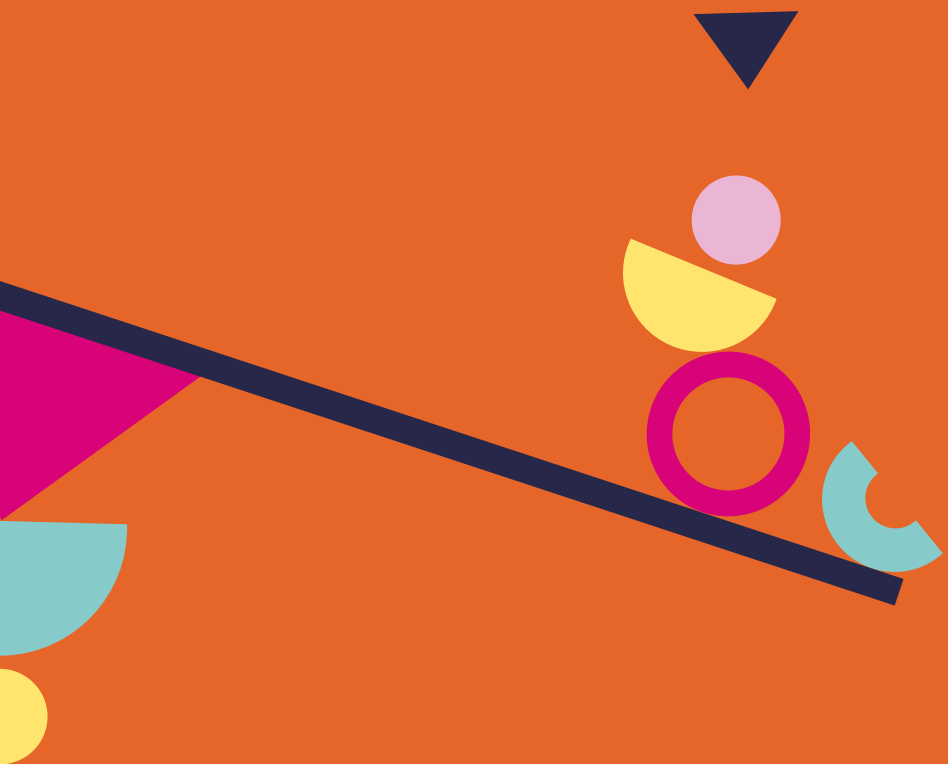


the rules



The Care Review was driven by those who have experience of the 'care system'. The 'care system' is a complex, fragmented, multi-purpose and multifaceted entity which does not lend itself to easy definition.

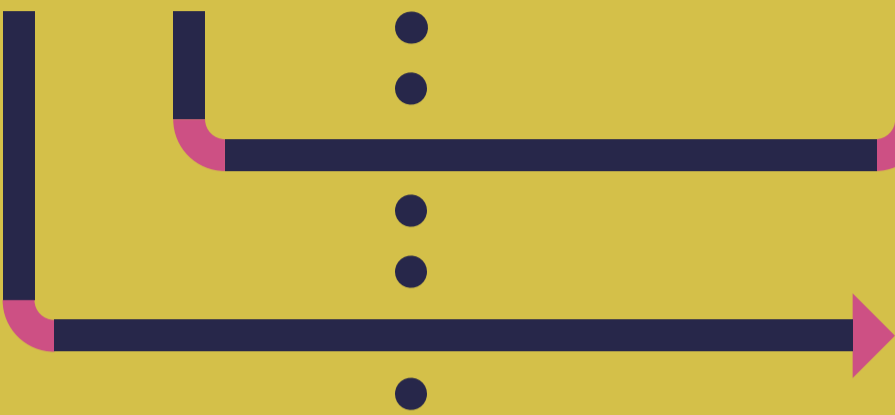
Its roots and branches are underpinned by 44 pieces of legislation, 19 pieces of secondary legislation and three international conventions and straddle six out of nine Scottish policy areas.

This is not a 'care system'.

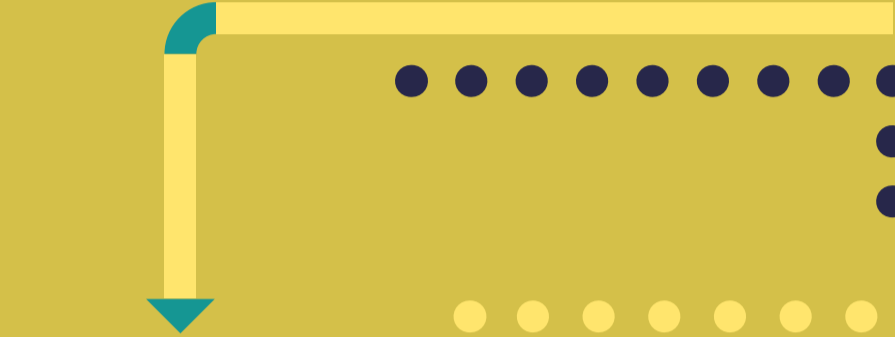
It is a labyrinth of legislation, policy and practice reflective of how rules and systems have evolved over decades, often in response to changes the system requires. It does not reflect the needs of Scotland's children or their journeys into adulthood.



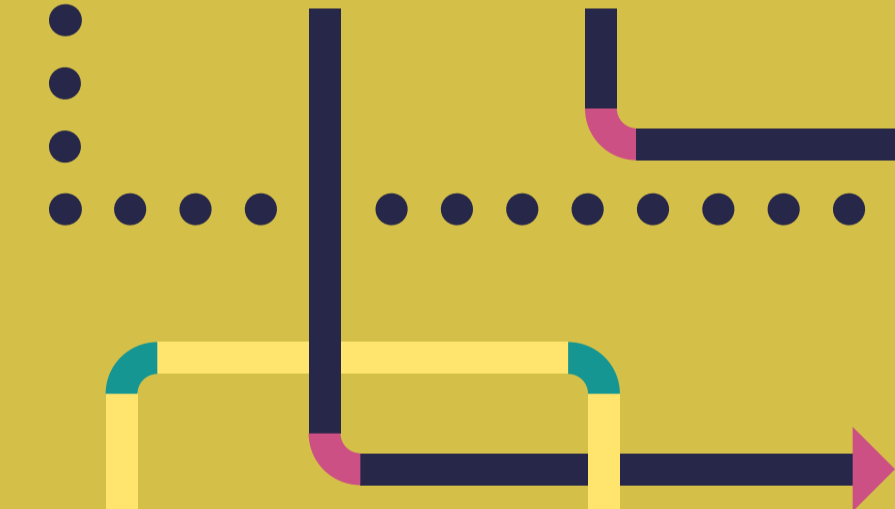
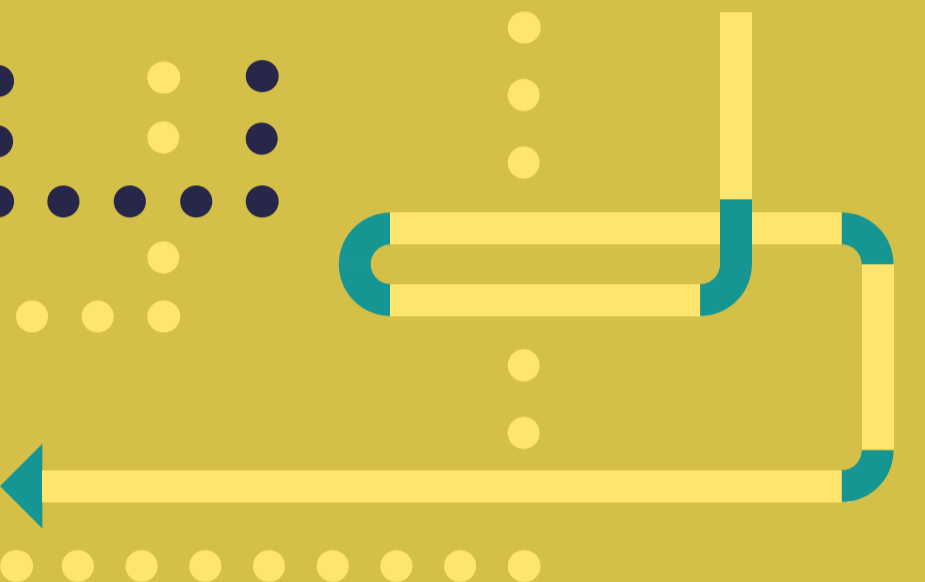
Between February 2017 and February 2020, the Care Review heard over 5,500 experiences. Over half were from care experienced children and adults, with the rest from families who have navigated the 'care system' and the paid and unpaid workforce.



It was their experience that the 'care system' has a huge amount of rules and gate-keepers who use the language relevant to their parts of the 'system'. It was their experience that this often felt very confusing and stigmatising.



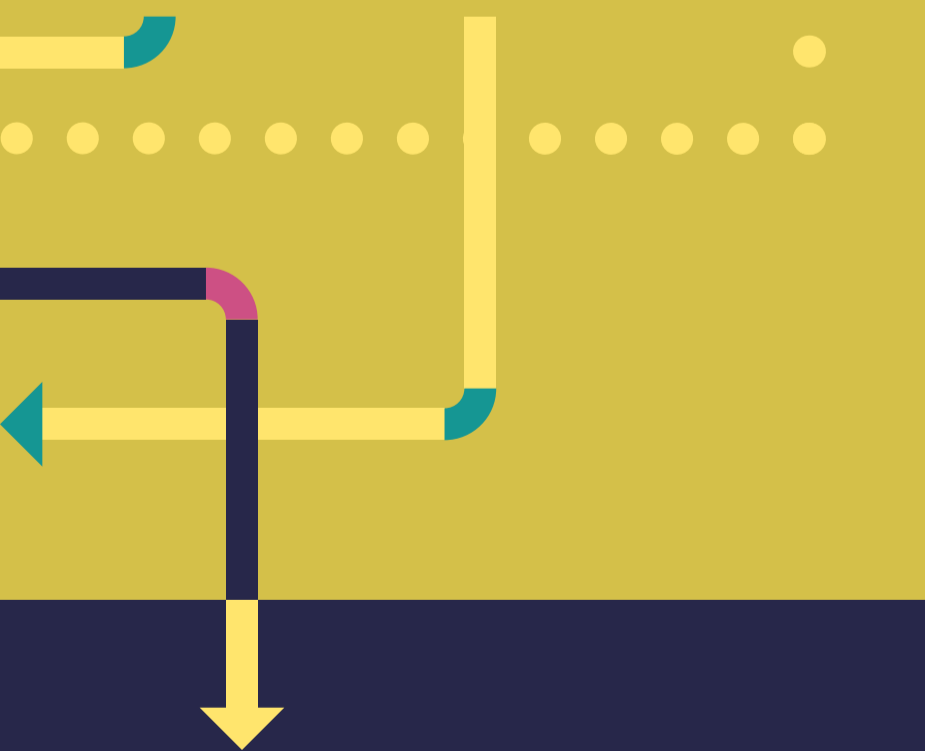
They had witnessed a variety of customs and practice, which were often unfamiliar and sometimes hostile and adversarial. Their experiences were that the 'care system' often took place in formal and intimidating settings that were upsetting and distressing.



The 'care system' they spoke of is a bureaucratic cluster of silos which are unable to operate cohesively and often do not communicate consistently or effectively. It is a 'system' which is often unable to take a holistic lens and can end up focusing on targets rather than needs.



This results in disconnects into which children, adults and families can fall. Delivering services and providing support can be time consuming and expensive but the human costs that arise as a result of not getting it right are higher.



Childhoods can get lost.

The Care Review has identified areas where there are gaps in the rules, increasing the potential for unintended consequences of well-intentioned action and prioritising the needs of the system.

In March 2019, Scotland's Minister for Children and Young People announced plans to strengthen the law to keep brothers and sisters together in care when it is in their best interests. This is important to children and adults who told the Care Review they had been separated from their brothers and sisters.

Harris' Story

- Harris was adopted when he was 6. When he was young, he lived with his parents and younger sister.
- He stayed with his sister when they were first taken into care but when he was adopted that changed.
- He wishes he could see more of his sister now. He misses her.
- Harris' adoptive family are trying to help but no one seems to be able to tell him when he'll be able to see his sister regularly. He knows his sister feels the same way and that she tells her carers and social worker this but it doesn't seem to make any difference. He wishes they could do the fun stuff they used to enjoy again but there always seems to be a reason why not.
- Harris was recently introduced to someone called an advocate. He's not really sure what an advocate does but she was really friendly. He hopes she'll be able to get people to listen to him and understand what he wants.

To ensure all children in care and their families can access their entitlements, a clear set of well communicated Rules which are easy to understand is important. Scotland must aspire to Getting It Right For Every Child but it must also make sure that there is ready access to legal advice and representation when aspects of the 'care system' go wrong.

Children and families must be aware of their rights and know where to turn for legal advice and representation if required.

The rules are complex and often contradictory, straddling:

- The Universal Declaration of Human Rights and the Convention on the Rights of the Child (UNCRC) which Scotland has committed to incorporating
- Children (Scotland) Act 1995
- The Human Rights Act 1998
- Adoption and Children (Scotland) Act 2007
- The Guidance on Looked After Children (Scotland) Regulations 2009
- Looked After Children (Scotland) Regulations 2009
- Children's Hearings (Scotland) Act 2011
- Children and Young People (Scotland) Act 2014

There are delays between well intended changes to legislation and their implementation, which result in delays in children and their families receiving help and support. This has a significant impact on lives as promised change sometimes never comes, or is too late when it does. For children like Harris, this can mean they lose relationships.

The Care Review heard experiences from across Scotland where rules were not upheld or were used as a reason to withhold benefits and entitlements. When this is challenged, the explanations given are many, including lack of money and resources and lack of awareness. It is clear, Scotland's 'care system' does not universally uphold the rights of children nor provide the context for loving relationships to flourish.

Trying to navigate the rules is complex. The experiences, wants and needs of the child and their family must be considered first. Children and their families must be listened to each and every time.

During The Plan, work will be done to ensure adherence to the existing Rules. This includes but is not restricted to:

- ensuring the legal rights of children are protected and upheld in all circumstances particularly in The Children's Hearings System.
- acknowledging, protecting and promoting brother and sister relationships in and on the edges of care, meaningful participation in decision-making and simple rights of appeal.
- treating unaccompanied asylum-seeking children as 'looked after' children and placing them in caring, supportive settings whilst ensuring access to legal support, advice and advocacy.
- understanding the complex consequences for the legal identities of children and young people after adoption breakdown.
- reducing any delay between well intended changes to legislation and their implementation.
- preventing lengthy detention in hospital settings through mental health legislation.
- ensuring access to legal advice for children with additional support needs, those living in rural communities and those for whom English is a second language.

To ensure The Promise can be realised, The Rules and how they relate to each other must change.

Scotland needs a new set of Rules that work for children, young people and their families across all Five Foundations of The Promise and reflect their lives, not the systems priorities.

The UNCRC will be the bedrock upon which all future legislation is based to ensure children's rights are respected, upheld, championed and defended as a matter of course. To do that Scotland must fully and directly incorporate the UNCRC and embed it across the scaffolding and delivery of its services.

Too often, it has not been acknowledged that rights are guaranteed for children, not only in legislation and policy, but in relationships with loving, attentive care givers and everyday experiences.

Children's rights do not exist in isolation; they are realised through a life free from poverty and the nurture of loving, caring relationships.

Scotland cannot legislate for love and nor should it try. A legislative framework for love would be driven by an institutional view that cannot reflect the experience of being loved and cared for.

Therefore, there must be a set of Rules that reflect a holistic understanding of children and family lives with associated definitions and entitlements. The Care Review does not underestimate the complexity of this.

The Rules will be developed over the lifetime of The Plan. Emerging evidence of positive impacts on children and young people's lives must be tracked in The Plan to understand what this means for any future Rules.

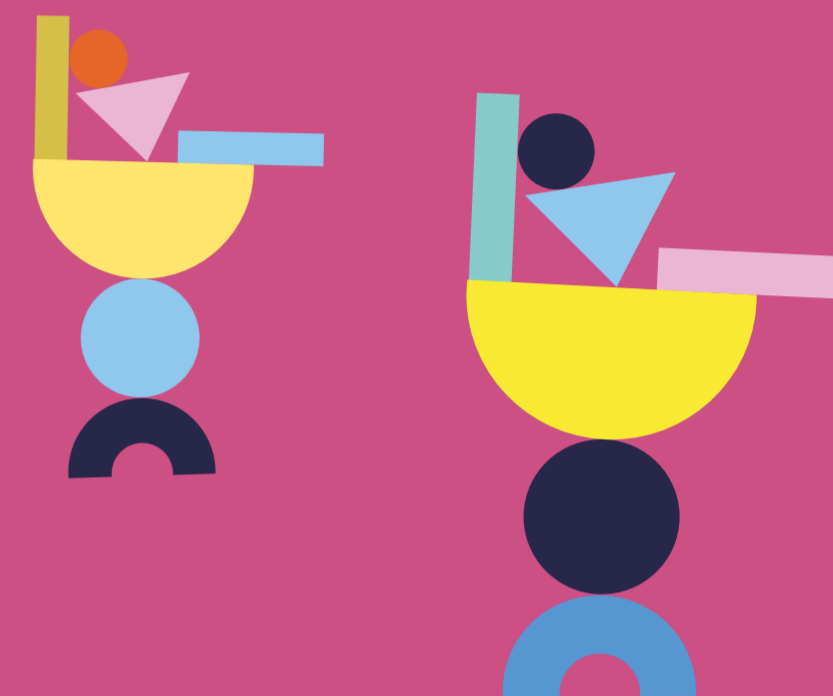
The Plan allows time for tests and pilots to realise The Promise which must include emerging areas and those not yet fully explored.

Realising this will require new Rules so The Plan will include but not be restricted to:

- supporting families to stay together, protecting and allowing relationships to flourish.
- ensuring children have the totality of their cases dealt with in an environment that upholds their rights and allows them to effectively participate, with more efforts to ensure children stay within The Children's Hearings System.
- ensuring children, wherever they live, are protected from all forms of violence in line with equal protection legislation that removes the defence of 'justifiable assault'.

This set of Rules will make sure the Five Foundations as laid out in The Promise are fulfilled. The timing of The Rules will be considered in The Plan so that all aspects of the Care Review's destination are synchronised.

This will help ensure that children, young people, families, and the paid and unpaid workforce will not need to rely on advocacy and litigation to achieve rights and entitlements. Instead the operating environment will have the right practice culture and adequate resources to ensure rights are upheld.



Other issues that need to be fully explored during The Plan to ensure The Promise is fully realised include new ways to share information that recognise the ownership of children and young people over their own stories. The legislative environment that governs data will need to be properly considered in the new Rules.

It is vital that for as long as the 'care system' remains complex and unwilling to provide what children and care experienced young adults need that they have ready access to advocates. During the delivery of The Plan, advocates and legal representatives must be available to all care experienced children and young adults if needed.



**“We grow up loved, safe,
and respected so that we
realise our full potential.”**

Scotland's Ambition for children and young people