.

The SGS has developed, through its focus on the best interests of children and young people, trusting relationships that enable disclosure of information needed to support better decisions which appropriately reflect past experiences and meet and anticipate future needs. Therefore, the SGS has facilitated more relevant and robust information to the UK Border Agency<sup>274</sup> (the UKBA) in claims under the Refugee Convention, thereby assisting more correct and positive initial decisions for separated children and young people, and reinforcing the wider trend in the UK of greater sensitivity in Convention decisions for the separated group.

The SGS model has also identified and sought to assist overcoming barriers to more effective practice with separated children and young people. These include: demonstrating the need for independent advocacy and its relationships of trust for this group to feel well, socially connected, and hence prepared to share information, experiences and feelings;<sup>275</sup> the importance of taking time, openness, and consistent best interests' practice to demonstrate the added value of guardianship,<sup>276</sup> especially in inter-agency relationships (e.g. a protocol agreed between the SGS, UKBA and Social Work exemplified the success of this process);<sup>277</sup> and the case for rights for certain separated children and young people to, for instance, statutory age assessment,<sup>278</sup> legal representation,<sup>279</sup> and special measures in criminal proceedings.

The SGS is a clear demonstration of the Scottish Government's commitment to separated children. Further evidence of this commitment and recognition of SGS'principles is the forthcoming Early Years Family Support Public Sector Partnership, which includes a pilot co-managed by Scottish Refugee Council of a key worker model of service delivery for newly arrived asylum seeker families in Scotland. The SGS was pinpointed by the UK Parliament's Joint Committee of Human Rights (the JCHR) as an appropriate model to be piloted in England and Wales.<sup>280</sup>

## Recommendations

The Scottish Government should:

- consider whether and how guardianship principles and services may be enshrined in legislation, including, potentially, in the Children and Young People (Scotland) Bill.
- encourage all relevant statutory partners to proactively engage with the SGS including through working with it through cases.

<sup>281</sup> Committee on the Rights of the Child (2008). *Concluding Observations: United Kingdom of Great Britain and Northern Ireland* (CRC/C/GBR/CO/4). No 78a-h.

<sup>282</sup> Scottish Government (2010). *National Guidance for Child Protection in Scotland*

<sup>283</sup> Scottish Government (2009). *Safeguarding Children in Scotland who may have been Trafficked*

<sup>284</sup> Scottish Government (2013). *Anti-Trafficking Progress Groups* (pg 2)

<sup>285</sup> Glasgow Child Protection Committee (2009). *Child trafficking in Glasgow: Report of a social work case file analysis of unaccompanied asylum seeking children*.

<sup>286</sup> Criminal Justice Act 2003 (section 22) and Immigration and Asylum Act 2004 (section 4)

<sup>287</sup> Trafficking provisions in the Criminal Justice & Licensing (Scotland) Act 2010

<sup>288</sup> Victims and Witnesses (Scotland) Bill

<sup>289</sup> Serious Organized Crime Agency (SOCA) and United Kingdom Human Trafficking Centre (UKHTC) (2013). *United Kingdom National Referral Mechanism provisional statistics 2012*

<sup>290</sup> REF TO ADD XXX

<sup>291</sup> Equality and Human Rights Commission Scotland (2011). *Inquiry into Human Trafficking in Scotland* (pg 58-60)

<sup>292</sup> Scottish Government (2013). *Action Points Agreed at Trafficking in Human Beings Summit*. Scottish Government (2013). *Anti-Trafficking Progress Groups*

<sup>293</sup> Scottish Refugee Council (2013). *'She Endures with Me.'* An evaluation of the Scottish Guardianship Service pilot (pg 85-86)

### UN Concluding Observations

- Provide the necessary resources for an effective implementation of the Anti-trafficking Action Plan. It also recommends that the State party ratify the Council of Europe Convention on Action against Trafficking in Human Beings and implement its obligations by ensuring that child protection standards for trafficked children meet international standards. 51a.<sup>281</sup>

Some progress has been made in tackling child trafficking in Scotland, principally through a maturing policy framework and greater levels of inter-agency and national cooperation. Scotland has embedded child trafficking into its National Guidance on Child Protection (2010),<sup>282</sup> furnished practitioners with specialised information through its 'Safeguarding Children who may Have Been Trafficked' guidance (2009),<sup>283</sup> and is currently developing an anti-trafficking toolkit for application by local child protection committees across Scotland,<sup>284</sup> building on the Glasgow model.<sup>285</sup>

Child trafficking is encompassed under the two criminal definitions of human trafficking.<sup>286</sup> None of the three cases in Scotland with convictions for trafficking included children so, technically, there have not been any convictions to date for trafficking of children. This reflects a wider problem of relatively and severely low levels of prosecutions for trafficking offences in Scotland. Nonetheless, the criminal justice system is, gradually, becoming sensitive to the particular vulnerability of child trafficking survivors and witnesses, as demonstrated by the expansion in automatic entitlement to standard special measures for witnesses up to 18 in trafficking cases<sup>287</sup> and, in the near future, for child witnesses up to 18 in all criminal proceedings.<sup>288</sup>

Recorded child trafficking, as identified through the UK Government's National Referral Mechanism, is increasing in the UK including in Scotland. Figures published in September 2013 noted that in 2012 there were 524 child potential victims of trafficking in the UK, a 12% increase from 2011, with 29 victims in Scotland.<sup>289</sup> Not all victims enter the NRM and many go unidentified due to low awareness and effective control by their traffickers; maintained by physical force or threats to family, through to psychological techniques of emotional deception and manipulation.<sup>290</sup> Children are trafficked for a range of reasons, with girls especially vulnerable to sexual exploitation, and there have been cases of identified labour exploitation, domestic servitude, and criminal exploitation. The latter tends to comprise either Vietnamese young people being exploited – and then perversely sometimes criminalised – for cannabis offences or children being trafficked for the purpose of benefit fraud.

In response to the lead recommendation in the EHRC's seminal Inquiry into Human Trafficking in Scotland,<sup>291</sup> that Scotland needs a strategic approach against human trafficking, the Scottish Government instigated and convened a multi-agency Anti-Human Trafficking Summit in October 2012 with public reporting due in April 2014.<sup>292</sup> The Summit's architecture comprises three levels: the Summit Group, led by the Cabinet Secretary for Justice; the Anti-Trafficking Progress Group, which meets quarterly to oversee operational activities covering trafficking-free supply chains and contracting, awareness-raising and training, data and analysis, legislation, prosecution, and enforcement, and of particular relevance to child survivor issues: victim care and support and distinct issues for children at risk of trafficking.<sup>293</sup> This work is supported by six sub-groups. Two other key national developments are the Ministerial Working Group on Sexual Exploitation in Scotland and the forthcoming report of the Inquiry by the Scottish Parliament's Public Petitions Committee into Child Sexual Exploitation in Scotland.<sup>294</sup>

<sup>294</sup> <http://www.scottish.parliament.uk/parliamentarybusiness/CurrentCommittees/60242.aspx> [accessed 05/11/13]

<sup>295</sup> Proposed Human Trafficking (Scotland) Bill

<sup>296</sup> <https://www.gov.uk/government/news/home-secretary-begins-evidence-sessions-on-modern-slavery> [accessed 05/11/13]

<sup>297</sup> European Union (2013). Directive 2011/36/EU of the European Parliament and of the Council of 5 April 2011 on preventing and combating trafficking in human beings and protecting its victims, and replacing Council Framework Decision 2002/629/JHA

<sup>298</sup> Serious Organized Crime Agency (SOCA) and United Kingdom Human Trafficking Centre (UKHTC) (2013). United Kingdom National Referral Mechanism provisional statistics 2012

<sup>299</sup> Equality and Human Rights Commission (2013). *Inquiry into Human Trafficking in Scotland: Follow on report. Scottish Refugee Council (2013). 'She Endures with Me': An evaluation of the Scottish Guardianship Service. Anti-Trafficking Monitoring Group (2013). In the Dock: Examining the UK's Criminal Justice Response to Trafficking*

There have been significant developments in 2013 around how legislation can best bear down on human trafficking. These include:

- a consultation on a proposed Human Trafficking (Scotland) Bill, tabled by Jenny Marra MSP in September 2013, which has been described by Baroness Helena Kennedy QC as the basis for 'exemplar modern slavery legislation' and by Dr. Anne T. Gallagher, the lead official behind the UN's Human Trafficking Protocol, as potentially 'the most innovative and comprehensive piece of anti-trafficking legislation in the world'.<sup>295</sup>
- the commitment from August 2013 by the UK Government to introduce a UK-wide Modern Slavery Bill.<sup>296</sup>

These present considerable opportunities for at worst consolidating disparate anti-slavery provisions across the UK – including for preventing and effectively responding to child trafficking and assisting its survivors – and at best strengthening anti-slavery legislation across the UK so that all future law in Scotland and beyond is genuinely comprehensive, child-centred, and inclusive of statutory provisions for all survivors including children. The Scottish Government has considerable opportunities to ensure Scots Law is at the forefront of anti-slavery law globally.

The EU Human Trafficking Directive took effect in the UK in April 2013.<sup>297</sup> It is a comprehensive legal instrument that, if implemented, can lever more integrated anti-trafficking responses, including through its child-focused provisions.<sup>298</sup> One of the most progressive – Article 8 – targets the manifest injustice of trafficking survivors being subject in some way to criminal justice process for criminal acts committed as a manifestation of, or as a direct consequence of their trafficking situation. This is the antithesis of a human rights, survivor-centred approach, and amounts to triple victimisation whereby a person becomes a trafficking victim, then is compelled to commit crime, and is then punished for such a crime. Scotland is by no means alone in facing this issue but three national reports<sup>299</sup> have now documented the likelihood that young people may have been prosecuted or even convicted for offences, which were actually inextricably linked with a human trafficking situation. It is imperative therefore that all relevant agencies work together to prevent such cases in the future as well as assist those who may have been so criminalised, to facilitate appeals against such detriment either individually or, potentially, as a suite of test cases through the Scottish Criminal Cases Review Commission.

## Recommendations:

The Scottish Government should:

- ensure it meets all its commitments on child trafficking, arising from the on-going Summit process, and publicly reports on these in April 2014.
- ensure any new legislation on human trafficking includes, in Scots law, statutory assistance for trafficking survivors and statutory protection against unjust criminalisation.
- develop guidance on the non-criminalisation of survivors of trafficking in partnership with other relevant agencies, (especially criminal justice and the judiciary).

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<sup>300</sup> Committee on the Rights of the Child (2008). *Concluding Observations: United Kingdom of Great Britain and Northern Ireland* (CRC/C/GBR/CO/4). No 78

<sup>301</sup> Scottish Government (2012). *Do the Right Thing Progress Report 2012*

<sup>302</sup> Children 1st (13th June 2013). *Letter to the Minister for Children and Young People re Criminal Justice Bill*

<sup>303</sup> Scottish Government (2013). *Children and Young People's experiences of, and views on, issues relating to the Implementations of the United Nations Convention on the Rights of the Child* (pg 53)


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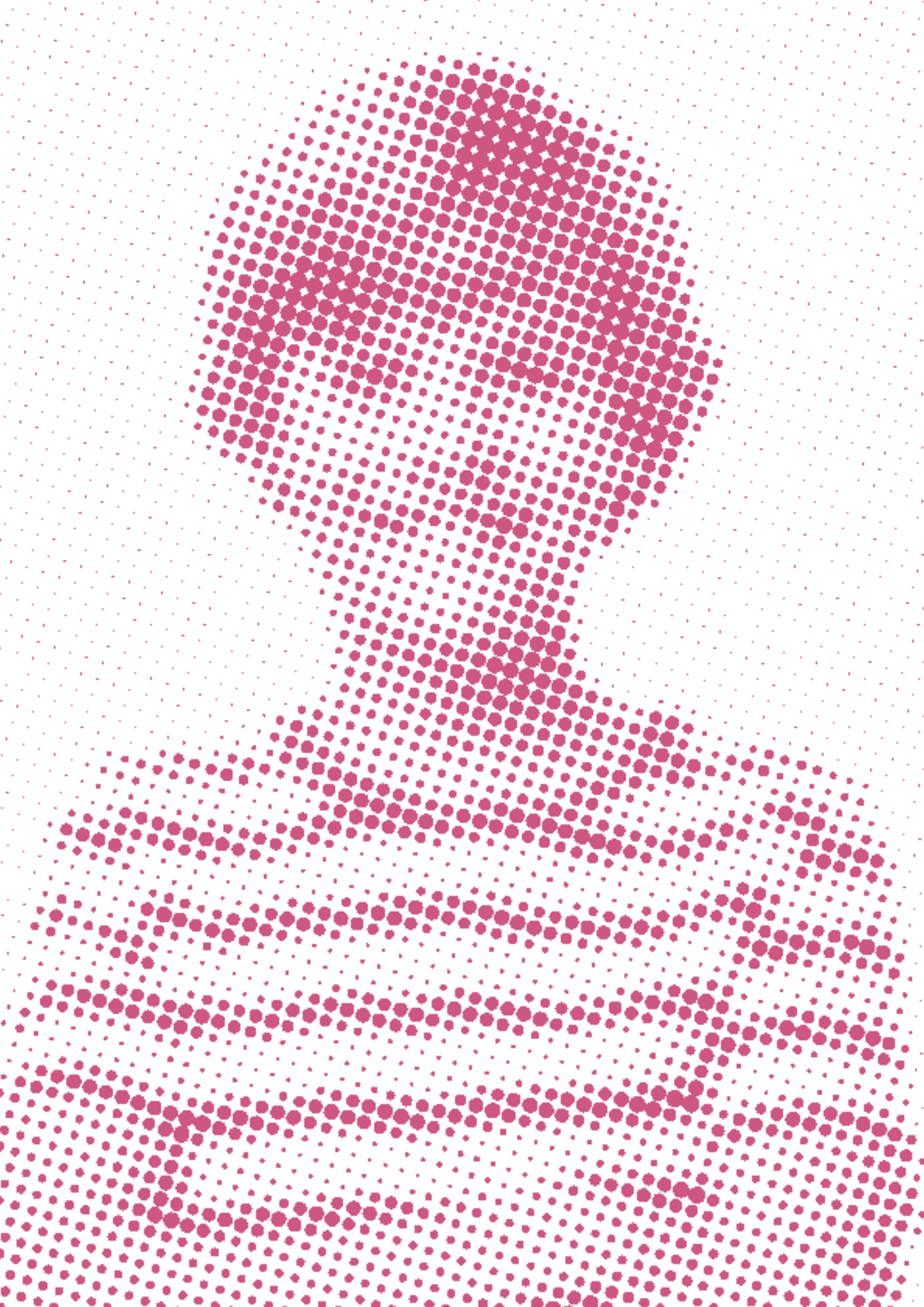
### UN Concluding Observations

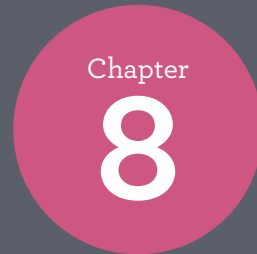
- Raise the minimum age of criminal responsibility in accordance with the Committee's General Comment n° 10<sup>300</sup>

The Scottish Government has given a welcome commitment to give consideration to raising the age of criminal responsibility from eight to 12 with a view to bringing legislative change within the lifetime of this Parliament (by 2016).<sup>301</sup> A number of children's organisations have raised their shared concern that this provision has not been included in the Criminal Justice (Scotland) Bill.<sup>302</sup> Labelling children as criminals from such an early age can have extremely negative consequences. Children's organisations are clear that these children and their families need support and help to address the causes of their challenging behaviour in order to prevent any further offending. Such an approach will bring more benefits in the longer-term for both the individual child and wider society, as advocated by Kilbrandon in the founding principles to address both "needs and deeds" in the Children's Hearings system. Children themselves believe that the most effective youth justice interventions are those that take into account the economic and social contexts in which the crime takes place.<sup>303</sup>

### Recommendation

- The Scottish Government should raise the age of criminal responsibility in line with the UN Committee General Comment No. 10. (as per Together's State of Children's Rights report 2012)





# Summary of Recommendations

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## Summary of recommendations

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### Recommendations relating to the *Children and Young People (Scotland) Bill*:

A number of recommendations referred to in this report are directed at the *Children and Young People (Scotland) Bill* that is currently progressing through Parliament. Together and its members have highlighted these recommendations to the Education and Culture Committee during the Stage 1 consideration of the Bill and will continue its efforts as the Bill continues through its parliamentary passage.

The *Children and Young People (Scotland) Bill* should:

- Incorporate the general principles of the UNCRC (Non-discrimination, Protection, Development & Participation).
  - Include a stronger, meaningful duty on Ministers, extended to public bodies, to implement the UNCRC.
  - Include a duty on Ministers to prepare, publish and report on an implementation scheme.
  - Include a duty on Ministers to undertake child rights impact assessments (CRIA) on the face of the Bill.
  - Develop the SHANARRI indicators to encompass all children's rights and accordingly refer to them as 'children's rights and well-being indicators'.
  - Be accompanied by statutory guidance supporting the reporting duties on Ministers and public bodies containing a clear set of indicators within a robust right-based monitoring framework.
- 
- Any information-sharing provision within the *Children and Young People (Scotland) Bill* must be underpinned by the best interests of the child and be robustly impact assessed. The provision must be accompanied by clear, robust guidance to support professionals in sharing information and widespread training and support.
  - The *Children and Young People (Scotland) Bill* must take forward the recommendations put forward by Barnardo's Scotland, Who Cares? Scotland and the Aberlour Childcare Trust to strengthen its provisions for looked after children.
  - The Scottish Government should take forward the recommendations made by a number of children's organisations in the paper '*Putting the Baby in with the Bath Water*' to prevent health inequalities that begin in the early years. These recommendations should be taken forward through the *Children and Young People (Scotland) Bill* and other legislative and policy measures.
  - The Scottish Government should consider whether and how guardianship principles and services may be enshrined in legislation, including, potentially, in the *Children and Young People Bill*.

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## General measures of implementation

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### Measures taken to harmonise national law and policy with the provisions of the UNCRC

- The Scottish Government should set out a roadmap towards the full incorporation of the UNCRC into Scots law.

The *Children and Young People (Scotland) Bill* should:

- Incorporate the general principles of the UNCRC (Non-discrimination, Protection, Development & Participation).
- Include a stronger, meaningful duty on Ministers, extended to public bodies, to implement the UNCRC.
- Include an implementation scheme on the face of the Bill.
- Include a duty on Ministers to undertake child rights impact assessments (CRIA) on the face of the Bill.
- Develop the SHANARRI indicators to encompass all children's rights and accordingly refer to them as 'children's rights and well-being indicators'.
- Be accompanied by statutory guidance supporting the reporting duties on Ministers and public bodies containing a clear set of indicators within a robust right-based monitoring framework.

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### Training on children's rights and the UNCRC

- The Scottish Government should take steps to promote the Common Core more widely through GIRFEC guidance, Early Years Collaborative and by integrating it into the recruitment and training of all those working with and for children.

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### Means of redress for children's rights violations

- The Scottish Government should urge the UK Government to ratify the Optional Protocol with immediate effect (as recommended in Together's 2012 State of Children's Rights report)

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## General principles

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### Participation

- The recommendations from the Equal Opportunities Committee report 'Where Gypsy/Travellers Live' and from LGBT Youth Scotland's education report 'Life in Scotland for LGBT Young People' should be taken forward with immediate effect.



## Best interests and the right to life, survival and development

The Scottish Government should:

- ensure that all children's rights are fully embedded across GIRFEC.
- assess the impact of GIRFEC to ensuring the best interests principle is at the heart of practice in work with all children from all backgrounds living in all local authority areas. (repeated from Together's 2011 and 2012 State of Children's Rights reports).

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## Participation

- The Scottish Government should use appropriate methods of communication and a realistic timeframe to engage with all children, including those from marginalised groups. All consultations on matters that affect children should be made available in child-friendly, easy read formats with sufficient time allowed to ensure they understand the concepts in the consultation (as recommended in Together's 2012 State of Children's Rights report).

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## Civil rights and freedoms

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### Right to privacy

- Any information-sharing provision within the Children and Young People (Scotland) Bill must be underpinned by the best interests of the child and be robustly impact assessed. The provision must be accompanied by clear, robust guidance to support professionals in sharing information and widespread training and support.

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### Equal protection from violence

- The Scottish Government should give children equal protection from assault in law (as recommended in Together's 2012 State of Children's Rights report).

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## Family environment and alternative care

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### Looked after and accommodated children

- The *Children and Young People (Scotland) Bill* must take forward the recommendations put forward by Barnardo's Scotland, Who Cares? Scotland and the Aberlour Childcare Trust to strengthen its provisions for looked after children.

## Domestic abuse

- The Scottish Government should ensure that tackling domestic abuse remains high on the policy and funding agenda. Priorities of the three-year National Domestic Abuse Delivery Plan for Children and Young People should be embedded into the core work of the Scottish Government, with adequate funding and resources provided to ensure its continued success.

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## Young carers

- The Scottish Government should ensure that the rights of young carers are recognised on the policy agenda and that they receive timely and appropriate support across all local authorities.

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## Children of prisoners

- Child & Family Impact Assessments should be conducted and acted upon throughout the criminal justice process, starting with arrest and continuing through the release of a prisoner (including impact assessments for non-custodial penalties) (as recommended in Together's 2012 State of Children's Rights report).
- The Criminal Justice (Scotland) Bill should include a provision to ensure that the best interests of the child is taken into consideration when holding, arresting, interviewing or charging a parent.

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# Basic health and welfare

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## Children with disabilities

The Scottish Government should:

- complement the Common Core with the recommendations made in Enable's 'Bridging the Training Gap' to include mandatory training on basic behaviour management strategies, autism/learning disability awareness and communications strategies for all staff involved in a child's education (as recommended in Together's 2012 State of Children's Rights report)
- ensure the Disability Champions are involved in considering policy on a systematic and considered basis and their work is supplemented by the use of Child Rights Impact Assessments.
- take forward the recommendations from '*developing an outcomes Model for Disabled Children in Scotland*' with immediate effect.

## Health inequalities

- The Scottish Government should take forward the recommendations made by a number of children's organisations in the paper *'Putting the Baby in with the Bath Water'* to prevent health inequalities that begin in the early years. These recommendations should be taken forward through the Children and Young People (Scotland) Bill and other legislative and policy measures.

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## Tackling child poverty

- The Scottish Government should produce an implementation plan for the revised 2014 Child Poverty Strategy that includes actions, targets, timescales, and robust monitoring, evaluation and reporting processes to assess the extent of success in improving the standard of living for children in poverty (as recommended in Together's 2011 and 2012 State of Children's Rights reports).

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## Education, leisure and cultural activities

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### Transitions

- The Scottish Transitions Forum's 'Big 9' solutions to transitions should be taken forward by various stakeholders with immediate effect.

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### Bullying

- The Scottish Government should continue to commit resources to raise awareness among professionals and children of the nature and impact of cyberbullying (as recommended in Together's 2012 State of Children's Rights report).

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### Recreation, play and cultural activities

Scottish Government and CoSLA should:

- enable the play sector to thrive and develop through longer funding commitments and increased availability across all areas of Scotland (as recommended in Together's 2012 State of Children's Rights report)
- introduce a statutory duty for Article 31 of the UNCRC (the right to recreation, play and cultural activities) that ensures all local authorities have an implementation strategy in place (as recommended in Together's 2012 State of Children's Rights report)
- resource the Play Action Plan sufficiently to ensure effective implementation
- ensure positive action is taken to ensure that disabled children are able to exercise their rights under article 31, taking the UN General Comment no. 17 fully into account.

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## Special protection measures

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### Refugee and asylum seeking children

The Scottish Government should:

- consider whether and how guardianship principles and services may be enshrined in legislation, including, potentially, in the *Children and Young People (Scotland) Bill*.
- encourage all relevant statutory partners to proactively engage with the SGS including through working with it through cases.

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### Child victims of trafficking

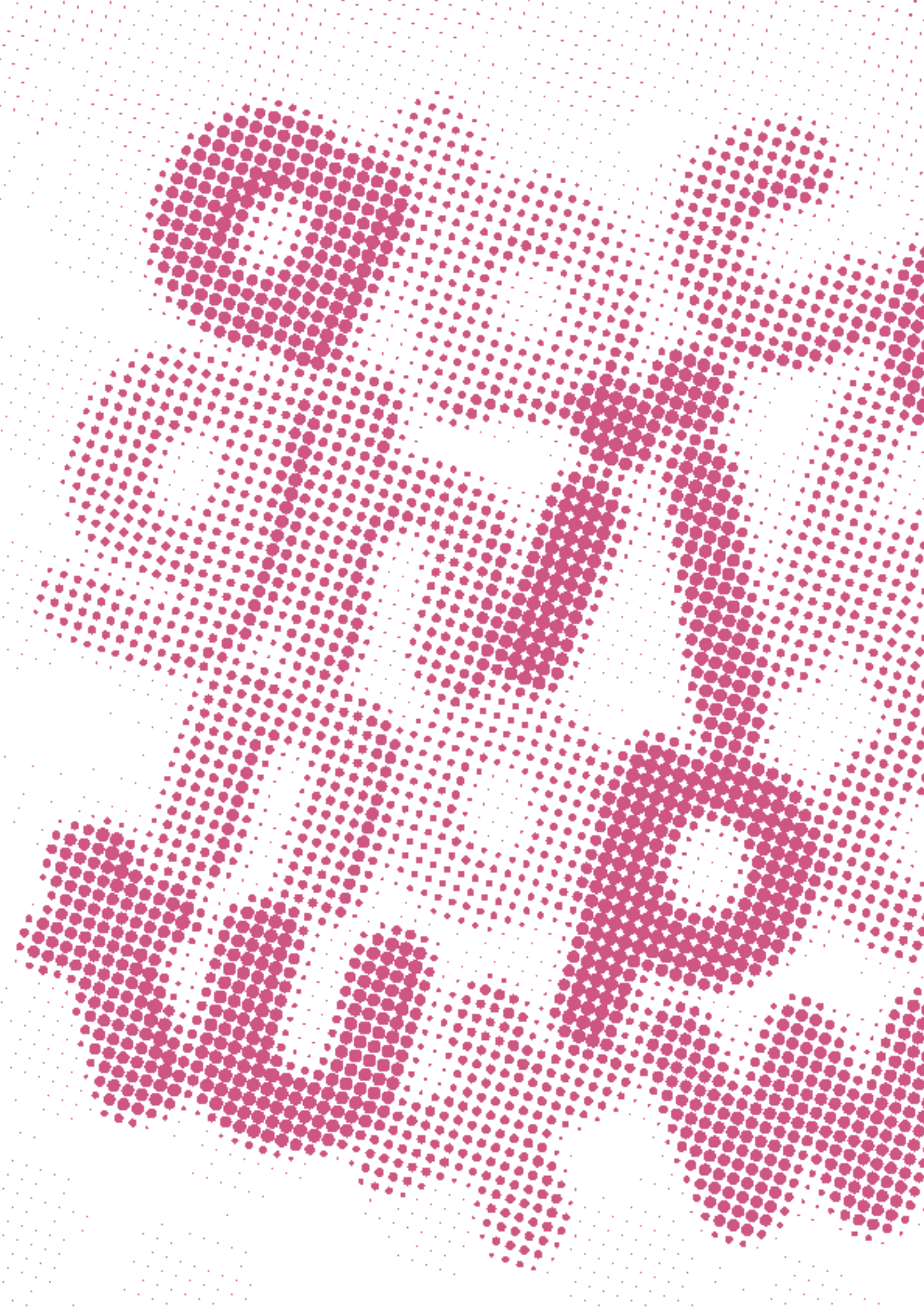
The Scottish Government should:

- ensure it meets all its commitments on child trafficking, arising from the on-going Summit process, and publicly reports on these in April 2014.
- ensure any new legislation on human trafficking includes, in Scots law, statutory assistance for trafficking survivors and statutory protection against unjust criminalisation.
- develop guidance on the non-criminalisation of survivors of trafficking in partnership with other relevant agencies, (especially criminal justice and the judiciary).

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### Age of criminal responsibility

- The Scottish Government should raise the age of criminal responsibility in line with the UN Committee General Comment No. 10. (as recommended in Together's 2012 State of Children's Rights report).





Chapter  
**1-4**

# Appendices

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## Appendix 1: UN Concluding Observations 2008

The following list contains the *Concluding Observations* from the UN Committee on the Rights of the Child in 2008 relating to the areas identified by Together members and supporters as areas of priority. Questions in the online *State of Children's Rights* survey were related to each *Concluding Observation* listed. Children's organisations were asked to only respond to those *Concluding Observations* that are of direct relevance to their area of expertise. The *State of Children's Rights* report 2013 is based on their responses. Only *Concluding Observations* referred to in this report are included in this appendix. For the full list of *Concluding Observations* for the UK, please visit <http://www.togetherscotland.org.uk/about-childrens-rights/un-convention-on-the-rights-of-the-child/>

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### General measures of implementation

#### UN Concluding Observations 11 and 12 – Incorporation of the UNCRC into UK and Scots law

- The Committee remains concerned that the principles of the Convention are not duly taken into account in all pieces of legislation throughout the country and that the State party has not incorporated the Convention into domestic law nor has ensured the compliance of all legislation affecting children with it. The Committee recommends that the State party continue to take measures to bring its legislation in line with the Convention.

#### UN Concluding Observation 21 – Training of professionals

- Reinforce adequate and systematic training of all professional groups working for and with children, in particular law enforcement officials, immigration officials, media, teachers, health personnel, social workers and personnel of child-care institutions.

#### UN Concluding Observations 13, 15, 19 – Monitoring and reporting on UNCRC implementation

- The Committee reiterates its previous recommendation that the State party ensure effective coordination of the implementation of the Convention throughout the State party, including locally, especially where local authorities have significant powers to determine their priorities and allocate budgets.
- Adopt a comprehensive plan of action for the implementation of the Convention in cooperation with public and private sectors. Ensure adequate budget allocations and follow-up evaluation mechanisms for the full implementation of the plan to regularly assess progress achieved and potential deficiencies.
- Child Rights Impact Assessments should be regularly conducted to evaluate how the allocation of budget is proportionate to the realisation of policy developments and the implementation of legislation.

#### UN Concluding Observations 17 – Means of redress for children's rights violations

- Ensure that all established Commissioners be independent, in compliance with the Paris Principles and mandated to receive and investigate complaints from, or on behalf of, children concerning violations of their rights.

## UN Concluding Observation 20, 21 – Awareness of the UNCRC

- The Committee is concerned that there is no systematic awareness-raising about the Convention and that the level of knowledge about it among children, parents or professional working with children is low. Furthermore, the Committee regrets that the Convention is not part of the curriculum in school.

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## General Principles

### UN Concluding Observation 25 – Non-discrimination

- Ensure full protection against discrimination on any grounds, including... taking all necessary measures to ensure that cases of discrimination against children in all sectors of society are addressed effectively, including with disciplinary, administrative or – if necessary – penal sanctions... In accordance with article 27 of the Convention, Government should reintroduce a statutory duty for local authorities to provide safe and adequate sites for Travellers.

### UN Concluding Observations 26 and 27 – Best interests and the right to life, survival and development

- Take all appropriate measures to ensure that the principle of the best interests of the child, in accordance with article 3 of the Convention, is adequately integrated in all legislation and policies which have an impact on children, including in the area of criminal justice and immigration.
- Use all available resources to protect children's rights to life, including by reviewing the effectiveness of preventive measures.

### UN Concluding Observations 32 and 33 – Participation and respect for the views of the child

- Promote, facilitate and implement, in legislation as well as in practice, within the family, schools, and the community as well as in institutions and in administrative and judicial proceedings, the principle of respect for the views of the child.
- Continue to collaborate with civil society organizations to increase opportunities for children's meaningful participation, including in the media.

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## Civil rights and freedoms

### UN Concluding Observations 37 – Right to privacy

- Ensure in both legislation and practice that children are protected against unlawful or arbitrary interference with their privacy including by introducing stronger regulations for data protection.
- Intensify efforts, in cooperation with the media, to respect the privacy of children in the media, especially by avoiding messages publicly exposing them to shame, which is against the best interests of the child.
- Regulate children's participation in TV programmes, notably reality shows, as to ensure that they do not violate their rights.

## **UN Concluding Observation 42 – Equal protection from violence**

- Prohibit as a matter of priority all corporal punishment in the family, including through the repeal of all legal defences.
- Actively promote positive and non-violent forms of discipline and respect for children's equal right to human dignity and physical integrity, with a view to raising public awareness of children's right to protection from all corporal punishment and to decreasing public acceptance of its use in childrearing.
- Provide parental education and professional training in positive child-rearing.

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## **Family environment and alternative care**

### **UN Concluding Observation 45 – Looked after children**

- Avoid having children taken into alternative care as a result of low parental income.
- Monitor the status of children placed in kinship homes, foster care, pre-adoptive homes and other care institutions, inter alia through regular visitations.
- Assess why so many children with disabilities are in long-term institutional care and review their care and treatment in these settings.
- Facilitate the initiation of contact proceedings for all children separated from their parents and siblings, including those in long-term residential care.
- Take into account the Committee's recommendations issued at the day of general discussion on children without parental care, held on 16 September 2005.

### **UN Concluding Observation 51 – Domestic abuse**

- Establish mechanisms for monitoring the number of cases and the extent of violence, sexual abuse, neglect, maltreatment or exploitation, including within the family, in schools and in institutional or other care.
- Ensure that professionals working with children (including teachers, social workers, medical professionals, members of the police and the judiciary) receive training on their obligation to report and take appropriate action in suspected cases of domestic violence affecting children.
- Strengthen support for victims of violence, abuse, neglect and maltreatment in order to ensure that they are not victimized once again during legal proceedings.
- Provide access to adequate services for recovery, counselling and other forms of reintegration in all parts of the country.

### **UN Concluding Observation 45 – Children of prisoners**

- Ensure support to children with one or both parents in prison, in particular to maintain contact with the parent(s) (unless this is contrary to their best interests) and prevent their stigmatisation and discrimination).

### **UN Concluding Observation 51 – Ending Violence, Abuse and Neglect of Children**

- Establish mechanisms for monitoring the number of cases and the extent of violence, sexual abuse, neglect, maltreatment or exploitation, including within the family, in schools and in institutional or other environments.
- Ensure that professionals working with children (including teachers, social workers, medical professionals, members of the police and the judiciary) receive training on their obligations to report and take appropriate action in suspected cases of domestic violence affecting children.

- Strengthen support for victims of violence, abuse, neglect and maltreatment in order to ensure that they are not victimised once again during legal proceedings.
- Provide access to adequate services for recovery, counselling and other forms of reintegration in all parts of the country.

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## Basic health and welfare

### UN Concluding Observation 53 – Children with disabilities

- Take all necessary measures to ensure that legislation providing protection for persons with disabilities, as well as programmes and services for children with disabilities, are effectively implemented.
- Develop early identification programmes.
- Provide training for professional staff working with children with disabilities, such as medical, paramedical and related personnel, teachers and social workers.
- Develop a comprehensive national strategy for the inclusion of children with disability in the society.
- Undertake awareness-raising campaigns on the rights and special needs of children with disabilities, encourage their inclusion in society and prevent discrimination and institutionalization.

### UN Concluding Observation 55 – Health inequalities

- The Committee recommends that inequalities in access to health services be addressed through a co-ordinated approach across all government departments and greater coordination between health policies and those aimed at reducing income inequality and poverty.

### UN Concluding Observation 65 – Poverty

- Adopt and adequately implement the legislation aimed at achieving the target of ending child poverty by 2020, including by establishing measurable indicators for their achievement.
- Give priority in this legislation and in the follow-up actions to those children and their families in most need of support.
- When necessary, besides giving full support to parents or others responsible for the child, intensify its efforts to provide material assistance and support programmes for children, particularly with regard to nutrition, clothing and housing.

### UN Concluding Observation 57 – Mental health

- The Committee recommends that additional resources and improved capacities be employed to meet the needs of children with mental health problems throughout the country, with particular attention to those at greater risk, including children deprived of parental care, children affected by conflict, those living in poverty and those in conflict with the law.

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## Education, leisure and cultural activities

### UN Concluding Observation 67 – Schools

- Continue and strengthen its efforts to reduce the effects of the social background of children in their achievement in school.



- Invest considerable additional resources in order to ensure the right of all children to a truly inclusive education which ensures the full enjoyment to children from all disadvantaged, marginalized and school-distant groups.

### **UN Concluding Observation 67 – Exclusions**

- Use the disciplinary measure of permanent or temporary exclusion as a means of last resort only, reduce the number of exclusions and get social workers and educational psychologists in school in order to help children in conflict with school.
- Ensure that children who are able to express their views have the right to appeal against their exclusion as well as the right, in particular for those in alternative care, to appeal to special educational needs tribunals.

### **UN Concluding Observation 67 – Bullying**

- Intensify its efforts to tackle bullying and violence in schools.

### **UN Concluding Observation 67 – Recreation, leisure and cultural activities**

- Strengthen efforts to guarantee the right of the child to rest and leisure, to engage in play and recreational activities appropriate to the age of the child and to participate freely in cultural life and the arts. The State party should pay particular attention to provide children, including those with disabilities, with adequate and accessible playground spaces to exercise their play and leisure activities.

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## **Special protection measures**

### **UN Concluding Observation 71 – Refugee and asylum-seeking children**

- Ensure that the United Kingdom Border Agency (UKBA) appoints specially-trained staff to conduct screening interviews of children.
- Consider the appointment of guardians to unaccompanied asylum-seekers and migrant children.
- Provide disaggregated statistical data in its next report on the number of children seeking asylum, including those whose age is disputed.
- Give the benefit of the doubt in age-disputed cases of unaccompanied minors seeking asylum, and seek experts guidance on how to determine age.
- Ensure that when return of children occurs, this happens with adequate safeguards, including an independent assessment of the conditions upon return, including family environment.
- Consider amending section 2 of the 2004 Asylum and Immigration (Treatment of Claimants etc.) Act to allow for an absolute defence for unaccompanied children who enter the UK without valid immigration documents.

### **UN Concluding Observation 76 – Child trafficking**

- Provide the necessary resources for an effective implementation of the Anti-trafficking Action Plan. It also recommends that the State party ratify the Council of Europe Convention on Action against Trafficking in Human Beings and implement its obligations by ensuring that child protection standards for trafficked children meet international standards.

### **UN Concluding Observations 78 – Age of criminal responsibility**

- Raise the minimum age of criminal responsibility in accordance with the Committee's General Comment n° 10.

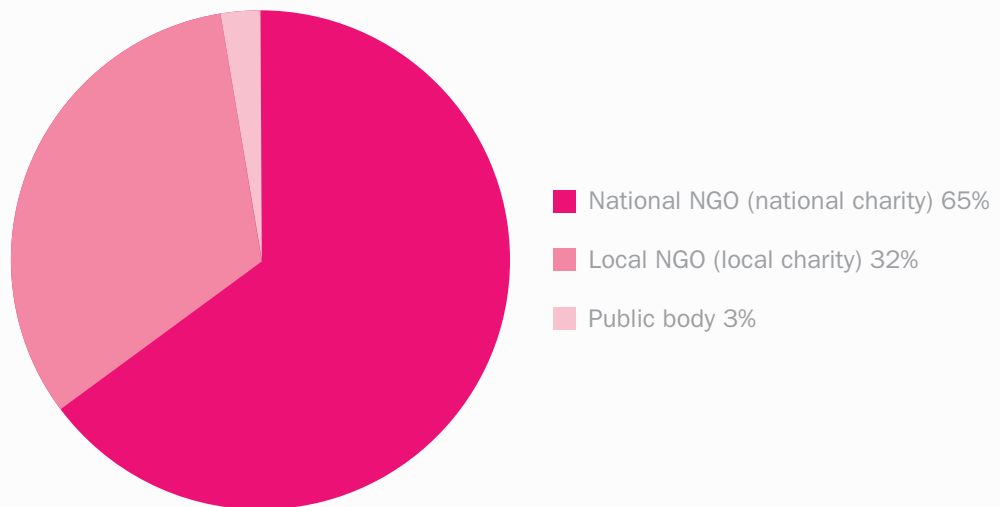
## Appendix 2: Summary of *Do the Right Thing* actions

*Do the Right Thing* is the Scottish Government's UNCRC action plan, published in September 2009 in response to the UN Committee's *Concluding Observations* of 2008. In May 2012, the Scottish Government published the *Do the Right Thing* progress report, outlining what progress had been made since September 2009 against each action. A summary of each action area is below. For more details on each action, refer to *Do the Right Thing* (<http://www.scotland.gov.uk/Publications/2009/08/27111754/25>) or the *Do the Right Thing* progress report (<http://www.scotland.gov.uk/Resource/0039/00392997.pdf>)

- Action 1** Ongoing monitoring of the UNCRC in Scotland and development of UK-wide work
- Action 2** Promoting children's rights in the Scottish Government
- Action 3** Promotion and awareness raising of UNCRC, including training of professionals who work with children
- Action 4** Tackling negative perceptions of children and young people
- Action 5** Gypsy and Traveller children and young people
- Action 6** Advocacy services for children and young people
- Action 7** Participation of children and young people in schools
- Action 8** Mosquito devices
- Action 9** Promote positive forms of parenting
- Action 10** Young carers
- Action 11** Improve outcomes for looked after children and young people
- Action 12** Children of prisoners
- Action 13** Private fostering
- Action 14** Children with disabilities
- Action 15** Improve outcomes for teen parents
- Action 16** Support the delivery of the *Curriculum for Excellence* education and wellbeing experiences and outcomes
- Action 17** Child poverty
- Action 18** Play
- Action 19** Better support for unaccompanied asylum seekers
- Action 20** Child trafficking and sexual exploitation
- Action 21** 16 and 17 year-olds in the youth justice system

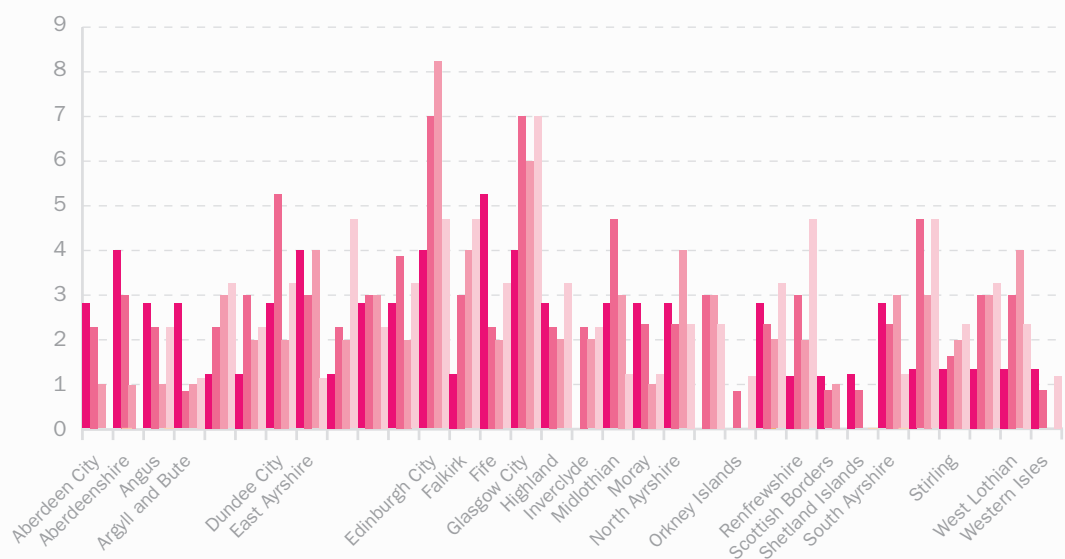
## Appendix 3: Contributing organisations

### Type of organisation



### Local Authority Area

2013 2012 2011 2010

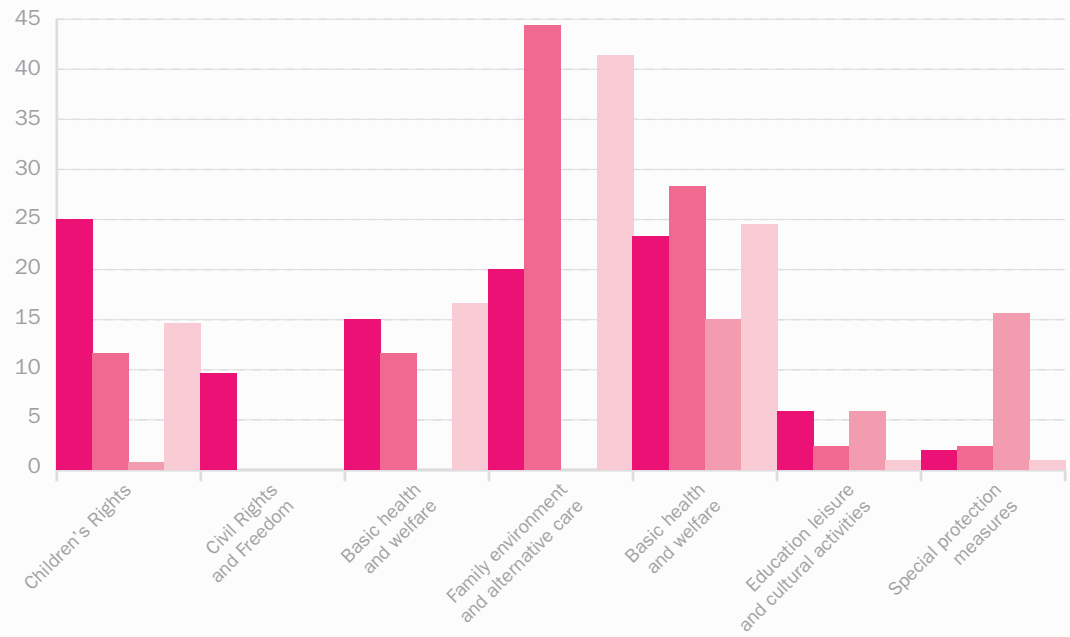


In addition, the following percentage of organisations stated that they worked in all local authority areas:

- 2013 – 29%
- 2012 – 10%
- 2011 – 21%
- 2010 – 20%

## Main Area of Activity

2013 2012 2011 2010



## Appendix 4: Credits

The *State of Children's Rights* report 2013 represents an overall consensus of opinion of NGOs within Together's membership. It does not necessarily represent in all respects or detail the views of every member of Together, nor every organisation that has contributed to this report. Views expressed separately by Together's members should also be taken into account. Thanks go to the following organisations for sharing their experiences to inform the preparation of this report:

### Contributing NGOs

Aberlour	Legal Services Agency
Action for Sick Children Scotland	LGBT Youth Scotland
Article 12 in Scotland	MACS
Barnardo's Scotland	National Deaf Children's Society
Befriending Networks	NSPCC – Scotland
Camphill School Aberdeen	Play Scotland
Capability Scotland	Quarriers
Carers Trust Scotland	respectme
CHILDREN 1ST	Save the Children
Children in Scotland	Scottish Association of Social Work
Children's Hospice Association Scotland	Scottish Out of School Care Network
Children's Parliament	Scottish Refugee Council
cl@n childlaw	Scottish Women's Aid
Coalition for Racial Equality and Rights	Scottish Youth Parliament
Dyslexia Ayrshire	Small'n' Tall, Moffat Childcare
Eighteen and Under	Starcatchers
ENABLE	The Gateway Levenmouth (Fife Gingerbread)
Families Outside	UNICEF UK
Includem	Who Cares? Scotland
IPA Scotland	YouthLink Scotland

### Other contributors

Children's Rights Service	Fife Council
Aberdeenshire Council	Radical Services
Aberdeen Council	Scottish Children's Reporter Administration

### Thanks

Together would particularly like to thank Ross Oke and Denys Salas who worked as interns in 2013 organising the *State of Children's Rights* consultation seminars and researching and preparing the *State of Children's Rights* report. Thanks also to all those who attended Together's *State of Children's Rights* seminars in Kirkcaldy, Edinburgh and Inverurie and provided valuable insight and feedback; to Scotland's Commissioner for Children and Young People for his ongoing assistance; and to the Scottish Government and Early Intervention Fund, who provides funding for Together's activities but did not exercise any editorial control in the preparation of this report.



‘Working to promote  
the full implementation  
of the UN Convention  
on the Rights of the  
Child in Scotland’  
November 2013



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