

Potential Impacts of a Universal Definition of 'Care Experience'

Children's Hearings Scotland (CHS) welcomes the opportunity to respond to this consultation. We fully support the ambitions of this consultation to keep The Promise and make sure that children and young people with care experience are given the support, nurture and resources that they need. The development of a universal definition of 'care experience' and the appropriate use of language around care and what this means to those with care experience, can lead to better outcomes for children and young people. In order to achieve better outcomes, it is crucial that those with care experience are directly involved in this process and careful consideration is given to the development, application and implementation of any such a definition.

Children's Hearings Scotland: Our Role

A children's hearing is a legal tribunal comprised of trained Panel Members who make decisions as to whether compulsory measures of supervision are required for children in need of care and protection, or whose behaviour puts themselves, or others, at risk of harm. Panel Members are trained to take a rights-based approach to making these decisions, with the welfare of the child being the paramount consideration.

CHS was established in July 2011 as a public body to support the National Convener to deliver their statutory functions. These functions include the recruitment, training, and ongoing support to tribunal Panel Members. Maintaining the independence of CHS and the National Convener is an essential statutory requirement. A Board of non-executive members, accountable to Scottish Ministers and the Scottish Parliament, governs CHS. Our vision is of a Children's Hearings System where everyone works together, making sure that all children are cared for and protected, that their rights are upheld and their views are heard, respected and valued. Our mission is to improve outcomes for children by enabling Panel Members to make high quality decisions with them and the people that matter most to them.

Q1. Do you agree or disagree that there is a need for a universal definition to describe 'care experience'?

- a) Agree strongly
- b) Agree
- c) Neither agree nor disagree
- d) Disagree
- e) Disagree strongly

Q2. What are your views on the potential advantages of developing a universal definition of 'care experience'?

Children's Hearings Scotland is broadly supportive of the development of a universal definition of 'care experience.' This is a term which has different meanings to different people and creates a degree of confusion in practice, for example, the misconception that this term is limited to someone who has been in residential care. 'Care experienced' can and should encompass a significantly greater range of infants, children, young people and adults that have lived experience of the care system. Whilst we support the development of a universal definition, we also recognise that some people may choose not to identify with the term, in relation to a means of identity or in relation to the circumstances in which they find themselves. This could be because of stigma or perceived attitudes surrounding the term 'care experience,' therefore careful consideration is required of how to ensure that entitlement to support or services later in life is not limited to only those who openly identify with the term.

A universal definition would allow for a greater understanding of what care means to different people within Scotland. This would hopefully go some way to remove the stigma which exist in relation to what it means to be in care or to be 'care experienced.' A universal definition which is widely understood and carefully considered in its formulation would be in line with the views identified in The Promise. It is crucial however that any such definition is carefully considered in its formulation so that it is widely understood and sufficiently broad. This will ensure that it is compliant with children's rights in respect of UNCRC and in order to be trauma informed. As set out in [The Promise \(page 10\)](#), *"The Care Review believes in an expansive and holistic understanding of 'care experience' that includes all the various settings and experiences of care. Within this there must be an understanding of how the role of the state in individuals'*

upbringing relates to ongoing rights and entitlements. The experience of being cared for must not be stigmatising. The Care Review supports a broad and diverse understanding of care experience, to ensure a collective recognition that care represents a part of all Scotland's communities." If a universal definition of care experience is widely used, then this should bring greater clarity in terms of the pathways and support within the care system.

At present, in the absence of a universal definition, the test for eligibility for different supports and entitlements for infants, children and young people who are in care or have experienced care, are different depending on the respective organisation or the legislation and guidance that is being considered. The examples of the supports included within the Scottish Government consultation document are administered by different organisations and each have different eligibility criteria. If a universal definition of 'care experience' was used to determine eligibility to supports and entitlements, this would allow for a collective understanding of who will qualify for rights and entitlements and will promote rights and entitlements being accessed more consistently.

Currently because of such inconsistency in terms of eligibility and access to support services, this can lead to inconsistent practice and provision for children and young people in different areas of Scotland. By developing a universal definition, universal practice and pathways through support services should become easier to navigate and ensure universal access to all supports available. The overall goal and is that those with care experience should benefit from improved and consistent access to services in Scotland.

At present children who are granted permanence to stay with family members often experience reducing levels of support post-permanence when the local authority is no longer directly involved with the infant, child or young person. A definition which is wide enough to include people in this situation is essential to ensure a full support package is available to all those entitled to it.

A universal definition would also allow for more accurate and meaningful data to be recorded which could assist with securing adequate future funding for services. It is crucial that any universal definition is developed with people with care experience, through a collaborative and well-resourced co-production process.

Q3. What are your views on the potential disadvantages of developing a universal definition of 'care experience'?

Some children and young people may continue to feel that they do not wish to use the term 'care experience' as they view it is marginalising and stigmatising. The creation of a universal definition could have a labelling impact on the identity of children and young people, and from a human rights perspective, lead to children and young people feeling their choice is being removed with regards the language they wish to use to describe their life experiences. Access to support and services should not be dependent upon someone identifying with a prescribed definition. It should be universally available to everyone that has lived experience of the care system, not just those who choose to disclose that they meet a new definition of 'care experience' as they continue through life.

We also believe that a universal definition can only have a positive impact for children and young people if it is applied consistently, and that there are appropriate routes to recourse available to ensure those who are not fulfilling their obligations to children and young people are held accountable.

There would be a significant practice and policy requirement to retrospectively clarify and detangle an array of policy, procedures and practice resources that are used to determine care experience. This would need to be very carefully navigated to ensure that eligibility for provision and support was not impacted adversely. This would need to be complemented by a thorough review of current practices ranging from care leavers bursaries, pathways supports and other related entitlements. Additionally, a comprehensive training programme would need to be rolled out to ensure that this was understood by all those with care experience or supporting people with care experience. This would likely be a very significant and resource intensive undertaking that would require robust planning and resourcing.

A 'care leaver' is a young person who ceased to be 'looked after' on, or at any time after, their sixteenth birthday. In legislation, this is outlined in Guidance on Part 10 (Aftercare) of the 2014 Act, as defined above, and also reflected in section 29 of the 1995 Act on aftercare.

Q4. Do you have any views on the definition of 'Care Leaver' as set out above?

Care experienced young people often face disproportionate levels of adversity and poverty when transitioning to adult life and often find themselves structurally disadvantaged. Therefore, the impact of experiencing care as a child or young person can be lifelong. Corporate parenting responsibilities placed upon local authorities should be a lifetime commitment. Support should only ever be reduced when the support is no longer required, based solely on the individual needs of the person. With this in mind, we question whether anyone should be considered a 'care leaver' when their entitlement to support should continue indefinitely. The current cut-off date for pathways entitlement of 26 does not reflect the individual needs of the person with care-experience.

We believe that full consideration should be given to removing the need for a term of this nature because the need to be cared does not diminish as young people leave the formal care system as the term 'care leaver' implies. By ensuring that a broad-spectrum definition of 'care experience' is embraced, consistently applied and implemented, there should be no need to differentiate children, young people or adults on the basis of when a structured care package was no longer necessary.

Section 17(6) of the Children (Scotland) Act 1995 ("the 1995 Act") sets out that certain references in that Act to a child who is "looked after" by a local authority, refer to a child:

- for whom they are providing accommodation under section 25 of the Act;
- who is subject to a compulsory supervision order or an interim compulsory supervision order and in respect of whom they are the implementation authority (within the meaning of the Children's Hearings (Scotland) Act 2011, "the 2011 Act");
- who is subject to an order in accordance with which, by virtue of regulations made under section 33(1) of the Act or section 190 of the 2011 Act (effect of orders made outwith Scotland), they have responsibilities as respects the child, or;
- in respect of whom a permanence order has, on an application by them under section 80 of the Adoption and Children (Scotland) Act

[2007](#), been made and has not ceased to have effect. [Section 24 of the Children \(Care and Justice\) \(Scotland\) Act 2024](#) also inserted a new section [17A into the 1995 Act](#), with the effect that children detained in secure accommodation under certain criminal justice provisions are treated as “looked after” children.

There are many different reasons as to why children and young people may come into contact with the care system, but they will all require support that recognises their experiences, and to help them to thrive into the future.

The term ‘looked after at home’ is used where a child is looked after at home, there is a supervision requirement in place and support is being given to the child and their family by the local authority, rather than separating the child from their family. ‘Looked after away from home’ is a term that describes where a child is being cared for away from their family home in one of the care settings described later in this paper. Our ‘looked after children’ policy is part of [Getting It Right For Every Child \(GIRFEC\)](#). GIRFEC is the Scottish Government’s national approach to improving outcomes and supporting the wellbeing of children and young people. It is our commitment to provide all our children and their families with the right support at the right time, so that every child and young person in Scotland can reach their full potential.

Q5. Do you have any views on the statutory definition of ‘Looked After’ as set out above?

Young people have told us that the term ‘looked after’ can be disempowering as it strips the young person of their agency and can overlook that everybody is looked after to a greater or lesser degree.

Many young people view the term ‘looked after’ as stigmatising. Alongside the findings of [The Promise](#), evidence from [Our Hearings, Our Voice](#) around language used in the current care system strongly speaks to a dislike of this term ([Stigmatising Labels - OHOV Feedback Project](#)).

We believe that full consideration should be given to removing the need for a term of this nature in our care system going forward. By ensuring that a broad-spectrum definition of 'care experience' is embraced, consistently applied and implemented, there should be no need to differentiate children and young people by the means in which they are being looked after.

Potential Scope of a Universal Definition of 'Care Experience'

Q6. What experience of care would you expect to be covered by any definition of "care experience"?

- Looked After at Home
- Kinship Care (looked after children who have been placed with kinship carers by the local authority)
- Kinship Care (non-looked after children who live with a kinship carer, these children may be subject to an order under [section 11 of the Children \(Scotland\) Act 1995](#) or may be living in a completely private arrangement with extended family, with no local authority involvement)
- Foster Care
- Residential Care
- Residential Special School
- Supported Accommodation
- Secure Care
- Adoption
- Other – please provide details

We believe all of above experiences should be included as part of any definition of care experience.

Q7. Do you have any other comments about a proposed universal definition of 'care experience'?

For a universal definition to lead to positive change, it must be clear and sufficiently broad in order to capture the various situations which children and young people may experience during their childhood.

Consideration of this issue brings with it an ideal opportunity for the language in our care system to be streamlined, removing the need for differentiation between how and when care was provided. Anyone who has experienced care during their childhood should be afforded continuing support, whether they identify with a specific terminology or not. It should be up to the person to decide whether or not to identify as care experienced.

Q8. Do you have any comments on the existing language of care?

Language can have a powerful effect but can also leave someone feeling labelled and stigmatised and create barriers to understanding. All language used within the care system should make children and young people feel empowered, included and at the centre of their own life.

Language and terminology should not be solely based upon the chronological age of a child or young person - an 'age and stage' approach must be taken which reflects their wellbeing and emotional development, vulnerabilities and other contextual factors.

Q9. Do you have any suggestions on potential ways to change and improve the language of care?

The language of care needs to be child-centred, and trauma-informed. At Children's Hearings Scotland, we believe a hearing must be a space where all children and young people feel supported to participate effectively and should never feel labelled, discriminated or marginalised. A hearing should be an inquisitorial space where children's rights are promoted and protected, and all forms of language and communication should be carefully considered and tailored to the needs and rights of each person.

We fully endorse the 'Principles of Language' established by Language Leaders, a collaborative group of young adults with lived experience and professionals from across the hearings system – a group which Children's Hearings Scotland has participated in since November 2022 ([Language Leaders - Children's Hearings Improvement Partnership](#)).

The 'Principles of Language' are as follows;

- 1) Personalised - Words will be personalised to meet the individual needs of the child, including taking account of the child's own wishes and use of language.
- 2) Involved - All language used will be clear, easy to understand and will support children to be involved in decision making.
- 3) Balanced - Reports, letters and discussions will reflect the strengths and positives in children's lives, ensuring they are balanced against any challenges and risks.
- 4) Non-stigmatising - Only language which is non-stigmatising and protects children from blame or distress will be used.

All language in the care system should be measured against these principles and adapted where appropriate if Scotland is to deliver on its promise to children and young people by 2030.

Q10. Are you aware of good practice to change and improve the language of care?

- Language Leaders project – see response to [question 9](#) above.
- CHS language guide which was launched May 2024 and forms an integral part of best practice guidance to our staff and volunteers alike ([Language in the Hearing Room](#)).
- [Articulate Animation](#) (co-written, designed and voiced by OHOV as joint initiative with CHS and SCRA). This animation brings to life the language principles championed by Language Leaders and is intended to be a

learning tool those involved in children's hearings to improve the way they approach the matter of language.

- [Each and Every Child](#), in collaboration with [FrameWorks UK](#), have developed eight ways we can talk about care experience and the care system that counter stigma and discrimination towards people with experience of care ([Each and Every Child toolkit](#)).