

The Promise Scotland's response to the Education, Children and Young People Committee's call for views on the Children (Care, Care Experience and Service Planning) (Scotland) Bill

August 2025

"Scotland must create a clear legislative, enabling environment that supports families to stay together and protects and allows relationships to flourish."

[The promise](#), Page 112

*"Although this can be easily seen as just words in a report, there are real people and real lives behind these pages. **To those responsible for making these changes happen, we ask that you don't miss this opportunity to change lives.**"*

Our Hearings Our Voice, ['Hearings for Children'](#), Pg 10

A note on terminology

This response mirrors the terminology used by the Independent Care Review. Wherever possible, 'system language' has been avoided, but on occasion it has been used in line with current and existing legislation for the purpose of clarity.

The term 'children' is used to mean those under the age of 18, in line with the UNCRC and 'young people' aged up to 26, in line with corporate parenting.

The Independent Care Review concluded that Scotland must change the language of care. Language must be easily understood, positive and not create or compound stigma. A language of care that better reflects the views and experiences of children and care experienced adults must be developed, with the implications of changing statutory terms clearly understood. In consideration of this, there must be a concerted effort from the Scottish Government to ensure the language used in this Bill, and any accompanying work, aligns with the commitment to keep the promise and change the language of care.

Background and Summary

[The Promise Scotland](#) is the organisation set up to support Scotland in the delivery of the implementation of the findings of the [Independent Care Review](#).

The Independent Care Review resulted in a promise to Scotland's care experienced children, young people and adults that all would grow up loved, safe, and respected. This response to the Education, Children and Young People's

Committee's call for evidence on the Children (Care, Care Experience and Services Planning) (Scotland) Bill should be read in the context of the seven reports produced by the Independent Care Review, specifically [the promise](#) and '[The Rules](#)', and alongside [Plan 24-30](#), Scotland's plan to keep the promise, which identifies 'legislation' as one of 25 core themes where a route map for change must be developed.

['The Rules'](#), produced by the Independent Care Review as one of its final reports, outlined a number of key areas where legislative change was required, while also recognising that further change in the future may be required. The key areas identified at that time were:

- 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.
- 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.
- The legislative environment that governs data.

There must not be any delay between well-intentioned changes to legislation and their implementation.

This response is informed by more than 5,500 voices and experiences heard by the Independent Care Review, as well those children, families and care experienced adults and members of the workforce who have shared their views since 2020 to inform implementation, for example during The Promise Scotland and Staf's joint work on the [Moving On Change Programme and 100 Days of Listening](#) and the work of the [Hearings System Working Group](#).

It also draws on five years of work across Scotland to keep the promise, understanding what is getting in the way of change and what is helping. It is critical that this legislation supports further change and does not create new barriers.

The Bill presents an essential step at a critical time, the mid-point in the decade long change programme towards keeping the promise. It will make some of the necessary and significant changes in the lives of children, families and care experienced adults. We therefore **urge MSPs to support the principles of the Children (Care, Care Experience and Services Planning) (Scotland) Bill at Stage 1.**

The Promise was made to all children, families and care experienced adults in and on the edges of care. The ten-year programme of change recognises the time required to deliver transformation across multiple interwoven systems, to a wide range of front-line services and to culture. Legislative change is critical to this.

When Scotland keeps the promise, more children will be safe with their families. There will be fewer children and young people in the 'care system', and they will grow up loved, safe and respected, going on to thrive as adults, and able to rely on the state for support when they need it.

With that in mind, The Promise Scotland urges Members to consider four things regarding this legislation:

1. to what extent it supports delivery of the entirety of the legislative challenges identified by the Independent Care Review five years ago and what it does not do;
2. whether it will accelerate the ongoing programme of change by building on the bridges and overcoming the barriers identified at the midpoint of a decade of work to keep the promise;
3. how to ensure new voices raised during the programme of change by people to whom the promise was made are properly heard and taken account of; and
4. to what extent it is future proofed, recognising that the coming five years have to be when Scotland keeps the promise in full everywhere to everyone.

The Promise Scotland will work with systems and services to help ensure those who must be heard but often continue to struggle to be – including people of colour, adult adoptees, those with a disability, or families experiencing deep and persistent poverty – will be meaningfully engaged in the changes still to come and urge members to do the same.

As well as demanding changes to systems and services, the promise requires cultural change in how Scotland cares for its children, young people, families and care experienced adults. For this to be realised, a fundamental shift in how the workforce (paid and unpaid) is supported is required.

Importantly, keeping the promise means embedding a culture with voice at its heart; one that is always listening, always learning, always improving. Scotland

must honour the voices it heard during the Care Review, and it also needs to listen to all the voices of people who the promise was made, including new ones as they emerge.

This Bill cannot be the final legislative step. Further legislation will be required in the future to keep the promise, in particular to 'declutter' the landscape and create a legislative environment which is more cohesive and easier to understand for children, families, and care experienced adults. A more enabling legislative environment will also reduce bureaucracy for the paid and unpaid workforce.

We therefore **ask the Scottish Government and all parties to commit to progressing further legislation relating to the promise in the next Parliamentary term.**

We ask MSPs to build on cross party support for the promise and work constructively and collaboratively to strengthen the Bill as it progresses, including to ensure that there is appropriate support and resources for local authorities and other duty bearers to implement the proposed changes and for children, families and care experienced adults to understand them.

Key messages

- Changes to legislation around the 'care system' in Scotland must be rooted in and align with the conclusions of the Independent Care Review and the voices and experiences of those who have shared their stories about their experience of care in Scotland.
- The impact of this legislation will be felt most acutely by children, families and care experienced adults, so it must avoid incentivising the system in a way that negatively impacts them.
- While this Bill as currently drafted does not fulfil the vision of the Independent Care Review when it concluded in 2020, The Promise Scotland is nonetheless supportive of the main principles of the Children (Care, Care Experience and Services Planning) (Scotland) Bill and asks MSPs to support it at Stage 1.
- In addition, we urge MSPs from all parties to commit to the further legislation that will be required to keep the promise, in particular to 'declutter the landscape of care'.
- Concerns have been raised about the process to develop this Bill and an absence of engagement before it was laid in June. Now that the Bill process is underway, it is critical that a collaborative approach is taken to ensure the voices of children, families, care experienced adults and

members of the workforce are heard and their views are taken into account to develop strong and effective legislation.

- The work to develop this Bill must include a sharp focus on implementation and sequencing, recognising that the burden of delivery sits with duty bearers and the workforce.
- The provisions in the Bill must be fully resourced so that children, families and care experienced adults feel the benefits of the changes and there must be a clear understanding of how the changes will be aligned with other significant aspects of the promise where change is also underway, for example the implementation of the Children (Care and Justice) (Scotland) Act 2024.
- This response highlights a number of questions and suggestions for how the Bill can be strengthened at Stage 2, including amendments around early help and support, Family Group Decision Making and the 'right to return' to care and by ensuring that the inquisitorial approach outlined by the Hearings System Working Group is set out in primary legislation.
- The courage of the children, families, care experienced adults and members of the workforce that contributed to the Independent Care Review and since 2020 must be matched by the courage of decision makers and politicians who have the power to implement the required changes.

Our approach to this consultation

In order to help Committee members and MSPs understand our positioning on the Bill, we have answered Q.10 first, setting out the context for legislation around [the promise](#) and our overall views on the Children (Care, Care Experience and Services Planning) (Scotland) Bill.

Q10. Are there any other comments you would like to make in relation to this Bill?

Legislative change and keeping the promise: the route map to get there

The need for legislative change was clear five years ago when the Independent Care Review concluded and [the promise](#) was made. The Independent Care Review concluded that the 'care system' is a complex, fragmented, multi-purposed and multi-faceted entity which does not lend itself to easy definition. In 2020 it found

a 'system' underpinned by 44 pieces of legislation, 19 pieces of secondary legislation and three international conventions ([the promise](#), Pg 112). Since the promise was made this has expanded further as additional pieces of legislation and policies – many welcome - have been layered on to the 'system' including the Children (Care and Justice) (Scotland) Act 2024. **This Bill will add to that complexity.**

[The promise](#) is clear that the current legislative environment is too complex and cluttered and legislative change is required to simplify it and ensure that children, families and care experienced adults understand, can navigate and access their rights and duty bearers understand their duties—and, crucially, are supported to implement them.

In March 2022, the [Scottish Government's Keeping The Promise Implementation Plan](#) committed to undertaking a review of the legislative framework relating to the 'care system' in Scotland and to considering the desirability and extent of a restatement of the law in this area so that it is identifiable and understandable (Pg 98). As far The Promise Scotland is aware, this review has not been undertaken. The Promise Scotland remains committed to advancing [the work that we have already begun](#) around 'decluttering the landscape' to ensure that children, families, care experienced adults and members of the workforce find it easier to navigate and understand their rights and duties as they relate to the 'care system' in Scotland.

[Plan 24-30 states that by 2030](#): "Scotland will have a clear legislative, enabling environment that keeps the promise" (Pg 112). The legislative framework must bring clarity, streamline bureaucracy and reduce stigma. It must uphold the rights of those in care and with experience of care. This means:

- Legislation will be in place that supports families to stay together wherever safe to do so, that protects and allows relationships to flourish and children to thrive and that enables care experienced adults to access lifelong support (Pg 112)
- A strong legal framework will be in place that acknowledges, protects and promotes brother and sister relationships in and on the edges of care. Those legal protections will include the right to time together, meaningful participation in decision making about their relationships and clear, simple rights to appeal (Pg 62/63)
- There will have been full consideration of the legislative environment that governs data to ensure Scotland is able to measure and collect what it needs to ensure it understands what is happening and how services are working (Pg 13).
- The UNCRC will be the bedrock upon which all legislation is based to ensure that children's rights are upheld as a matter of course (Pg 112)

(Page numbers are references to [the promise](#)).

The Promise Scotland is working alongside the Scottish Government and other duty bearers to develop a route map for how this can be achieved—**the passage and implementation of this Bill forms part of the milestones that must be achieved by 2030**. This is in addition to other legislative changes such as those set out in the UNCRC (Incorporation) (Scotland) Act 2024, the Children (Care and Justice) (Scotland) Act 2024 and the Restraint and Seclusion (Scotland) Bill, which is currently progressing through the Scottish Parliament.

There is also a need to focus on implementing and better resourcing existing legislation that has already passed but has either not yet been commenced or has not yet been fully implemented due to challenges in practice. This includes provisions of the Children and Young People (Scotland) Act 2014 and duties within the Children and Young People (Scotland) Act 2020, which have not yet commenced.

The Promise Scotland's position on the Children (Care, Care Experience and Services Planning) (Scotland) Bill

To support the Scottish Government and the Scottish Parliament in the development and scrutiny of the legislative framework, The Promise Scotland has produced the following:

- A draft [route map on 'legislation'](#) as part of Plan 24-30
- A [briefing for the Scottish Government on key areas of consideration for the 'Promise Bill'](#) (legislation around the promise)
- A [summary document of the different pieces of legislation](#), secondary legislation and policies that relate to the 'care system' in Scotland
- An [options paper setting out the different ways that Scotland can declutter and simplify the legislative and policy landscape](#) in Scotland with respect to the 'care system' in the way envisioned by the promise.

It is clear that the Children (Care, Care Experience and Services Planning) (Scotland) Bill as introduced will not 'declutter' the landscape and will not be the broad and overarching piece of ambitious legislation required to capture all of the changes needed to keep the promise by 2030. **Further legislation will be required in the future to keep the promise**, in particular to 'declutter' the landscape and ensure promise's conclusions about simplifying policy and legislation and creating a more enabling legislative environment are realised.

The Bill does, however, represent a significant step forward to keep [the promise](#), in line with what the Independent Care Review heard and the experience of The Promise Scotland since 2021.

In particular, it makes changes to ensure improved access to ‘aftercare’ support and of a statutory right to advocacy, which was one of the recommendations that we made in [our advocacy scoping work](#), published in December 2023. We are also supportive of many of the proposed changes to the Children’s Hearings System which will begin to make the necessary legislative changes to align with the proposals in ‘Hearings for Children’ and the conclusions of the Independent Care Review.

We therefore:

- **Ask MSPs to support the principles of the Children (Care, Care Experience and Services Planning) (Scotland) Bill at Stage 1** and to work constructively and collaboratively to strengthen the Bill as it progresses.
- **Urge MSPs to commit to the further legislation** that will be required to keep [the promise](#), in particular to ‘declutter the landscape of care’.

The process to develop this Bill

It has been noted there has been an absence of meaningful engagement during the development of the Bill, which has limited the depth of discussion needed to shape a Bill of this importance. While the four Scottish Government consultations were informative, they cannot replicate the detailed dialogue required to fully understand the broad package of legislative change required now and, in the future, to keep the promise and the impact of the proposed changes.

Looking ahead, the Scottish Government must engage in a significant and genuine process of engagement with members of the care community, duty bearers and the paid and unpaid workforce to both better inform the work to progress the provisions contained within this Bill and to help people understand why certain provisions have been included and not others.

Since the Bill was laid in June, there has been a welcome increase in levels of engagement. Given the proposed timetable for the Bill progressing through parliament, care must be taken to avoid overwhelming the sector and the care experienced community, and to ensure the impacts of proposed changes are carefully managed and not rushed through in the absence of detailed engagement earlier in the process.

The vision for change

When Scotland keeps the promise, more children will be safe with their families. There will be fewer children and young people in the ‘care system’, and they will grow up loved, safe and respected, going on to thrive as adults, and able to rely

on the state for support when they need it. This will result in a significantly smaller, more specialised 'care system'.

In order to achieve this, there must be a renewed focus on ensuring an adequately resourced workforce, a simplified and cohesive legislative and policy landscape and sufficient, reliable funding. This must take into account the broader picture of transformational change, recognising that when significant changes are made in one part of the 'care system', the impact will be felt elsewhere, including those systems experienced simultaneously. It must also recognise the links with other significant change agendas, including broader public service reform in education, health and social care and upholding the rights of children and young people through the UNCRC (Incorporation) (Scotland) Act 2024.

As the Bill progresses, it is important to keep in mind the broader vision for change set out in [the promise](#) and the ambition described in '[Hearings for Children](#)', produced by the Hearings System Working Group of a redesigned Children's Hearings System that is inquisitorial and better upholds the rights of children and families.

The Hearings System Working Group was established by The Promise Scotland, secretariat provided, and Sheriff David Mackie appointed by the Independent Strategic Advisor to chair it. The Promise Scotland urges members to take account of Sheriff Mackie's detailed submission.

[The promise](#) is not about making small tweaks to an imperfect system but about delivering lasting, transformational change. The courage of the children, families, care experienced adults and members of the workforce that contributed to the Independent Care Review and since 2020 must be matched by the courage of decision makers and politicians who have the power to implement the required changes.

Strengthening the Bill further

The Promise Scotland is mindful of the current pressures and the sense of overwhelm for the sector, and how this affects implementing of legislation, existing and future. However, there are a number of areas where this Bill can be better aligned with duties and provisions and have indicated in the responses to the respective questions below where this is possible

There are also a number of areas that are not yet in the Bill that we have brought to the attention of the Scottish Government for consideration at Stage 2. These include:

- **Early help and support.** A core element of [the promise](#) is that where children are safe in their families and feel loved they must stay—and families must be given support together to nurture that love and overcome the difficulties

which get in the way (Pg 15). There is a need to assess whether the current statutory framework around family support is sufficient, or whether this needs to be strengthened through, for example, clearer definitions around 'family support' and 'early help' and putting in place preventative spend targets that align with the Scottish Government's ambitions around holistic whole family support.

- **Right to return to care.** [The promise](#) states that young adults for whom Scotland has taken on parenting responsibility must have right to return to care and have access to services and supportive people to nurture them (Pg 92). This Bill is an opportunity to enshrine that right into statute.
- **Statutory timescales and dual registration of foster and adoptive parents.** [The promise](#) was clear that children's rights are most often realised through relationships with loving, attentive caregivers (Pg 26) and that the consistency of these caregivers is particularly important. This Bill is an opportunity to explore statutory timeframes for decision making, in particular with respect to time limits for establishing grounds in the Children's Hearings System and to consider a statutory framework for dual registration of foster and adoptive parents.
- **Kinship care.** [The promise](#) states that Scotland must ensure that children living in kinship care get the support they need to thrive (Pg 74). The development of a 'kinship care vision' for Scotland provides an opportunity for the Scottish Government to review the existing legislation for kinship carers that sits within Part 13 of the Children and Young People (Scotland) Act 2014 and consider what additional help and support can be provided to better support children and families living in kinship care arrangements.
- **Family Group Decision Making (FGDM).** [The promise](#) states that Family Group Decision Making and mediation must become a much more common part of listening and decision-making (Pg 33). 'Hearings for Children' also made specific recommendations about access to Family Group Decision Making and restorative justice. The Bill presents an opportunity enshrine an approach where children and families have a right to access FGDM and local authorities have a duty to provide it.
- **Places of Safety.** There remains a need to amend the Criminal Justice (Scotland) Act 2015 to ensure that children in police custody are able to be placed in alternative places of safety to police stations.

Additionally, The Promise Scotland, the Children and Young People's Commissioner for Scotland, the Scottish Human Rights Commission and the Equality and Human Rights Commission have collectively called for a statutory framework around restraint. We are supportive of the current Restraint and Seclusion in Schools (Scotland) Bill currently making its way through the Scottish

Parliament, which places a statutory framework around education. We urge the Scottish Government to ensure that there are plans for the introduction of a human rights based statutory framework around restraint which covers all settings of care through either the Children (Care, Care Experience and Services Planning) (Scotland) Bill at Stage 2 or an alternative piece of legislation in the next parliamentary term.

Children's rights

The Promise Scotland's expectation, as set out in the briefings previously shared with Scottish Government, is that all provisions within the Bill would be within scope of the United Nations Convention on the Rights of the Child Act 2024.

At present, we understand that two specific provisions, those that amend the Children (Scotland) Act 1995, are currently outwith the scope of the UNCRC Act. We encourage the Scottish Government to work collaboratively at Stage 2 with Together (Scottish Alliance for Children's Rights) and the Children and Young People's Commissioner for Scotland to ensure that the Bill is fully compliant with the UNCRC.

Implementation of the Bill and sequencing with other aspects of the promise

As with any new legislation, careful consideration must be given to implementation of this Bill, ensuring it is planned, sequenced and resourced effectively. This will require close scrutiny of the Financial Memorandum as the Bill progresses through the parliamentary process, and a clear understanding of the impact of the proposed changes on the workforce.

The Promise Scotland is committed to working alongside the Scottish Government and other duty bearers to ensure that there is a clear sequenced plan for implementation across the commencement dates for the provisions within this Bill and other policy and legislation. For example, work must be stepped up to understand the interaction between further investment in early help and the Children's Hearings System. There must also be sequencing between this Bill and:

- The implementation of the Children (Care and Justice) Act 2024
- The work of the Hearings Redesign Board, co-chaired by the Scottish Government and COSLA
- The work to implement the findings within the Reimagining Secure Care report, which will transform the model and delivery of Secure Care in Scotland.

The detail of a significant number of duties and provisions in this Bill (including, for example, the provisions around advocacy, guidance around the definition of care experience and the proposed register of foster carers) has been left to guidance and secondary legislation. While this will allow for further consultation and co-production, there is a considerable amount of work required to ensure practical applicability that can be delivered by the workforce and felt by children families and care experienced adults in and on the edge of the 'care system'. It is important that this process is robust and that the Scottish Parliament is able to adequately and appropriately scrutinise these significant changes.

Part One, Chapter One

Q1. What are your views on the aftercare provisions set out in the Bill?

The Independent Care Review heard from care experienced young people and adults about the 'cliff edges' of care and the lack of support they felt when their legal orders ended before their sixteenth birthday. It was also clear that the term 'aftercare' itself is fundamentally at odds with the principles of the promise – how many families would think of their caring responsibilities towards their older children as 'aftercare'?

[The promise](#) concluded that 'aftercare' must take a person-centred approach, with thoughtful planning so that there are no cliff edges out of care and support (Pg 92). It was clear that the current system does not ensure that those who leave care prior to their sixteenth birthday are able to access legal entitlements, even though they have been removed from their families by a decision of the state (Pg 188).

These issues were raised by Jasmin Kasaya-Pilling in her petition to the Scottish Parliament, and repeatedly by those who shared their views and experiences as part of the [100 Days of Listening project](#).

Our consultation response to the Scottish Government was clear that rights of care experienced young people must not be dependent on arbitrary age limits or definitions that create 'cliff edges'. Support must be available for children, families and care experienced adults when they need it, including access to advocacy and legal representation.

We therefore welcome the Scottish Government's commitment to addressing this issue, and the extension of 'aftercare' within the Children (Care, Care Experience and Services Planning) (Scotland) Bill to children and young people who left care prior to their sixteenth birthday.

In order to ensure that this change is accessible to children and young people it will be important for there to be a robust plan and guidance in place to support

local authorities to implement this duty and to let children and young people know and understand their rights. The views, experiences and rights of children and young people must be the starting point for making changes to the current policy, practice and legislative landscape for children and young people transitioning into adulthood from Scotland's 'care system'.

In our consultation response we stated that the legislative duty for an 'eligible needs' assessment when young people reach 19 must be removed. Young people should not require an assessment to be able to access additional help and support. This must be clearly set out in the Bill and not left to guidance.

In order to realise the new provisions around 'aftercare', it is important to ensure that there is an accurate reflection of the resource requirements in both human and financial terms to deliver on the ambitions of this policy. Our understanding is that local authorities will need additional support to:

1. Resource the teams that will be required to undertake additional engagement with increased numbers of children and young people including potential expansion of teams and recruitment and training costs. This may take some time to put in place, and we note that at present there are no resources in the Financial Memorandum for 2026/27.
2. Ensure that additional funding is in place to provide local authority financial support, such as grants and exemption from Council Tax etc. to additional numbers of care experienced young people.
3. Ensure that support services are fully resourced to meet the demands of additional numbers of children and young people who will be entitled to access them under the new legislation.

It is essential that the Scottish Government and local areas work together collaboratively to ensure that funding is available and that there are no unintended consequences where funding is diverted from other work to keep the promise, such as early help and family support, to deliver on these additional duties.

There is also a need to fully understand the implications of the changes when children and young people move between local authorities. Accessing support when a young person has moved is a problem that was highlighted to Staf and The Promise Scotland during 100 Days of Listening. Provisions must be in place to ensure that children and young people can access the help and support they require regardless of where they currently live. This must include placing local authorities adhering to notifying hosting local authorities of their young people. Providers of care, that care for children originating from beyond their local authority, must plan for supporting a successful move on from their provision of care.

It would also be helpful to understand more about the provisions to ensure that young people living in Scotland and previously looked after in Northern Ireland, England or Wales will be able to access aftercare services in practice regardless of where they choose to reside.

As we have stated above, our understanding is that this is an area that, as currently drafted, sits out of scope of the UNCRC (Incorporation) (Scotland) Act 2024. We encourage amendments to this section so that the drafting brings it into scope and young people have the right to legal redress in the way set out in the UNCRC (Incorporation) (Scotland) Act 2024 where necessary.

Finally, [the promise](#) states that young adults for whom Scotland has taken on parenting responsibility must have a right to return to care and have access to services and supportive people to nurture them (Pg 92). **This Bill is an opportunity to enshrine that right into statute and this must be explored as the Bill progresses.**

Q2. What are your views on the corporate parenting provisions set out in the Bill?

It is positive to see the expansion of corporate parenting provisions to include those without a care leaver status but who have care experience, within the proposed Bill.

The Promise will only be kept by 2030 if all corporate parents commit to fulfilling their duties completely and consistently.

As we have stated in our response to Q1 on the extension of aftercare, there is a need to ensure the Financial Memorandum accurately reflects the additional resources that may be required to implement the changes in the intended spirit.

Q3. What are your views on the advocacy provisions set out in the Bill?

Scotland has a large number of skilled and valued providers of independent advocacy to children and adults. [The promise](#) is clear that care experienced children and adults must have the right to and access to independent advocacy, at all stages of their experience of care and beyond (Pg 115).

The Hearings System Working Group Redesign Report, '[Hearings for Children](#)', also made specific recommendations about improved access to advocacy for children and families.

We therefore welcome that the Children (Care, Care Experience and Services Planning) (Scotland) Bill includes provision for Scottish Ministers to confer by

regulations rights of access to care experience advocacy services. A lot of work is still to be done to understand how this will work in practice—and we welcome the Scottish Government’s intention to co-design this with the care community and advocacy providers.

In December 2023, The Promise [Scotland produced a report](#), in collaboration with advocacy providers, which set out the core issues and identified the core principles that should underpin a national advocacy service.

It sets out a path towards delivery, identifying how it should be operationalised and what can be done in order to realise the conclusions of the promise with respect to advocacy. As part of this work, the report recommended that: **“The upcoming Promise Bill could be the legislative mechanism for the development of a statutory right to advocacy provision and associated redress and complaints processes”** (Pg 24).

We welcome the specific reference to advocacy services as “independent services of support”, ensuring that advocacy provision is independent from the implementing authority and/or care provider. Clarity would be welcome on how this will be ensured in practice and how the definition of “independence” used by this Bill and guidance aligns with the provision of advocacy in other pieces of legislation in Scotland. [Page 27-28 of our report](#) sets out the need for further development of a clear and shared national definition and understanding of what is meant by “independent advocacy”.

We also welcome provision for specific standards and qualifications and training for persons providing advocacy services.

The promise expects advocacy to also be available for families: *“Advocacy must be readily and quickly available to all families who are in contact with the ‘care system’”* (Pg 115). The proposed right of access to care experienced advocacy services **must therefore also apply to family members.**

The Bill proposes in Chapter 3 that children in the Children’s Hearings System are offered advocacy at an earlier point. **In our view this offer should be extended even further**, in line with Recommendation 4.1.2 of Hearings for Children, which states that:

*“The Promise Scotland’s work to develop a lifelong advocacy service for care experienced children and adults **should include the extension of advocacy support beyond the entry point to the Children’s Hearings System to children working voluntarily alongside local authorities and to parents and carers too.**”*

This recommendation was accepted in full by the [Scottish Government in their response to ‘Hearings for Children’](#). The legislation in Wales follows a similar approach, ensuring a statutory right to advocacy for children at a much earlier point—including for when children become the subject of child protection

enquiries or when they become looked after (Social Services and Wellbeing (Wales) Act 2014). Learning from Wales needs to be reflected in the Scottish Government's approach, along with learning from other jurisdictions, and the Bill should be amended to ensure the right to advocacy applies as early as necessary.

The approach that the Scottish Government has taken to developing a statutory right to advocacy within this Bill means that a substantial amount of detail is still to be worked out and will be included in guidance. It is essential that any guidance is developed through collaborative discussion about the most appropriate service delivery model and financial framework.

There is also a need to clearly understand how the provision for advocacy through the National Practice Model and the proposed changes in Chapter 3 of the Bill in relation to rights of children going through the Children's Hearings System, link to the right for care experienced children to access advocacy under this part of the Bill. Recognising that children, families and care experienced adults may experience multiple systems simultaneously, Scotland must ensure they are not in a position of also having multiple different advocacy workers.

[The promise](#) was also clear that children and families should also be able to access appropriate legal representation: *"Children and their families must have a right to legal advice and representation if required"* (Pg 116). The Committee may wish to seek clarification on how this right will be upheld in addition to the right to advocacy.

Q4. What are your views on the proposals for guidance in relation to care experience?

The Independent Care Review heard that, as a definition, 'care experience has meaning for many. It has supported movement-building and is helpful as an understanding of personal identity. The Independent Care Review also heard that it is an identity definition that some who have experienced care do not wish to identify with as it can feel like a perpetuation of 'othering'. It concluded that:

"there must be a more universal, commonly understood definition as it relates to rights and entitlements. There must also be an understanding that the purpose of those rights and entitlements is to support young people for whom Scotland has had ongoing parenting responsibilities, recognising that parents seek to provide care and support for their children beyond the age of 18" ([the promise](#), Pg 118)

We therefore welcome the intent behind s.5 and 6 of the Bill 'Guidance in relation to care experience'. We are supportive of proposals within the Bill to ensure that guidance is used to ensure the experiences and needs of care experienced people

will be accounted for in the planning and provision of public services and proposals to ensure public bodies have “due regard” to the guidance.

There is a need for clarity regarding what is meant by the “due regard” duty to be sure it is clear and fit-for-purpose plus what reporting and monitoring is planned to ensure it is ultimately effective.

In terms of the proposals in s.2(a) around identifying and communicating with care experienced people, there is a need to better understand more about how this will be used and operated in practice. It is important to ensure that the need for and access to support is balanced with the right to privacy and to recognise that some care experienced people may not wish or need additional identification or support.

The work The Promise Scotland stated must be carried out by Scottish Government in our consultation response on [developing a universal definition of care experience](#) has not taken place and is essential to inform the production of guidance around a definition of care experience. Although the provision in the Bill is to create guidance around a definition of ‘care experience’ the Bill does, in effect, already create this definition (in s.4(6) and s.5(6)) and there is a need to understand how the definition will be applied in practice and the impact this will have in people’s lives.

Specifically, we urge:

- The Scottish Government’s focus must be to bring clarity as to how the definition of ‘care experience’ will be applied and, in particular, how associated rights and entitlements are known and understood by children and adults with experience of care, and easily accessible.
- The purpose of creating a definition must be clear to both members of the care community and to the workforce. The Independent Care Review is clear about the need for an inclusive, non-stigmatising approach to defining care experience in order to better support and uphold the rights of those for whom the State has parenting responsibility.
- It is not enough to create a new definition of ‘care experience’. There is a need for a broader and comprehensive understanding of existing rights and entitlements to ensure that support and services, including access to advocacy, legal representation, mental and physical health support, trauma recovery support and education are available for children, young people and adults who have experience of care when they need it—rather than according to complex statutory definitions.
- In order to do this, there is a requirement to:
 - o Map the existing rights and entitlements at all stages of a child, young person and adult’s journey of care to ensure that Scotland has got this right

and there is a clear statutory and non-statutory framework in place that sets out rights and entitlements in line with the UNCRC.

o Understand how these current rights and entitlements are accessed and what changes are needed—including legislative and financial in order to ensure that they are clearly set out in legislation (where appropriate), policy and practice.

The provision in the Bill relating to consultation prior to guidance being issued (s.6(1)) allows the Scottish Government the opportunity to incorporate the work referred to above into the consultation with care experienced people and those who work alongside them. We strongly support an approach of co-production and the measures to publicise and share the guidance. There is a need to understand more about how local authorities will be expected to utilise the guidance, including additional resource requirements if they apply a broader definition of care experience to existing support services.

In summary, we support creating a broad, inclusive definition of “care experience” in line with the Independent Care Review’s conclusions. However, this must be applied carefully to avoid adding to an already complex system or creating confusion for the workforce and for care-experienced children, young people and adults. The definition must not reinforce stereotypes about growing up in care, and its implementation must not divert already stretched resources from other vital areas, such as early help and support.

Part One, Chapter Two

Q5. What are your views on proposals designed to limit profits for children’s residential care services?

The promise is clear that Scotland must end the marketisation of care and ensure that its most vulnerable children are not profited from. There is a need to take a different approach to how it invests in its children and families.

The conclusions of the Independent Care Review around profit must be met:

- Services within the ‘care system’ must not profit from care.
- Any presence of surplus funds generated within any part of the ‘care system’ must be directed to the care and support of children.
- Targets associated with adopting children, including financial and profit based targets, must be removed.
- Processes of regulation, scrutiny and commissioning must support the removal of profit from the care system.

The rise of for-profit companies among residential childcare providers across the UK has occurred by default, rather than policy design. The provisions in the Bill are a careful first step in addressing these issues, and we are pleased to see there is now a Scottish Government consultation on the provisions to give members of the care community, duty bearers, decision makers and those working in the sector an opportunity to engage with and inform these provisions as they are developed and strengthened.

We are supportive of regulations to enhance financial transparency by requiring certain residential childcare providers to provide financial and other relevant information about the operation of their services. There is a need for greater clarity on what is meant by 'limiting profit from children's residential care should it be determined that excessive profits are being made'. It is essential that following this initial step Scotland works towards removing all profit from the 'care system.'

We understand that the Scottish Government is consulting with and learning from Wales about the process of becoming the first nation in the UK to legislate to end private profit in children's residential and foster care. This will ensure that care for children will only be provided by the public sector, charitable or not-for-profit organisations in the future, and that all money going into the system is reinvested into children's welfare, rather than taken as profit for shareholders.

The regulations in this Bill make the initial step as Scotland works towards removing all profit from the 'care system.'

Q6. What are your views on proposals to require fostering services to be charities?

As stated in our answer to Q.5, the promise is clear that Scotland must end the marketisation of care and ensure that its most vulnerable children are not profited from. Whilst we appreciate that not all businesses make profit, the proposals included in the Bill to require fostering services to be charities helps mitigate against that and note that there may be a need to extend this to alternative legal structures for not-for-profits such as Community Interest Companies and social enterprises.

As stated in our [response to the Scottish Government's consultation on the future of foster care in Scotland](#), if Independent Fostering Agencies (IFAs) continue to operate in Scotland, they must ensure there is no profit in care and that all funds are properly directed to the care and support of children:

- The new approach to foster care must facilitate a managed transition to ending profit in care.

- There must be increased transparency around fees charged, pay and allowances to foster carers, other costs incurred - and critically profit.
- IFAs must prioritise children's needs and rights rather than administrative costs. There is a need for greater accountability around how funds are allocated.
- Multiple moves and moving children away from local communities linked to use of IFAs must be stopped.
- IFAs must be required to pay their foster carers at least the Scottish Recommended Allowance (SRA) or higher.
- There must be clearer mechanisms for formal market oversight in respect of care services and scrutiny of IFA costs.
- There is a need to ensure alignment between any proposed changes to IFAs and other efforts to reduce and remove profit in Scotland's 'care system'.
- There is a lack of consistency across local authorities and compared to IFAs – whether that is access to training, peer support, and 24/7 assistance. There is an opportunity for the Scottish Government and local authorities to work collaboratively to identify what is working and how some of the training and support can be enhanced and shared.

As we stated in our response to Q5 about the broader changes linked to profit, this must be carefully and sensitively managed to avoid disruptions to children who are currently living in homes affected by these changes.

Q7. What are your views on proposals to maintain a register of foster carers?

The Independent Care Review was not definitive about the need for a national register for foster carers, but concluded that it should be considered, recognising that foster carer's care for children within their own home. [The promise](#) states that this *"should operate in a supportive way that is aligned to the underlying values of how Scotland must care"* (Pg 78).

The Promise Scotland believes the proposed register offers an opportunity for improved collaboration, information sharing, enhanced training, continuous professional development and a more standardised approach to recruitment, retention, training and support.

The national register could provide valuable data that is up to date to inform workforce planning and better help align the interests of children, young people and foster carers better. It would also bring the foster care role in line with other

roles that have significant daily contact with children and require national registration.

The register could also better enable children to be matched with foster carers from within communities to which they belong, or as close as possible to these. A realisation of this would be in alignment with keeping [the promise](#).

There is a range of views in terms of how effective the creation of a register would be and some risks in setting up and implementing it. In balancing these views, it will be helpful to consider other areas where a national register approach has been taken where significant lessons can be shared, for example, the Safeguarders Panel in the Children's Hearings System, and the National Register for Foster Carers in Wales.

There may also be an opportunity to align or amalgamate existing national registers which may also assist with reducing bureaucracy.

As we have stated above, our understanding is that this is an area that, as currently drafted, sits out of scope of the UNCRC (Incorporation) (Scotland) Act 2024. We encourage amendments to this section so that the drafting brings it into scope and young people have the right to legal redress in the way set out in the UNCRC (Incorporation) (Scotland) Act 2024 where necessary.

Part One, Chapter Three

Q8. What are your views on the proposed changes to the Children's Hearings System?

The Independent Care Review heard a variety of experiences of the Children's Hearings System, some positive and others less so. Some of the challenges raised included ([the promise](#), Pg 39):

- The rotation of panel members can result in a lack of consistency.
- Hearings struggle to manage the complexity of the families appearing before them and to recognise the trauma they have faced.
- A lack of holistic understanding of families, siblings and their respective legal rights.
- Overly formal reports and language with inconsistent variation in quality of information received from social work teams.

Despite the difficulties raised, the Independent Care Review heard of significant support for, and commitment to, the underlying principles of Kilbrandon. The promise is therefore clear that to effect change, the following must happen:

- The focus of the Children's Hearings System must be the children and families who appear before it, where their rights are upheld and protected (Pg 40)
- There must be particular attention paid to the rights of brothers and sisters to ensure that they have all their legal rights upheld
- Scotland must comprehensively assess and consider the role of volunteers in the decision-making structure of Hearings (Pg 44)
- The Children's Hearings System must plan to shrink and specialise (Pg 44)
- Everyone involved in the Children's Hearings System must be properly trained in the impact of trauma, childhood development, neurodiversity and children's rights.

In direct response to these conclusions, The Promise Scotland convened and facilitated the Hearings System Working Group and appointed Sheriff David Mackie to independently chair a redesign. The Working Group included Children's Hearings Scotland, the Scottish Children's Reporters Administration, and The Promise Scotland, with the Scottish Government observing. Our Hearings, Our Voice and other young people with experience of the Children's Hearings System informed the group's work. The group published a report, '[Hearings for Children](#)', in May 2023 after an extensive period of engagement and collaboration, including a Collaborative Redesign Project.

The report, along with documents and videos to help members of the care community and the workforce to understand the conclusions, are available on The Promise Scotland's website: [hearings-for-children-the-redesign-report.pdf](#).

The recommendations were agreed, in their entirety, by the Hearings System Working Group, including Children's Hearings Scotland and the Scottish Children's Reporter Administration (Pg 14).

Following the report's publication the Scottish Government published a response to the report, and the specific recommendations from the Hearings System Working Group. Of the 97 recommendations, the Scottish Government accepted 63, accepted with conditions 26, declined 7 and sought to further explore or consult on 42. They have also set up a Redesign Board (jointly chaired by the Scottish Government and COSLA). Sheriff Mackie was appointed by the Minister for Children, Young People and The Promise as Independent Adviser on Children's Hearings Redesign but is not a member of the Redesign Board.

The provisions in this Bill go some of the way towards making the significant changes demanded by the Independent Care Review and reflected in 'Hearings for Children'. However, there are some significant omissions from the Bill which will prevent the aspirations set out in '[Hearings for Children](#)' and the Independent Care Review from being realised. There are also a number of areas where further clarification is required to ensure the full intent is clear and there are no

unintended consequences or the introduction of added complexity for children, families and members of the workforce.

Members may find reading the following section alongside Sheriff Mackie's technical response helpful to informing the Committee's understanding.

It is important for the Scottish Government to be clear about the entirety of work to transform the Children's Hearings System, articulating the clear way the future redesigned Children's Hearings System will look that aligns with what the Independent Care Review said must change. Not all of the changes required need legislative change—some policy and practice changes are being led by the Redesign Board. The Committee must be provided with a clear and coherent picture of the overall change programme, including what still remains to be implemented, in order to scrutinise and understand the proposed changes in the context of the broader redesign. It is also important that the workforce and children and families understand the nature of what is being proposed in legislation, in addition to the other changes, to determine what difference they will make, when and how.

The 'Hearings for Children' Redesign

The recommendations set out in ['Hearings for Children'](#) must be viewed as the implementation of a crucial aspect of the Independent Care Review, alongside a modern update on the work of the Kilbrandon Committee—a new and bold interpretation of what those core concepts mean in a Scotland that has cross-party commitment to keeping the promise and to incorporating legally binding children's rights (Pg 10).

The implementation of the recommendations will **result in a redesigned Children's Hearings System that listens—with the intention of hearing what is said.**

One that inquires, that **asks what families' strengths as well as their challenges** are.

One that makes **strong and robust decisions by consistent and competent decision makers** right alongside children and their families and makes sure that everyone understands what those decisions are and what they mean.

One that **values kindness, compassion, openness and helps children and families** to know and access their rights.

One where the **people who know children and families best have the time and space to work in a relational way** or to build relationships with them, where appropriate.

One that **asks duty bearers across Scotland to work much more closely together** when children and their families need care and support—and where they are held to account if things are not working the way they should (Pgs 10-11).

In order to realise this redesign there are some crucial parts that must happen—without which transformational change is not possible and upon which all the other policy, practice and legislative changes depend:

- The conditions for change as set out in Chapter 1 of [‘Hearings for Children’](#) being met, **including increased investment in early help and support for families and addressing the significant challenges to workforce recruitment and retention**. Without this, the Independent Care Review’s vision for a smaller and more specialised Children’s Hearings System (and therefore ‘care system’) cannot (or will not) be realised.
- **There must be a clear overarching inquisitorial approach.** A strong feature throughout the Hearings System Working Group’s engagement and deliberation was a widespread desire to lessen the adversarial nature of the Children’s Hearings System and to ‘lower the temperature’ in Children’s Hearings (Pg 151). [‘Hearings for Children’](#) recommends (rec 2.1) an *“overarching principle in primary legislation or procedural rules and a shared set of national standards for the workforce should be made that explicitly describes the children’s hearings system as inquisitorial. This will foster an inquisitorial approach and culture within the Children’s Hearings System and ensure there is a clear understanding across the entire system of what this means.”* This was part of the Scottish Government’s consultation and accepted with conditions in the Scottish Government original response to the report and should be considered at Stage 2. The Scottish Government’s response stated that there was a need to engage with the judiciary in respect of these potential changes—it would be helpful to understand what engagement has taken place and what the response was. Pages 142-154 of the report describe in detail what an inquisitorial approach will look like in practice in a redesigned Children’s Hearings System.
- **There must be consistent decision makers.** There must be an amendment at Stage 2 to introduce a duty to ensure that, wherever safe and practicable, the Chair of a Hearing should be consistent. This is in line with views heard repeatedly during the course of the Hearings System Working Group (see below).
- **There must be changes to the role of the Chair.** A cohort of Chairs with the skills, qualities and competencies described in pages 167-169 of [‘Hearings for Children’](#). The role of the Chair must be set out in primary legislation in the same way that the role of the Reporter is. It must not be left to secondary legislation or to guidance. This should be amended at Stage 2.

- **There must be more focus on the increased and meaningful participation of children, families and the important people in their lives** as set out in Page Chapters 8 and 9 of '[Hearings for Children](#)' (see below).
- **The complexity must be reduced and not increased.** Some parts of the (Children's Hearings System) system are necessarily complex, given the grave and significant decisions that are being made. However, efforts must be made to streamline and simplify and not further complicate the existing landscape making it harder for children and families and members of the workforce to navigate. The changes outlined in the Bill and the accompanying document are hard to understand and interpret—including for those who are familiar with the Children's Hearings System. It is essential that the Scottish Government ensures that this complexity does not transfer to the experiences of children and families and members of the workforce.

We offer the following more specific observations and comments to support the Committee's consideration of the Bill at Stage 1. Given the complexity of the changes and the limited time available for engagement, we have prioritised the most significant areas of change and how they align with '[Hearings for Children](#)'.

Single member Children's Hearings and pre-Hearing Panels

The role of Panel Members is complex and demanding. Many understandably feel the weight of the significant, life changing decisions being made. Hearings can be increasingly adversarial and more complex and while Panel Members are trained with the expectation of chairing Children's Hearings, that role and the prospect of undertaking it becomes a source of anxiety for many. Ensuring a clear distinction between ordinary and chairing members in the Bill is therefore a welcome change. **However, the Bill should be more specific about the difference in role between the ordinary and chairing member** (see below).

We are also supportive of changes to ensure that certain, carefully selected, procedural decisions can be **made by a Chair** of a Children's Hearing. '[Hearings for Children](#)' made the recommendation (rec 8.8):

*"In a redesigned children's hearings system there must be a separation between procedural decisions relating to the hearing itself and the decisions made by the hearing. There should be an assessment to understand which procedural decisions **a Chair** can take without the need to convene a full Panel in advance of a hearing. This should include scrutiny of whether anything needs to change in legislation or procedural rules to better facilitate decision-making and eliminate structural drift and delay in the system."*

The assessment of the Hearings System Working Group was that this would reduce drift and delay in the current system and in recognition of the enhanced

role of the Chair described in Pages 165-169 of the report. In a redesigned Children's Hearings System this Chair would have the skills, competencies and qualities described in the report. Our support for the changes in the Bill is entirely conditional on the procedural decisions that can be taken by a single Panel Member being the Chair described in the report. It would not be fair to expect a volunteer without additional training and support.

In our view, **this must be more clearly set out in primary legislation** so that there can be absolute certainty about the role of the Chair, and in particular the way that they are expected to conduct Hearings in an inquisitorial manner and the oversight, enforcement, accountability and overview of a child's order (Chapter Eleven).

Recommendation 7.2.5 is clear that the recruitment and training of Panel Members and maintenance of standards should continue to be undertaken by the National Convener, however there is no reason that there cannot be a clearer definition of the role of the Chair of the Hearing in primary legislation.

Many of the changes in this part of the Bill place significant additional decision-making powers on the National Convener, who will be expected to play an enhanced role in directing proceedings. There must be careful consideration of the impact of this and how this aligns with human rights duties, including the right to a fair trial.

Panel Members local to the community

The Bill makes provision to ensure that, where possible, the National Convener must ensure that the member of the Children's Hearing lives or works in the area of the local authority which is the relevant local authority for the child to whom the Hearing relates (new section 6A to the 2011 Act). While this is welcome and matches recommendation 7.2.2, which states that *"Where possible, Panel Members should be local to the community that the child and family are from"* it is important to be clear that **there was a second part to that recommendation:**

"...but there should be a focus on matching Panel Members to children and families to whom they can relate and who are empathetic to their experiences, challenges and circumstances."

The young people that shared their stories with the Hearings System Working Group spoke about it being important that the Panel Members were able to relate to them. The focus, therefore, should not be solely on 'locality', but finding Panel Members that are able to relate to the child. For example, young people said they liked the idea of Panel Members having the same aspirations or background as them or having things in common (Page 170 of ['Hearings for Children'](#)).

Specialist Panel Members

Recommendation 7.2.4 in '[Hearings for Children](#)' stated:

"The potential value of specialist Panels or Panel Members with specialist training should be considered."

The Hearings System Working Group reached this conclusion after hearing from different stakeholders about the bespoke, complex and changing needs of children and families in 2025. The report states *"For example, Panel Members with additional training and expertise in the developmental needs of infants and babies or with a special focus on children in conflict with the law"* (Pg 172).

This is in recognition of the fact that some of the children and families who attend Children's Hearings have complex circumstances and situations that require significant insight into specialist subjects. The provisions in this section of the Bill are therefore welcome, but more information is needed as to how 'specialist Panels' and/ or 'Panel Members' would work in practice and the broader intention of this part of the Bill.

This also has to evolve to adapt to the change needed to how Scotland cares including more focus on anti-racism and unconscious bias, neurodiversity and disability.

Remuneration and consistency of Children's Panel members

We are supportive of the section of the Bill that makes provision to remunerate Panel Members. This is in line with recommendation 6.1.2 in '[Hearings for Children](#)' which stated:

"The decision-making model must consist of a salaried, consistent and highly qualified professional Chair accompanied by two Panel Members, remunerated at a daily rate."

Crucially, this was followed by recommendation 6.1.3 which states *"As far as possible the Chair must be the same Chair each time a child and family attend a Hearing. This should also apply to Panel Members where possible and desirable."*

The reasons for this are set out in detail on Pages 156-158 of '[Hearings for Children](#)'. It is important to be clear that, for the Hearings System Working Group **remuneration was never an end in and of itself**, but rather it was the assessment of the Group that the consistency so often called for by children, families and members of the workforce and the additional asks placed on the Chair could only be achieved by remunerating Panel Members:

"Achieving the level of continuity that is desired alongside improvements in the quality of decision-making and comprehensive writing is likely to only be achieved by the appointment of salaried Chairs and remunerated Panel Members" (Page 157).

The Children's Hearings System is currently served by approximately 2,483 volunteers who give their time, skills, energy and dedication to uphold the welfare-based approach to children that is embedded within the Children's Hearings System. The evidence is clear that the needs of the families referred to the system are increasingly complex, with multi-faceted issues and oftentimes historic involvement with the 'care system' and inter-generational trauma. The assessment of the Hearings System Working Group was that the burden of this responsibility should not be placed on the unpaid workforce, however skilled that workforce might be (Page 36).

This also has the added benefit of ensuring a broader cohort of people are able to become Panel Members, rather than just people who can afford to volunteer. In our view this moves the Children's Hearings System closer to—and not further away from—the original intentions of the Kilbrandon Committee. Indeed, the Committee acknowledged that options for remuneration may become a necessary part of the Children's Hearings System, writing in its report (para 225) that it might *"well be necessary for the efficient working of individual panels and in view of the likely volume of business and frequency of sittings, to make provision for appointment of one or more full time salaried Chairmen of the Panels"*.

It is also important to be clear that **remuneration must be for the Panel Members with the skills, qualities and competencies set out in Chapter Seven of ['Hearings for Children'](#)**. As we have stated above, we believe that **these roles should be more clearly set out on the face of the Bill**.

In addition to the provision for remuneration in this Bill, therefore, an **amendment should be made at Stage 2 to introduce a duty that ensures, wherever safe and practicable, that the Chair of each child's Hearing is consistent**. New subsection 4b of s.6 of the 2011 Act goes some way to achieving this—referring to the "desirability of consistency of membership in cases where a single member Children's Hearing or pre-Hearing Panel has previously dealt with a case", but in our view this is not strong enough.

Continuity of the Chair will ensure continuity of involvement and engagement in the lives of children and families, working alongside them from the very beginning and seeing the impact of their decisions. Trusted relationships are the foundation of making sure the Chair can work in the best interests of children and families, and be able to recognise when their opinions on needs to happen do not align. Quite simply, consistent decision makers is the single biggest change that has been identified by children, families and members of workforce that will make the biggest difference to the current operation of the Children's Hearings System.

Child's attendance at Children's Hearings and hearings before a Sheriff

We are supportive of the removal of a duty for children to attend their Hearing, particularly for very young children, which is in line with recommendation 8.12 of [‘Hearings for Children’](#). However, we are extremely concerned that the second part of the recommendation has not also been translated into the Bill. The recommendation in full states that:

*“The existing obligation for a child to attend must be removed **and replaced with a presumption that a child will attend their Hearing, with some limitations**. There must be no presumption that babies and infants will attend their Hearing.”*

The removal of the duty must be replaced with a presumption that a child will attend and the alternative ways that a child should share their views and engage with their Hearing must be clearly set out. As it currently stands, we are concerned that the removal of the duty in the absence of anything further about obtaining a child’s views is not compatible with the United Nations Convention on the Rights of the Child.

The Hearings System Working Group did not recommend that children should no longer attend their Hearing. Rather, there was a specific recommendation that babies and infants should not be required to attend for reasons set out on Page 195 of [‘Hearings for Children’](#) relating to their ability to understand what happens at a Hearing). The report was also clear that:

- Particular attention should be paid to ensure effort has been made to capture the views and experiences of babies and infants and that the reports and information provided to the Hearing should set out the importance of making decisions in accordance with their developmental timescales and milestones.
- For other children, it is important that that exclusion provision is not habitually or routinely applied but rather there is a balanced and informed discussion, with the child, to make a determination about their attendance.
- The existing obligation should be replaced with a presumption that the child will attend their Hearing, and the Chair should operate based on a presumption that a child will attend.
- The existing range of options available to help facilitate children’s attendance within the Children’s Hearings System should remain in place and expand in accordance with emerging research, evidence and shared learning from other tribunals and ongoing improvement work.
- Ensure that attendance minimises disruption to their childhood, as far as possible.
- If a child does not wish to attend their Hearing, then there should be clear mechanisms in place to help the child understand what will be discussed at the Hearing and what decisions were made. If a recording was made of the

Hearing consideration should be given to whether the child should have access to that—with support in place—after the Hearing has taken place. The Collaborative Redesign Project made a number of suggestions to ensure children fully understand what happened at their Hearing, whether or not they attend their Hearing in person (Pages 195-197).

Chapter Nine of the Redesign report (the voices and involvement of children and their families in the Hearing) goes into considerable detail about the changes required to improve the participation and involvement of children and the important people in their lives in Hearings. We understand that many of these changes are being led by the Redesign Board and the Scottish Children's Reporter Administration given that they do not require legislative change.

However, **this section of the Bill must be amended at Stage 2 to ensure that the presumption (with the exception of babies and infants) as envisioned by the Hearings System Working Group is included on the face of the Bill** and that there is a clear legislative understanding that the Hearing will seek to understand the child, and their families', views and experiences to help inform decision making. There must be additional options to ensure that children and young people are able to participate in their Hearing and to share their views in ways that make sense to them, in line with Article 3 and 12 of the United Nations Convention on the Rights of the Child.

The role of the Reporter and changes to processes around grounds

The changes set out in the Bill with respect to the Reporter and the grounds process are extremely complex and due to a lack of prior engagement before the Bill was laid we do not yet have an understanding of children, families and members of the workforce's views of the proposed changes. As the Committee considers the changes within the Bill we ask them to keep in mind the original intention of the Hearings System Working Group as set out in Chapters Five and Six of '[Hearings for Children](#)' and the importance of ensuring that the changes help to improve children and families' experiences of the Children's Hearings System rather than to add additional complexity. **Adding additional complexity to the system is contrary to the conclusions of the Independent Care Review, which calls for 'decluttering' and simplifying** and to the overall aims of the Hearings System Working Group which aimed to improve children, families and members of the workforce's experiences rather than confuse them further.

We are supportive of changes being made to the role of the Reporter, in line with the conclusions of '[Hearings for Children](#)':

"The role of the Reporter prior to a referral being made to the Children's Hearings System must be enhanced. The engagement of the Reporter must routinely be considered during other child protection and care and support meetings and

discussions, and there must be a consistent approach to partnership working between agencies and the children's hearings system" (rec 3.5)

"Once a referral has been received, the Reporter must work more closely alongside children and families, where possible" (rec 4.3)

The Hearings System Working Group redesigned the Children's Hearings System where the voices, views and experiences of children and their families are routinely part of the Reporter's investigation. The recommendation was that a **statutory duty on the Reporter to seek the views of the child and family, if they wish to share, should be considered**. This does not necessarily mean that the Reporter needs to meet with the child and their family, adding in new people into their lives and asking them to repeat their stories, but rather that the Reporter should be satisfied that they are aware of the child and families' views and perspectives to help inform their decision making. Social workers, advocacy workers and other important people in their lives have an important role in ensuring children's voices are heard, particularly very young children.

The new provisions in s.69A of the Bill make a provision where before arranging a Hearing or making an application to the Sheriff, the Principal Reporter must offer the child and each relevant person an opportunity to discuss the statement of grounds, the child's participation and other matters. We welcome the intent of this provision, but **we are concerned that this does not align entirely with the recommendation in 'Hearings for Children'**, which was not about a meeting, but about ensuring the child and families' views were taken into account. Further work is required to understand how this would work in practice and how the recommendations in 'Hearings for Children', which were based on extensive engagement and collaboration, including with children and families, can be realised in practice.

Additionally, 'Hearings for Children' makes a recommendation (8.4) about a **meeting with the Chair, rather than the Principal Reporter**—with the intention of being an opportunity for the child and their families' preferences about how they would like the Hearings to take place to be discussed and to understand more about the practical support that should be in place to keep them safe. This is described in detail on Pages 187-188 of the report. The proposed changes in the Bill appear to conflate the two issues—and underline the need for a clearer understanding, in statute, as to the role of the Chair. 'Hearings for Children' described a **clearer separation between the potentially adversarial process of establishing grounds (despite the introduction of additional measures to 'lower the temperature') and the inquisitorial approach taken by Children's Hearings** and led by the Chair.

Grounds Hearings

The recommendations in '[Hearings for Children](#)' relating to Grounds Hearings based on extensive discussion and deliberation, were:

"The process of establishing grounds must change.

The drafting of grounds and the Statement of Facts should be reframed to take a rights-based approach to help families to better understand why grounds are being established and recognise themselves in the drafting.

Where relevant and appropriate, the Statement of Facts should include strengths and positive elements of a child's care in addition to the challenges in their lives.

Grounds must be established in a separate process before a child and their family attend a Children's Hearing. There must be no more Grounds Hearings.

A more relational way of working to agree grounds and confirm the Statement of Facts should be encouraged, where the Reporter exercises professional judgement to determine when children and families might be able to discuss grounds."
(Recommendation 5.1)

The recommendation was very clear: there must be no more Grounds Hearings. This was not something that the Hearings System Working Group arrived at lightly. The current process of establishing grounds in the Children's Hearings System was one of the areas that was constantly and consistently pointed out by children, families and members of the workforce as being distressing and must change. The process was described as being adversarial, combative and traumatic. As a result, '[Hearings for Children](#)' provided an alternative view about how grounds should be established—this is set out on Pages 137 -142.

The Promise Scotland has sought a legal opinion regarding this, which concluded there was no legal impediment to grounds being established in the way described in '[Hearings for Children](#)'.

Some of the changes to the existing process as set out in the Bill are extremely welcome. We are extremely supportive of measures to help children and families understand the process and the grounds themselves better and to ensure that where grounds are not contested a Hearing can be immediately convened which will reduce the current drift and delay in the system.

We are also extremely supportive of the measures in the Bill where a Reporter can make a direct referral to a Sheriff where grounds are contested. These are significant and transformational changes that will make a difference to children and families and all those working alongside them in the Children's Hearings System.

We are concerned, however, about the new approach that is being introduced alongside these changes which allows for the Chair and Reporter to have an 'inquisitorial' discussion with children and families where it is possible that some

or all of the grounds may be accepted. Although we recognise the good intentions behind this proposal, **we are concerned that it is being introduced without significant discussion and consultation with children, families and members of the workforce**—including Children’s Hearings Scotland and the Scottish Children’s Reporter Administration. In our view further work is required to ensure that the proposals are compliant with human rights legislation, including the United Nations Convention on the Rights of the Child, and to ensure that the changes will help to meet the conclusions of the Independent Care Review. As drafted it is currently unclear how decisions will be made about which families would engage in this new process and what the basis for this decision-making is. There is also a danger that this will add drift and delay into the system if a referral is then made to the Sheriff—although we recognise that the reverse may also be true.

It is unclear to The Promise Scotland why the changes set out in ‘[Hearings for Children](#)’ cannot be made in their entirety, and why the new element (s.69C) relating to a ‘possibility’ of grounds being accepted needs to be introduced.

Additionally, the recommendations in ‘[Hearings for Children](#)’ regarding eliminating drift and delay in establishing grounds should be considered by the Committee. In particular, recommendation 5.4.1 which states that statutory timescales for establishing grounds (with the appropriate caveats) should be considered:

“The benefit of a statutory three month set time limit for the determination of grounds should be considered. Importantly, the recommendation is also clear that there should be scope for this to be extended in extreme circumstances, at the discretion of the Sheriff. This could be similar to the introduction of mandated timescales for decision-making in England and Wales.”

The average length of time between the Reporter receiving a referral about a child, grounds being established and a Hearing making a decision about a child and their family is approximately 8.5 months. Establishing grounds for referral, when the facts are disputed, can take on average approximately 3.5 months, although the Hearings System Working Group has heard examples of children and families waiting up to 6 months or even more than a year. These are extraordinary lengths of time for children and families to be in limbo, waiting for significant decisions that will impact on the rest of their lives.

Members of the workforce have spoken about the help and support for children and their families to address the challenges in their lives being ‘paused’ or not put in place while they were waiting for a decision from a Hearing. This is despite the evidence which shows that the first six months are most effective in terms of working alongside children and their families after an acute incident has taken

place. This should be urgently addressed. Children and families must feel supported while they are waiting for their Hearing to take place and efforts should be made to address systemic delays.

The Promise Scotland would welcome amendments at Stage 2 to bring forward a statutory time limit for establishing grounds which would introduce a discipline among practitioners, relevant persons, and other participants in the proof that would have the overall effect of limiting unnecessary drift and delay.

Relevant persons

We are supportive of the proposed changes regarding relevant persons, which was not an area considered by the Hearings System Working Group, though the Group was clear that redesigned Children's Hearings System must work harder to hear the views of the important people in a child's life and make sure they feel involved in the decision-making process. In our view the proposed changes will help to add in additional protections and ensure that children's rights are upheld.

Changes to language

We are supportive of the changes to the language around tests for referral to the Principal Reporter (from "might be" to "is likely to be" and other changes), which is in line with recommendation 3.3 of "[Hearings for Children](#)". We note that the recommendation goes further and also refers to the need to update the language around 'treatment and control'. We understand the Scottish Government is considering the impact of this change and would **welcome amendments at Stage 2 to progress this if possible.**

Access to advocacy and legal representation

We are supportive of the proposed changes to advocacy within the Children's Hearings System. '[Hearings for Children](#)' concluded (recs 4.1.1, 4.1.3) that:

- *If a child does not already have an advocacy worker, there should be an immediate offer of advocacy at the point of referral to the Reporter for all children. This must be fully explained to children in ways that they understand so that they are aware of what an advocacy worker is and the role that they can play. Independent advocacy and legal advice at point of referral.*
- *The offer of advocacy should be repeated to children and to their families at different stages of the process.*

The Scottish Government accepted these recommendations in full. We note that the Bill states that local authorities, police officers and the Principal Reporter must

inform children earlier about “the availability of advocacy services” in s.21. It is important that these services are available at an earlier point if children are being informed of them.

We are unclear how the provision for advocacy in this part of the Bill aligns with the changes to advocacy provision and the right to advocacy described in Chapter One of the Bill. Children must not be offered multiple different advocacy workers and there must be a clear alignment and transition for children as they leave the Children’s Hearings System, including the option to retain their advocacy worker if they have established a relationship with them. As we have stated above, The Promise Scotland’s recommendation to the Scottish Government in December 2023 was that the National Practice Model for the Children’s Hearings System is expanded for children and young people.

Recommendation 10.1 of ‘[Hearings for Children](#)’ makes specific reference to the conduct of lawyers, which was an area consistently raised by children, families and members of the workforce with the Hearings System Working Group. In line with the broader ambition for an inquisitorial system, the report recommended a review of the pre-existing Code of Practice that lawyers are required to adhere to, mechanisms to review practice and consideration of the development of rights of audience.

The report also recommended (4.2) that children should be fully informed of their right to legal representation and that there should be an exploration and understanding of whether the current mechanisms for them to access legal aid and their right to legal support is sufficient.

In our view, **consideration of these areas is missing from the Bill**. We understand that discussions are ongoing to ensure that regulations are laid to ensure children who are referred to the Reporter on offence grounds are automatically able to access legal representation. We strongly support this and seek assurance that an alternative legislative vehicle has been identified in addition to consideration of what may be done to introduce rights of audience and ensure that all children are able to access legal representation in addition to the right to advocacy.

Part Two

Q9. What are your views on the proposed changes to Children’s Services Planning set out in section 22 of the Bill?

The Promise highlights that Scotland’s ‘care system’ is burdened by complex and incoherent legislation, placing strain on the workforce, and that despite the levels of bureaucracy, current data and reporting focus more on system processes and

settings, what can be easily measured, than on the real experiences and outcomes of children, families and care experienced adults – the things that matter most to them. It concluded that Scotland must declutter the landscape for how it cares.

Services and provision must be designed on the basis of need and with clear data, rather than on an acceptance of how the system has always operated (pg.110). As the 'care system' shrinks and specialises, the nature and needs of the children requiring care will change and therefore the data captured must evolve too.

The Oversight Board for the promise's [Report ONE](#) highlighted how complex the existing governance landscape is, and the myriad of accountabilities across many organisations, concluding that "accountability needs to shift away from the individual parts of the 'system' and towards a collective accountability framework, focused on the needs of children, young people and their families" (pg.8).

The Promise Scotland's '[Resetting public services: Governance and accountability to keep the promise](#)' paper sets out five principles that should be built into a reset of how Scotland's public services are governed, and is clear that to sharpen accountability for outcomes, the reporting burden on public bodies must be minimised.

The Promise Scotland is supportive of measures to ensure that Integrated Joint Boards are part of children's services planning. That said, this section of the Bill is a missed opportunity to enable the more substantive changes that are required to address the reporting burden on local areas and to consider how to streamline reporting duties and improve monitoring and data collection to ensure that what is being measured matters to children and families and care experienced adults.

There will be a need for further legislation in these areas to ensure that reporting requirements around children's services make sense to the workforce and are not overly bureaucratic. There is also a need to improve children's services planning to ensure that plans are more accessible to children and families and local communities. This could include requirements to ensure meaningful involvement of care experienced children, young people and families in shaping local plans, including them playing a role in deciding what information is used to report on and to measure outcomes, so that plans reflect a combination of national measures and locally co-designed indicators of what matters to children and families.

For further information about our response please get in touch with our Policy Lead, Chloe Riddell, at chloe@thepromise.scot.